



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, April 4, 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)

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 Spring

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PRESENTATIONS

Silicon Valley Water Conservation Award Presentation

Legislative Update- Seth Miller, the League of California Cities

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. RESOLUTION OF LOCAL SUPPORT FOR MTC DISCRETIONARY FUNDING PROGRAMS

Recommendation:

1. Adopt resolution of local support for the Metropolitan Transportation Commission (MTC) Discretionary Funding program;
2. Authorize the filing of an application for One Bay Area Grant (OBAG II) Funds; and
3. Commit City matching funds of \$300,000 from the Street Capital Improvement Program (CIP) Fund (308).

2. ACCEPT \$40,000 DONATION FROM FRIENDS OF THE MORGAN HILL SENIOR CENTER

Recommendation:

Accept a \$40,000 grant from the Friends of the Morgan Hill Senior Center.

3. AWARD LIFT STATIONS J & W

Recommendation:

1. Approve Sanitary Sewer Lift Stations J & W Rehabilitation Project plans and specifications;
2. Award contract to Pacific Infrastructure Corporation for the Sanitary Sewer Lift Stations J & W Rehabilitation Project in the amount of \$1,153,000;
3. Authorize expenditure of construction contingency funds not to exceed \$115,300; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Infrastructure Corporation.

4. APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR CANDELARIA RESIDENTIAL PROJECT LOCATED AT 1190 CASTLE LAKE CIRCLE (APN: 764-30-006)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Candelaria Residential Project located at 1190 Castle Lake Circle (APN: 764-30-006); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

5. REJECT ALL BIDS FOR THE PLAYGROUND ENHANCEMENTS AT JACKSON PARK

Recommendation:

Reject all bids for the playground enhancements at Jackson Park.

6. ACQUISITION BY HOUSING FUND (FUND 236) OF 17545 DEPOT STREET , APN 726-14-041

Recommendation:

Adopt resolution authorizing the acquisition of 17545 Depot Street for the assembly of property to support a future affordable housing development for an amount not to exceed \$925,000.

7. ACCEPT AMENDED ANNUAL HOUSING ELEMENT PROGRESS REPORT

Recommendation:

Accept the Amended Annual Housing Element Progress Report.

8. JANUARY 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

9. ADOPT RESOLUTION CONSENTING TO DISSOLUTION OF CORP YARD COMMISSION

Recommendation:

Adopt Resolution consenting to termination of a Joint Powers Agreement with the Morgan Hill Unified School District and dissolving the joint Corporation Yard Commission.

10. APPROVE THE MARCH 7, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

11. OPPORTUNITY TO PROVIDE PUBLIC COMMENT REGARDING SANDALWOOD SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

Provide opportunity for the public to be heard on the matter of the planned increase in the assessment in the Sandalwood Subarea.

Estimated Time: 5 Minutes

12. SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2018

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2018.

Estimated Time: 10 Minutes

13. ENERGY SERVICES AGREEMENT WITH CARBON LIGHTHOUSE

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution approving award of an energy services agreement to Carbon Lighthouse, Inc. in the amount of \$82,100 subject to the review and approval of the City Attorney.

Estimated Time: 5 Minutes

OTHER BUSINESS

14. BOOKSMART UPDATE AND FINANCIAL REQUEST

Recommendation:

1. Accept report; and
2. Provide direction on whether staff should proceed with reviewing potential options for the City's financial support of BookSmart.

Estimated Time: 15 Minutes

15. MONTEREY CORRIDOR MARKET STUDY AND IMPLEMENTATION OPTIONS

Recommendation:

1. Receive presentation on the Monterey Corridor Market Study and Implementation Recommendations; and
2. Consider and provide direction to staff on Planning Commission's Monterey Corridor Implementation Recommendation.

Estimated Time: 45 Minutes

16. PROVIDE DIRECTION REGARDING THE OUTDOOR SPORTS CENTER OPERATOR SELECTION

Recommendation:

1. Direct staff to negotiate an agreement with NewCo for operation of the Outdoor Sports Center; and
2. Provide direction on any additional agreement considerations the Council may have, in addition to those already established in the guiding principles and outcomes outlined in the Request for Proposals.

Estimated Time: 30 Minutes

17. APPROVE FIFTH AMENDMENT TO MORGAN HILL YOUTH SPORTS ALLIANCE CONCESSIONAIRE AGREEMENT

Recommendation:

Authorize the City Manager to execute and subsequently administer a Fifth Amendment to the Concessionaire Agreement with the Morgan Hill Youth Sports Alliance for the operations of the Outdoor Sports Center.

Estimated Time: 10 Minutes

18. 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

19. FRANCHISE TOW AGREEMENTS

Recommendation:

1. Approve Tow Program Agreements with California Tow and Salvage and Community Tow; and
2. Authorize the City Manager to execute the Agreements.

Estimated Time: 10 Minutes

20. ACQUISITION OF THE 17760 MCLAUGHLIN COURT BELOW MARKET RATE (BMR) HOME BY THE CITY HOUSING FUND

Recommendation:

Adopt resolution:

1. Authorizing Acquisition of the Moderate, Below Market Rate (BMR) Home located at 17760 McLaughlin Court, Morgan Hill, CA 95037 to re-sell to an income-eligible buyer, preserving the unit within the City's affordable housing inventory and extending the affordability covenants; and
2. Approving an amendment to the City's Fiscal Year 2017-18 budget, appropriating \$564,043 from the Housing Fund (255) for expenses associated with the acquisition and rehabilitation of the home located at 17760 McLaughlin Court.

Estimated Time: 10 Minutes

21. UNCODIFIED ORDINANCE REAUTHORIZING CHAPTER 5.21 - STATE VIDEO FRANCHISES OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

1. Waive the first reading of the Ordinance; and
2. Introduce Ordinance reaffirming and reauthorizing Chapter 5.21 – State Video Franchises of the Morgan Hill Municipal Code.

Estimated Time: 5 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so 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: April 4, 2018

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

RESOLUTION OF LOCAL SUPPORT FOR MTC DISCRETIONARY FUNDING PROGRAMS

RECOMMENDATION(S)

1. Adopt resolution of local support for the Metropolitan Transportation Commission (MTC) Discretionary Funding program;
2. Authorize the filing of an application for One Bay Area Grant (OBAG II) Funds; and
3. Commit City matching funds of \$300,000 from the Street Capital Improvement Program (CIP) Fund (308).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The Metropolitan Transportation Commission (MTC) developed Federal flexible funding programming criteria to assist local jurisdictions with infrastructure projects desired by those communities. One of the programs is the One Bay Area Grant Program (OBAG). In 2012, the City submitted an OBAG I grant application to the Santa Clara Valley Transportation Authority (VTA) for the resurfacing of Monterey Road. The project was awarded \$1,379,000 in OBAG I funds.

On November 18, 2015, MTC adopted the funding and policy framework for the second round (OBAG 2) of the One Bay Area Grant program. In December 2016, City staff learned that the VTA had approved the City's OBAG 2 grant request for the resurfacing of East Dunne Avenue between lower Thomas Grade and 2,500 linear feet east of Holiday Drive (end of City limits) in the amount of \$1,157,000. The City will receive \$857,000 in funding from the OBAG 2 program for this project with the City pledging \$300,000 in local matching funds.

In order for the City to receive the grant funding, it must adopt a resolution of local support that authorizes the submittal of the grant application to the MTC. The resolution also commits the City to provide a required minimum local match of 11.47% of the grant award, and to make the necessary assurances that the project will comply with the grant program requirements. It further requires the City to accept the OBAG 2 grant funding from the MTC and to negotiate and execute any subsequent documents as necessary for such acceptance and to state assurances to complete the awarded project.

It is recommended that the City Council adopt a Resolution in support of the Metropolitan Transportation Commission One Bay Area Grant Program (OBAG 2) and authorize City staff to submit a grant application to the MTC for the One Bay Area Grant Program and to commit the City to provide the local match, and to provide assurance that it will complete the grant project in question.

COMMUNITY ENGAGEMENT: Inform

Construction is tentatively scheduled for summer of 2020. Prior to construction, staff will provide project updates to the public via Nextdoor and the City's website. When construction commences, information will be posted weekly through Nextdoor and on the website.

ALTERNATIVE ACTIONS:

City Council could choose to not provide a resolution of support for this project. However, this would forfeit the City's OBAG 2 grant funds and the project would need to find another funding source.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On September 25, 2013, City Council adopted a resolution of local support for Metropolitan Transportation Commission Discretionary Funding Programs for resurfacing Monterey Road (OBAG I).
- On May 3, 2017, City Council awarded the Monterey Road Preservation Project to Granite Construction Company, which utilized \$1,379,000 in OBAG I funds.

FISCAL AND RESOURCE IMPACT:

The East Dunne Avenue Pavement Rehabilitation Project will be included in this year's Capital Improvement Program (FY2018-19 through 2023-24), including the City's match. The City's match of \$300,000 will be funded through the Street Fund (308).

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. Resolution of support - OBAG 2
2. Project Location Map-OBAG 2

RESOLUTION NO. ____

**A RESOLUTION OF LOCAL SUPPORT OF THE CITY
COUNCIL OF THE CITY OF MORGAN HILL
AUTHORIZING THE FILING OF AN APPLICATION FOR
FUNDING ASSIGNED TO MTC AND COMMITTING ANY
NECESSARY MATCHING FUNDS AND STATING
ASSURANCE TO COMPLETE THE PROJECT**

WHEREAS, the City of Morgan Hill (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for Eight Hundred Fifty Seven Thousand dollars (\$857,000) in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Program (STP) funding, Congestion Mitigation and Air Quality Improvement (CMAQ) funding, Transportation Alternatives Program (TAP)/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the East Dunne Avenue Pavement Rehabilitation Project (herein referred to as PROJECT) for the One Bay Area Grant-Cycle 2 (OBAG II) (herein referred to as PROGRAM); and

WHEREAS, the Moving Ahead for Progress in the 21st Century Act (Public Law 112-141, July 6, 2012) and any extensions or successor legislation for continued funding (collectively, MAP 21) authorize various federal funding programs including, but not limited to the Surface Transportation Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives Program (TA) (23 U.S.C. § 213); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to MAP-21, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquiries or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC

in conjunction with the filing of the application.

NOW, THEREFORE, BE IT RESOLVED that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under MAP-21 or continued funding; and be it further

RESOLVED that APPLICANT will provide any required matching funds; and be it further

RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans. FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

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. Application. The City Council does hereby approve the application for funding for the East Dunne Avenue Rehabilitation Project.

Section 3. Matching Funds, Project Completion. The City Council does hereby commit to matching funds and assure the completion of the project.

Section 4. This Resolution shall take effect immediately upon adoption.

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

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

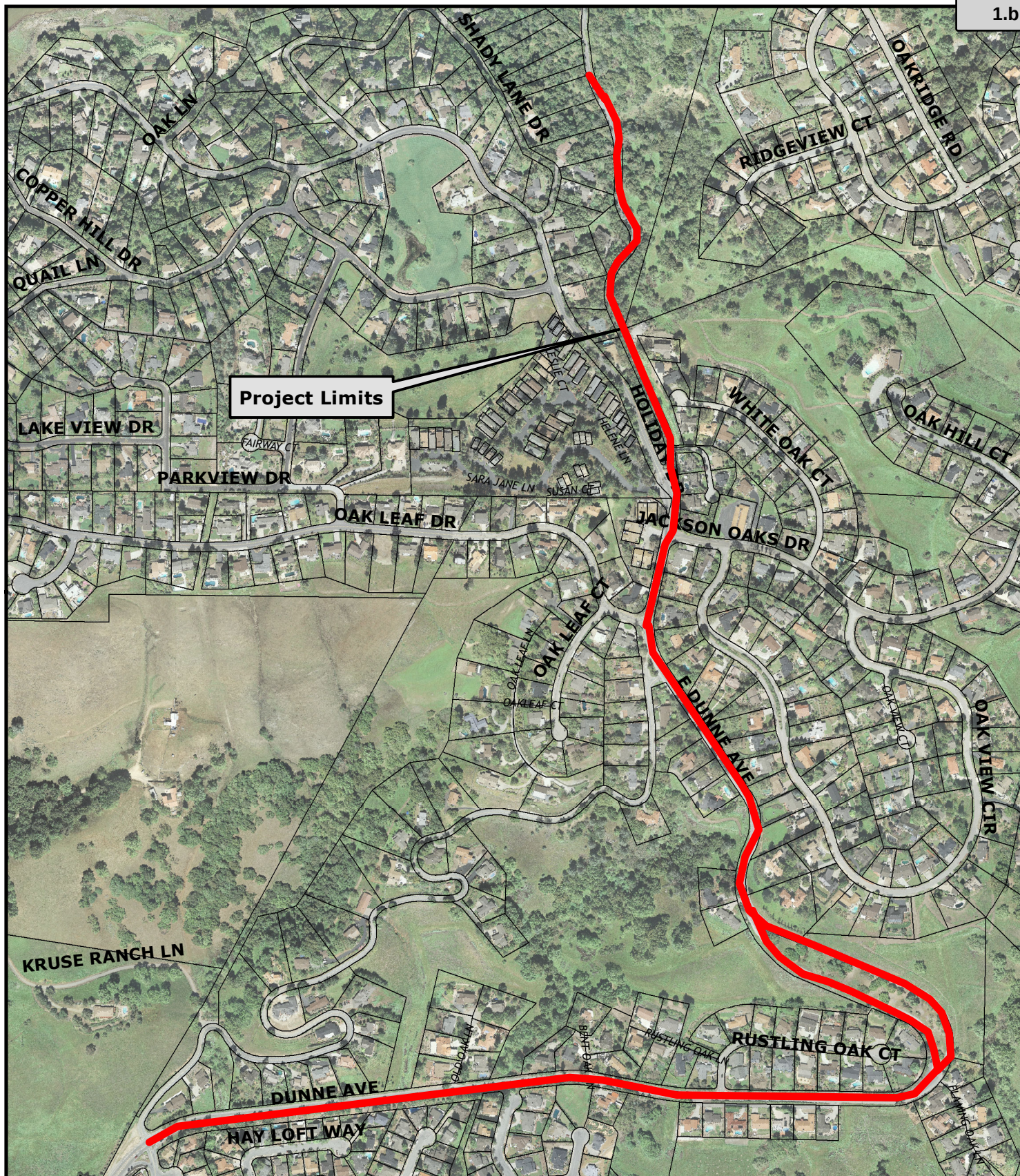
COUNCIL MEMBERS:

COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

Attachment: Resolution of support - OBAG 2 (1681 : Resolution of Local Support)



Attachment: Project Location Map-OBAG 2 (1681 : Resolution of Local Support)



CITY OF MORGAN HILL
Engineering Division
Community Development Agency

SITE MAP East Dunne Pavement Rehabilitation Project

0 120 240 480 720 960
Feet





CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Debbie Vasquez,
APPROVED BY: City Manager

ACCEPT \$40,000 DONATION FROM FRIENDS OF THE MORGAN HILL SENIOR CENTER

RECOMMENDATION(S)

Accept a \$40,000 grant from the Friends of the Morgan Hill Senior Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

In November 2017, staff submitted a grant application to the Friends of the Morgan Hill Senior Center requesting grant funds in the amount of \$40,000. The request was made to support Older Adult Programs and Services at the Centennial Recreation Senior Center with targeted funding to support the pilot Volunteer Driver Program, "Get'n Around Town". This funding is necessary to support the existing operation of the Senior Center and \$20,000 was part of the budget plan for FY 2017/2018.

The Friends of the Morgan Hill Senior Center was established in 2011 with the primary purpose of raising funds to support Senior Center operations. "Friends", a group of more than 40 community volunteers, host the ongoing Tuesday night Bingo at the Community and Cultural Center as its primary fundraising activity. When the City took on management of the Senior Center in 2015, the Friends estimated that funding of \$20,000 per year would be available to support the City's operation of the Senior Center.

Financial sustainability continues to be a focus area for the Senior Center. As part of the sustainability plan for the Senior Center, City teammates have also been working with the Friends to establish a formal endowment program that aligns with the existing Community Sponsorship Policy. A sub-committee of the Senior Advisory Committee has been established, the Endowment and Legacy Committee, to establish the procedures and guidelines for a Senior Center Giving Tree and Naming Rights for rooms at the Senior Center.

Over the next few months the Endowment and Legacy Committee, in collaboration with Friends of the Morgan Hill Senior Center, will finalize details and fully implement the Naming Rights and Giving Tree Endowment Program.

COMMUNITY ENGAGEMENT: Inform, Involve, Collaborate,

The Friends of the Morgan Hill Senior Center is a group of community members that raise funds specifically to support the Morgan Hill Senior Center. The Friends of the Morgan Hill Senior Center collaborate with City staff to inform and involve the public in their ongoing events to support operations at the Senior Center.

ALTERNATIVE ACTIONS:

The Council could reject the \$40,000 grant award.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In January 2017, City Council accepted the Friends of the Morgan Hill Senior Center donation of \$30,000 to the Senior Center, and \$40,000 to the Morgan Hill Senior Support Endowment Fund.

FISCAL AND RESOURCE IMPACT:

Accepting the donation of \$40,000 provides \$20,000 more in grant revenue than anticipated in the FY 2017/18 budget.

CEQA (California Environmental Quality Act):

Since the resulting activity is an administrative program that will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

AWARD LIFT STATIONS J & W

RECOMMENDATION(S)

1. Approve Sanitary Sewer Lift Stations J & W Rehabilitation Project plans and specifications;
2. Award contract to Pacific Infrastructure Corporation for the Sanitary Sewer Lift Stations J & W Rehabilitation Project in the amount of \$1,153,000;
3. Authorize expenditure of construction contingency funds not to exceed \$115,300; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Infrastructure Corporation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The Adopted Fiscal Year 2016-17 through 2021-22 Six Year Capital Improvement Program includes the rehabilitation of the City's sewer lift stations "J" and "W". The rehabilitation of the lift stations "J" and "W" are part of the City's ongoing maintenance program to improve the existing lift stations that are near the end of their life expectancies. The improvements to the lift stations will increase reliability, reduce the potential for overflows, and ensure compliance with the Regional Water Quality Control Board Requirements by replacing and upgrading aging equipment/facilities.

The scope of the work involves the replacement of the lift station pumps, valving, force main piping and fittings, mounting equipment, power pedestal equipment, installation of protective/restorative coatings, relocation of existing electrical services, restoration of site improvements (i.e. pavement, site lighting), and temporary sewer bypass operations. The bid opening for the project was held on March 13, 2018 and the bids received are listed below.

Pacific Infrastructure Corporation	\$1,153,000
Monterey Peninsula Engineering	\$1,229,500*
JMB Construction	\$1,405,500
Pacific Underground Construction	\$1,405,850

**Monterey Peninsula Engineering's construction bid was corrected from \$1,236,100 to \$1,229,500 due to mathematical errors.*

The low bidder, Pacific Infrastructure Corporation (PIC) is an experienced contractor with this type of work and has worked on numerous wastewater and recycled water rehabilitation projects for local agencies and sanitary districts in Alameda, Contra Costa, and Marin Counties. Although Pacific Infrastructure Corporation has not worked for the City previously, they recently completed a similar project for the sanitary district in Contra Costa County and the district was very pleased with PIC's workmanship and the temporary sewer bypass operations implemented to complete the project. Pacific Infrastructure Corporation's bid amount of \$1,153,000 was approximately 5% higher than the engineer's estimate of \$1,100,000, which is most likely due to the competitive bidding climate and increasing construction costs coinciding with the ongoing regional economic growth. Thus, staff recommends award of the contract to Pacific Infrastructure Corporation in the amount of \$1,153,000. The project is scheduled to begin in May 2018 and be completed by December 2018.

The project plans and specifications can be found on the City's web page at the following link: <http://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>.

COMMUNITY ENGAGEMENT: Inform

The Sanitary Sewer Lift Stations J & W Rehabilitation Project are located at 16035 Jackson Oaks Drive (Lift Station "J") and 15505 Watsonville Road (Lift Station "W"). Staff will provide email and door notifications prior to construction activities. Staff will also provide updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

City Council could elect to not award this construction contract. However, this would leave the existing lift stations in poor condition, vulnerable to equipment failures, and possibly result in sewer spills.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On November 4, 2015, City Council awarded a service agreement for design professionals with Schaaf & Wheeler Consulting Engineers for \$135,535 to design the Sewer Lift Station J & K Rehabilitation Project.
- On November 18, 2015, City Council awarded a service agreement for design professionals with Schaaf & Wheeler Consulting Engineers for \$148,575 to design the 2015 Lift Sewer Lift Station Improvements – D, F, & W Project.
- On December 16, 2016, the City Manager authorized the First Amendment to Agreement with Schaaf & Wheeler Consulting Engineers for the Sewer Lift Station J & K Rehabilitation Project.
- On December 16, 2016, the City Manager authorized the First Amendment to Agreement with Schaaf & Wheeler Consulting Engineers for the 2015 Lift Sewer Lift Station Improvements – D, F, & W Project.

- On January 17, 2018, City Council ratified second amendments with Schaaf & Wheeler Consulting Engineers for Professional Design Services for Sewer Lift Stations J, K, D, F, and W.

FISCAL AND RESOURCE IMPACT:

The total authorization for this project would be \$1,268,300, which includes a 10% contingency of \$115,300. The construction costs are sufficiently funded in the Fiscal Year 2017-18 Capital Improvement Program (CIP) budget under CIP Project 304000 – Lift Station Improvements. The project is being funded through Sewer Bond Proceeds.

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. Project Location Map
2. Project Bids and Specifications (web link)



Attachment: Project Location Map (1690 : Award Lift Stations J & W)



CITY OF MORGAN HILL

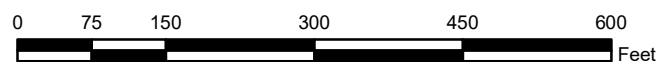
Engineering Division

Community Development Agency

Path: G:\R-14\PROJ\GIS\Marks\SITE MAPS\SiteMap_Sewer_LiftStaJ.mxd

SITE MAP

'J' Lift Station Jackson Oaks Dr.





Attachment: Project Location Map (1690 : Award Lift Stations J & W)



CITY OF MORGAN HILL

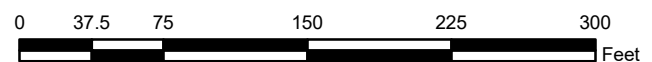
Engineering Division

Community Development Agency

Path: G:\R-14\PROJ\GIS\Marks\SITE MAPS\SiteMap_Sewer_LiftStaW.mxd

SITE MAP

'W' Lift Station Watsonville Rd.





CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR CANDELARIA RESIDENTIAL PROJECT LOCATED AT 1190 CASTLE LAKE CIRCLE (APN: 764-30-006)

RECOMMENDATION(S)

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Candelaria Residential Project located at 1190 Castle Lake Circle (APN: 764-30-006); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

The Candelaria Residential Project is located at 1190 Castle Lake Circle which is lot number 46 of existing Tract Number 7679 (Castle Hill Subdivision); Assessor's Parcel Number (APN) 764-30-006 (see attached Site Map). The project is a new single-family residence with a three-car attached garage, a four-car detached garage, and a new accessory structure to be used as an entertainment room on a vacant, one-acre lot.

The project received a building permit on March 9, 2018 to construct the proposed residence and accessory structures and install on-site, private stormwater detention facilities in the form of three surface ponds to improve the quality of stormwater runoff and reduce the runoff rate and volume within the development as required by City Municipal Code Chapter 18.71, Post-Construction Stormwater Pollution Prevention. The private stormwater facilities will require regular maintenance and inspection by the owner, Michael Candelaria. To ensure proper maintenance and inspection, staff recommends that the City Council authorize the City Manager to sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Candelaria Residential Project.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended approval of the agreement.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There are no prior City Council and Commission actions on this project.

FISCAL AND RESOURCE IMPACT:

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

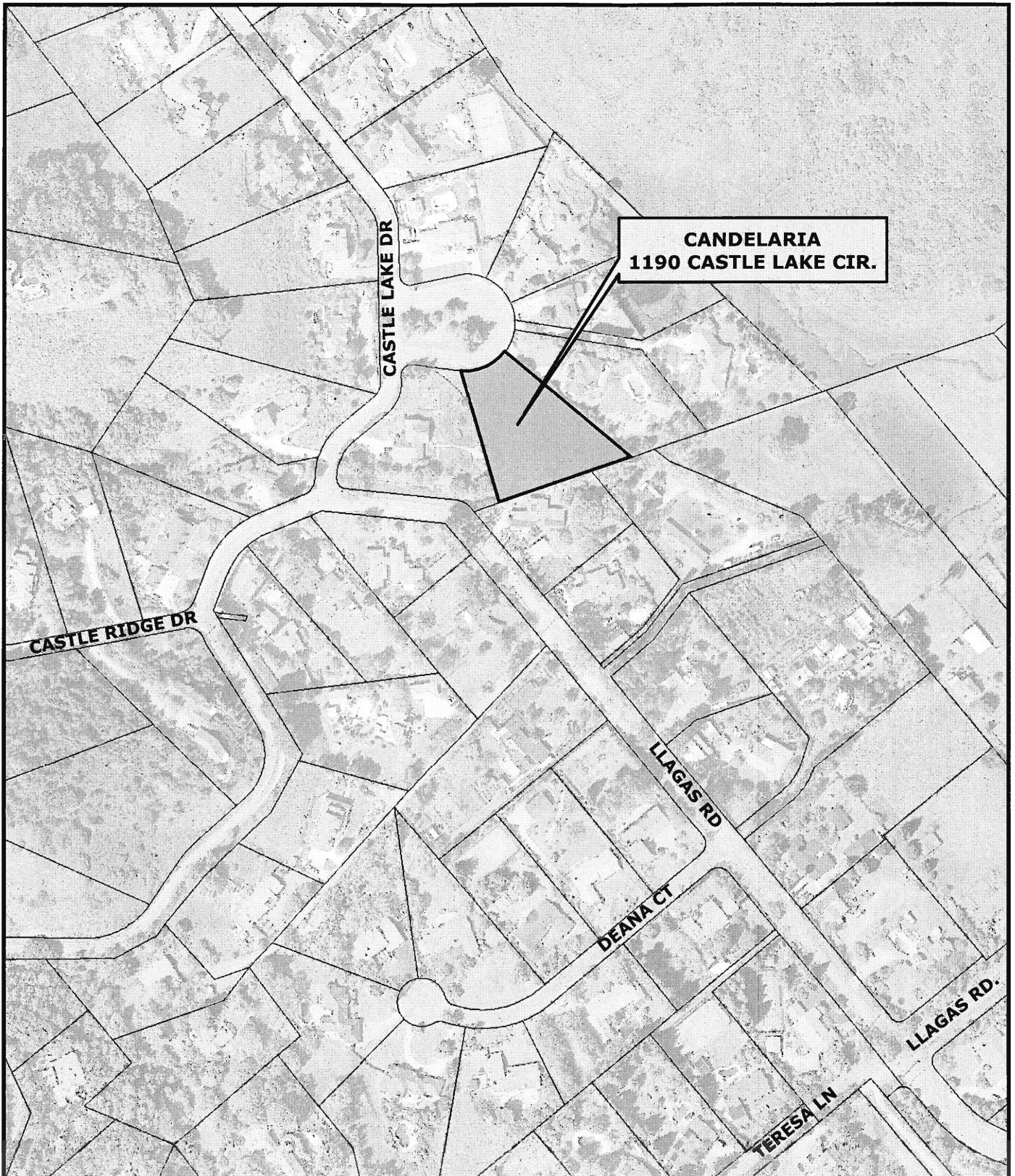
CEQA (California Environmental Quality Act):

Statutory Exemption

Council approval of the Stormwater BMP Operation and Maintenance Agreement is statutorily exempt from CEQA pursuant to § 15268 (Ministerial Projects).

LINKS/ATTACHMENTS:

1. Site Map
2. Stormwater BMP Operation and Maintenance Agreement



Attachment: Site Map (1678 : Stormwater BMP O&M for Candelaria Residential Project)



CITY OF MORGAN HILL

Department of Public Works
Engineering and Utilities Division

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

**SITE MAP
CANDELARIA
RESIDENTIAL PROJECT
APN: 764-30-006**



0 100 200 400 600 800
Feet

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

APN: 764-30-006

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 **Michael Candelaria**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **Stormwater Runoff Management Plan for Candelaria Residence** prepared by **M.H. Engineering Co.** and dated **January 26, 2018**, 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: Michael Candelaria

Name: Michael Candelaria

Title: Owner/Applicant

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

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.

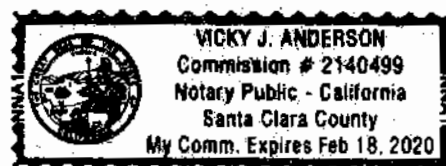
State of California
County of Santa Clara

On Feb 23, 2018 2018, before me, Vicky J Anderson a Notary Public in and for said County and State, personally appeared Michael Candelaria 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.

Vicky J Anderson
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)

EXHIBIT "A"

All of Parcel A as shown on that certain Parcel Map filed at Book 906 of Maps, Pages 4 and 5, Santa Clara County Records.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

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

REJECT ALL BIDS FOR THE PLAYGROUND ENHANCEMENTS AT JACKSON PARK

RECOMMENDATION(S)

Reject all bids for the playground enhancements at Jackson Park.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE

In August of this year, City staff had the opportunity to apply for a grant through PlayCore's Center for Professional Development, GameTime, and the California Parks and Recreation Society. The goal of this *Healthy Play Initiative* grant is to provide matching funding to parks throughout the State to install a pre-approved play and recreation project that promotes best practices.

City staff worked with GameTime to develop a proposal that would add to and improve the play environment at Jackson Park. In consistency with the City's Bikeways, Trails, Parks and Recreation Master Plan, the improvements proposed included a net increase in play opportunities and a broadening in the inclusiveness of the play environment.

In September 2017, City staff were notified that Morgan Hill was chosen as one of the 24 communities across California to receive funding assistance through the *Healthy Play Initiative* grant. While the grant significantly reduces the cost of the play equipment, there are matching funds that would be required from the Park Impact Fund to cover the costs of installation and the remaining cost of the play equipment.

On November 15, 2017, the City Council directed staff to proceed with the proposed conceptual plans and directed staff to solicit bids for the installation costs. At that time the total amount allocated for the matching playground funds was \$24,327.41 and \$48,000 for the cost of installation.

The scope of work for the installation included site work, concrete curbs, sub base for surfacing, install of poured in place surfacing, and installation of play equipment.

In soliciting proposals for this project, the City advertised in the Morgan Hill Times on February 9, 2018 and posted bid documents on Public Purchase and the City of Morgan

Hill website. City staff also notified contractors on the City's Bidders List who had the required contractor's license for this work.

The bid opening was held on February 21, 2018. The bids received are listed below.

Community Playgrounds, Inc.	\$87,545
Flexground Surfaces, Inc	\$98,369
G & G Builders	\$98,457

Staff recommends rejecting the bids received as they all significantly exceeded the project budget for installation of \$48,000 and not proceeding with this project at this time.

COMMUNITY ENGAGEMENT: Consult

On October 10, 2017, a community meeting was held at Jackson Park. City Staff presented the conceptual plans and had discussion with the residents about what they would like to see at the park. Staff will notify the residents on the Council decision after the April 4, 2018 meeting.

ALTERNATIVE ACTIONS:

The Council could elect to not reject all bids and instead direct staff to return to the Council on April 18th with a resolution to amend the City's approved budget to appropriate the additional funds needed to implement the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At the July 26, 2017 City Council Meeting, Council authorized City Staff to apply for the Healthy Play Grant for new play equipment and to return to Council with a budget amendment authorizing matching appropriation from the Park Impact Fund. The Parks and Recreation Commission was presented with the conceptual plans at the October 17th meeting and all voted in support of the staff recommendation to move forward with the project.

At the November 15, 2017 City Council Meeting, Council approved conceptual plans for Jackson Park and directed staff to solicit bids. Council also adopted a resolution approving an appropriation of \$72,327 from the Park Impact Fund for matching funds for play equipment and installation costs.

FISCAL AND RESOURCE IMPACT:

The recommended action will result in not expending \$72,327 in park impact funds for this project. These funds will remain available to support future park improvements and expansions throughout the community.

CEQA (California Environmental Quality Act):

Not a Project: Projects that are rejected or disapproved by the City Council are exempt from CEQA.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

ACQUISITION BY HOUSING FUND (FUND 236) OF 17545 DEPOT STREET , APN 726-14-041

RECOMMENDATION(S)

Adopt resolution authorizing the acquisition of 17545 Depot Street for the assembly of property to support a future affordable housing development for an amount not to exceed \$925,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Infrastructure
Regional Initiatives

POLICY CONSIDERATION:

Should the City Council consider acquiring additional land located in Downtown Morgan Hill as part of an assemblage to support future affordable housing development opportunity?

REPORT NARRATIVE:

In August 2017, the City acquired via probate sale, a 9,000-square foot lot with house at 85 E. First Street, to hold as the site of a future affordable housing project. The house on this property was subsequently demolished and the property fenced, pending interim paving improvements allowing use of the lot as temporary parking until it is developed. During demolition and fence construction, the City reached out to the owner of 17545 Depot Street to coordinate tree trimming and shared fence removal/construction. The owner of 17545 Depot Street, Ralph Bader, Successor Trustee of the Ralph H. Bader Survivor's Trust, asked the City to consider purchasing his property as well.

An appraisal was prepared by Valbridge/Hulberg Property Advisors and the value was determined to be \$905,000. The property is 8,527 sf, and combined with the property already in City ownership, constitutes a site of approximately 17,700 square feet or .4 acres. The property is strategically situated in the Downtown Core with easy access to transit, parks, amenities and services, in a walkable environment.

The Bader property consists of a 3-unit, single-story, wood frame building, and one, one-bedroom apartment, all approximately 500 square feet. The buildings were constructed in 1967 and include a large patio structure. The one single unit is a garage

conversion. Without significant capital investment, the appraiser considers the structures to be within 10 years of the end of their economic life. In negotiation, Mr. Bader has agreed to accept \$925,000 or 2% above the appraisal, for the property. This is within standard deviation for determining value by appraisal, which can run from 5 - 10% depending upon comps in the market. The City would require that an environmental assessment be prepared on the land and structures, and the site be vacated prior to close of escrow. The City proposes to demolish the units on the site after acquisition and add the lot to the adjacent city-owned property to be used as temporary parking until an affordable development project can be identified and developed. Mr. Bader will also require enough time to identify property for exchange from the sale (perhaps 3 months) which will provide ample time to notice tenants and conduct the necessary studies.

COMMUNITY ENGAGEMENT:

This report is intended to inform the City Council and community of the proposed actions to acquire 17545 Depot Street.

ALTERNATIVE ACTIONS:

The City Council could choose not to acquire this property.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no prior actions related to this request.

FISCAL AND RESOURCE IMPACT:

The proposed acquisition will be an expenditure of Housing Fund 236 In-lieu fees. The item was not budgeted for FY 17-18 and requires a Budget Scorecard (attached). The Housing Fund has funds available for two to three housing projects over the next three years. It is the recommendation that this site assembly opportunity be one of those projects. Total costs include environmental assessment, escrow charges, demolition and property acquisition and are estimated at \$950,000.

CEQA (California Environmental Quality Act):

This project is exempt from CEQA review under Public Resources Code section 21159.21 and is consistent with the activities contemplated in the 2009 Morgan Hill Downtown Specific Plan Master EIR.

LINKS/ATTACHMENTS:

1. Appraisal
2. Site Map
3. 17545 Depot Street Acquisition Resolution
4. Budget Scorecard 17545 Depot Street

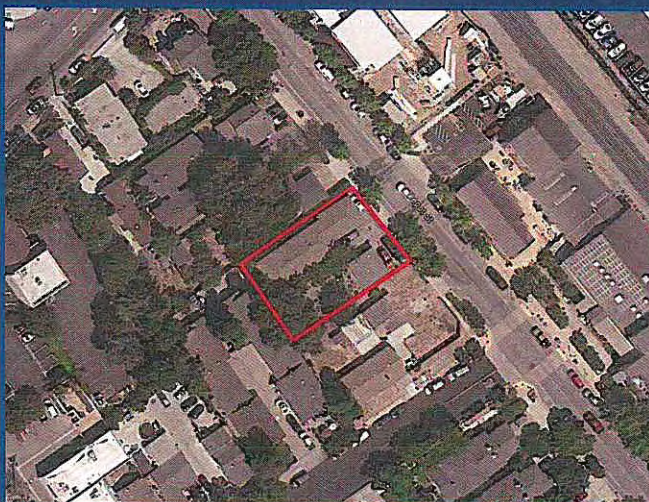


Valbridge
PROPERTY ADVISORS

Appraisal Report

Residential Property
17545 Depot Street
Morgan Hill, Santa Clara County, California 95037

Report Date: February 15, 2018



FOR:

Ms. Leslie Little
Assistant City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Valbridge Property Advisors

55 South Market Street, Suite 1210
San Jose, CA 95113
408.279.1520 phone
408.279.3428 fax
valbridge.com

Valbridge File Number:
CA02-18-0030-000

Attachment: Appraisal (1684 : Acquisition of 17545 Depot Street , APN 726-14-041)



55 South Market Street, Suite 1210
 San Jose, CA 95113
 408.279.1520 phone
 408.279.3428 fax
 valbridge.com

February 15, 2018

Josh Fronen, MAI
 408.279.1520, ext. 7113
 jfronen@valbridge.com

Ms. Leslie Little
 Assistant City Manager
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037

RE: Appraisal Report
 Residential Property
 17545 Depot Street
 Morgan Hill, Santa Clara County, California 95037

Dear Ms. Little:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinions. This letter of transmittal is not valid if separated from the appraisal report.

The subject property, as referenced above, is located at 17545 Depot Street, Morgan Hill, Santa Clara County, California 95037 and is further identified as Assessor Parcel Number (APN) 726-14-041. The subject site contains 8,527 gross square feet or 0.20 gross acres. The property is improved with a three-unit apartment building and a detached, illegally converted unit combining for a total of four units and a building area of approximately 2,000 square feet, per the property owner. Each unit has one-bedroom and one-bathroom, contains approximately 500 square feet, and generates rent of \$1,195 per month. The property was fully occupied by four tenants on month-to-month lease terms as of the valuation date.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.



Leslie Little with the City of Morgan Hill is our client in this assignment and will be the sole intended user of this appraisal and report and no others. The intended use is for a possible purchase of the property and no other use. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

- We were not provided architectural drawings and have used information of the improvements size provided by the property owner. If the size of the improvements is shown to be different then the report and value conclusion may need to be revisited.
- We were unable to inspect the interior of the subject improvements and assume the interior condition is similar to that of the exterior, as observed on January 31, 2017 during our site inspection. We also assume that the improvements are as described in this report.

Hypothetical Conditions:

- None

Based on the analysis contained in the following report, our value conclusions are summarized as follows:

Value Conclusions

Component	As Is
Value Type	Market Value
Property Rights Appraised	Leased Fee
Effective Date of Value	January 31, 2018
Value Conclusion	\$905,000
Price per Unit	\$226,250 per unit

Respectfully submitted,
Valbridge Property Advisors

Josh Fronen, MAI
Senior Appraiser
California Certified License #AG028548

Yvonne J. Broszus, MAI
Director
California Certified License #AG019587



Summary of Salient Facts

Property Identification

Property Name	Residential Property
Property Address	17545 Depot Street Morgan Hill, Santa Clara County, California 95037
Latitude & Longitude	37.130678, -121.652596
Census Tract	5123.14
Tax Parcel Number	726-14-041
Property Owner	Ralph H. Bader Trust

Site

Zoning	Central Business District (CBD)
FEMA Flood Map No.	06085C0444H
Flood Zone	X
Primary Land Area	0.196 acres

Existing Improvements

Property Use	Multi-Family Residential
Occupancy Type	Residential
Net Rentable Area (NRA)	2,000 sf
Number of Units	4
Number of Buildings	2
Number of Stories	1
Year Built	1967
Condition	Average
Construction Class	D - Wood Frame
Construction Quality	Average
Surface Parking	8 spaces

Valuation Opinions

Highest & Best Use - As Vacant	A residential or mixed use
Highest & Best Use - As Improved	Existing use
Reasonable Exposure Time	6 months
Reasonable Marketing Time	6 months



Value Indications

Approach to Value	As Is
Sales Comparison	\$880,000
Income Capitalization	
Direct Capitalization	\$925,000

Value Conclusions

Component	As Is
Value Type	Market Value
Property Rights Appraised	Leased Fee
Effective Date of Value	January 31, 2018
Value Conclusion	\$905,000
Price per Unit	\$226,250 per unit

Our findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

- We were not provided architectural drawings and have used information of the improvements size provided by the property owner. If the size of the improvements is shown to be different then the report and value conclusion may need to be revisited.
- We were unable to inspect the interior of the subject improvements and assume the interior condition is similar to that of the exterior, as observed on January 31, 2017 during our site inspection. We also assume that the improvements are as described in this report.

Hypothetical Conditions:

- None

Aerial and Front Views

AERIAL VIEW



FRONT VIEW





Site Description

The subject site is located at 17545 Depot Street, Morgan Hill, Santa Clara County, California 95037. The characteristics of the site are summarized as follows:

Site Characteristics

Location: 17545 Depot Street, Morgan Hill, Santa Clara County, California 95037

Gross Land Area: 0.20 Acres or 8,527 SF

Usable Land %: 100.0%

Shape: Generally Rectangular

Average Depth: 110 feet

Topography: Level and at grade with fronting streets

Drainage: Assumed adequate

Grade: At street grade

Utilities: All available to the site

Off-Site Improvements: Depot Street is a fully improved roadway with sidewalk, curbs, gutters, streetlights, and landscaping. This roadway carries one lane of traffic in each direction, northwest and southeast. According to 2016 MPSI estimates, vehicle traffic counts along Depot Street were 2,029 per day near the subject.

Interior or Corner: Interior

Signalized Intersection: No traffic signal at, or near, the site

Street Frontage / Access

Frontage Road	Primary
Street Name:	Depot Street
Street Type:	Local
Frontage (Linear Ft.):	80
Number of Curb Cuts:	1
Traffic Count (Cars/Day):	2,029

Flood Zone Data

Flood Map Panel/Number: 06085C0444H

Flood Map Date: 05-18-2009

**Flood Zone:**

X

Areas outside the 1% annual chance floodplain, areas of 1% annual chance sheet flow flooding where average depths are less than 1 foot, areas of 1% annual chance stream flooding where the contributing drainage area is less than 1 square mile, or areas protected from the 1% annual chance flood by levees. No Base Flood Elevations or depths are shown within this zone. Insurance purchase is not required.

Other Site Conditions**Soil Type:**

We have not been provided a geotechnical report for the subject property. Based on our physical inspection, soil conditions appear stable.

Environmental Issues:

A Phase I Environmental Site Report was not provided for review. We make no representations as to the presence of toxins and hazardous materials on the subject site. We are appraising the site as if clean. If this is of concern to any reader of this report, it is our recommendation that an environmental report be obtained from the appropriate professionals qualified to issue such opinions.

Easements/Encroachments:

A Preliminary Title Report was not provided to the appraiser for review. We assume that there are no easements or encumbrances that would materially affect the value of the subject, either positively or negatively.

Earthquake Zone:

The property is not located in an Alquist-Priolo Special Studies Zone for earthquake hazard. Earthquake hazard is typical for the overall area.

Adjacent Land Uses**North:**

Residential

South:

Residential

East:

Commercial

West:

Residential

Site Ratings**Access:**

Average

Visibility:

Average



Zoning Designation

Zoning Jurisdiction:	City of Morgan Hill
Zoning Classification:	CBD, Central Business District
General Plan Designation:	Mixed Use
Permitted Uses:	A variety of mixed uses

Zoning Comments:

The subject property is under the jurisdiction of the City of Morgan Hill and is zoned Central Business District (CBD). The General Plan land use designation is Mixed Use. The property is part of Block 1 of the Downtown Specific Plan.

The Downtown Specific Plan was adopted in November of 2009 and is the guiding document for development in the downtown area. Strengthening downtown as the gathering place, a connecting force, and the social and activity heart of Morgan Hill is the overriding aspiration of this plan.

The subject has a mixed-use General Plan land use designation, which permits mixed-use development with no minimum or maximum density. The goal of the CBD zoning is threefold: to provide a variety and intermixture of residential, commercial, and public activities in the downtown core; to provide additional housing stock and conserve housing stock in residential areas west of Monterey Road; and to increase residential and commercial densities in the Downtown Core.

Permitted uses in the Central Business District include food services, retail stores, medical office, administrative and professional office, restaurants, mixed-use residential and live/work units.

The subject is located in Block 1 of the Specific Plan. Each block in downtown has a distinct character and potential for redevelopment based on the land use, zoning, and proximity to Monterey Road and East Third Street. Block 1 has a CBD Mixed Use (General Plan) and CBD (Zoning Ordinance) designation, and it is not within the Ground Floor Overlay (GFO) district. Therefore, commercial uses are not required on the ground floor.

There is no minimum or maximum density established within the CBD zoning district, and there is no maximum building coverage specified either. The minimum lot area is 3,500 square feet, minimum lot width is 40 feet, and minimum lot depth is 80 feet. The maximum FAR is between 2 and 2.25 for larger sites, over 22,000 square feet. Parking areas are excluded from the FAR calculation. Maximum number of floors in the district is three stories, while four floors are permitted for sites over 22,000 square feet. The minimum number of floors is two stories. A setback is required for four-story buildings. The maximum building height for two-story buildings is 35 feet, for three-story buildings is 45 feet, and 55 feet for four-story structures. Parking for a residential use is required at 1 space per unit less than 600 square feet, 1.5 spaces per unit 600 to 1,350 square feet, and 2 spaces per unit larger than 1,350 square feet.

According to Elain Collins, Planning Technician with the City of Morgan Hill, the subject property is a legal, non-conforming use and any alteration of the existing improvements would require a conditional use permit. The property is non-conforming because multi-family use is a conditional use. We also note that the subject's detached unit was originally a garage which has been converted into a fourth residential unit. We have considered this risk from the illegal unit in the valuation.



Residential Development Control Ordinance

Morgan Hill voters approved a ballot measure in May 2009 modifying the Residential Development Control System (RDCS) to better accommodate Downtown development, by providing an exemption for 500 housing units located in the 20-block Downtown area. The RDCS is an ordinance approved by city voters aimed at controlling residential growth in the city.

The previous version of the RDCS extended through the year 2020, and was focused on a city population of 48,000 in 2020. The RDCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the city's residents. The RDCS has also encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure.

Proposed residential projects are rated on a point-based system to determine which projects would best serve the city. Several Downtown property and business owners have expressed concern that this system favors development outside of Downtown.

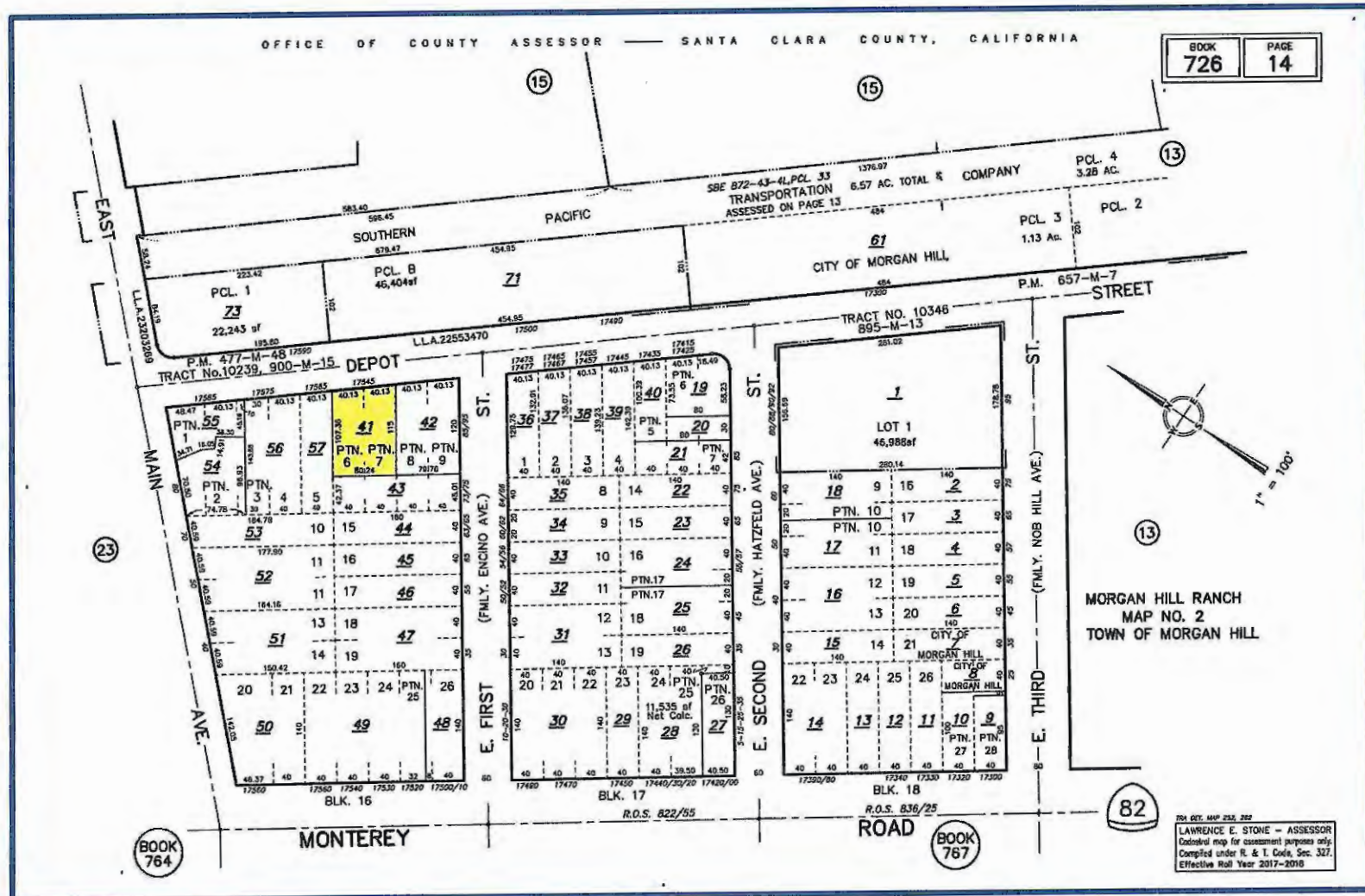
Measure S was then approved in 2016 and was a voter-approved amendment to the General Plan and Residential Development Control System (RDCS) to extend it to 2035, establish a population ceiling of 58,200, with a slower rate of growth than currently exists, and improve policies to maintain neighborhood character, encourage more efficient land use, conserve water, and preserve open space.

According to Leslie Little with the City of Morgan Hill, the subject property is exempt from the RDO process. Downtown Morgan Hill has a 500 residential unit capacity and there are still plenty of allotments left.

Analysis/Comments on Site

The subject site consists of a single parcel located along the west side of Depot Street in downtown Morgan Hill. The site has a generally rectangular shape and an interior lot configuration one parcel north of East 1st Street. The site has approximately 80 feet of frontage along Depot Street (with one curb cut) and an average depth of 110 feet.

The underlying site contains 8,527 gross square feet or 0.20 gross acres. The property zoning is Central Business District and the General Plan land use designation is Mixed Use. Overall, the subject site conforms to the area and is well suited to a residential or mixed use. The property benefits from its downtown location and access to local and regional transportation networks.





Improvements Description

The following description is based on our property inspection, assessor records, and information provided by the owner and the client.

Improvement Characteristics

Property Type:	Residential
Property Subtype:	Multi-Family/ Apartments
Number of Buildings:	2
Number of Stories:	1
Construction Class:	D - Wood Frame per Marshall Valuation Service
Construction Quality:	Average
Gross Building Area (GBA):	2,000 SF (based on information provided by the property owner)

Ratios & Parking

Land-to-Building Ratio:	5.68 to 1 (Usable Land/GBA)
Floor Area Ratio (FAR):	0.23 (based on GBA)
Parking Spaces:	8
Parking Ratio:	2.0 spaces/unit
Parking Comments:	Parking is adequate and conforms to the zoning regulations.

Age / Life

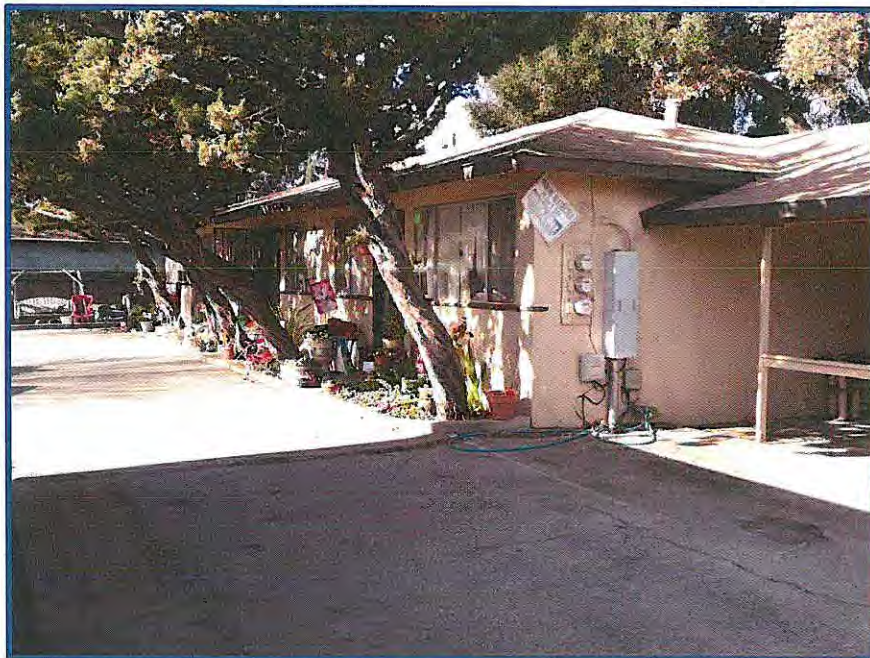
Year Built:	1967
Condition:	Average for vintage
Actual Age:	51 years
Effective Age:	40 years
Typical Building Life:	50 years
Remaining Economic Life:	10 years

Structural Characteristics

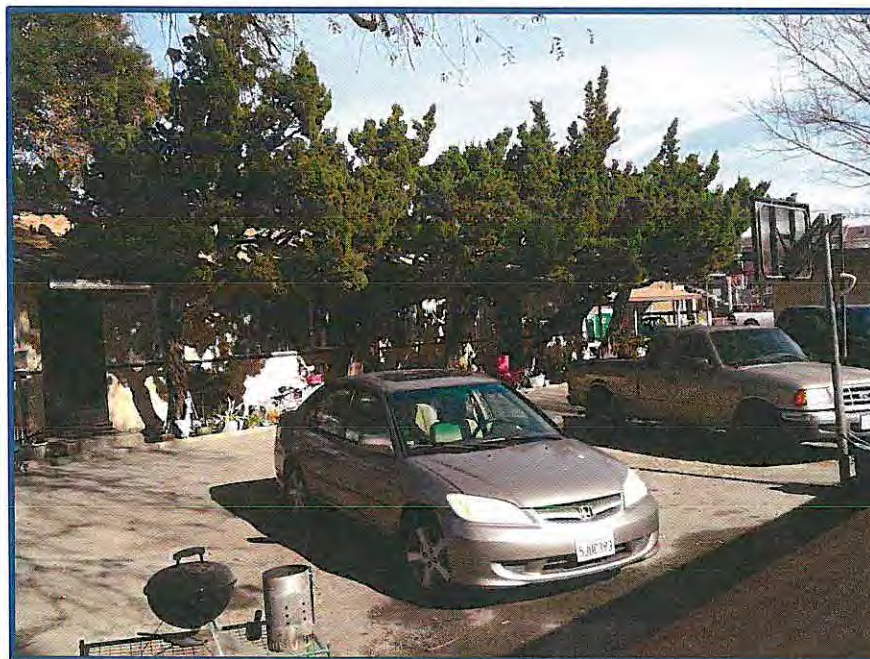
Foundation:	Raised foundation
Building Frame:	Wood frame
Exterior Walls:	Wood and stucco
Roof Type / Material:	Hip / Composition shingle

Interior

Floors:	Carpet
Walls:	Painted drywall
Ceilings:	Painted drywall



View of the main building and driveway



View of the parking area and main building

Additional photos are included in the Addenda

Attachment: Appraisal (1684 : Acquisition of 17545 Depot Street , APN 726-14-041)



Assessment and Tax Data

Assessment Methodology

The State of California has provided for a unified system to assess real estate for property taxes. Assessment Districts are established on a county basis to assess real estate within the county. The appraised property falls under the taxing jurisdiction of Santa Clara County and is subject to both general taxes and direct assessments.

Assessed Values and Property Taxes

The subject's assessed values, applicable tax rates and total taxes including direct assessments are shown in the following table:

Tax Schedule

Tax Year	Parcel Number	Assessor's Appraised Value - Land	Assessor's Appraised Value - Imp.	Assessor's Total Appraised Value	Effective Tax Rate	Special Assessments	Tax Expense
2018	726-14-041	\$105,027	\$86,271	\$191,298	1.215160%	\$176	\$2,500

General Taxes

The amount of General Taxes due is quantified by multiplying the assessed value by the tax rate. In the State of California, real estate is assessed at 100% of market value as determined by the County Assessor's Office. The tax rate consists of a base rate of 1% plus any bonds or fees approved by the voters. The County Tax Rate for the subject property is 1.215160%.

Direct Assessments

Direct assessments are tax levies that are not dependent upon the assessed value of the property. They are levied regardless of assessment. According to the Santa Clara County Tax Collector's Office, the direct assessments for the subject property are as follows: Santa Clara Valley Water District safe clean water assessment, Santa Clara County mosquito vector control assessments, Community Facilities District library assessment, Santa Clara Valley Open Space Authority assessment, and San Francisco Bay Restoration Authority assessment.

Current and Future Taxes

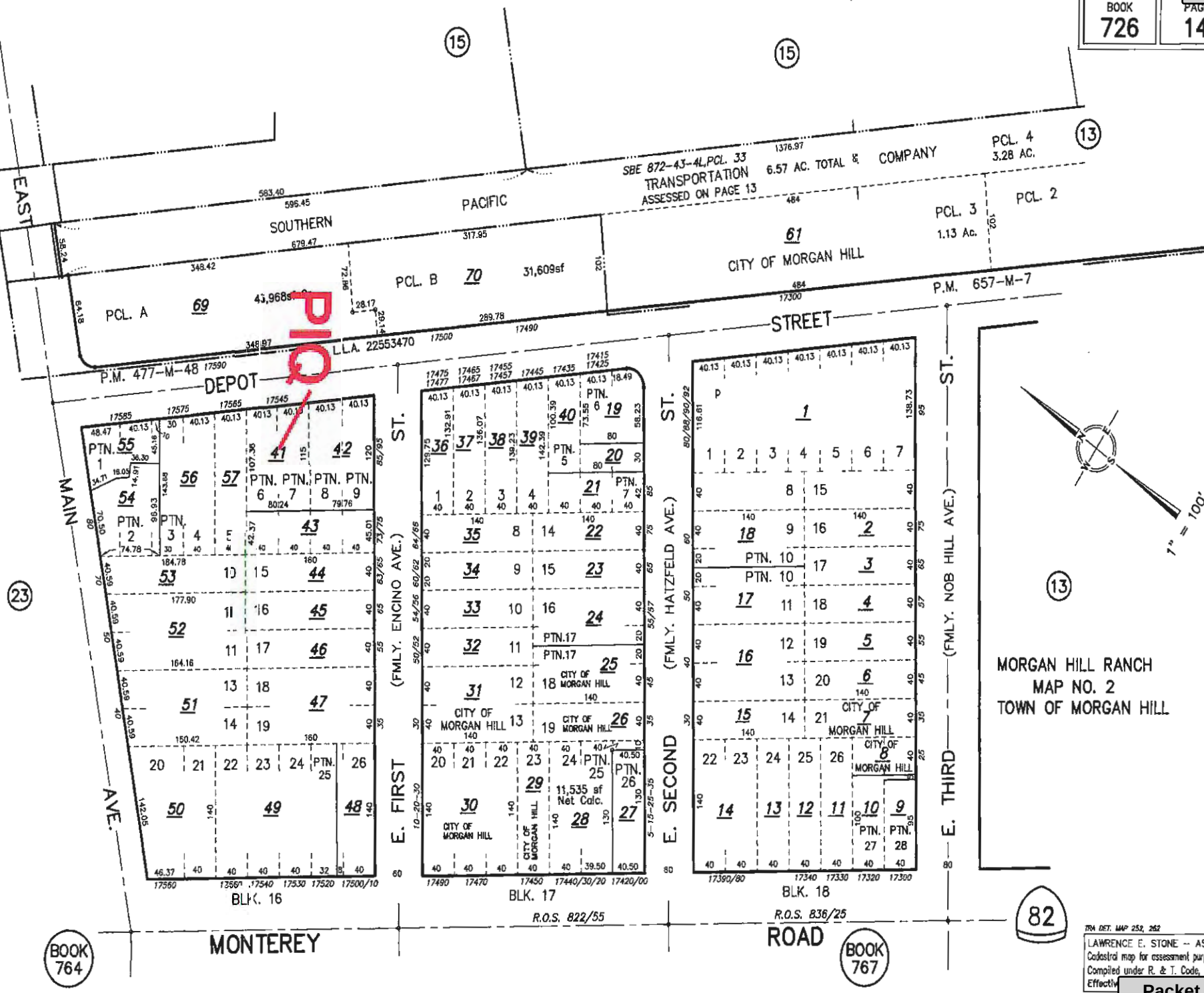
Proposition 13 was passed by voters in June 1978 and substantially changed the taxation of real estate in California. This constitutional amendment rolled back the base year for assessment purposes to the tax year 1975-1976. Annual increases in assessed value are limited to 2% per year, regardless of the rate of inflation. Real estate is subject to re-appraisal to current market value upon a change in ownership or new construction. Property assessments in years subsequent to a change of ownership or new construction are referred to as factored base values.

Proposition 8, which passed in 1979, states that the Assessor shall lower tax roll values to fair market value whenever the assessed value exceeds fair market value. It mandates that the lower of fair market value or factored base value be placed on the assessment roll. When fair market values are enrolled, the Assessor reassesses the property annually until such time as fair market value again equals or exceeds the factored base year value. For properties that have been owned for several years, the assessed value may not reflect the current fair market value. Furthermore, due to

BOOK
726

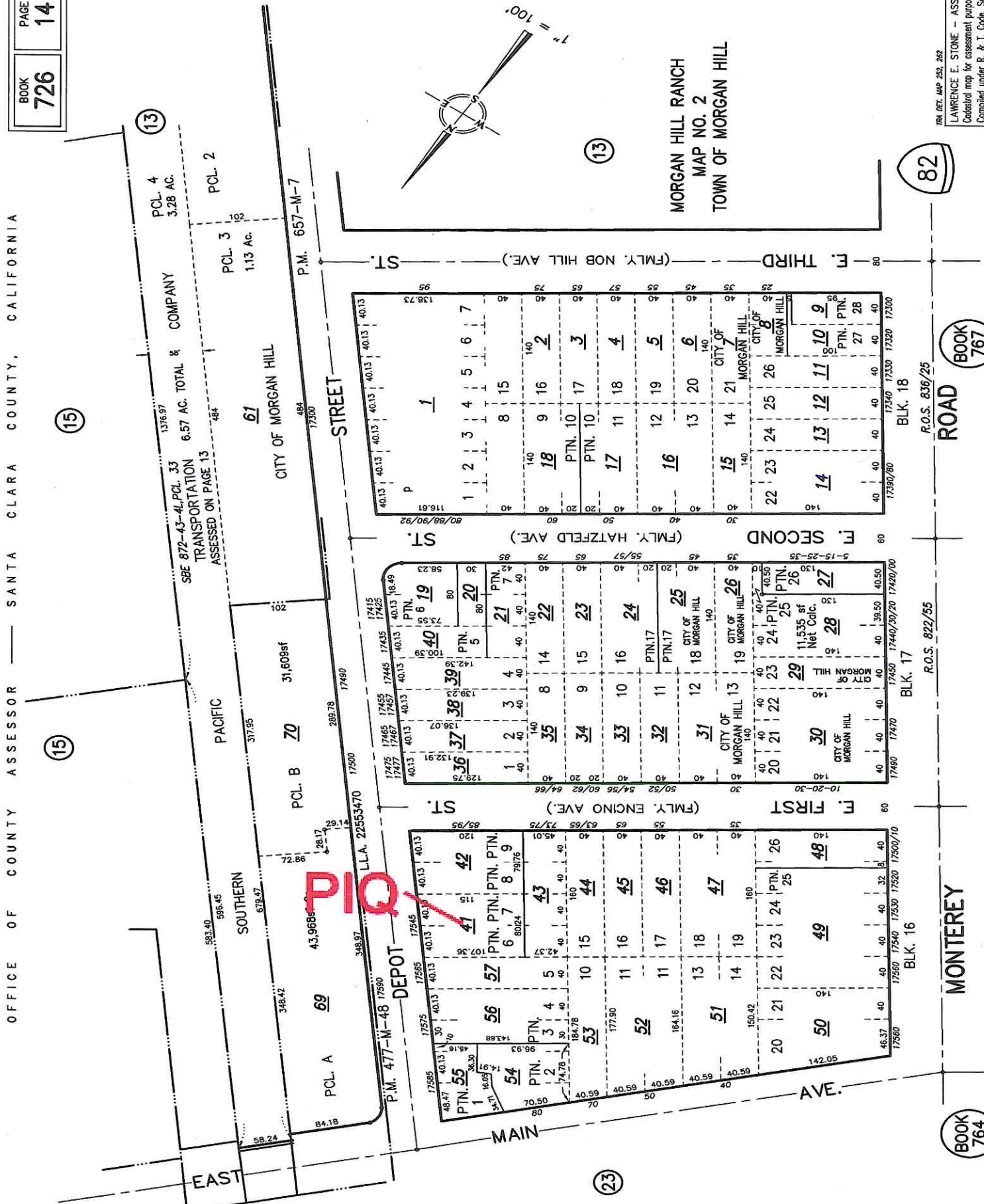
PAGE
14

This map/plot is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.



TRA DET. MAP 252, 262

LAWRENCE E. STONE -- ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective



This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

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 HOUSING FUND (FUND NO. 236) TO APPROPRIATE \$950,000 THEREFORE

WHEREAS, the subject of this Resolution is set forth in detail in that certain City Council Staff Report entitled "Acquisition by the City Housing Fund (Fund 255) of 17545 Depot Street, APN 726-14-041" submitted for City Council consideration at its meeting of April 4th, 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 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 4th day of April 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 April 4, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: 17545 Depot Street Acquisition Resolution (1684 : Acquisition of 17545 Depot Street , APN 726-14-041)

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

032

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

236	Housing Mitigation Fund
7100	Housing Development
86100	ACQUISITION EXPENSE

AGENDA DATE:**AGENDA ITEM TITLE:**

04/04/18
Property Acquisition 17545 Depot Street

	07/01/17			06/30/18
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,178,174	842,443	1,320,091	1,700,526
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	950,000	(950,000)
RESULT OF RECOMMENDED ACTION	<u>2,178,174</u>	<u>842,443</u>	<u>2,270,091</u>	<u>750,526</u>

Attachment: Budget Scorecard 17545 Depot Street (1684 : Acquisition of 17545 Depot Street , APN 726-14-041)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

ACCEPT AMENDED ANNUAL HOUSING ELEMENT PROGRESS REPORT

RECOMMENDATION(S)

Accept the Amended Annual Housing Element Progress Report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Regional Initiatives

REPORT NARRATIVE:

On March 7, 2018, the City Council adopted a resolution accepting the 2017 General Plan and Housing Element Annual Progress Report, 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). The report was due on April 1, 2018. Prior to mailing this report, staff discovered additional housing units that had been overlooked in the report. Upon discovery of the error, staff revised the report and submitted it to the State to comply with the filing deadline. The City Council meeting of April 4, 2018 is the first meeting available to share this information. The March 4 report, undercounted local housing production by 169 units; 4 low income, 1 moderate income and 164 above-moderate income units. The revised report is attached.

COMMUNITY ENGAGEMENT: Inform

This revised report is intended to inform the City Council and the community regarding housing production and the Morgan Hill 2035 General Plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 7, 2018 the City Council approved a resolution accepting the General Plan and Housing Element Annual Progress Report. This report (attached) updates the March 7 report previously transmitted.

FISCAL AND RESOURCE IMPACT:

No fiscal impact related to acceptance of the report.

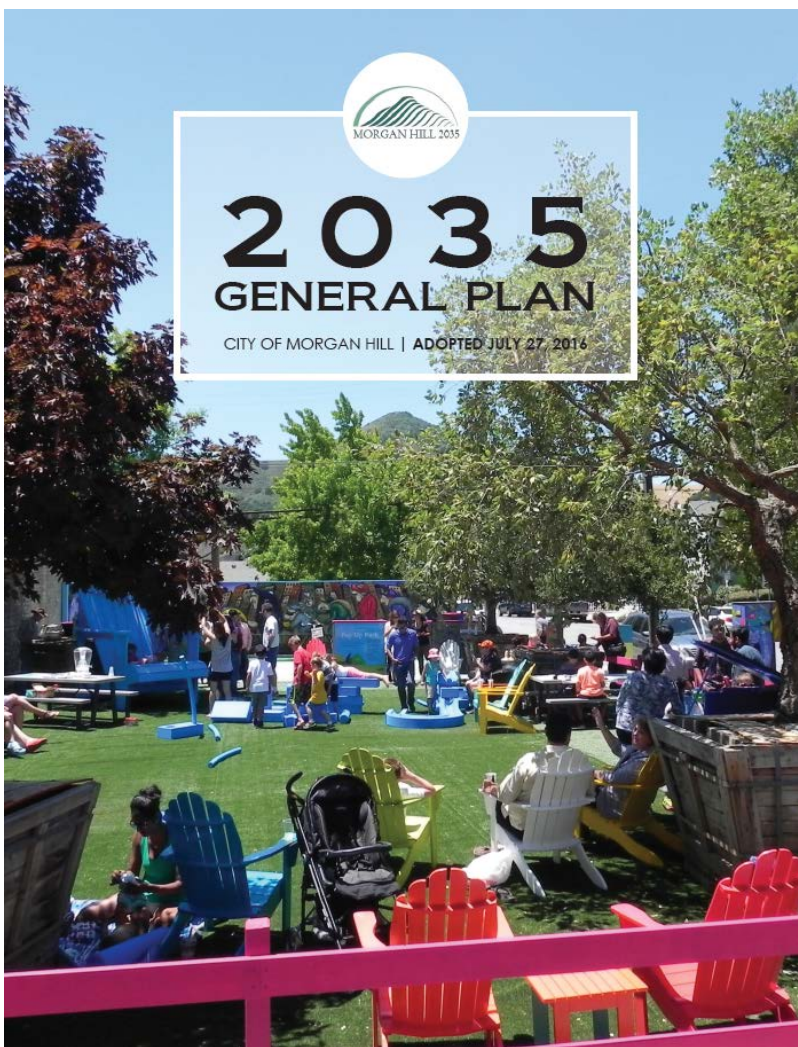
CEQA (California Environmental Quality Act):

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 the direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Amended HCD FINAL 2017 Annual Progress Report



Annual Progress Report

2017

March 7, 2018

City Council Resolution No. 18-021

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 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	
Deed Restricted (45 Years) Low-Income Units:											
Lantana Wisteria: 1301 Red Bird Ln, 18661 Turtle Dove Dr, 1324 Rainbow Crow Ln				3			3				
Madison Gate: 17110 Saint Brendan Lp, 812 Saint Solange Lp				2			2				
Solera Ranch: 18107 Monterey Road, 18167 Old Monterey Road				2			2				
The Commons: 16751 Rohan Ln				1			1				
Valencia: 120 Vereda Del Turia, 240 Vereda Del Turia				2			2				
Young Property Gables: 15517 Monterey				1			1				
Esperanza: 1734 Caymen St				1			1				
Monterey Parque: 62 La Mancha Ln				1			1				
Solera Ranch: 143 Banano Ln				1			1				
Terra Mia: 1470 Avanita de Los Padres				1			1				

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	
Deed Restricted (45 Years) Moderate-Income Units:											
Connemara Project: 15065 La Alameda					1		1				
Solera Ranch Project: 18083 Monterey Rd, 18143 Old Monterey Rd, 176 Peral Av					3		3				
Valencia Project: 17710 Calle Granada, 150 Vareda Deltoria					2		2				
362 Above Moderate Units						362	362				
(9) Total of Moderate and Above Moderate from Table A3 ▶ ▶ ▶ ▶								6	362	368	
(10) Total by income Table A/A3 ▶ ▶			0	15	6	362	383				
(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 in 2017.
(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)	6					6	
No. of Units Permitted for Above Moderate	362					362	

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

JurisdictionCity of Morgan Hill 2017

Reporting Period1/1/2017 - 12/31/2017

Table B
Regional Housing Needs Allocation Progress Planning Period 2015-2023

Permitted Units Issued by Affordability												Total Units to Date (all years)	Total Remaining RHNA by Income Level
Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.													
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	15							158	-5
	Non-deed restricted		1		0							1	
Moderate	Deed Restricted	185		5	6							11	169
	Non-deed restricted		5		0							5	
Above Moderate		316	333	201	362							896	-580
Total RHNA by COG. Enter allocation number:		928											
Total Units ▶ ▶ ▶			463	265	383							1,111	-183
Remaining Need for RHNA Period ▶ ▶ ▶ ▶ ▶													

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

Attachment: Amended HCD FINAL 2017 Annual Progress Report (1702 : Amended Annual Housing

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 administered 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.

Attachment: Amended HCD FINAL 2017 Annual Progress Report (1702 : Amended Annual Housing

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.

Attachment: Amended HCD FINAL 2017 Annual Progress Report (1702 : Amended Annual Housing

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

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)

JurisdictionCity of Morgan Hill 2017

Reporting Period1/1/2017 - 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	159	103.25%	+5
Moderate (80-120% AMI)	185	16	8.65%	- 169
Above Moderate (120% +AMI)	316	896	283.54%	+ 580
TOTAL RHNA	928	1,111	119.72%	+183



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

JANUARY 2018 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the month ended January 31, 2018. The Revenue and Expense Summary for the month of January is included on the first page. Overall, General Fund revenues through January totaled \$23.0 million or 61% of the budget. Expenditures, including encumbrances, amounted to \$25.9 million through January. The encumbrances represent commitments or contractual obligations that the City entered with vendors or suppliers such as Cal-West Lighting and Signal Maintenance for the maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial

and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. January 2018 Financial Statement Analysis
2. January 2018 Financial and Investment Report

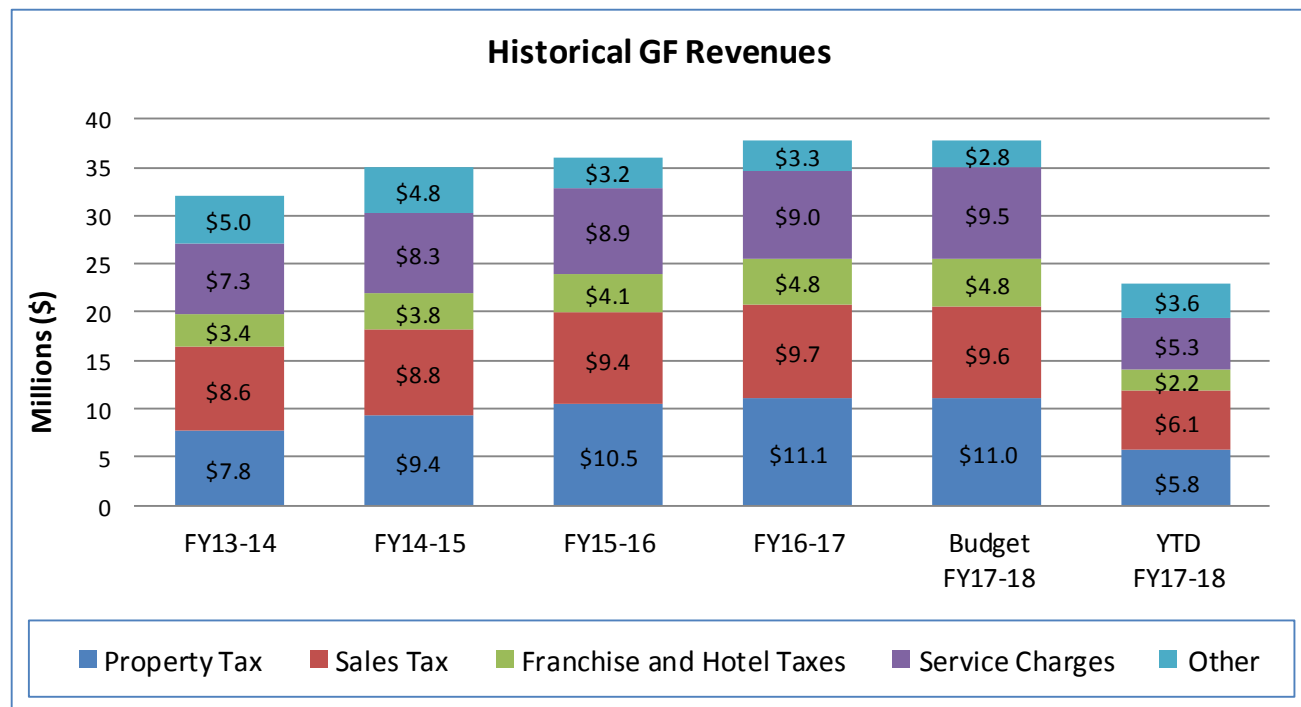


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED JANUARY 2018 – 58% OF YEAR COMPLETE

- **General Fund** – Overall, revenues received through January totaled \$23.0 million, or 61% of the budgeted revenues. The amount received is 13% or \$2.6 million higher than a year ago at this time. A portion of this difference is due to an increase in sales tax collection of approximately \$438,000. As for property tax, the final advances for the December 10, 2017 secured and unsecured property tax installment have been received, and is 8% or approximately \$391,000 higher than a year ago at this time. Property tax revenue, excluding property transfer tax, is forecasted to end the year at \$11.1 million, which is approximately \$500,000 more than the mid-cycle revised estimate. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 28% of the approximately \$37.8 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 89% of the budgeted amount as annual business license renewal payments are usually received in July.

The chart below shows historical General Fund revenues by major revenue category from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of January 31, 2018.



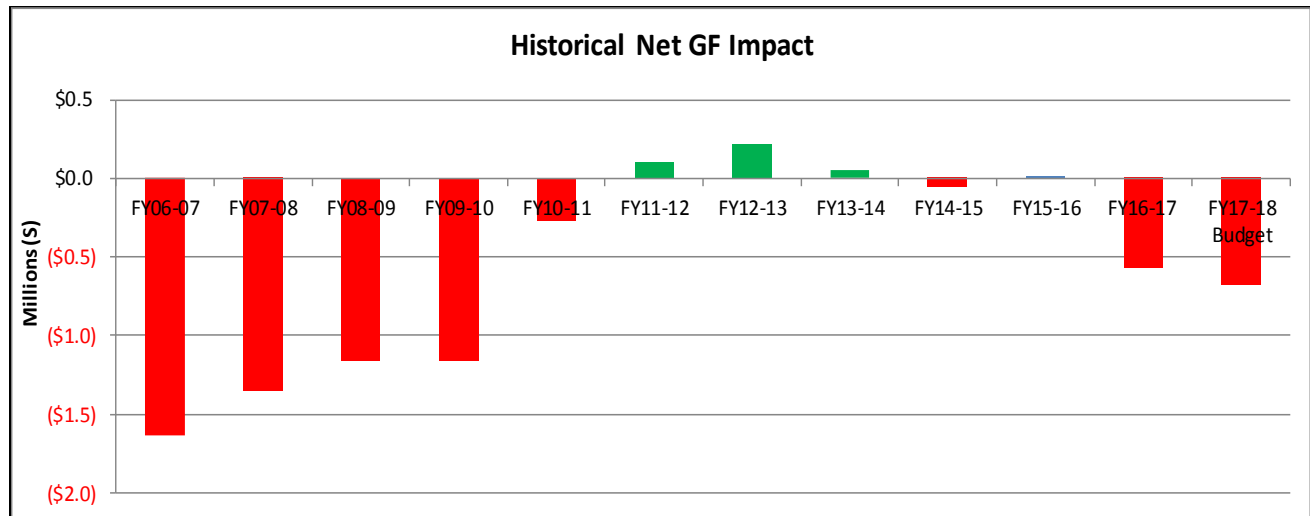
General Fund expenditures and encumbrances as of January 31, 2018 totaled \$25.9 million, of which approximately \$2.3 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.2 million through the month of January. Without the



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED JANUARY 2018 – 58% OF YEAR COMPLETE

encumbrances, year to date operations resulted in a smaller negative impact to the general fund of approximately \$194,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund. The following chart reflects the effect of Community Services activity on the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Community Development Fund** – Revenues through January totaled \$2.7 million, or approximately 72% of the budget. The amount received to date is approximately \$320,000 or 11% less than prior year. Expenditures, including encumbrances totaled \$3.4 million or 63% of the budget. The fund was budgeted to end the fiscal year with an operating deficit of approximately \$1.6 million. However, the amount is anticipated to come in better due to the fee increase that when into effect January 1, 2018
- **Debt Service Funds** – Expenditures through January totaled \$506,000. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.
- **Sewer Operations** – Revenues from Sewer Operations through January totaled \$5.9 million, 2% or \$110,000 higher than a year ago at this time. However, revenues are projected to come in lower than budget due to lower water consumption as a result of wet winter months (which was based upon the quarter from January to March 2017). Sewer bills are based on the lowest three consecutive months of



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED JANUARY 2018 – 58% OF YEAR COMPLETE

water consumption from the prior fiscal year. Expenditures and outstanding encumbrances totaled \$5.5 million or 51% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of January 31, 2018.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	9.4	10.3	10.2	9.7	10.8	5.9
Expenditures	8.6	8.8	12.0	9.8	10.8	5.5
Operating Margin	0.8	1.5	(1.8)	(0.1)	-	0.4
Operating Margin without Encumbrances	0.8	1.5	(1.8)	(0.0)	-	0.5

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through January totaled \$7.9 million, approximately \$1.2 million more than a year ago at this time. Revenues are expected to come in slightly better than budget partially due to higher water consumption than estimated. Water Operations expenditures, including outstanding encumbrances, through the month of January totaled \$6.5 million. Without the encumbrances, however, the expenditures amounted to \$5.9 million. The table below shows Water Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of January 31, 2018.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	12.2	8.8	8.5	10.9	12.2	7.9
Expenditures	12.1	9.3	9.7	10.8	12.1	6.5
Operating Margin	0.1	(0.5)	(1.2)	0.1	0.1	1.4
Operating Margin without Encumbrances	0.1	(0.5)	(1.2)	0.3	0.1	2.0

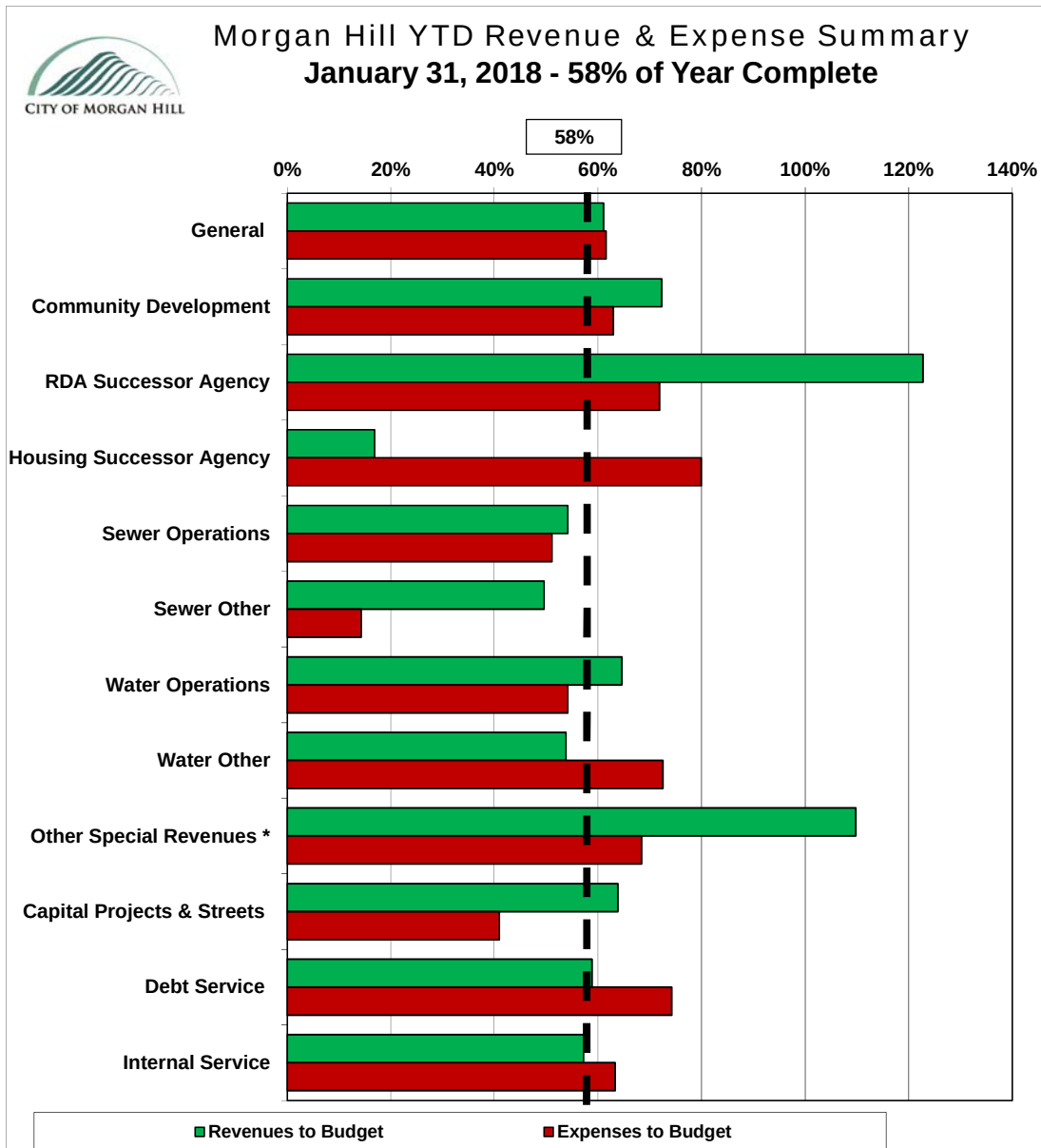
- **Investments** – One security was purchased and one security was called during the month of January 2018. Total interest earnings received on investments were \$51,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
January 31, 2018 - 58% of Year Complete



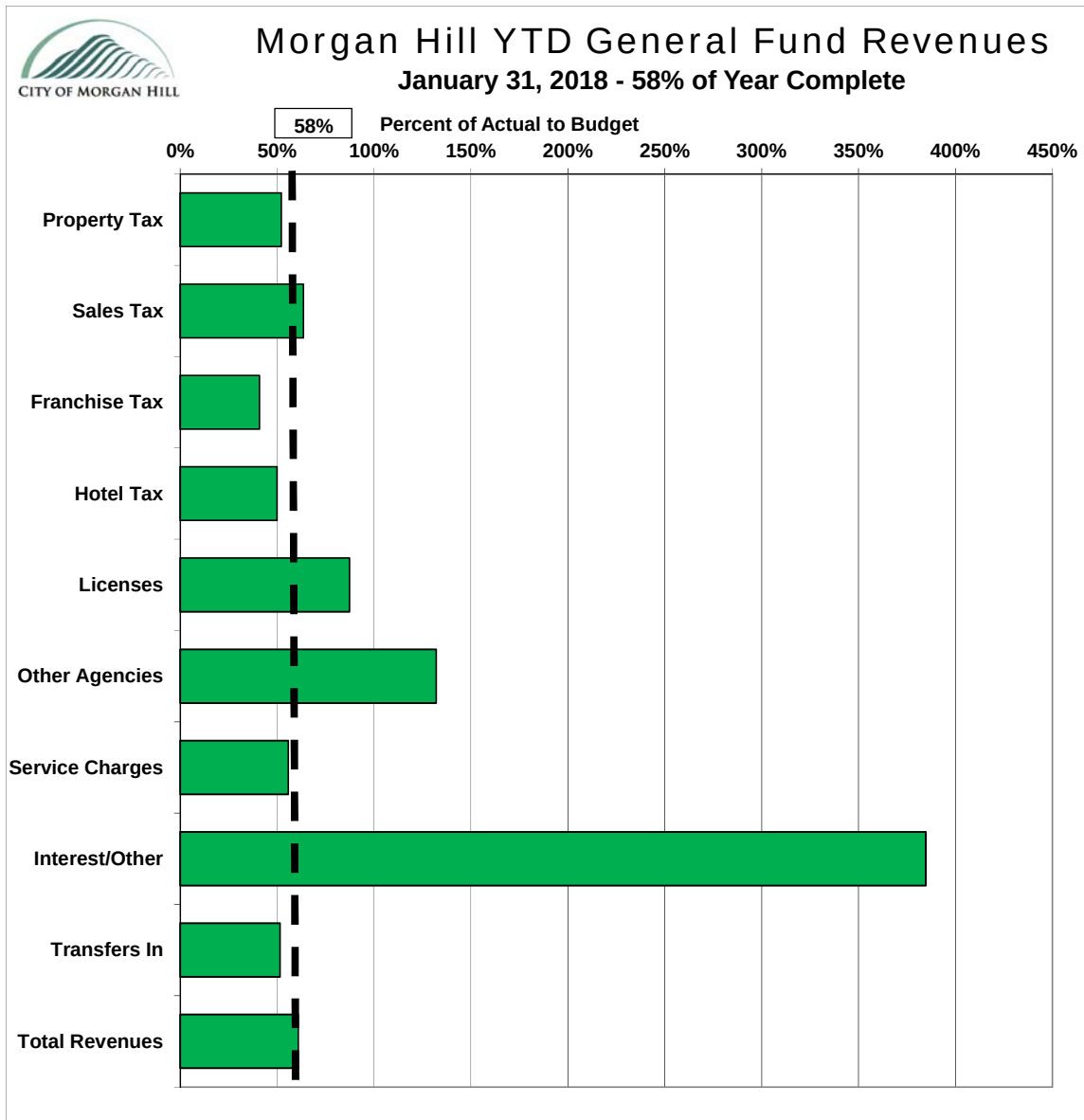
CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 23,047,074	61%	\$ 25,885,352	62%
Community Development	2,661,105	72%	3,352,637	63%
RDA Successor Agency	8,753,073	123%	5,159,597	72%
Housing Successor Agency	216,747	17%	1,555,312	80%
Sewer Operations	5,870,448	54%	5,548,943	51%
Sewer Other	3,587,311	50%	3,936,746	14%
Water Operations	7,891,623	65%	6,530,307	54%
Water Other	1,645,169	54%	4,513,554	72%
Other Special Revenues *	2,794,574	110%	1,834,307	68%
Capital Projects & Streets	8,908,846	64%	12,733,602	41%
Debt Service	401,580	59%	505,669	74%
Internal Service	5,958,777	57%	7,003,736	63%
TOTAL FOR ALL FUNDS	\$ 71,736,327	65%	\$ 78,559,763	49%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

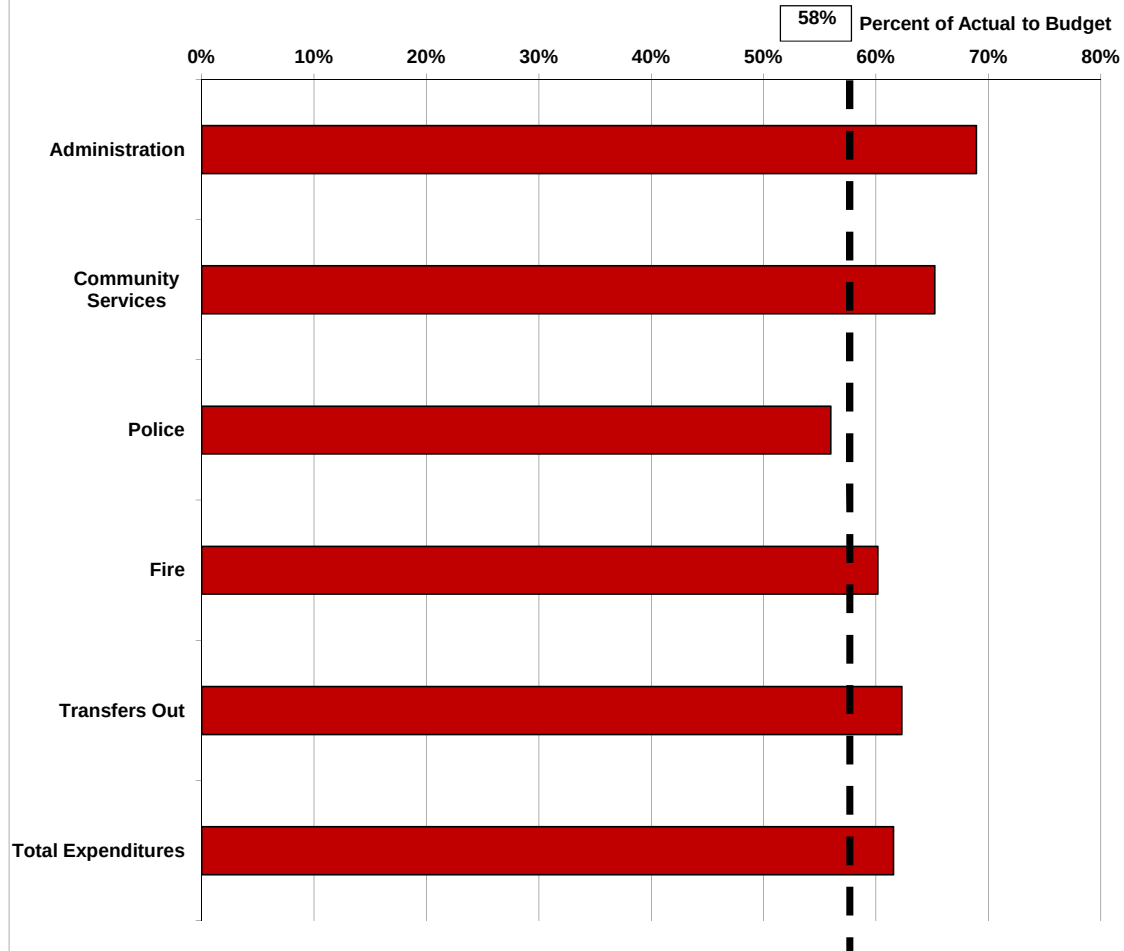


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$11,047,000	\$ 5,764,557	52%	\$ 5,511,104	5%
Sales Tax	9,588,502	6,099,760	64%	5,651,169	8%
Franchise Tax	1,981,796	810,757	41%	761,738	6%
Hotel Tax	2,827,050	1,414,110	50%	1,449,494	-2%
Licenses	210,621	184,049	87%	174,007	6%
Other Agencies	319,875	422,898	132%	213,978	98%
Service Charges	9,536,644	5,322,747	56%	5,105,603	4%
Interest/Other	561,760	2,160,999	385%	745,339	190%
Transfers In	1,682,103	867,197	52%	839,960	3%
TOTAL REVENUES	\$37,755,351	\$23,047,074	61%	\$ 20,452,393	13%



Morgan Hill YTD General Fund Expenditures

January 31, 2018 - 58% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 7,443,327	\$ 5,130,327	69%	\$ 3,984,024	29%
Community Services	11,050,226	7,207,680	65%	6,690,966	8%
Police	15,871,619	8,882,520	56%	8,599,555	3%
Fire	5,785,389	3,480,134	60%	3,322,132	5%
Transfers Out	1,901,915	1,184,691	62%	1,348,730	-12%
TOTAL EXPENDITURES	\$ 42,052,476	\$ 25,885,352	62%	\$ 23,945,407	8%

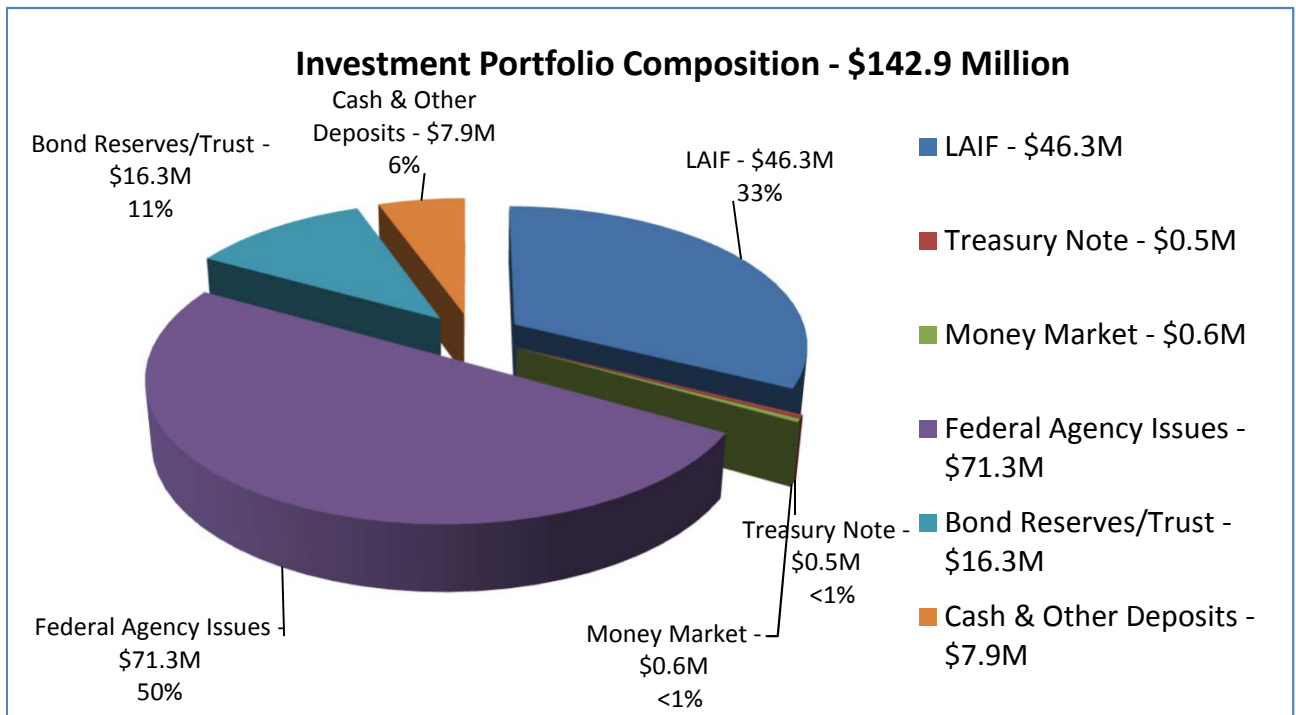


**City of Morgan Hill
Recreation Report - Fiscal Year 2017-18
For the Month and Seven Months Ended January 31, 2018
58% of Year Complete**

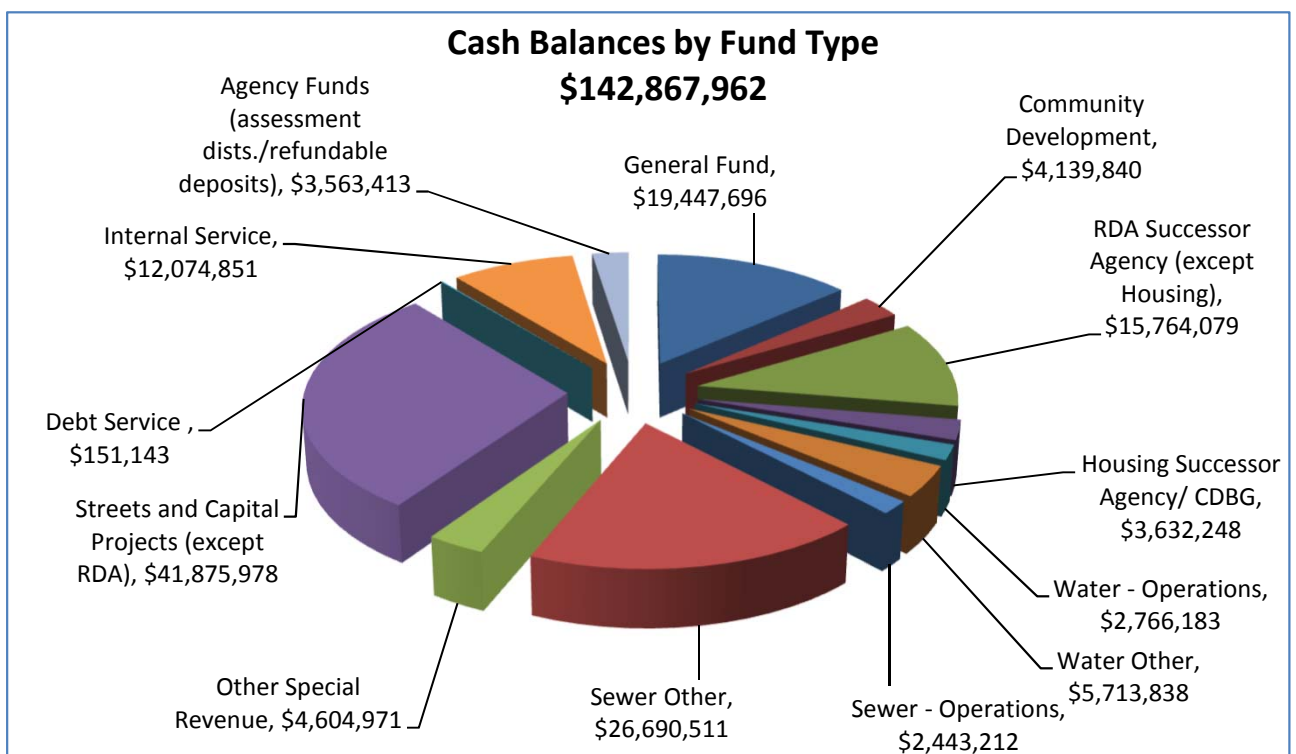
	<u>Budget</u>	<u>January 2017</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,197,036	\$ 477,545	\$ 3,452,136	
Facility Rentals	904,666	112,190	594,002	
Community Services	139,190	11,461	59,519	
Transfers in	75,000	6,250	43,750	
Total Revenues	<u>\$ 7,315,892</u>	<u>\$ 607,446</u>	<u>\$ 4,149,407</u>	57%
Less: Expenditures				
Membership & Program Services	\$ 5,914,430	\$ 281,764	\$ 3,191,226	
Facility Rentals	1,299,185	100,633	752,775	
Community Services	768,671	43,986	399,903	
Total Expenditures	<u>\$ 7,982,287</u>	<u>\$ 426,382</u>	<u>\$ 4,343,903</u>	54%
Net Impact without encumbrances	<u>\$ (666,395)</u>	<u>\$ 181,064</u>	<u>\$ (194,496)</u>	
Encumbrances	-	-	1,030,725	
Net Impact with encumbrances	<u>\$ (666,395)</u>	<u>\$ 181,064</u>	<u>\$(1,225,221)</u>	

City of Morgan Hill Monthly Investment Report - January 31, 2018

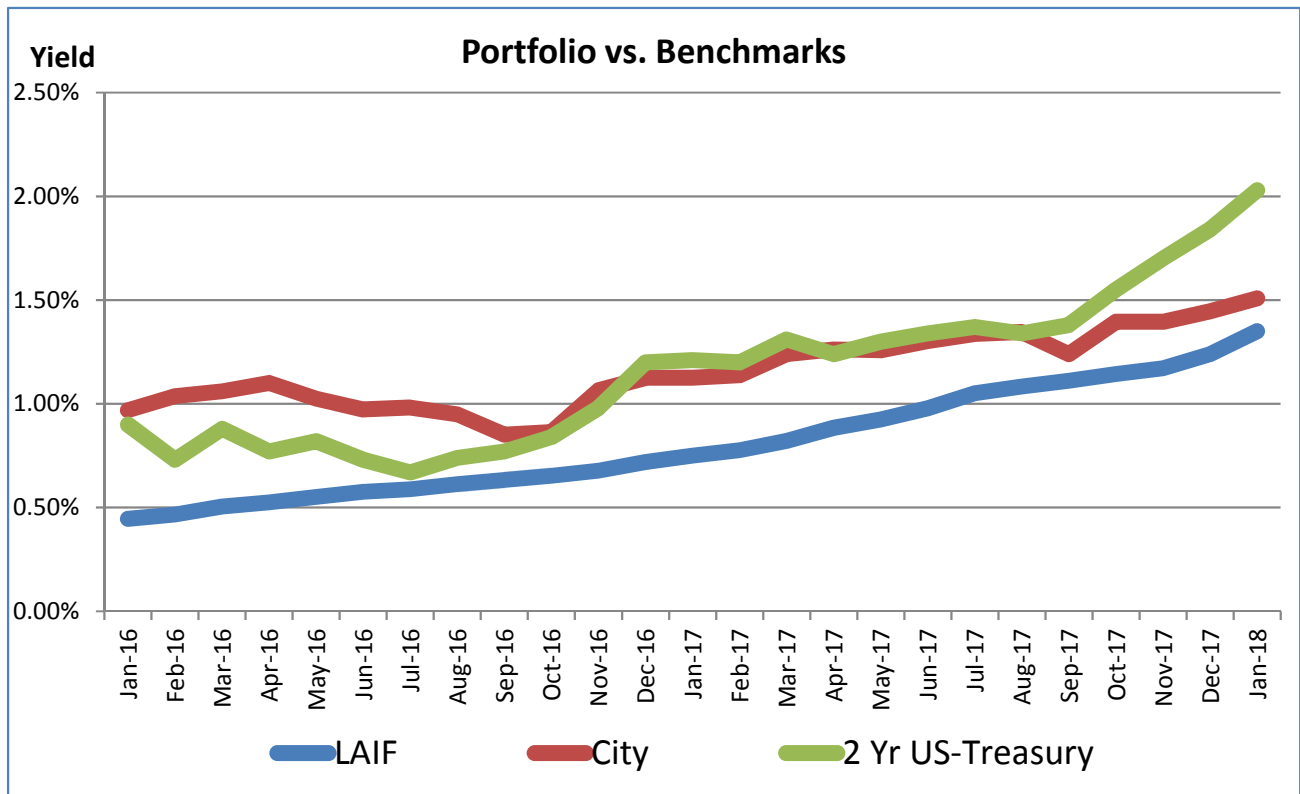
The following are the snapshots of City's investment portfolio as of January 31, 2018. The first chart shows the portfolio composition by investment type:



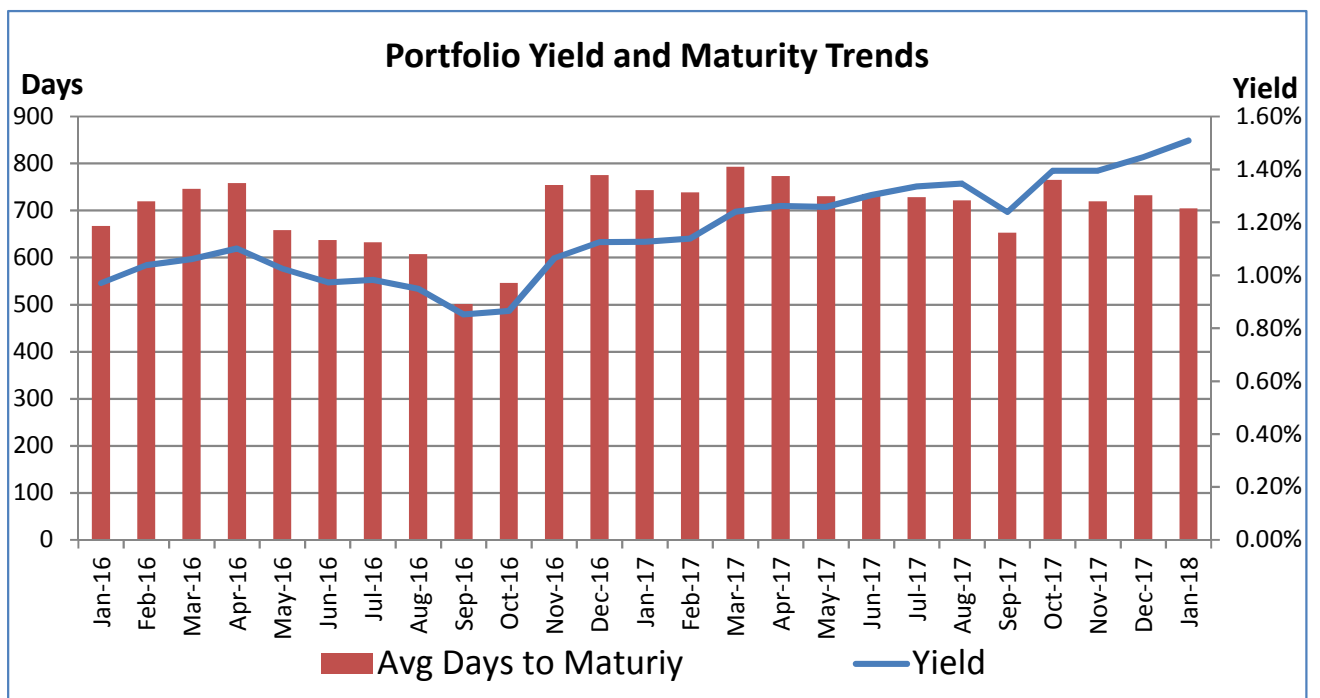
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of January 31, 2018

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 46,318,968	32.42%	\$ 46,230,662	1.35%		
City Managed							
Federal Farm Credit Bank	5/28/2015	1,000,061	0.70%	999,820	0.99%	2/20/2018	2/20/2018
Treasury Note	6/12/2015	499,757	0.35%	499,480	1.06%	3/31/2018	3/31/2018
Fed Natn'l Mortgage Assn	6/12/2015	500,013	0.35%	499,865	1.10%	2/28/2018	2/28/2018
Fed Home Loan Mortgage	7/2/2015	999,910	0.70%	999,550	0.97%	3/7/2018	3/7/2018
Fed Home Loan Bank	9/30/2015	1,000,120	0.70%	998,830	0.95%	4/24/2018	4/24/2018
Fed Home Loan Bank	10/19/2015	4,000,000	2.80%	3,922,840	1.70%	4/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.80%	3,851,440	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.80%	3,859,920	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.40%	1,933,940	1.65%	3/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.80%	3,840,120	1.60%	3/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.80%	3,822,480	1.60%	4/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.80%	3,820,640	1.55%	4/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.40%	1,913,520	1.65%	4/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.80%	3,852,120	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.10%	2,891,550	1.65%	2/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.80%	3,855,400	1.63%	2/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.80%	3,883,320	1.88%	2/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.91%	1,270,711	2.15%	3/29/2018	6/29/2022
Fed Home Loan Bank	10/19/17	3,850,000	2.69%	3,757,138	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/17	4,150,000	2.90%	4,047,620	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	01/30/18	3,000,000	2.10%	2,975,310	2.50%	1/30/2019	1/30/2023
Sub Total/Average		\$ 59,299,861	41.51%	\$ 57,495,614	1.70%		
Money Market		\$ 393,619	0.28%	\$ 393,619	0.09%		
Total City Managed/Average		\$ 106,012,447	74.20%	\$ 104,119,893	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,552	0.52%	\$ 743,003	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,689	0.52%	739,583	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,961	0.52%	738,308	1.25%	2/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.52%	740,243	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.52%	746,550	1.10%	3/13/2018	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.52%	747,765	1.00%	3/15/2018	6/15/2018
Fed Home Loan Bank	9/21/2016	749,904	0.52%	746,610	1.12%	3/21/2018	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,814	0.52%	737,505	1.29%	3/12/2018	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,850	0.52%	740,693	1.22%	2/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,404	0.52%	731,594	1.03%	7/30/2018	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,957	0.52%	738,075	1.25%	3/30/2018	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,747	0.52%	745,223	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,005,256	0.70%	996,180	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,807	0.70%	993,370	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	747,844	0.52%	741,930	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	743,623	0.52%	736,922	1.39%	6/20/2019	6/20/2019
Money Market		180,976	0.13%	180,976	0.01%		
Sub Total/Average		\$ 12,665,384	8.87%	\$ 12,544,526	1.18%		
Bond Reserve Accounts - Held By Trustees		\$ 14,478,130	10.13%	\$ 14,434,896			
Cash/Deposits		\$ 7,924,596	5.55%	\$ 7,924,596			
PARS Trust		\$ 1,787,404	1.25%	\$ 2,036,314			
GRAND TOTAL/AVERAGE		\$ 142,867,962	100.00%	\$ 141,060,226			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JANUARY 31, 2018
FOR THE FISCAL YEAR OF 2017-18

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.35%	\$ 38,025,912	26.62%	\$ 37,953,417
2014 Water Rev Bonds - Water Impact	Water Fund	1.35%	522,420	0.37%	521,424
2014 Water Rev Bonds - Water CIP	Water Fund	1.35%	1,088,114	0.76%	1,086,040
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.35%	6,682,521	4.68%	6,669,781
Federal Issues	All Funds Pooled	1.43%	71,284,512	49.90%	69,359,684
US Treasury Notes	All Funds Pooled	1.06%	499,757	0.35%	499,480
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.20%	574,595	0.40%	574,595
	SUBTOTAL		\$ 118,677,832	83.07%	\$ 116,664,421
Bond Reserve Accounts - held by trustees					
BNY - 2015 Wastewater Bonds					
Cash Balance	Wastewater Fund	0.00%	-	0.00%	-
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	0.00%	63	0.00%	63
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.00%	80	0.00%	80
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.20%	198,639	0.14%	198,639
US Treasury Notes - Revenue Acct.	Successor Fund	1.33%	6,862,871	4.80%	6,854,422
US Treasury Notes - Reserve Acct.	Successor Fund	1.28%	6,895,891	4.83%	6,861,105
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.00%	256,649	0.18%	256,649
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.00%	263,937	0.18%	263,937
	SUBTOTAL		14,478,130	10.13%	14,434,896
Other Cash/Deposits					
General Checking	All Funds		7,887,484	5.52%	7,887,484
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
PARS - OPEB Trust			987,404	0.69%	1,160,056
PARS - PENSION Trust			800,000	0.56%	876,258
	SUBTOTAL		9,712,000	6.80%	9,960,909
Total Cash and Investments			\$ 142,867,962	100.00%	\$ 141,060,226

CASH ACTIVITY SUMMARY
FY 2017-18

Fund Type	07/01/17 Balance	Change in Cash Balance	1/31/2018 Balance
General Fund	\$ 13,850,210	\$ 5,597,486	\$ 19,447,696
Community Development	4,641,472	(501,632)	4,139,840
RDA Successor Agency (except Housing)	12,149,330	3,614,749	15,764,079
Housing Successor Agency/ CDBG	4,732,509	(1,100,261)	3,632,248
Water - Operations	1,512,329	1,253,854	2,766,183
Water Other	5,507,256	206,583	5,713,838
Sewer - Operations	2,085,815	357,397	2,443,212
Sewer Other	26,927,307	(236,796)	26,690,511
Other Special Revenue	4,381,840	223,131	4,604,971
Streets and Capital Projects (except RDA)	42,727,410	(851,432)	41,875,978
Debt Service	256,088	(104,945)	151,143
Internal Service	12,201,454	(126,603)	12,074,851
Agency Funds (assessment dists./refundable deposits)	4,008,713	(445,300)	3,563,413
Total	\$ 134,981,732	\$ 7,886,230	\$ 142,867,962

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:

Harjot Sangha, Accounting Manager

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Seven Months Ended January 31, 2018
58% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 8,852,000	\$ 9,083,000	\$ 5,139,823	57%	\$ 4,749,262	\$ 390,560	8%
Property Tax - RPTTF Residual Distribution	1,100,000	1,200,000	265,874	22%	412,978	(147,104)	-36%
Property Tax - Supplemental Roll	162,000	283,000	129,937	46%	113,987	15,949	14%
Sales Tax	9,151,500	9,226,502	5,923,416	64%	5,485,859	437,557	8%
Public Safety Sales Tax	362,000	362,000	176,344	49%	165,310	11,035	7%
Transient Occupancy Taxes	2,827,050	2,827,050	1,414,110	50%	1,449,494	(35,384)	-2%
Franchise (Refuse, Cable, PG&E)	1,981,796	1,981,796	810,757	41%	761,738	49,019	6%
Property Transfer Tax	481,000	481,000	228,924	48%	234,876	(5,952)	-3%
TOTAL TAXES	24,917,346	25,444,348	14,089,184	55%	13,373,505	715,679	5%
LICENSES/PERMITS							
Business License	202,878	202,878	181,007	89%	172,439	8,568	5%
Other Permits	7,743	7,743	3,042	39%	1,569	1,473	94%
TOTAL LICENSES/PERMITS	210,621	210,621	184,049	87%	174,007	10,041	6%
FINES AND PENALTIES							
Parking Enforcement	12,240	12,240	4,079	33%	5,838	(1,759)	-30%
Bails & Fines	65,280	65,280	29,641	45%	24,890	4,751	19%
Administrative Citations	-	-	8,650	n/a	400	8,250	2063%
TOTAL FINES AND PENALTIES	77,520	77,520	42,370	55%	31,128	11,241	36%
OTHER AGENCIES							
Motor Vehicle in-Lieu	17,538	17,538	-	0%	19,552	(19,552)	-100%
Other Revenue - Other Agencies	406,875	319,875	422,898	132%	213,978	208,920	98%
TOTAL OTHER AGENCIES	424,413	337,413	422,898	125%	233,530	189,368	81%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,640	32,640	17,556	54%	24,841	(7,285)	-29%
Business License Application Review	36,633	36,633	22,386	61%	23,186	(800)	-3%
Membership Services & Rec Programs	6,023,650	6,197,036	3,452,136	56%	3,316,826	135,310	4%
Facility Rentals	932,986	904,666	594,002	66%	520,739	73,263	14%
Community Services	139,190	139,190	59,519	43%	90,017	(30,498)	-34%
General Administration Overhead	1,323,077	1,323,077	770,168	58%	733,495	36,673	5%
Other Charges Current Services	903,402	903,402	406,980	45%	396,499	10,481	3%
TOTAL CURRENT SERVICES	9,391,578	9,536,644	5,322,747	56%	5,105,603	217,144	4%
OTHER REVENUE							
Use of money/property	309,396	309,396	209,329	68%	176,491	32,838	19%
Other Revenues	151,306	157,306	1,909,300	1214%	518,167	1,391,133	268%
TOTAL OTHER REVENUE	460,702	466,702	2,118,630	454%	694,659	1,423,971	205%
TRANSFERS IN							
One Time Transfer	-	26,595	-	0%	-	-	0%
Public Safety	100,000	100,000	81,000	81%	54,501	26,499	49%
Streets	761,458	761,458	323,000	42%	339,209	(16,209)	-5%
Police Impact	25,000	25,000	14,581	58%	-	14,581	n/a
Sewer Operations	347,025	347,025	202,433	58%	201,250	1,183	1%
Water Operations	347,025	347,025	202,433	58%	201,250	1,183	1%
Park Development	75,000	75,000	43,750	58%	43,750	-	n/a
TOTAL TRANSFERS IN	1,655,508	1,682,103	867,197	52%	839,960	27,237	3%
TOTAL GENERAL FUND	37,137,688	37,755,351	23,047,074	61%	20,452,393	2,594,681	13%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	363,752	48%	392,136	(28,384)	-7%
Interest / Other Revenue/Other Charges	72	72	591	821%	571	20	4%
202 STREET MAINTENANCE	761,530	761,530	364,343	48%	392,707	(28,364)	-7%

Attachment: January 2018 Financial and Investment Report (1693 : January 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Seven Months Ended January 31, 2018
58% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	395	395	183	46%	181	2	1%
Police Grant/SLEF/JAG	100,000	100,000	72,750	73%	62,657	10,093	16%
205 PUBLIC SAFETY TRUST	100,395	100,395	72,933	73%	62,839	10,094	16%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,937,862	1,937,862	1,364,917	70%	1,555,808	(190,891)	-12%
Planning Fees	1,131,054	1,131,054	647,549	57%	501,668	145,881	29%
Engineering Fees	601,640	601,640	620,197	103%	904,450	(284,253)	-31%
Other Revenue/Current Charges	9,414	9,417	28,443	302%	19,183	9,260	48%
206 COMMUNITY DEVELOPMENT	3,679,970	3,679,973	2,661,105	72%	2,981,108	(320,003)	-11%
207 LONG RANGE PLANNING	706,212	706,212	395,284	56%	503,632	(108,348)	-22%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	417	120,417	1,670	1%	6,920	(5,250)	-76%
215 and 216 HCD BLOCK GRANT	417	120,417	1,670	1%	6,920	(5,250)	-76%
225 ASSET SEIZURE	250	250	956	382%	51,825	(50,869)	-98%
229 LIGHTING AND LANDSCAPE	187,321	187,321	95,236	51%	99,430	(4,194)	-4%
230 COMMUNITY FACILITIES DISTRICT	43,340	43,340	23,426	54%	21,378	2,048	10%
232 ENVIRONMENTAL PROGRAMS	382,164	382,164	293,241	77%	236,872	56,369	24%
234 MOBILE HOME PARK RENT STAB.	3,931	3,931	2,784	71%	3,764	(980)	-26%
235 SENIOR HOUSING	1,633	1,633	1,548	95%	972	576	59%
236 HOUSING MITIGATION	842,443	842,443	1,889,978	224%	1,252,390	637,588	51%
240 EMPLOYEE ASSISTANCE	30,966	30,966	16,536	53%	15,845	691	4%
247 ENVIRONMENT REMEDIATION	1,104	1,104	984	89%	657	327	50%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,131,889	7,131,889	8,753,073	123%	8,984,249	(231,176)	-3%
255 HOUSING SUCCESSOR AGENCY	1,285,374	1,285,374	216,747	17%	284,705	(67,958)	-24%
TOTAL SPECIAL REVENUE FUNDS	15,158,940	15,278,943	14,789,842	97%	14,899,293	(109,450)	-1%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,439,640	1,931,640	1,555,862	81%	787,136	768,725	98%
302 PARK MAINTENANCE	888,026	905,061	1,149,065	127%	760,337	388,729	51%
303 LOCAL DRAINAGE	1,822,884	1,822,884	1,691,261	93%	1,160,493	530,768	46%
304 LOCAL DRAINAGE/NON AB1600	70,894	70,894	144,565	204%	149,778	(5,214)	-3%
306 AGRICULTURE & OPEN SPACE PRESERVATION	1,539,970	1,539,970	546,198	35%	144,414	401,784	278%
308 STREET CIP	1,357,235	1,603,833	1,656,464	103%	955,363	701,100	73%
309 TRAFFIC IMPACT	1,348,287	1,348,287	211,693	16%	405,482	(193,788)	-48%
311 POLICE IMPACT	256,218	256,218	158,279	62%	70,269	88,010	125%
313 FIRE IMPACT	94,577	94,577	50,256	53%	75,588	(25,331)	-34%
346 PUBLIC FACILITIES NON-AB1600	617,956	617,956	77,027	12%	634,766	(557,739)	-88%
347 PUBLIC FACILITIES IMPACT	171,217	171,217	108,074	63%	44,052	64,022	145%
348 LIBRARY	1,250,509	1,250,509	355,733	28%	132,477	223,256	169%
350 UNDERGROUNDING	53,236	53,236	200,559	377%	842,698	(642,139)	-76%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	544,341	544,341	75,763	14%	859,780	(784,017)	-91%
360 COMMUNITY/REC IMPACT FUND	985,274	985,274	563,705	57%	102,492	461,213	450%
TOTAL CAPITAL PROJECTS FUNDS	12,440,264	13,195,897	8,544,503	65%	7,125,124	1,419,379	20%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	297,408	297,408	172,360	58%	174,819	(2,459)	-1%
441 POLICE FACILITY BOND	385,373	385,373	229,220	59%	187,949	41,272	22%
TOTAL DEBT SERVICE FUNDS	682,781	682,781	401,580	59%	362,767	38,813	11%

Attachment: January 2018 Financial and Investment Report (1693 : January 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Seven Months Ended January 31, 2018
58% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,602,695	10,602,695	5,662,239	53%	5,459,821	202,418	4%
Interest Income/Transfers	48,461	48,461	15,325	32%	9,572	5,753	60%
Other Revenue/Current Charges	183,354	183,354	192,884	105%	291,264	(98,380)	-34%
640 SEWER OPERATION	10,834,510	10,834,510	5,870,448	54%	5,760,657	109,791	2%
641 SEWER EXPANSION							
Interest Income	59,474	59,474	102,008	172%	64,374	37,634	58%
Development Impact Fee	4,727,753	4,727,753	2,012,508	43%	897,938	1,114,570	124%
Transfers/Other	-	-	-	0%	600	(600)	-100%
641 SEWER EXPANSION	4,787,227	4,787,227	2,114,516	44%	962,912	1,151,604	120%
642 SEWER RATE STABILIZATION	15,702	15,702	17,790	113%	47,308	(29,518)	-62%
643 SEWER-CAPITAL PROJECT	2,424,509	2,424,509	1,455,004	60%	1,562,700	(107,696)	-7%
TOTAL SEWER FUNDS	18,061,948	18,061,948	9,457,759	52%	8,333,577	1,124,182	13%
650 WATER OPERATION							
Water Sales	11,201,856	11,401,856	6,903,156	61%	5,773,801	1,129,355	20%
Meter Install & Service	120,575	120,575	216,087	179%	131,927	84,160	64%
Transfers-In / Interest Income	424,507	424,507	255,731	60%	240,956	14,775	6%
Other Revenue/Current Charges	475,784	275,784	516,648	187%	533,907	(17,259)	-3%
650 WATER OPERATION	12,222,722	12,222,722	7,891,623	65%	6,680,591	1,211,032	18%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	1,944	1,944	25,389	1306%	14,228	11,161	78%
Development Impact Fee	1,196,984	1,196,984	526,783	44%	297,171	229,612	77%
651 WATER EXPANSION	1,198,928	1,198,928	552,172	46%	311,399	240,773	77%
652 Water Rate Stabilization	505,618	505,618	296,290	59%	292,311	3,979	1%
653 Water Capital Project	1,351,992	1,351,992	796,707	59%	560,158	236,549	42%
TOTAL WATER FUNDS	15,279,260	15,279,260	9,536,792	62%	7,844,459	1,692,333	22%
TOTAL ENTERPRISE FUNDS	33,341,208	33,341,208	18,994,551	57%	16,178,036	2,816,514	17%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,812	1,592,812	938,036	59%	940,937	(2,901)	0%
740 BUILDING MAINTENANCE	3,066,615	3,149,985	1,820,764	58%	1,810,134	10,630	1%
741 BUILDING REPLACEMENT	487,008	487,008	290,065	60%	277,297	12,768	5%
745 CIP ADMINISTRATION	1,869,109	1,869,109	768,242	41%	764,439	3,803	0%
760 UNEMPLOYMENT INSURANCE	1,094	1,094	1,151	105%	760	391	51%
770 WORKERS COMPENSATION	763,390	763,390	640,664	84%	437,901	202,763	46%
790 EQUIPMENT REPLACEMENT	974,418	974,418	585,170	60%	622,084	(36,914)	-6%
791 EMPLOYEE BENEFITS	624,676	624,676	358,353	57%	370,210	(11,857)	-3%
793 CORPORATION YARD COMMISSION	-	-	1,850	0%	547	1,303	238%
795 GENERAL LIABILITY INSURANCE	941,342	941,342	554,481	59%	500,548	53,933	11%
TOTAL INTERNAL SERVICE FUNDS	10,320,464	10,403,834	5,958,777	57%	5,724,857	233,920	4%
TOTAL FOR ALL FUNDS	\$ 109,081,345	\$ 110,658,014	\$ 71,736,327	65%	\$ 64,742,470	\$ 6,993,857	11%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Seven Months Ended January 31, 2018
58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 25,122	\$ 401,865	\$ 158,437	\$ 41,500	\$ 199,937	50%	\$ 201
	CITY ATTORNEY	54,193	836,813	406,919	156,536	563,455	67%	371
	CITY MANAGER/ATTORNEY LOAN	1,300,000	1,300,000	1,300,000	-	1,300,000	100%	831
	CITY MANAGER	64,162	1,901,979	631,763	617,346	1,249,109	66%	481
	HUMAN RESOURCES	45,531	757,742	422,170	9,450	431,620	57%	391
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	44,387	601,195	336,894	11,200	348,094	58%	321
	Elections	25,223	30,669	61,038	-	61,038	199%	121
	COUNCIL SVCS & RECORDS MGMT	69,610	631,864	397,932	11,200	409,132	65%	441
	FINANCE	129,495	1,613,065	931,944	45,131	977,074	61%	961
	TOTAL ADMINISTRATION	1,688,114	7,443,327	4,249,164	881,163	5,130,327	69%	3,711
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	281,764	5,914,430	3,191,226	988,323	4,179,548	71%	3,031
	Recreation Facility Rentals	100,633	1,299,185	752,775	-	752,775	58%	721
	Community Services	43,986	768,671	399,903	42,402	442,305	58%	361
	Solid Waste Management	13,693	277,104	109,434	-	109,434	39%	101
	Street Maintenance	153,118	2,225,954	1,111,638	248,074	1,359,712	61%	1,131
	Downtown Maintenance	29,968	296,241	152,954	77,008	229,962	78%	51
	Cable Television	1,556	49,443	11,294	-	11,294	23%	11
	COMMUNITY SERVICES	624,718	10,831,028	5,729,223	1,355,807	7,085,030	65%	5,431
	CODE COMPLIANCE	9,414	141,628	68,792	-	68,792	49%	71
	CONGESTION MANAGEMENT	1,338	77,570	53,858	-	53,858	69%	51
	TOTAL COMMUNITY SERVICES	635,470	11,050,226	5,851,873	1,355,807	7,207,680	65%	5,561
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	70,464	1,185,166	642,858	21,812	664,670	56%	611
	Field Operations	601,992	7,904,735	4,371,446	78,067	4,449,512	56%	4,301
	Support Services	175,734	2,089,756	1,165,213	8,658	1,173,871	56%	1,191
	Emergency Services/Haz Mat	11,265	217,012	101,193	-	101,193	47%	91
	Special Operations	248,949	2,779,972	1,586,204	-	1,586,204	57%	1,451
	Dispatch Services	125,276	1,694,978	907,068	-	907,068	54%	881
	POLICE	1,233,680	15,871,619	8,773,983	108,536	8,882,520	56%	8,541
	FIRE	526,769	5,785,389	3,477,038	3,095	3,480,134	60%	3,301
	TOTAL PUBLIC SAFETY	1,760,449	21,657,008	12,251,022	111,632	12,362,654	57%	11,841
IV. TRANSFERS								
	Other	145,443	1,901,915	1,184,691	-	1,184,691	62%	1,341
	TOTAL TRANSFERS	145,443	1,901,915	1,184,691	-	1,184,691	62%	1,341
	TOTAL GENERAL FUND	4,229,476	42,052,476	23,536,750	2,348,602	25,885,352	62%	22,471

Attachment: January 2018 Financial and Investment Report (1693 : January 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Seven Months Ended January 31, 2018
58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	169	763,480	324,233	-	324,233	42%	34%
205	PUBLIC SAFETY/SUPP.LAW	-	100,000	81,000	-	81,000	81%	5%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	137,973	2,241,307	1,048,186	405,792	1,453,978	65%	1,10%
	Building	126,490	1,789,823	996,820	47,872	1,044,692	58%	97%
	Engineering	84,648	1,292,702	728,633	125,334	853,967	66%	56%
206	COMMUNITY DEVELOPMENT FUND	349,111	5,323,832	2,773,639	578,998	3,352,637	63%	2,65%
207	LONG RANGE PLANNING	35,047	988,643	334,139	228,098	562,236	57%	28%
215/216	CDBG	-	165,331	8,883	196,092	204,976	124%	9%
225	ASSET SEIZURE	-	26,595	-	-	-	0%	0%
229	LIGHTING AND LANDSCAPE	8,972	205,430	102,142	51,129	153,271	75%	9%
230	COMMUNITY FACILITIES DISTRICT	1,908	45,100	10,583	2,320	12,903	29%	1%
232	ENVIRONMENT PROGRAMS	78,436	345,422	241,831	19,900	261,731	76%	40%
234	MOBILE HOME PARK	71	880	497	-	497	56%	5%
236	HOUSING MITIGATION	56,296	1,320,091	335,868	208,305	544,174	41%	2,76%
240	EMPLOYEE ASSISTANCE	1,904	41,247	13,521	-	13,521	33%	2%
250	COMH-SUCCESSOR AGENCY-MHRDA	16,046	7,178,310	5,135,707	23,890	5,159,597	72%	6,61%
255	HOUSING SUCCESSOR AGENCY	72,507	1,945,760	1,321,979	233,333	1,555,312	80%	51%
TOTAL SPECIAL REVENUE FUNDS		620,466	18,450,121	10,684,022	1,542,066	12,226,087	66%	13,77%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	61,580	7,342,206	3,490,339	837,923	4,328,263	59%	62%
302	PARK MAINTENANCE	75,451	2,688,257	570,854	1,714,107	2,284,961	85%	57%
303	LOCAL DRAINAGE	986	47,010	7,085	-	7,085	15%	1%
304	LOCAL DRAIN. NON-AB1600	384	189,171	50,943	-	50,943	27%	1%
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,832	2,481,696	27,883	89,751	117,633	5%	80%
308	STREET CIP	12,086	5,335,964	2,096,296	307,862	2,404,158	45%	9%
309	TRAFFIC IMPACT	1,233,960	3,913,053	1,523,617	184,903	1,708,519	44%	85%
311	POLICE IMPACT	2,161	237,117	136,706	-	136,706	58%	14%
313	FIRE IMPACT	110	623,735	778	-	778	0%	0%
346	PUBLIC FAC.NON AB1600	22,106	1,020,977	541,063	54,405	595,468	58%	48%
347	PUBLIC FACILITIES IMPACT	81	439,481	601	-	601	0%	0%
348	LIBRARY IMPACT	22,674	3,824,836	193,949	244,800	438,749	11%	23%
350	UNDERGROUNDING	45	55,539	315	-	315	1%	69%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	7,263	1,809,032	249,938	21,008	270,946	15%	4%
360	COMM/REC CENTER IMPACT	15,771	309,400	16,015	48,229	64,244	0%	0%
TOTAL CAPITAL PROJECTS FUNDS		1,457,490	30,317,473	8,906,381	3,502,988	12,409,369	41%	4,52%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	97	297,423	209,871	-	209,871	71%	21%
441	POLICE FACILITY BOND DEBT	198	383,610	295,798	-	295,798	77%	28%
TOTAL DEBT SERVICE FUNDS		295	681,033	505,669	-	505,669	74%	50%



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Seven Months Ended January 31, 2018
 58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	468,279	10,846,377	5,417,074	131,868	5,548,943	51%	5,581
641	SEWER CAPITAL EXPANSION	37,781	19,130,592	710,100	537,835	1,247,934	7%	1,014
642	SEWER RATE STABILIZATION	325	3,900	2,275	-	2,275	58%	1
643	SEWER-CAPITAL PROJECTS	73,660	8,453,383	2,447,939	238,598	2,686,536	32%	2,901
TOTAL SEWER FUND(S)		580,045	38,434,252	8,577,388	908,301	9,485,688	25%	9,511
WATER								
	Water Operations	673,996	11,005,629	5,466,731	477,158	5,943,889	54%	5,441
	Utility Billing	60,732	836,258	422,580	28,406	450,986	54%	401
	Water Conservation	5,488	212,502	50,299	85,133	135,432	64%	71
650	WATER OPERATIONS	740,217	12,054,389	5,939,610	590,697	6,530,307	54%	5,921
651	WATER CAPITAL EXPANSION	29,266	3,405,848	333,986	2,135,084	2,469,071	72%	1,201
652	WATER RATE STABILIZATION	51	662	357	-	357	54%	1
653	WATER-CAPITAL PROJECTS	145,591	2,991,557	949,934	1,094,193	2,044,127	68%	2,861
TOTAL WATER FUND(S)		915,126	18,452,455	7,223,887	3,819,974	11,043,861	60%	9,991
TOTAL ENTERPRISE FUNDS		1,495,170	56,886,707	15,801,275	4,728,274	20,529,549	36%	19,501
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	92,188	1,796,307	1,047,060	25,801	1,072,861	60%	731
740	BUILDING MAINTENANCE	310,311	3,328,743	1,729,744	263,199	1,992,943	60%	1,621
741	BUILDING REPLACEMENT	38,636	524,821	248,066	64,522	312,588	60%	451
745	CIP ADMINISTRATION	103,703	1,872,190	789,248	16,175	805,423	43%	761
760	UNEMPLOYMENT	-	20,400	2,466	-	2,466	12%	1
770	WORKERS COMPENSATION	11,263	808,807	879,747	-	879,747	109%	341
790	EQUIPMENT REPLACEMENT	117,278	1,096,467	401,568	379,501	781,069	71%	1,281
791	EMPLOYEE BENEFITS FUND	50,888	558,538	488,728	-	488,728	88%	391
793	CORP YARD COMMISSION	1,073	-	7,352	1,903	9,255	0%	1
795	GEN. LIABILITY INSURANCE	81,692	1,059,920	658,655	-	658,655	62%	741
TOTAL INTERNAL SERVICE FUNDS		807,034	11,066,194	6,252,635	751,101	7,003,736	63%	6,361
REPORT TOTAL		\$ 8,609,931	\$ 159,454,003	\$ 65,686,731	\$ 12,873,031	\$ 78,559,763	49%	\$ 67,131

Attachment: January 2018 Financial and Investment Report (1693 : January 2018 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Seven Months Ended January 31, 2018 58% of Year Complete										
Fund No.	Fund	Fund Balance 06-30-17	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance		
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved	
010	GENERAL FUND	\$ 16,830,617	\$ 23,047,074	61%	\$ 23,536,750	56%	\$ (489,676)	\$ 2,348,602	\$ 13,992,339	
TOTAL GENERAL FUND		\$ 16,830,617	\$ 23,047,074	61%	\$ 23,536,750	56%	\$ (489,676)	\$ 2,348,602	\$ 13,992,339	
202	STREET MAINTENANCE	\$ 440	\$ 364,343	48%	\$ 324,233	56%	\$ 40,110	\$ -	\$ 40,550	
205	PUBLIC SAFETY/SUPPL. LAW	16,702	72,933	73%	81,000	56%	(8,067)	-	8,635	
206	COMMUNITY DEVELOPMENT	2,646,685	2,661,105	72%	2,773,639	52%	(112,534)	578,998	1,955,153	
207	LONG RANGE PLANNING	1,170,077	395,284	56%	334,139	34%	61,145	228,098	1,003,125	
215 / 216	CDBG	95,752	1,670	1%	8,883	0%	(7,214)	196,092	(107,554)	
225	ASSET SEIZURE	136,345	956	382%	-	0%	956	-	137,301	
229	LIGHTING AND LANDSCAPE	160,594	95,236	51%	102,142	50%	(6,906)	51,129	102,559	
230	COMMUNITY FACILITIES DISTRICT	60,276	23,426	54%	10,583	0%	12,843	2,320	70,798	
232	ENVIRONMENTAL PROGRAMS	157,637	293,241	77%	241,831	70%	51,410	19,900	189,147	
234	MOBILE HOME PK RENT STAB.	41,059	2,784	71%	497	56%	2,287	-	43,346	
235	SENIOR HOUSING	220,710	1,548	95%	-	0%	1,548	-	222,257	
236	HOUSING MITIGATION	2,178,174	1,889,978	224%	335,868	25%	1,554,110	208,305	3,523,978	
240	EMPLOYEE ASSISTANCE	36,302	16,536	53%	13,521	33%	3,016	-	39,318	
247	ENVIRONMENT REMEDIATION	139,723	984	89%	-	0%	984	-	140,707	
250	COMH-SUCCESSOR AGENCY-MHRDA	4,650,153	8,753,073	123%	5,135,707	72%	3,617,366	13,981,291	(5,713,772)	
255	HOUSING SUCCESSOR AGENCY	3,956,700	216,747	17%	1,321,979	68%	(1,105,232)	2,746,608	104,860	
TOTAL SPECIAL REVENUE FUNDS		\$ 15,667,329	\$ 14,789,842	97%	\$ 10,684,022	58%	\$ 4,105,821	\$ 18,012,741	\$ 1,760,408	
301	PARK DEV. IMPACT FUND	\$ 4,850,439	\$ 1,555,862	81%	\$ 3,490,339	48%	\$ (1,934,478)	\$ 837,923	\$ 2,078,038	
302	PARK MAINTENANCE	5,431,371	1,149,065	127%	570,854	21%	578,211	1,714,107	4,295,475	
303	LOCAL DRAINAGE	8,381,669	1,691,261	93%	7,085	15%	1,684,175	-	10,065,844	
304	LOCAL DRAINAGE/NON-AB1600	1,301,563	144,565	204%	50,943	27%	93,621	-	1,395,185	
306	AGRICULTURE AND OPEN SPACE PRESERV	6,014,381	546,198	35%	27,883	0%	518,315	89,751	6,442,946	
308	STREET CIP	1,819,399	1,656,464	103%	2,096,296	16%	(439,832)	307,862	1,071,704	
309	TRAFFIC IMPACT FUND	4,539,601	211,693	16%	1,523,617	39%	(1,311,923)	184,903	3,042,775	
311	POLICE IMPACT FUND	(778,194)	158,279	62%	136,706	58%	21,573	-	(756,621)	
313	FIRE IMPACT FUND	3,818,916	50,256	53%	778	0%	49,478	-	3,868,394	
346	PUBLIC FACILITIES NON-AB1600	1,117,552	77,027	12%	541,063	53%	(464,037)	-	653,515	
347	PUBLIC FACILITIES IMPACT FUND	343,009	108,074	63%	601	0%	107,473	244,800	205,681	
348	LIBRARY IMPACT FUND	2,103,639	355,733	28%	193,949	5%	161,784	-	2,265,423	
350	UNDERGROUNDING	510,438	200,559	377%	315	1%	200,244	21,008	689,674	
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,640,864	75,763	14%	249,938	14%	(174,174)	48,229	1,418,461	
360	COMM/REC CTR IMPACT FUND	268,766	563,705	57%	16,015	0%	547,690	-	816,456	
TOTAL CAPITAL PROJECT FUNDS		\$ 41,363,413	\$ 8,544,503	65%	\$ 8,906,381	29%	\$ (361,878)	\$ 3,448,584	\$ 37,552,952	
420	CIVIC CENTER DEBT	\$ 161,328	\$ 172,360	58%	\$ 209,871	71%	\$ (37,511)	\$ 63	\$ 123,754	
441	POLICE FACILITY BOND DEBT	93,903	229,220	59%	295,797	77%	(66,578)	80	27,246	
TOTAL DEBT SERVICE FUNDS		\$ 255,231	\$ 401,580	59%	\$ 505,669	74%	\$ (104,089)	\$ 143	\$ 150,999	

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Seven Months Ended January 31, 2018 58% of Year Complete										
Fund No.	Fund	Fund Balance 06-30-17	Revenues		Expenses		Year to-Date Deficit or Carryover		Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget	YTD Actual	% of Budget	Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,997,397	54%	\$ 5,870,448	50%	\$ 453,374	131,868	\$ 3,318,902		
641	SEWER IMPACT FUND*	13,739,517	44%	2,114,516	44%	710,100	537,835	14,606,099		
642	SEWER RATE STABILIZATION	2,538,125	113%	17,790	113%	2,275	-	2,553,640		
643	SEWER-CAPITAL PROJECTS	8,964,265	60%	1,455,004	60%	2,447,939	238,598	7,732,733		
650	WATER OPERATIONS	1,329,683	65%	7,891,623	65%	5,939,610	590,697	2,690,999		
651	WATER IMPACT FUND*	3,153,845	46%	552,172	46%	333,986	2,135,084	1,236,946		
652	WATER RATE STABILIZATION	539,303	59%	296,290	59%	357	-	835,236		
653	WATER -CAPITAL PROJECT	613,123	59%	796,707	59%	949,934	1,094,193	(634,297)		
TOTAL ENTERPRISE FUNDS		\$ 33,875,258	57%	\$ 18,994,551	57%	\$ 15,801,275	\$ 3,193,276	\$ 4,728,274	\$ 32,340,259	

730	INFORMATION SERVICES	\$ 612,170	59%	\$ 938,036	59%	\$ 1,047,060	25,801	\$ 477,345		
740	BUILDING MAINTENANCE	126,409	58%	1,820,764	58%	1,729,744	263,199	(45,770)		
741	BUILDING REPLACEMENT	2,063,612	60%	290,065	60%	248,066	64,522	2,041,088		
745	CIP ENGINEERING	32,485	41%	768,242	41%	789,248	16,175	(4,695)		
760	UNEMPLOYMENT	164,584	105%	1,151	105%	2,466	-	163,269		
770	WORKERS COMPENSATION	1,647,992	84%	640,664	84%	879,747	30,000	1,378,909		
790	EQUIPMENT REPLACEMENT	4,110,874	60%	585,170	60%	401,568	379,501	3,914,974		
791	EMPLOYEE BENEFITS FUNDS	584,228	57%	358,353	57%	488,728	-	453,853		
793	CORP YARD COMMISSION	-	0%	1,850	0%	7,352	1,903	(7,406)		
795	GEN. LIABILITY INSURANCE	1,106,814	59%	554,481	59%	658,655	-	1,002,640		
TOTAL INTERNAL SERVICE FUNDS		\$ 10,449,167	57%	\$ 5,958,777	57%	\$ 6,252,635	\$ (293,859)	\$ 781,101	\$ 9,374,207	

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,830,617	\$ 23,047,074	61%	\$ 23,536,750	56%	\$ (489,676)	\$ 2,348,602	\$ 13,992,339
SPECIAL REVENUE GROUP	15,657,329	14,789,842	97%	10,684,022	58%	4,105,821	18,012,741	1,760,408
DEBT SERVICE GROUP	255,231	401,580	59%	505,669	74%	(104,089)	143	150,999
CAPITAL PROJECTS GROUP	41,363,413	8,544,503	65%	8,906,381	29%	(361,878)	3,448,584	37,552,952
ENTERPRISE GROUP	33,875,258	18,994,551	57%	15,801,275	28%	3,193,276	4,728,274	32,340,259
INTERNAL SERVICE GROUP	10,449,167	5,958,777	57%	6,252,635	57%	(293,859)	781,101	9,374,207
TOTAL ALL GROUPS	\$ 118,441,015	\$ 71,736,327	65%	\$ 65,686,731	41%	\$ 6,049,595	\$ 29,319,446	\$ 95,171,165

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

ADOPT RESOLUTION CONSENTING TO DISSOLUTION OF CORPORATION YARD COMMISSION

RECOMMENDATION(S)

Adopt Resolution consenting to termination of a Joint Powers Agreement with the Morgan Hill Unified School District and dissolving the joint Corporation Yard Commission.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Regional Initiatives

REPORT NARRATIVE:

In 1975, the City and the Morgan Hill Unified School District (District) entered into a Joint Powers Agreement (JPA) creating the Corporation Yard Commission (Commission) to finance the acquisition, construction, and operation of a vehicle maintenance facility. In 1990, the Joint Powers Agreement was amended to clarify the membership makeup of the Commission.

In July 1995, gasoline containing MTBE was discovered to have leaked into the soil and groundwater from the underground storage system at the Corporation Yard site. The Commission incurred costs for the investigation and cleanup of the contamination. In April 2015, the County of Santa Clara Department of Environmental Health issued the "Fuel Leak Site Case Closure". The letter confirmed the completion of the investigation and cleanup of the reported release contamination at the site.

With the subject fuel leak case closed, the City and School District now wish to terminate the JPA and dissolve the Commission. Under Paragraph 11 of the Agreement, the parties may terminate the agreement by mutual consent. The Agreement requires consent to be demonstrated by the adoption of a resolution.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended JPA termination.

ALTERNATIVE ACTIONS:

Council could decide not to terminate the Joint Powers Agreement

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None

FISCAL AND RESOURCE IMPACT:

The termination of the JPA is anticipated to save both the City and District a combined cost of approximately \$5,000 annually for the audit and general liability insurance.

CEQA (California Environmental Quality Act):

Not a Project: Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Corp Yard JPA Dissolution Resolution

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL TERMINATING THE
JOINT POWERS AGREEMENT BETWEEN THE CITY OF MORGAN
HILL AND THE MORGAN HILL UNIFIED SCHOOL DISTRICT
DATED MAY 7, 1975 AS AMENDED ON JUNE 6, 1990, AND
DISSOLVING THE CORPORATION YARD COMMISSION**

WHEREAS, in 1975 the City of Morgan Hill ("City") and the Morgan Hill Unified School District ("District") adopted a Joint Powers Agreement forming a Corporation Yard Commission for the purpose of operating a joint Corporation Yard in the City of Morgan Hill; and

WHEREAS, in 1990 the City and District approved an amendment to the Joint Powers Agreement providing that the members of the Corporation Yard Commission are two members appointed from the Board of the District, two members appointed from the City Council and one member selected by the four appointed members; and

WHEREAS, the Corporation Yard Commission has no outstanding bonds; and

WHEREAS, the City and District now wish to terminate the Joint Powers Agreement and dissolve the Corporation Yard Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

The City of Morgan Hill consents to the termination of the Joint Powers Agreement and the dissolution of the Corporation Yard Commission as authorized under Paragraph 11 of the Joint Powers Agreement.

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

Attachment: Corp Yard JPA Dissolution Resolution (1700 : Dissolution of Corp Yard Commission)

∞ 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: Corp Yard JPA Dissolution Resolution (1700 : Dissolution of Corp Yard Commission)

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, March 7, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

TELECONFERENCE

Mayor Tate participated in the regular meeting via teleconference as follows:

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

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 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	Remote	
Rich Constantine	Mayor Pro Tem	Present	
Larry Carr	Council Member	Present	

Caitlin Jachimowicz	Council Member	Absent	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

Deputy City Clerk Michelle Bigelow declared the posting of the agenda.

Mayor Tate declared the posting of the agenda at his teleconference location.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

None.

CITY MANAGER'S REPORT

City Manager Christina Turner announced that Council Member Caitlin Robinett Jachimowicz and her family welcomed their new baby boy, Griffin Nathaniel Robinett Jachimowicz.

She announced that the American Association of University Women (AAUW) hosted a workshop last week called "Learn How to Build a Successful Campaign." The video for that workshop can be found on the City's You Tube Channel.

She shared that on March 26, 2018 at 7:00 pm in the Council Chamber, the City will be holding a gray water workshop where you can learn how to safely reuse water from washing machines. More information is available on our website.

She highlighted that Open Counter is a new permitting software that is now live. It is a portal that allows members of the community, business as well as residential, to come in or from the comforts of their home, research potential permitting that they may want to do. The portal has a variety of matrices it can track. Since January 1, 2018, the portal has had 2,940 visits. Additionally, it has saved 42 hours of staff time and 401 projects have been started using the portal.

She concluded by speaking to the evening's supplements and presentations.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin had no report.

OTHER REPORTS

None.

PROCLAMATIONS

Proclaiming the month of March 2018 as Youth Art Month

Proclaiming the month of March 2018 as American Red Cross Month

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

POPPY JASPER INTERNATIONAL FILM FESTIVAL PRESENTATIONAMERICAN RED CROSS PRESENTATION**PRESENTATIONS**RELAY FOR LIFE PRESENTATIONYAC PRESENTATION- ASSET #14- ADULT ROLE MODELS**PUBLIC COMMENT**

The public comment was opened at 7:35 pm.

Swanee Edwards was called to speak.

There being no further requests to speak, the public comment was closed.

ADOPTION OF AGENDA**MOTION:**

Adopting the agenda continuing item 20 to the April 4, 2018 City Council meeting and removing the closed session from the agenda.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Spring
ABSENT:	Jachimowicz

CONSENT CALENDAR**MOTION:**

Approving consent calendar items 2, 3, 5 through 7, and 9 through 17.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Spring
ABSENT:	Jachimowicz

1. ITEM PULLED FOR DISCUSSION**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. ITEM PULLED FOR DISCUSSION

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. ITEM PULLED FOR DISCUSSION

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.

ITEMS PULLED FOR DISCUSSION

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.

The public comment was opened at 7:40 pm.

Brian Faircloth 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:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Spring
ABSENT:	Jachimowicz

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.

The public comment was opened at 7:47 pm.

Rocke Garcia was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT: AUTHORIZED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Rene Spring, Council Member
AYES: Tate, Constantine, Carr, Spring
ABSENT: Jachimowicz

8. APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET

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.

The public comment was opened at 7:50 pm.

Rocke Garcia was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT: APPROVED [UNANIMOUS]
MOVER: Steve Tate, Mayor
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Spring
ABSENT: Jachimowicz

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.

City Attorney Donald Larkin excused himself from the dais.

City Manager Christina Turner provided the report.

The public comment was opened at 7:52 pm.

There being no requests to speak, the public comment was closed

MOTION:

Continuing the item to the April 18, 2018 City Council meeting.

RESULT: CONTINUED TO A FUTURE MEETING [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Rene Spring, Council Member
AYES: Tate, Constantine, Carr, Spring
ABSENT: Jachimowicz

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.

City Attorney Donald Larkin resumed his seat at the dais and presented the report.

The public comment was opened at 8:05 pm. The following people were called to speak:

Brian Faircloth

Ken Murray

Nicola

John

Anthony

Christian

Allison

Michelle

There being no further requests to speak, the public comment was closed.

The meeting went into recess at 8:20 pm.

The meeting was reconvened at 8:28 pm.

MOTION:

Approving the recommended action.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Rene Spring, Council Member
AYES: Tate, Constantine, Carr, Spring
ABSENT: Jachimowicz

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.

Item continued through the adoption of the agenda to the April 4, 2018 City Council meeting.

RESULT: NO ACTION TAKEN

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested that staff follow up with the residents in San Martin that were affected by the sewer spill that took place last winter.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:45 pm in honor of Griffin Nathaniel Robinett Jachimowicz.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

Minutes Acceptance: Minutes of Mar 7, 2018 7:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

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

OPPORTUNITY TO PROVIDE PUBLIC COMMENT REGARDING SANDALWOOD SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

RECOMMENDATION(S)

Provide opportunity for the public to be heard on the matter of the planned increase in the assessment in the Sandalwood Subarea.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the public with an opportunity to provide the City with input on the special ballot proceeding needed to increase the maximum level of assessment in the Sandalwood Subarea of Morgan Hill Landscape Assessment District Number 1 (District).

The City has been administering the various subareas contained in Morgan Hill Landscape Assessment District Number 1 since the 1990s. Each of these subareas function as a “mini-district” in which the revenues garnered through the annual assessments must only be used to pay the administrative and direct service costs for that subarea. One of these subareas, Sandalwood, has had very limited services for over ten years due to the limited revenues available to serve the subarea.

As a result of Proposition 218, the assessment level cannot be increased above the maximum permitted level without an affirmative vote of the majority of the voting property owners. Two prior efforts to increase the assessments in this area were unsuccessful. Recently, however, many of the residents in the Sandalwood Subarea have contacted the City indicating that they would prefer to vote to increase their maximum assessment level in order to obtain a higher level of service.

This public meeting is a required step in the voting process specified to increase the assessment under the California Constitution. A final public hearing and counting of the ballots submitted to the City is scheduled for April 18th.

COMMUNITY ENGAGEMENT: Consult

Staff has had multiple meetings over the past two years with the Sandalwood residents and the proposed increase in the maximum assessment limit is a result of those requests.

ALTERNATIVE ACTIONS:

No alternative actions as this report is informational in nature.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the resolution of intent needed to start this process at its meeting of February 21, 2018.

FISCAL AND RESOURCE IMPACT:

This item does not have a fiscal impact as the ballot proceeding will only raise the legally-permissible maximum assessment limit - it will not actually increase the assessment. The actual annual assessments for the entire District will be set by a separate Council action scheduled for a meeting later in the Spring. Administering the District is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

The actions in this resolution are fiscal activities which do not directly involve a physical impact on the environment.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

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

SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2018

RECOMMENDATION(S)

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2018.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to present Recology South Valley's (Recology) request for an adjustment in the maximum allowable solid waste rates charged within the City for City Council consideration and action.

One of the provisions of Recology's franchise agreement has historically been that service rate increases are based upon changes in the Consumer Price Index. With the amendment to the franchise agreement approved in 2014, rate amendments are now based on changes in both the Consumer Price Index and the price of compressed natural gas. In accordance with the agreement, Recology submitted the attached timely request for a rate adjustment and Recology's rate application follows the formula prescribed in the amended franchise agreement. The calculated rate adjustment requested this year is a 2.10% increase.

For residential customers, this adjustment applied to the current, basic residential service rate of \$30.95 is \$0.65 per month. With the approval of this adjustment, the maximum permitted monthly charge for flatland customers will be \$31.60 and the maximum permitted monthly charge for hillside customers will be \$34.37. For a business getting a 3-yard dumpster serviced once per week, the maximum allowable monthly rate will rise from \$340.41 to \$347.56.

It is recommended that the Council adopt the attached resolution increasing the maximum allowed rates for solid waste management services for 2018.

COMMUNITY ENGAGEMENT: Inform

The community will be informed about the rate amendment via notices in the bills they receive from Recology.

ALTERNATIVE ACTIONS:

Not applicable as the City is contractually obligated to approve this amendment to the maximum rates.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has evaluated solid waste rate adjustments annually for the past seventeen years. In 2014, the City Council approved an amendment to the franchise agreement which changed the formula for the annual process.

FISCAL AND RESOURCE IMPACT:

The City's annual franchise fee revenues will go up by approximately \$30,000 with passage of the attached resolution. This increase is consistent with the assumption built into the City's adopted budget and no adjustment to the City's budget or financial forecast is required. Processing this application is an anticipated and included activity in the work program of the Community Services Department

CEQA (California Environmental Quality Act):

Not a Project

This action will not result in physical changes to the environment and it is not a project under the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Recology Rate Resolution 2018
2. 2018 rate application

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN ADJUSTMENT IN SOLID WASTE COLLECTION RATES FOR 2018

WHEREAS, the City of Morgan Hill (the "City") has approved a franchise agreement with Recology South Valley ("Recology") that establishes a methodology for regulating the maximum rates that Recology can charge to Morgan Hill customers; and

WHEREAS, Recology has submitted an application for a rate adjustment that substantially complies with the methodology in the Agreement; and

WHEREAS, the cost of living, as indicated by the consumer price index, and the cost of motor fuels have increased during the past year causing an increase in the cost of providing service; and

WHEREAS, Recology has agreed to provide notice in their next garbage billing explaining the rate adjustment process; and

WHEREAS, further reasons supporting the rate adjustment described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Solid Waste Management Rate Adjustment for 2018" submitted for City Council consideration at its meeting of April 4, 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, 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 that Recology South Valley is hereby authorized to adjust their rates up to the maximum levels listed on the rate schedule attached hereto as Exhibit A.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th day of April 2018 by the following vote.

AYES:

COUNCIL MEMBERS:

NOES:

COUNCIL MEMBERS:

ABSENT:

COUNCIL MEMBERS:

ABSTAIN:

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 Regular Meeting on April 4, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

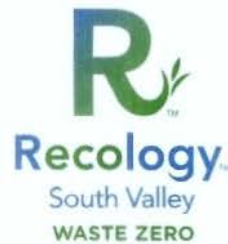
**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2018**

DESCRIPTION	Current Rates	Add Current 2.10%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	30.95	0.65	31.60
SGL FAM - NO STREET SWEEPING	30.57	0.64	31.21
HILLSIDE RESIDENTIAL	33.66	0.71	34.37
HILLSIDE RESIDENTIAL - NO SWEEPING	33.19	0.70	33.89
LOW INCOME	24.87	0.52	25.39
LOW INCOME - NO ST SWEEPING	24.56	0.52	25.08
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	41.20	0.87	42.07
BULKY MATERIAL (EACH EXTRA ITEM)	16.46	0.35	16.81
SIDE/BACKYARD SERV	12.35	0.26	12.61
GARBAGE TOTES RENTAL	5.24	0.11	5.35
RETURNED TRIP COLLECTION	32.24	0.68	32.92
<u>Commercial Rates</u>			
1 CAN COMM	18.93	0.40	19.33
2 CANS COMM	31.03	0.65	31.68
3 CANS COMM	43.19	0.91	44.10
4 CANS COMM	55.37	1.16	56.53
5 CANS COMM	67.52	1.42	68.94
6 CANS COMM	79.70	1.67	81.37
7 CANS COMM	91.81	1.93	93.74
8 CANS COMM	103.95	2.18	106.13
9 CANS COMM	116.11	2.44	118.55
10 CANS COMM	128.26	2.69	130.95
2 YD 1 X WEEK	235.00	4.94	239.94
2 YD 2 X WEEK	445.58	9.36	454.94
2 YD 3 X WEEK	656.13	13.78	669.91
2 YD 4 X WEEK	866.70	18.20	884.90
2 YD 5 X WEEK	1,077.23	22.62	1,099.85
2 YD 6 X WEEK	1,286.25	27.01	1,313.26
1/2 3 YD 1 X WEEK	170.21	3.57	173.78
3 YD 1 X WEEK	340.41	7.15	347.56
3 YD 2 X WEEK	648.26	13.61	661.87
3 YD 3 X WEEK	956.17	20.08	976.25
3 YD 4 X WEEK	1,263.98	26.54	1,290.52
3 YD 5 X WEEK	1,571.83	33.01	1,604.84
3 YD 6 X WEEK	1,879.67	39.47	1,919.14
4 YD 1 X WEEK	440.48	9.25	449.73
4 YD 2 X WEEK	837.09	17.58	854.67
4 YD 3 X WEEK	1,233.73	25.91	1,259.64
4 YD 4 X WEEK	1,630.40	34.24	1,664.64

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2018**

DESCRIPTION	Current Rates	Add Current 2.10%	New Rates
4 YD 5 X WEEK	2,027.02	42.57	2,069.59
4 YD 6 X WEEK	2,423.66	50.90	2,474.56
6 YD 1 X WEEK	658.12	13.82	671.94
6 YD 2 X WEEK	1,259.49	26.45	1,285.94
6 YD 3 X WEEK	1,860.85	39.08	1,899.93
6 YD 4 X WEEK	2,462.25	51.71	2,513.96
6 YD 5 X WEEK	3,063.64	64.34	3,127.98
6 YD 6 X WEEK	3,665.01	76.97	3,741.98
SPECIAL COLLECTION	27.04	0.57	27.61
REGULAR COMPACTOR (PER YARD)	42.72	0.90	43.62
RECYCLE COMPACTOR (PER YARD)	25.26	0.53	25.79
SUPER COMPACTOR (PER YARD)	85.43	1.79	87.22
20 YARD DEBRIS BOX	470.19	9.87	480.06
35 YARD DEBRIS BOX	671.71	14.11	685.82
40 YARD DEBRIS BOX	783.70	16.46	800.16
PERM RENTAL	249.11	5.23	254.34
PERM DISPOSAL (PER YARD)	23.43	0.49	23.92
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	240.33	5.05	245.38
40 YARD OTHER RECYCLABLES	400.60	8.41	409.01
20 YARD DEBRIS BOX HILLSIDE	586.25	12.31	598.56
40 YARD DEBRIS BOX HILLSIDE	899.33	18.89	918.22
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	370.24	7.80	378.04
2 YARD COMPACTOR 2 X WEEK	740.47	15.60	756.07
2 YARD COMPACTOR 3 X WEEK	1,110.71	23.40	1,134.11
3 YARD COMPACTOR 1 X WEEK	555.36	11.70	567.06
3 YARD COMPACTOR 2 X WEEK	1,110.71	23.40	1,134.11
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	740.39	15.51	755.90
2 YARD COMPACTOR 2 X WEEK	1,480.78	31.02	1,511.80
2 YARD COMPACTOR 3 X WEEK	2,221.16	46.54	2,267.70
3 YARD COMPACTOR 1 X WEEK	1,110.58	23.27	1,133.85
3 YARD COMPACTOR 2 X WEEK	2,221.16	46.54	2,267.70
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: Recology Rate Resolution 2018 (1688 : Recology Rate Adjustment)



February 20, 2018

Mr. Anthony Eulo
Program Administrator
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: July 2018 Rate Adjustment

Dear Anthony:

As outlined in section 6 of the Amended and Restated franchise agreement, we submit our request for a 2.10% adjustment to the collection rates effective July 1, 2018.

Section 6 (B) in the First Amendment describes using November to November index values for both the Consumer Price Index (CPI) for all Urban Consumers for the San Francisco/Oakland Metropolitan Area and the Department of Energy's Clean Cities Alternative Fuel Price Report.

The Bureau of Labor Statistics publishes the CPI index every other month; therefore the CPI index is not published in November. Additionally, the Department of Energy publishes the Alternative Fuel Price Report in October and January, therefore November is not available. Both indices are available in October.

For consistency purposes, and to most closely match the original Franchise Agreement we have used the October 2016 to October 2017 indexes in both cases as we did last year.

Attached are the following exhibits:

Exhibit 1 - CPI Calculation

CPI calculation using the formula described section 6 of the Amendment and Restated franchise agreement. Using October 2015 to October 2016 indexes.

Exhibit 2 – CPI Documentation

A Copy of the printout from the U.S. Department of Labor - Bureau of Labor Statistics web site displaying the required values of the CPI calculation.

Attachment: 2018 rate application (1688 : Recology Rate Adjustment)

Exhibit 3 – Clean Cities Alternative Fuel Price Report Documentation

Table 6 compressed Natural Gas (relative to Diesel) West Coast report

Exhibit 4 – Rate Schedule

This table applies the CPI factor and Fuel index to the current rates and calculates the adjusted new rates for July 1, 2018.

Should you have any questions or need additional information, please call me at (408) 846-1395.

Sincerely,



Phil Couchee
General Manager
Recology South Valley

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATE ADJUSTMENT
EFFECTIVE JULY 1, 2018**

CPI RATE ADJUSTMENT

Formula outlined in Section 6 (B) First Amendment of
December 13, 2005 Franchise Agreement.

$$\frac{X (I) - X (I-2)}{X (I-2)}$$

Consumer Price Index Values

X (I) = October, 2017 = 277.570

X (I-2) = October, 2016 = 270.306

$$\text{CPI} = \frac{277.570 - 270.306}{270.306}$$

CPI = 2.69%

70% of CPI = 1.88%

**Department of Energy's
Clean Cities Alternative
Fuel Price Report**

X (I) = October, 2017 = 2.76

X (I-2) = October, 2016 = 2.70

$$\text{MFI} = \frac{2.76 - 2.70}{2.70}$$

MFI = 2.22%

10% of MFI = 0.22%

Net index rate percentage adjustment

2.10%

Total rate adjustment

2.10%

Attachment: 2018 rate application (1688 : Recology Rate Adjustment)

[A to Z Index](#) | [FAQs](#) | [About BLS](#) | [Contact Us](#) | [Subscribe to E-mail Updates](#)
[Follow Us](#) | [What's New](#) | [Release Calendar](#) | [Blog](#)
[Search BLS.gov](#)
[Home](#) | [Subjects](#) | [Data Tools](#) | [Publications](#) | [Economic Releases](#) | [Students](#) | [Beta](#)

Databases, Tables & Calculators by Subject

 SHARE ON: [f](#) [t](#) [in](#) FONT SIZE: [-](#) [+](#)

Change Output Options:

From: 2007 To: 2017


☒ include graphs ☐ include annual averages

[More Formatting Options](#)

Data extracted on: January 23, 2018 (5:58:50 PM)

CPI-All Urban Consumers (Current Series)

Series Id: CUURA422SAC

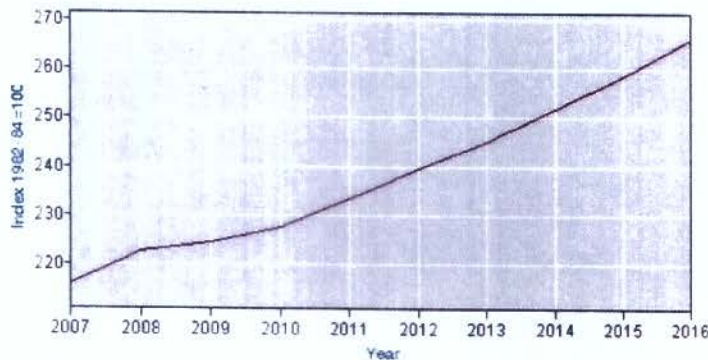
Not Seasonally Adjusted

Series Title: All Items in San Francisco-Oakland-San Jose, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-San Jose, CA

Item: All Items

Base Period: 1982-84=100

Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2007		213.688		215.842		216.123		216.240		217.949		218.485	216.048	214.736	217.361
2008		219.612		222.074		225.181		225.411		225.824		218.528	222.767	221.730	223.804
2009		222.166		223.854		225.692		225.801		226.051		224.239	224.395	223.305	225.484
2010		226.145		227.697		228.110		227.954		228.107		227.658	227.469	226.994	227.944
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.698
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.201
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.152
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.463
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.421
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.777
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.542

RECOMMEND THIS PAGE USING:



Facebook



Twitter



LinkedIn

TOOLS

[Areas at a Glance](#)
[Industries at a Glance](#)
[Economic Releases](#)
[Databases & Tables](#)
[Maps](#)

CALCULATORS

[Inflation](#)
[Injury And Illness](#)

HELP

[Help & Tutorials](#)
[FAQs](#)
[Glossary](#)
[About BLS](#)
[Contact Us](#)

INFO

[What's New](#)
[Careers @ BLS](#)
[Find It! DOL](#)
[Join our Mailing Lists](#)
[Linking & Copyright Info](#)

RESOURCES

[Inspector General \(OIG\)](#)
[Budget and Performance](#)
[No Fear Act](#)
[USA.gov](#)
[Benefits.gov](#)

Compressed Natural Gas (Relative to Diesel)

TABLE 6
Compressed Natural Gas (CNG) and Diesel
Average Retail Prices by Region

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.76	\$2.81	-\$0.05
Central Atlantic	\$2.51	\$2.97	-\$0.46
Lower Atlantic	\$2.38	\$2.74	-\$0.36
Midwest	\$2.28	\$2.68	-\$0.40
Gulf Coast	\$2.34	\$2.48	-\$0.14
Rocky Mountain	\$2.26	\$2.63	-\$0.37
West Coast	\$2.76	\$3.13	-\$0.37
NATIONAL AVERAGE	\$2.45	\$2.76	-\$0.31

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Table 6 shows the prices from Table 5, converted to \$/diesel gallon equivalent (\$/DGE), for easy comparison with diesel prices.

As with other fuels, the energy content of natural gas can vary. CNG dispensers are calibrated for local gas compositions and dispense an accurate GGE for the actual gas being sold.

On average, during this reporting period, CNG cost about \$0.31 less than diesel on a per diesel gallon equivalent basis.

Note: The Alternative Fuel Price Report is a snapshot in time of retail fuel prices. Alternative fuel fleets can obtain significantly lower fuel prices than those reported in the AFPR by entering into contracts directly with local fuel suppliers. Contract prices will vary, depending on fleet size and amount of fuel to be purchased, distance from the supplier, region of the country and other factors.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis, between October 1 and October 16, 2017.



In this map, negative numbers represent prices for CNG that are lower than diesel, on a per diesel gallon equivalent basis. States not highlighted with a color did not have any CNG data points in the current report.

CNG Price Difference Relative to Diesel

\$1.55 to -\$0.80

-\$0.79 to -\$0.40

-\$0.39 to \$0.00

\$0.01 to \$0.20

Insufficient Data

FIGURE 4
PRICE DIFFERENTIALS BY STATE FOR COMPRESSED NATURAL GAS (CNG)
RELATIVE TO DIESEL

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2018**

DESCRIPTION	Current Rates	Add Current 2.10%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	30.95	0.65	31.60
SGL FAM - NO STREET SWEEPING	30.57	0.64	31.21
HILLSIDE RESIDENTIAL	33.66	0.71	34.37
HILLSIDE RESIDENTIAL - NO SWEEPING	33.19	0.70	33.89
LOW INCOME	24.87	0.52	25.39
LOW INCOME - NO ST SWEEPING	24.56	0.52	25.08
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	41.20	0.87	42.07
BULKY MATERIAL (EACH EXTRA ITEM)	16.46	0.35	16.81
SIDE/BACKYARD SERV	12.35	0.26	12.61
GARBAGE TOTES RENTAL	5.24	0.11	5.35
RETURNED TRIP COLLECTION	32.24	0.68	32.92
<u>Commercial Rates</u>			
1 CAN COMM	18.93	0.40	19.33
2 CANS COMM	31.03	0.65	31.68
3 CANS COMM	43.19	0.91	44.10
4 CANS COMM	55.37	1.16	56.53
5 CANS COMM	67.52	1.42	68.94
6 CANS COMM	79.70	1.67	81.37
7 CANS COMM	91.81	1.93	93.74
8 CANS COMM	103.95	2.18	106.13
9 CANS COMM	116.11	2.44	118.55
10 CANS COMM	128.26	2.69	130.95
2 YD 1 X WEEK	235.00	4.94	239.94
2 YD 2 X WEEK	445.58	9.36	454.94
2 YD 3 X WEEK	656.13	13.78	669.91
2 YD 4 X WEEK	866.70	18.20	884.90
2 YD 5 X WEEK	1,077.23	22.62	1,099.85
2 YD 6 X WEEK	1,286.25	27.01	1,313.26
1/2 3 YD 1 X WEEK	170.21	3.57	173.78
3 YD 1 X WEEK	340.41	7.15	347.56
3 YD 2 X WEEK	648.26	13.61	661.87
3 YD 3 X WEEK	956.17	20.08	976.25
3 YD 4 X WEEK	1,263.98	26.54	1,290.52
3 YD 5 X WEEK	1,571.83	33.01	1,604.84
3 YD 6 X WEEK	1,879.67	39.47	1,919.14
4 YD 1 X WEEK	440.48	9.25	449.73
4 YD 2 X WEEK	837.09	17.58	854.67
4 YD 3 X WEEK	1,233.73	25.91	1,259.64
4 YD 4 X WEEK	1,630.40	34.24	1,664.64

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2018**

DESCRIPTION	Current Rates	Add Current 2.10%	New Rates
4 YD 5 X WEEK	2,027.02	42.57	2,069.59
4 YD 6 X WEEK	2,423.66	50.90	2,474.56
6 YD 1 X WEEK	658.12	13.82	671.94
6 YD 2 X WEEK	1,259.49	26.45	1,285.94
6 YD 3 X WEEK	1,860.85	39.08	1,899.93
6 YD 4 X WEEK	2,462.25	51.71	2,513.96
6 YD 5 X WEEK	3,063.64	64.34	3,127.98
6 YD 6 X WEEK	3,665.01	76.97	3,741.98
SPECIAL COLLECTION	27.04	0.57	27.61
REGULAR COMPACTOR (PER YARD)	42.72	0.90	43.62
RECYCLE COMPACTOR (PER YARD)	25.26	0.53	25.79
SUPER COMPACTOR (PER YARD)	85.43	1.79	87.22
20 YARD DEBRIS BOX	470.19	9.87	480.06
35 YARD DEBRIS BOX	671.71	14.11	685.82
40 YARD DEBRIS BOX	783.70	16.46	800.16
PERM RENTAL	249.11	5.23	254.34
PERM DISPOSAL (PER YARD)	23.43	0.49	23.92
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	240.33	5.05	245.38
40 YARD OTHER RECYCLABLES	400.60	8.41	409.01
20 YARD DEBRIS BOX HILLSIDE	586.25	12.31	598.56
40 YARD DEBRIS BOX HILLSIDE	899.33	18.89	918.22
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	370.24	7.80	378.04
2 YARD COMPACTOR 2 X WEEK	740.47	15.60	756.07
2 YARD COMPACTOR 3 X WEEK	1,110.71	23.40	1,134.11
3 YARD COMPACTOR 1 X WEEK	555.36	11.70	567.06
3 YARD COMPACTOR 2 X WEEK	1,110.71	23.40	1,134.11
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	740.39	15.51	755.90
2 YARD COMPACTOR 2 X WEEK	1,480.78	31.02	1,511.80
2 YARD COMPACTOR 3 X WEEK	2,221.16	46.54	2,267.70
3 YARD COMPACTOR 1 X WEEK	1,110.58	23.27	1,133.85
3 YARD COMPACTOR 2 X WEEK	2,221.16	46.54	2,267.70
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Anthony Eulo, Program Administrator

APPROVED BY: City Manager

ENERGY SERVICES AGREEMENT WITH CARBON LIGHTHOUSE

RECOMMENDATION(S)

1. Open/Close public hearing; and
2. Adopt resolution approving award of an energy services agreement to Carbon Lighthouse, Inc. in the amount of \$82,100 subject to the review and approval of the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide the Council with an update on the City's current energy efficiency projects and provide an opportunity for the Council to consider and award the energy services agreement needed to complete the project's implementation.

The City received a grant from Silicon Valley Energy Watch in 2017 to conduct two different energy efficiency projects at City facilities. The first project, the deployment of virtual building management systems at the Chamber Building and Police Department, has been largely completed. The second project, a major energy analysis of City Hall to be followed by identified energy efficiency improvements, is at its critical midpoint and presented tonight for Council consideration.

Over the past six months, Carbon Lighthouse has been monitoring and analyzing the energy consumed at City Hall using monitoring devices and the building's energy management system. With the data gathering and analysis complete, Carbon Lighthouse has proposed a recommended package of minor hardware improvements and energy system fine adjustments. This two-step process of 1) Conducting an intensive analysis; and 2) Implementing identified improvements, is exactly the process the City used with Carbon Lighthouse at the Community Center several years ago that is saving over 130,000 kilowatt hours of electricity annually at the Center.

The total proposed cost of the energy services package for City Hall is \$82,100. Guaranteed energy savings associated with the improvements would start at \$16,900 in the initial year and climb by approximately 5% annually as energy costs rise. The total guaranteed savings over the first ten years of the project is \$215,000.

Staff recommends that the Council adopt the attached resolution approving the award of the energy services agreement, authorizing the City Manager to execute the agreement.

COMMUNITY ENGAGEMENT: Consult, Involve, and Inform

In the first two phases of the entire grant project, the building's occupants have been consulted and involved with the design and placement of energy control features and improvements. The third phase of the project, which is yet to come, is dedicated to informing other building owners, local businesses, and neighboring jurisdictions about the results of the projects and their potential applicability to other buildings.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the agreement and to not make the related energy improvements at City Hall. This would necessitate forfeiting \$49,500 in grant funds.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The grant agreement with Silicon Valley Energy Watch was approved by the City Council on May 3, 2017. The City Council has a long history of supporting energy efficiency improvements at City buildings including a number of equipment retrofit projects. As stated above, the Council supported a similar previous project at the Community Center that was completed in 2015.

FISCAL AND RESOURCE IMPACT:

The total cost of the recommended agreement is \$82,100. Of this amount, \$49,500 will be funded by grant proceeds, \$16,500 was appropriated in the approved City budget for Fiscal Year 2017-18, and an additional \$16,100 is recommended to be financed using savings anticipated in Fund 740 (Building Maintenance) expenditures this fiscal year. The guaranteed savings from the project should eclipse the City's total investment within two years.

Supporting energy efficiency projects is an activity included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. City Hall Energy Efficiency Project Resolution
2. Carbon Lighthouse Energy Services Agreement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN ENERGY SERVICES AGREEMENT WITH CARBON LIGHTHOUSE FOR ENERGY EFFICIENCY 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 “Energy Services Agreement with Carbon Lighthouse” submitted for City Council consideration at its meeting of April 4, 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, 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 anticipated cost to the City for the conservation services provided under the agreement will be less than the anticipated marginal cost of energy that will be consumed by the facility if the City does not enter into the energy services agreement; and

- b. That the Energy Services Agreement with Carbon Lighthouse for the energy efficiency services attached hereto as Exhibit A and incorporated herein by this reference (the “Agreement”) is hereby approved subject to modification approved by the City Attorney; and
- c. 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 attached hereto as Exhibit A; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed eighty-two thousand one hundred Dollars (\$82,100).

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 4th day of April 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 April 4, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

ENERGY SERVICES AGREEMENT

This energy services agreement ("Contract") is entered into by and between the City of Morgan Hill ("City") and Carbon Lighthouse ("Contractor") for work on the 2018 City Hall Energy Improvement Project ("Project").

The parties agree as follows:

1. **Award of Contract.** Contractor has submitted a proposal to perform work on the Project, and on April 4, 2018, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's proposal.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following:
 - Scope of Work
 - Performance Guarantee
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor eighty-two thousand one hundred Dollars (\$82,100) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within ninety calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred Dollars (\$500) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

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

Contractor:

Name: Carbon Lighthouse
Address: 222 Sutter Street
City/State/Zip: San Francisco, CA 94108
Attn: Eric Brown and
Email: eric@carbonlighthouse.com
Copy to: Louis Concato

10. General Provisions.

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

Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

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

[Signatures are on the following page.]

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

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

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Wilson
Deputy City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

**CONTRACTOR:
CARBON LIGHTHOUSE, INC.**

Signature

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Signature

Name/Title [print]

Date: _____

Contractor's License Number(s)

Expiration Date(s)

Seal:

Contractor's DIR Registration Number(s)

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and Carbon Lighthouse ("Contractor") have entered into a contract, dated _____, 2018 ("Contract") for work on the City Hall Energy Improvement Project Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued 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.
7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
 Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and Carbon Lighthouse ("Contractor") have entered into a contract, dated _____, 2018 ("Contract") for work on the City Hall Energy Improvement Project Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than Dollars (\$_____) (the "Bond Sum"). By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.

2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void upon recordation of the notice of completion, provided Contractor has timely provided a warranty bond as required under the Contract. Otherwise Surety's obligations will remain in full force and effect until expiration of the one (1) year warranty period under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.

3. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.

4. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 4.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

4.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or

4.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

- 5. Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 6. Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

- 7. Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued 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.
- 8. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and Carbon Lighthouse ("Contractor") have entered into a contract, dated _____, 2018 ("Contract") for work on the City Hall Energy Improvement Project Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of \$ _____ or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, 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 Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

 Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued 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.

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

Table of Contents:

Article 1 – Definitions	1
Article 2 – Roles and Responsibilities	5
Article 3 – Contract Documents	9
Article 4 – Bonds, Indemnity and Insurance.....	11
Article 5 – Contract Time	16
Article 6 – Contract Modification	21
Article 7 – General Construction Provisions.....	24
Article 8 – Payment.....	32
Article 9 – Labor Provisions	37
Article 10 – Safety Provisions	39
Article 11 – Completion and Warranty Provisions	40
Article 12 – Dispute Resolution.....	43
Article 13 – Suspension and Termination	48
Article 14 – Miscellaneous Provisions.....	50

Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

Claim means a separate demand by Contractor for change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items, any required commissioning, and has provided all required submittals, including the warranty bond, instructions and manuals, and as-built drawings to City's satisfaction.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

Including, whether or not capitalized, means “including, but not limited to,” unless the context requires otherwise.

Inspector means the individual(s) or firm(s) retained by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Project means the energy services project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City’s behalf and may include his or her authorized delegee(s) when Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

RFI means a written request from Contractor for information from City or Design Professional.

Section as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are

intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into this Project by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

Technical Specifications means Specifications.

Work means all of the construction and services necessary or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City.

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including phone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of

Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, provided that City accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors

and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current approved schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** RFIs will be considered excessive or unnecessary if the Engineer determines that the explanation or response to the RFI is clearly and unambiguously discernable in the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the "General Provisions" of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

- (1) Any reference to the "Engineer" is deemed to mean the City Engineer.
- (2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions.
- (3) Any reference to the "Department" or "State" is deemed to mean City.

- 3.4 For Reference Only.** Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided "For Reference Only."

Article 4

Bonds, Indemnity, and Insurance

- 4.1 Payment and Performance Bonds.** Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.
- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees,

paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

- 4.3 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.

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

- (1) **Commercial General Liability Insurance ("CGL").**
Contractor shall maintain CGL and shall include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work against claims and

liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit and a general aggregate limit of four million dollars (\$4,000,000.00), or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

- (2) **Builder's Risk Insurance:** The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers' Compensation Insurance and Employer's Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

(6) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.
- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability Policy:
 - a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
 - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
 - c. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **Certificates.** Contractor must furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Contractor's Contract with City may 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 (10) 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 as follows:

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

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.
- (A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.
- (B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.
- 5.2 Schedule Requirements.** All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.
- (A) **As-Planned (Baseline) Schedule.** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and

approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) **Progress Schedules.** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(D) **Effect of Approval.** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly

provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or
- (5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) **Request for Extension of Contract Time.** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that

time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

(1) *Required Contents.* The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts, including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be

limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of

the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6 Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

- (A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.
- (B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.
- (C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.
- (D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.
- (E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

- (A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will

apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

6.4 Unilateral Change Order. If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7 General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as

may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site,

Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are

incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. Contractor's failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is "equal," and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor's Obligations.** City's review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers' application or

installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified

on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is

required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

- 7.15 Trenching of Five Feet or More.** As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.
- 7.16 New Utility Connections.** City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board national Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) ***Application for Payment.*** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.
Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.
- (B) ***Payment of Undisputed Amounts.*** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.
- 8.3 Adjustment of Payment Application.** City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

- (A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;
 - (B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
 - (C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;
 - (D) Failure to timely correct rejected, nonconforming, or defective Work;
 - (E) Unexcused delay in performance of the Work;
 - (F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;
 - (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
 - (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
 - (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
 - (J) Contractor's payroll records are delinquent or inadequate; and
 - (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.
- 8.4 Acceptance of Work.** Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.
- 8.5 Retention.** City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.
- (A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully

comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for

submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

- 8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | |
|--|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ |
| 3. REVISED CONTRACT AMOUNT: | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ |
| 5. REMAINING BALANCE: | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ |
| 8. CURRENT BALANCE DUE: | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | (5-8) \$ _____ |

Article 9 Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.
- (B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.
- (C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.
- (D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.
- 9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.
- (A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

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

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. 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.

9.6 Wage Theft Prevention. Compliance with Wage and Hour Laws: Contractor, 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 Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR 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 Contractor or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor 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. Contractor 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 Contractor 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 Contractor 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 Contractor 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.

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's

satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not

relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors,

suppliers and manufacturers any special or extended warranties required by the Contract Documents.

- (C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.
- (D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.
- (E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.
- (F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

- (A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these

Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

- 11.4 Substantial Completion.** For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

- 12.1 Claims.** This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City’s rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;
 - (c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45)-day period is extended by mutual agreement of City and Contractor. However, the City may first request, in

writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days

after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) Government Code Claims.

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery

under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.

(A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper

materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will

constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

- (A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
- (B) **Demobilization.** Actual and substantiated demobilization costs; and
- (C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

- 13.5 Provisions Remaining in Effect.** Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party

waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

Authorized Work Days and Hours.

(A) Authorized Work Days. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:
Mon - Friday

(B) Authorized Work Hours. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:
8 am – 5 pm

Scope of Work

Modifications to Existing Equipment to Deliver Services:

- Implement dynamic Optimal Start control logic for Air Handling Units #1-2 to start and stop equipment based on occupancy schedule and ambient conditions.
- Implement a "Special Events Schedule" and general scheduling controls to facilitate scheduling equipment off during holidays and other periods of planned building vacancy.
- Adjust dynamic speed controls of the variable frequency drive for the supply fans in Air Handling Units #1-2 to reduce fan speed during times of minimal cooling and heating load.
- Repair return and outside air dampers, actuators, and linkages on Air Handling Units #1-2 to enable airside economization and control outside air percentage for more efficient operations.
- Implement dynamic air supply temperature control strategy for Air Handling Unit #2 to increase air supply temperature when outdoor air temperatures are lower.
- Adjust lighting schedules based on observed occupancy patterns to minimize lighting use when building is unoccupied.
- Implement lockout and schedule controls for the heating hot water pumps and boiler to reduce simultaneous heating and cooling.
- Repair non-functioning parts of the solar array system to bring array up to its full design capacity.

Performance Guarantee

1.1. General. Carbon Lighthouse shall conduct ongoing remote monitoring of energy usage at the Property using thermodynamic and/or statistical or scientific approaches to analyze building energy data and perform energy savings measurement and verification. Carbon Lighthouse guarantees the services will deliver the energy savings as described herein. Carbon Lighthouse warrants that as of the Effective Date, its methods for calculating energy baselines and achieved energy savings have been certified by the 3rd-party verification program, The Investor Confidence Project, and that its methods meet the standards of the International Performance Measurement and Verification Protocol (IPMVP), and further that throughout the Term, Carbon Lighthouse shall use commercially-reasonable efforts to adopt the market-leading standards of measurement and verification. For weather data, Carbon Lighthouse references the United States' National Renewable Energy Laboratory data and United States' National Oceanic and Atmospheric Administration's data. For historical annual utility escalation rates, Carbon Lighthouse references the United States Department of Energy's Energy Information Administration state-level data for the State in which the Property is located. Carbon Lighthouse guarantees that during the Term, the services will deliver at least 90 percent of the Projected Savings (the "Guaranteed Savings"). The Projected Savings are determined by Carbon Lighthouse during analytics and do not reflect changes to the building occupancy, load or other impacts beyond Carbon Lighthouse's control.

1.1.1. At the end of each successive twelve (12) month anniversary of the Commercial Operation Date (such prior period, the "Assessment Period"), the amount of the energy savings realized by the City by the services (the "Actual Savings") shall be calculated by Carbon Lighthouse and subject to the exclusions and adjustments described below.

1.1.2. If during the Assessment Period, the Actual Savings are less than the Guaranteed Savings, Carbon Lighthouse shall owe City an amount equal to the difference (the "Refund Amount"). Carbon Lighthouse shall send a refund equal to the Refund Amount to City.

1.1.3. If during the Assessment Period, the Actual Savings are greater than the Projected Savings (the difference, the "Surplus Amount"), this Surplus Amount will be carried over to future Assessment Periods and used to offset any future Refund Amounts.

- 1.2. Term. This performance guarantee will remain in effect for ten (10) years from the date of execution of the Agreement.
- 1.3. Exclusions. The events listed below are not covered by the Performance Guarantee, and Carbon Lighthouse may use its reasonable discretion to equitably adjust the Actual Savings to account for the occurrence of any of the following events to the extent they have a material adverse impact on City's energy savings:
- 1.3.1. City Actions: loss or restriction of Carbon Lighthouse's access to the Property; loss or restriction of Carbon Lighthouse's access to applicable utility and building management system data; loss of internet connection to Carbon Lighthouse Equipment; building load profile, use, or operational change; any physical changes made to Carbon Lighthouse Equipment without prior written consent from Carbon Lighthouse; inadequate equipment or system maintenance; non-Carbon Lighthouse Equipment failure impacting Carbon Lighthouse delivery of services; override, alteration, or change of Carbon Lighthouse-specified sequence of operations, set points, or schedules; and inaccurate information about facility, operations at facility, load profile, utility costs, or state of equipment provided by City representatives to Carbon Lighthouse.
- 1.3.2. Other Events: Conditions beyond the control of Carbon Lighthouse including but not limited to: unexpected weather; above or below historical average utility rate increases; new sources of shade that affect solar array production; changes to applicable law or regulation, including but not limited to energy, mechanical, electrical, or other governmental codes that occur during the Term that affect the services, equipment or systems through which energy savings are being delivered.
- 1.4. Access. City hereby grants to Carbon Lighthouse and its agents, employees and subcontractors a license to such Property through the end of the Term for access to, on, over, under and across each such Property and the buildings and structures located at each such Property, including providing remote read access to building management systems, where available, for the limited purposes of performing the services and other obligations of Carbon Lighthouse under the Agreement, and enforcing all of Carbon Lighthouse's rights set forth in the Agreement. For avoidance of doubt, City or the existing landowner retains all of its right, title and interest in and to the Property. Carbon Lighthouse has a perpetual, irrevocable, royalty-free right to retain and use data collected and generated in the performance of services, and may disclose de-identified data to third parties. As between Carbon Lighthouse and City,

Carbon Lighthouse or its licensors or suppliers are the owners of all technology and intellectual property rights used in the performance of services, and Carbon Lighthouse reserves all rights in and to all of its technology and intellectual property.

Projected Savings:

Year	Projected Annual Savings
1	\$16,900
2	\$17,800
3	\$18,700
4	\$19,700
5	\$20,700
6	\$21,800
7	\$23,000
8	\$24,200
9	\$25,500
10	\$26,900



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Christina Turner, City Manager

APPROVED BY: City Manager

BOOKSMART UPDATE AND FINANCIAL REQUEST

RECOMMENDATION(S)

1. Accept report; and
2. Provide direction on whether staff should proceed with reviewing potential options for the City's financial support of BookSmart.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

POLICY CONSIDERATION:

Should City staff proceed with research and analysis of BookSmart's financial status and business plan to consider potential City funding of BookSmart?

REPORT NARRATIVE:

Council Member Carr requested that this item be placed on the agenda after receiving a request from BookSmart for City consideration of loan or grant funding to allow BookSmart to continue its operations.

The City has a history of working with BookSmart as well as other local businesses at the former Depot Center during the redevelopment of Downtown. A series of business decisions have now put BookSmart in a financial situation which is prompting their imminent closure.

Prior to BookSmart's move from Downtown to their current location, BookSmart waived relocation expenses because they were compensated by the City in a previous transaction related to the master lease and property rights at Depot Center. BookSmart knew because of that transaction the Depot Center property would be marketed for sale and that within a few years they would have to move. Even with time to prepare, Booksmart finds the costs of the move and the loans required to prepare their new space overwhelming and are hoping that the community can help provide short term or long-term assistance to help put them in a healthy business position to continue to operate the bookstore, the associated community gathering space and the foundation fostering activities of wide-community benefit.

BookSmart's current request follows its unsuccessful attempt to receive loan funding through the Grow Morgan Hill Fund, a program administered for the City of Morgan Hill by the National Development Council (NDC). This program leverages former Redevelopment Agency Funds, as well as other NDC funds, to provide financing consistent with an SBA structure to businesses in Morgan Hill.

Staff is requesting that City Council provide direction on whether to proceed with research and analysis for a potential permanent or interim loan or grant from the City to BookSmart based upon the following:

1. Designing a temporary loan (bridge loan), with interest, to be completely retired once Booksmart is stabilized.
2. Establishing a community oversight/management team to help oversee business actions intended to help Booksmart make the choices necessary to protect and grow the business, and to create optimum operating resources for programs and future investments needed by BookSmart.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the request received by BookSmart for funding.

ALTERNATIVE ACTIONS:

City Council may decide to not have staff proceed with any research or analysis on BookSmart at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Fiscal:

There is no fiscal impact for proceeding with a financial review.

Resource:

A significant amount of time would be required of staff to perform sufficient due diligence.

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

MONTEREY CORRIDOR MARKET STUDY AND IMPLEMENTATION OPTIONS

RECOMMENDATION(S)

1. Receive presentation on the Monterey Corridor Market Study and Implementation Recommendations; and
2. Consider and provide direction to staff on Planning Commission's Monterey Corridor Implementation Recommendation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust
Preserving Our Cultural Heritage

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications
Infrastructure

POLICY CONSIDERATIONS:

1. Should applicants along the Monterey Corridor be allowed to participate in the 2019 RDCS competition by providing General Plan and Zoning Consistency via a City led Block-Level Master Plan process?
2. Should residential development along Monterey Corridor be delayed until a comprehensive master planning process is completed?

REPORT NARRATIVE:

Background

The Morgan Hill 2035 General Plan, adopted in July 2016, envisions the transformation of the Monterey Road corridor north and south of Downtown from its current predominantly strip commercial character to a vibrant mixed-use corridor that encourages walking and biking with buildings fronting onto the street and a range of commercial and office uses located in close proximity to new and existing residential development.

The Mixed-Use Flex General Plan Land Use designation, which is primarily applied to

properties along the Monterey Road corridor, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). Prior to development of residential or mixed-use projects within the Mixed-Use Flex designation, the General Plan requires a Block-Level Master Plan to be prepared which would identify how commercial uses will be incorporated within the development of a block and how individual development projects will connect with each other. Commercial and other non-residential development may proceed on properties with the Mixed-Use Flex designation without the preparation of a Block-Level Master Plan.

In January 2017 the City of Morgan Hill contracted with Lisa Wise Consulting, Inc. (LWC) for the preparation of a market and land use capacity study for the Monterey Road corridor. The attached Market Analysis Report (Report) provides a summary of demographic and socio-economic conditions in the City of Morgan Hill as they relate to economic performance, as well as a high-level analysis of the commercial market, and a land use capacity assessment for the corridor.

The Report was used to inform the development of implementation plan options for the Monterey Corridor that are described in the attached Monterey Corridor Implementation Memo.

Market Analysis

The Market Analysis indicates, among other key findings, that the Monterey Corridor has a theoretical market demand of 215,000 square feet of commercial (retail and office) with development capacity for between 150 and 890 residential units.

The market demand for new commercial is considered theoretical and may shift lower due to changing demographics (e.g., aging population) and market trends (e.g., less retail demand from increasing volumes of online transactions).

A refined assessment of the commercial capacity for the corridor should be completed as part of the development of a plan for the Monterey Corridor. The assessment would be based on characteristics demanded by retail or office tenants currently and considering future trends. These characteristics may include: access/circulation; visibility; foot traffic; clustering with other like or complementary businesses; retail leakage/market saturation; lot dimensions; utility and infrastructure capacity and condition; existing uses and utilization; and other physical or operational constraints.

Implementation Options

The attached Monterey Corridor Implementation Memo includes a table that summarizes five options, estimated budgets, and timelines associated with each option:

- 1.1 Comprehensive Form-Based Code;
- 1.2 Scaled-Down Form-Based Code;
2. Conventional Code with Updates to Standards;
3. Specific Plan for the Study Area;
4. Guidelines for "Block-Level Master Plans"; and,

5. Streetscape Improvement Plan and a Façade Incentive Program.

The implementation options presented by LWC each have pros and cons, but the two form-based code options (1.1 Comprehensive Form-Based Code and 1.2 Scaled-Down Form-Based Code) would, in their experience, be most effective in helping to realize the General Plan's vision for the Monterey Corridor. One of the cons for either of these options is that development of a form-based code can be a lengthy process, taking anywhere from 8 to 18 months, or more.

At the January 17, 2018 Joint City Council/Planning Commission Study Session on the Zoning Code Update, the Commission and some members of the Council expressed interest in a near-term solution that would facilitate projects' ability to participate in next year's Residential Development Control System (RDCS) competition.

Planning Commission Recommendation

After carefully considering several implementation options for the Monterey Corridor at its February 27, 2018 meeting, the Planning Commission recommended that the City Council direct staff to initiate both a long-term and near-term planning process.

The recommended long-term planning process is development of a Specific Plan with integrated Form-Based Code for the Monterey Road Corridor (outside of Downtown). In formulating its recommendation, the Planning Commission noted the following benefits of a Specific Plan:

- Developing a refined vision, goals, and implementation measures for the Corridor (beyond what is described in the General Plan);
- Providing environmental clearance for future projects; and
- Enhanced community participation/buy-in.

The recommended near-term plan is the preparation of a Block-Level Master Plan for those segments of the Monterey Road Corridor (outside of Downtown) that include properties with a Mixed-Use Flex General Plan designation. The Commission's recommendation included that:

- Development/completion of the Block-Level Master Plan and the early stages of the Specific Plan process should overlap, with work on the Block-Level Master Plan supporting development of the Specific Plan;
- The Block-Level Master Plan should be prepared by the City with developer/property owner input;
- The Block-Level Master Plan should be completed/adopted prior to the next RDCS competition cycle.

Block-Level Master Plan (Near-term Plan)

The Block-Level Master Plan, as described in the General Plan, is only required to identify two items: 1) how commercial uses will be incorporated within the development of the block; and 2) how individual development projects will connect with each other.

The primary question that needs to be answered in the Block-Level Master Plan for each of the blocks in the Monterey Corridor is, how much commercial, if any, should be

located within a particular block, and if the block can support commercial, where should it be located. Building upon the market analysis prepared by LWC and research and analysis conducted by the City's Economic Development team, the locations for siting future commercial uses within each block can be determined for the Block-Level Master Plan through a subsequent commercial study that considers the following questions:

- Does the block have the physical characteristics needed to support commercial, or additional commercial uses?
- Is the block adequately served by existing commercial within or near the block?
- Are there sufficient sites within the block that are designated for future commercial uses (e.g., lands with a Commercial General Plan designation)?

Attached is a draft framework for a Block-Level Master Plan, which is similar in concept to City-initiated Planned Development (PD) Zonings, which have been used throughout the City to establish an expectation that larger sites will be developed in a coordinated manner in terms of basic design, access, and other features such as the distribution and/or intensity of uses. Like City-initiated PD Zonings, the Block-Level Master Plan would establish high-level expectations and guidelines for how blocks along the Monterey Corridor should develop and require the first applicant proposing to develop within a block to provide refined details for the specific proposed development and how that development would integrate with development of the remainder of the block.

Input from property owners, developers, and the community on the framework for a Block-Level Master Plan will inform the preparation of a Draft Block-Level Master Plan, which will be reviewed by the Planning Commission and City Council at public hearings. The Block-Level Master Plan would be approved by Ordinance and apply specifically to the designated blocks along the Monterey Corridor. Once in place, applicants with properties designated Mixed Use Flex, that otherwise conformed to the General Plan and Zoning, could participate in the RDCS competition for allotments. Staff believes this Block-Level Master Plan can be created with existing resources and possible limited peer review work by a consultant.

COMMUNITY ENGAGEMENT: Consult

A public stakeholder meeting was held on June 15, 2017 to gather local input regarding the priorities, preferences, challenges and opportunities along the Monterey Road Corridor in the City of Morgan Hill. Approximately 20 stakeholders attended and participated in a group exercise.

A meeting was held on November 8, 2017 with a panel of retail experts and members of the public to discuss the evolving retail landscape.

The February 27, 2018 Planning Commission meeting was open to the public with an opportunity for community members to provide feedback.

Additional opportunities to engage the community will occur with future near- and/or long-term planning processes.

ALTERNATIVE ACTIONS:

1. Block-Level Master Plan Only (No Long-term Plan)

The City-prepared Block-Level Master Plan would serve as a bridge between current land use regulation and what could be developed via a larger effort such as a Form-Based Code or Specific Plan. The City Prepared Block-Level Master Plan is not envisioned to be a master plan that takes building form, interface with the public realm and other recommended infrastructure/streetscape improvements into account. It is a tool to provide guidelines for locating commercial uses and general guidelines for applicants to include in future entitlement applications for their individual sites.

2. Block-Level Master Plans Prepared by Private Applicants

There are numerous instances throughout the City where master planning of larger areas, typically involving multiple parcels, has been required through the application and implementation of Planned Developments (formerly Planned Unit Developments and Residential Planned Developments). The Planned Development (PD) process would at a minimum identify how much commercial would be incorporated into a block and how development within the block would be connected. PDs for individual blocks in the Corridor could be initiated by private applicants to fulfill the Block-Level Master Plan requirement. Applicants would be responsible for the costs associated with processing a PD application, including completing the appropriate environmental review/clearance for their proposal.

3. Specific Plan Only (No Near-term Plan)

A Specific Plan for the Monterey Corridor would fulfill the Block-Level Master Plan requirement but would likely not be completed/adopted for 2 or more years. Applicants would not be able to participate in the RDCS competition process for residential allotments on Mixed Use Flex designated sites until a Block-Level Master Plan is completed.

4. Other Long-term Plans

- Comprehensive Form-Based Code
- Scaled-down Form-Based Code
- Conventional Zoning Code with Updates to Standards

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 27, 2018, the Planning Commission reviewed and discussed the Monterey Corridor Analysis Report and Implementation Options Memo (attached) and recommended both a near-term and long-term implementation option for City Council consideration.

FISCAL AND RESOURCE IMPACT:

Not applicable.

Should City Council direct staff to pursue a particular implementation option(s), staff will refine the following consultant cost estimates and include City costs:

	Implementation Option	Rough Budget Est. Consultant Costs	Time Est. (mos.)
1.1	Comp. Form Based Code	\$125,000 - \$330,000	10 – 18
1.2	Scaled-down Form Based Code	\$95,000 - \$200,000	8 – 12
2	Conventional Code	\$60,000 - \$110,000	6 - 10
3	Specific Plan	\$350,000 - \$700,000	18 – 24
4	Guidelines for “Block-Level MP”	\$25,000 - \$45,000	4 – 6
5	Streetscape Improvement Plan	TBD	TBD

CEQA (California Environmental Quality Act):

Statutory Exemption

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

Although the Monterey Corridor Study and identification of future implementation plan options is exempt from CEQA, the future adoption of a plan or plans for the Monterey Corridor will be subject to additional CEQA review.

LINKS/ATTACHMENTS:

1. Monterey Corridor Market Analysis
2. Monterey Corridor Implementation Memo
3. Monterey Corridor Block-Level Master Plan Framework
4. Monterey Corridor Blocks Map

CITY OF MORGAN HILL

MONTEREY CORRIDOR MARKET ANALYSIS

Lisa Wise Consulting, Inc.
December 2017

DRAFT

TABLE OF CONTENTS

1	Overview	1
1.1	Introduction	1
1.1.1	Purpose.....	1
1.1.2	Terms	1
1.1.3	Next Steps	2
1.2	Background	2
2	Key Findings	3
3	Demographic & Socio-Economic Data	4
3.1	Populations & Households	4
3.2	Household Income Growth	5
3.3	Age, Race, & Education	6
3.3.1	Age.....	6
3.3.2	Race	7
3.3.3	Educational Attainment.....	7
3.4	Employment	7
3.4.1	Employment Projection	8
3.4.2	Employment Inflow/Outflow.....	8
3.4.3	Unemployment.....	9
3.4.4	Employment by Industry and Occupation	9
3.4.5	Wages.....	12
3.5	Industry & Occupational Trends	12
3.6	Major Employers	14
3.7	Consumer Expenditures.....	14
4	Commercial Market Analysis	15
4.1	Retail	15
4.1.1	Retail Data	15
4.1.2	Sales Tax	17
4.1.3	Retail Leakage	18
4.1.4	Retail Trends	19
4.2	Office	20
4.2.1	Office Data.....	20
4.2.2	Office Trends.....	22
4.3	Residential.....	22
4.3.1	Residential Data.....	22
4.3.2	Residential Trends.....	24
5	Commercial Capacity Assessment.....	25
5.1	Commercial Capacity Based on Existing Land Use Inventory.....	25

5.2	Commercial Square Footage per Capita	26
5.3	Commercial Square Footage per Job.....	26
5.4	Projected Residential Growth in Study Area	26
5.5	Retail Leakage.....	27
5.6	Summary of Results.....	27
6	Conclusion	29
7	Cited Literature	30

DRAFT

1 OVERVIEW

1.1 INTRODUCTION

The following Market Analysis Report (Report) provides a summary of demographic and socio-economic conditions in the City of Morgan Hill as they relate to economic performance, as well as a high-level analysis of the commercial market, and a Commercial Capacity Assessment for the Monterey Road Corridor Study Area.

This Report relies on data from national, regional, and local sources such as the U.S. Census, Bureau of Labor Statistics, Association of Bay Area Governments, Santa Clara County Assessor, the City of Morgan Hill, and commercial real estate analytics providers (e.g., CoStar, REIS, Colliers International, etc.). Appendix A, B, and C include detailed and comprehensive data, maps, and calculations that support the findings in the Report.

1.1.1 PURPOSE

This Report identifies and provides a high-level assessment of economic and market conditions that will be used to inform the development of options for zoning along the Monterey Corridor. Options for zoning will focus on the Mixed Use Flex General Plan Land Use Designation and integrate General Plan direction with the market conditions and capacity assessment findings from this Report. A complete package that includes this Report and the zoning implementation options will be compiled and presented to the Morgan Hill Planning Commission and City Council for discussion.

1.1.2 TERMS

In this Report, the following terms are used according to the definitions below:

Retail – A building or space that is primarily used to promote, distribute, or sell products and services to the general public (e.g., clothing store, restaurant, salon, tailor, etc.). Commercial uses that are not considered as “office” (defined below) are classified as retail for the purposes of this Report.

Office – A building or space that is principally used to house employees of companies that produce a product or service primarily for support services such as administration, accounting, marketing, information, consulting, financial and insurance services, educational and medical services, and other professional services.

Commercial – Refers to both retail and office as defined above.

1.1.3 NEXT STEPS

After Planning Commission and City Council provide direction on this Report and zoning implementation options, the commercial capacity assessment should be refined through a criteria-driven analysis based on characteristics demanded by retail or office tenants currently and considering future trends. Those characteristics may include access/circulation (freeway proximity, left turn only access, etc.), visibility, foot traffic, clustering of like businesses, retail leakage/market saturation, lot dimensions, utility and infrastructure capacity and condition, existing uses and utilization, and other physical or operational constraints. The results will guide amendments to the Zoning Map and Zoning Code to ensure development standards enable and facilitate targeted commercial uses and desired urban form outcomes within market realities and consistent with the General Plan's vision to transform Monterey Road into a revitalized mixed-use corridor.

1.2 BACKGROUND

Located in the southern portion of Santa Clara County, Morgan Hill is approximately 30 miles south of downtown San Jose and 10 miles north of Gilroy. Highway 101 bisects the city, and the community is served by the Morgan Hill Transit Center, which includes Caltrain services, limited regional bus service provided by the Valley Transit Authority, and houses many private corporate busses. Morgan Hill encompasses 13 square miles and has approximately 44,000 residents.

Monterey Road parallels Highway 101, typically at a distance of one mile apart. The Monterey Road Corridor Study Area is roughly 187 acres (0.3 square miles) and stretches along approximately 4.4 miles of Monterey Road. While the Downtown is located on Monterey Road, it is not included in the Study Area as it is subject to the Downtown Specific Plan. An inventory of the Study Area, identifying existing land uses and underutilized parcels is included as Appendix B.

2 KEY FINDINGS

The following key findings summarize the most important takeaways from this Report:

- Morgan Hill's population is forecast to grow 1.9% per year until 2035 as a reflection of the City's voter-approved Residential Development Control System (RDCS), which established a maximum population ceiling of 58,200 residents by 2035. The number of jobs is projected with a slightly higher grow rate of 2%, suggesting that ***a larger proportion of Morgan Hill residents may work in Morgan Hill in the future.***
- The ***retail market appears relatively stable***, reflecting existing retail space and environments, regional competition, changing retail preferences, and e-commerce growth that has challenged the overall viability of traditional brick-and-mortar stores.
- Morgan Hill experiences ***sales tax leakage in all economic categories except Transportation*** (vehicle sales, service stations, and auto parts and repair). Grocery stores are also capturing an above-average proportion of sales. The economic segments with the ***highest leakage are restaurants and apparel stores.***
- Office conditions demonstrate a ***low activity Morgan Hill office market.*** Substantial office construction is occurring in Silicon Valley, which may sustain near term demand; although some secondary markets with transit hubs may see interest because of limited land and cost associated with urban office development.
- ***Residential is expected to be the most highly favored market sector in Morgan Hill***, where it continues to be an option for Bay Area homebuyers seeking more affordable prices, primarily for single-family homes.
- Based on the assumptions and methodology in this Report, ***even with a stable or modest floor area ratio (FAR) buildout assumption*** for the Monterey Corridor, ***there is more capacity available than theoretical commercial market demand*** (215,000 square feet), ***leaving at minimum 385,000 square feet for non-commercial uses*** (e.g., residential, etc.). This could accommodate roughly ***150 to 260 units*** assuming 1,500 to 2,500 gross square feet per unit; however, buildout at this modest FAR is ***unlikely to result in the revitalized corridor environment envisioned in the General Plan.***
- ***Under a high FAR buildout scenario*** for the Monterey Corridor, ***more than one million square feet could be available for non-commercial uses.*** This could accommodate roughly ***530 to 890 units*** assuming 1,500 to 2,500 gross square feet per unit.

3 DEMOGRAPHIC & SOCIO-ECONOMIC DATA

This Section assesses Morgan Hill's demographic and socio-economic characteristics relative to larger regions (i.e., Santa Clara County and California). The comparative context allows an understanding of Morgan Hill's unique attributes and potential opportunities or competitive advantages that may affect the City's economic performance over time. It may also provide insight as to whether existing trends in Morgan Hill may continue or adjust to larger geographic trends.

3.1 POPULATIONS & HOUSEHOLDS

Trends in population and household growth can convey important information about demand for various land use types, potential consumer spending, and the need for services. Morgan Hill has, and is expected to continue to, experience stable population and household growth. On average, Morgan Hill's population grew 1.7% per year between 2000 and 2015 (26.2%) and is forecast to grow 1.9% on average per year from 2015 to 2035 (37.5%).

TABLE 3-1 POPULATION

Population (2000-2035)						
Area	2000	2010	2015	Growth Rate 2000-2015	2035	Growth Rate 2015-2035
Morgan Hill	33,556	37,882	42,331	26.2%	58,200	37.5%
Santa Clara County	1,682,585	1,781,642	1,903,209	13.1%	2,337,470	22.8%
California	33,871,648	37,253,956	38,915,880	14.9%	45,521,334	17.0%

Source: U.S. Decennial Census, Summary File 1, Table DP-1; California Department of Finance, February 2017; City of Morgan Hill, Residential Development Control System

The total number of households forecast for Morgan Hill in 2035 is 18,082, which is an average 1.8% increase per year from 2015 or 238 additional households each year. This represents a slight increase from past household growth of 1.5% annually between 2000 and 2015, and is higher than the County's projected growth rate from 2015 to 2035. These growth projections reflect the constraints of the City's Residential Development Control System (RDCS), which limits the number of residential allotments available in each year's RDCS competition to 215.

TABLE 3-2 HOUSEHOLDS

Households (2000-2035)						
Morgan Hill	2000	2010	2015	Growth Rate 2000-2015	2035	Growth Rate 2015-2035
Number of Households	10,855	12,323	13,324	22.8%	18,082	35.7%
Persons Per Household	3.05	3.04	3.15	3.3%	3.09	-1.9%
Santa Clara County	2000	2010	2015	Growth Rate 2000-2010	2035	Growth Rate 2015-2035
Number of Households	565,863	604,145	623,120	10.1%	776,461	24.6%
Persons Per Household	2.92	2.90	3.00	2.7%	2.89	-3.7%

Source: ABAG Projections, 2013; California Department of Finance

Notes:

(1) 2035 number of households calculated by dividing population (Table 3-1) by persons per household (ABAG Projections) and reducing by a 4% vacancy rate.

The Quantified Housing Objectives outlined in the City's General Plan Housing Element, identifies that 13.5% of new housing units available between 2015 and 2023 should be affordable to households with moderate-income levels or below (i.e., households that earn less than 120% of the County's median household income). Median household income for a 4-person household in Santa Clara County is \$113,300¹. Figure F-1 in the Housing Element identifies vacant available residential sites throughout the city that could accommodate these housing needs, including some properties along the Monterey Road Corridor.

The Theory of Household Production views families as both consumers and producers of goods. The theory states that families efficiently allocate time, income, and the collection of goods and service to maximize utility (Becker, 1965). Subsequent researchers have found that as a local economy grows, production shifts out of households and into the market (Locay, 1990).

3.2 HOUSEHOLD INCOME GROWTH

Household income provides insight into the level of demand for and feasibility of the type of retail, services, and other businesses within the community as well as an indicator to the community's standard of living. Household income is often used by underwriters to assess lending risk in a community. Median household income in Morgan Hill has increased at a slower rate than was seen in both Santa Clara County and the State from 2000 to 2015, with an average annual increase of 1.1%. However, Morgan Hill and Santa Clara County's median income levels were still more than \$30,000 above the State's median household income in 2015.

¹ Department of Housing and Community Development, Memorandum – State Income Limits for 2017, June 9, 2017.

TABLE 3-3 MEDIAN HOUSEHOLD INCOME

Median Household Income (2000-2015)				
Area	2000	2010	2015	% Change 2000-2015
Morgan Hill	\$81,958	\$92,771	\$96,051	17.2%
Santa Clara County	\$74,335	\$86,850	\$96,310	29.6%
California	\$47,493	\$60,883	\$61,818	30.2%

Source: U.S. Decennial Census, Summary File 3, Table DP-3; American Community Survey 5-year Estimate, Table DP03

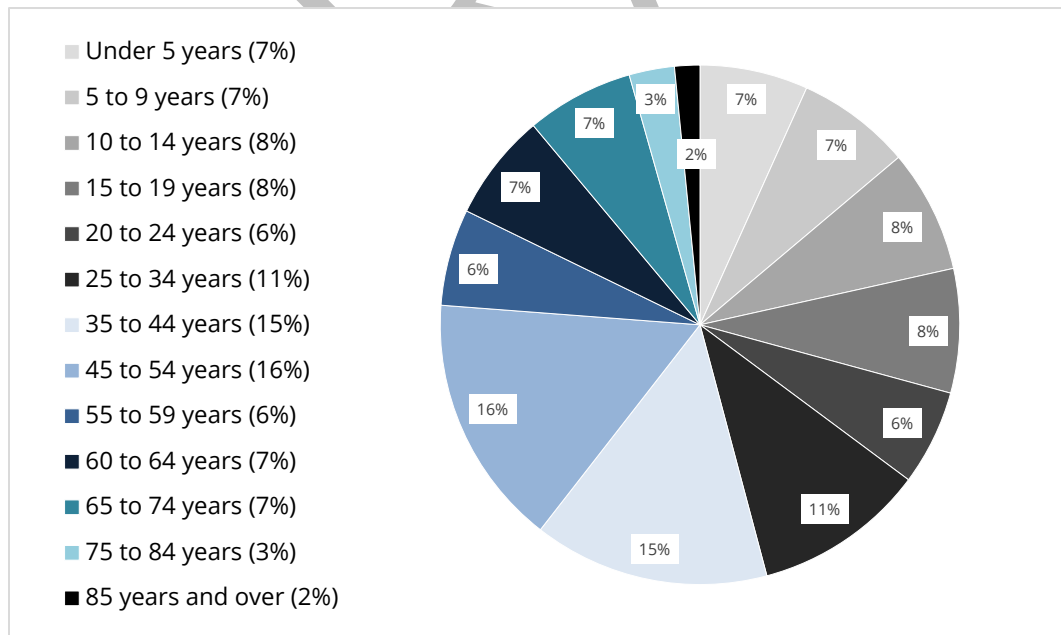
Over 48% of Morgan Hill households earn \$100,000 or more, and 18% earn \$200,000 or more. Average household income is \$126,986².

3.3 AGE, RACE, & EDUCATION

3.3.1 AGE

The age composition of a community informs expected spending behavior of residents, provides insight into demand for service types, and a profile of the labor pool. Morgan Hill is aging. The single largest gain in population between 2000 and 2015 was among 60 to 64 year olds. In absolute terms, this group experienced an increase of 1,705 people, growing from just over 3% of the total population in 2000 to just under 7% in 2015. Between 2000 and 2015, 25 to 44 year olds lost share of population while every age group over 45 years gained. In 2015, just over 30% of the population was between 35 and 54 years old.

FIGURE 3-A AGE COMPOSITION OF MORGAN HILL, 2015



² U.S. Census, 2011-2015 American Community Survey 5-year Estimate.

In 2015, Morgan Hill's median age was roughly one year higher than that of Santa Clara County and two years higher than that of the State.

TABLE 3-4 REGIONAL AND STATE COMPARISON OF MEDIAN AGE

Regional and State Comparison of Median Age (2015)			
	Morgan Hill	Santa Clara County	California
Median Age	37.9	36.8	35.8

Source: U.S. Census American Community Survey 5-year Estimate, Table S0101

3.3.2 RACE

While the nuances of race and their impacts on the market can be difficult to measure, research has found that place attachment - an important contributing factor to urban revitalization - is higher in non-white ethnic populations and homeowners (Brown et al., 2003). Understanding demographic forces, including race distribution, can help communities better prepare for future opportunities and challenges. Morgan Hill is less diverse than the County and State. The population is predominantly White at 67.8%, almost 6% higher than the State and almost 20% higher than the County. The share of Morgan Hill's population reported as Asian (9.5%) was also lower than the State (13.7%) and the County (33.8%).

3.3.3 EDUCATIONAL ATTAINMENT

Education levels are used to assess business investment attractiveness and provide insight on consumer behavior. Retailers and employers consider education levels in conjunction with incomes as principal factors in location decisions.

In Morgan Hill, the number of high school graduates or those with some college, associates degrees, bachelor's degrees, and graduate or professional degrees all grew in absolute terms between 2010 and 2015. In 2015, almost 39% of the population had a bachelor's degree or higher, roughly the same as 2010 levels, which is approximately 10% lower than the County.

3.4 EMPLOYMENT

Employment data provides insight into workforce preparedness, as well as trends and opportunities in business and industry clusters. Morgan Hill's key industries and trends in employment reflects its proximity to and relationship with Silicon Valley. In 2016, Silicon Valley's employment grew by 45,621 new jobs (3% from the previous year), most of which were concentrated in the fastest growing tech sectors of biotech, internet, and computer design³. Morgan Hill's existing commute patterns of employee inflow and outflow, and large number of residents employed in the management, business, science, and arts occupation category, indicates employment growth largely commensurate with Silicon Valley.

³ Joint Venture Silicon Valley, Institute for Regional Studies. *2017 Silicon Valley Index* (2017).

3.4.1 EMPLOYMENT PROJECTION

Employment in Morgan Hill is projected to grow at an average rate of 2% annually, with the number of jobs rising to 21,549 in 2035. This 64% increase between 2010 and 2035 represents 8,404 jobs, suggesting that a larger proportion of Morgan Hill residents may work in Morgan Hill in the future.

TABLE 3-5 EMPLOYMENT PROJECTIONS

Employment Projection (2010-2035)				
Area	2010	2035	Annualized Growth Rate	Growth Rate 2010-2035
Morgan Hill	13,135	21,549	2%	64.0%
Santa Clara County	852,855	1,115,594	1%	31.8%

Source: U.S. Census American Community Survey 5-year Estimate, Table S2301; 2010 Census OnTheMap Area Profile Analysis for all Jobs, City of Morgan Hill & Santa Clara County

Notes:

(1) Morgan Hill projections calculated using historic annualized job growth rate of 2%, as 2040 ABAG/MTC projection shows employment gains unrealistically low at 300 jobs from 2010 to 2040.

(2) Santa Clara County projections calculated using annualized growth rate of 1%, which represents the County's historic job growth from 2003 to 2014.

3.4.2 EMPLOYMENT INFLOW/OUTFLOW

Employment inflow and outflow data tracks commute patterns of area residents as they travel from their home to their place of employment and identifies change in daytime/nighttime populations.

The majority of Morgan Hill's residents, approximately 72%, works outside of the City limits, which is the same percentage as data collected between 2006 and 2008^{4, 5}. Morgan Hill residents have an average commute time of nearly 32 minutes and are overwhelmingly commuting to jobs within Santa Clara County. Of the jobs reported in Morgan Hill in 2014, almost 82% were filled by people not living in Morgan Hill. This inflow/outflow pattern results in a lower daytime population than nighttime population.

The jobs housing ratio measures the relationship between where people work and where they live. A balanced jobs housing ratio can yield numerous benefits that lead to increased economic and social vibrancy, including reduced traffic, improved workplace efficiency, lower air pollution emissions, and a higher quality of life⁶. Morgan Hill has a jobs to housing ratio of 1.42⁷, showing that

⁴ City of Morgan Hill, Morgan Hill 2035, *Existing Conditions White Paper, Economics* (May 16, 2013), pp. 1-12.

⁵ However, 2014 Census On The Map data shows approximately 87% of Morgan Hill's residents working outside of City limits.

⁶ SCAG, *The New Economy and Jobs-Housing Balance in Southern California* (April 2001), pp. 19-20. Dr. John Sullivan, TLNT.

⁷ Plan Bay Area Jobs Housing Connection Strategy, May 2012, Appendix A. Number of jobs in 2010 = 17,520; number of households in 2010 = 12,330 (17,520/12,330 = 1.42)

there is a disconnect between the match of job types and housing available in the community demonstrated by employment inflow and outflow.

3.4.3 UNEMPLOYMENT

Despite a reduction in unemployment levels in Santa Clara County between 2010 and 2015, unemployment in Morgan Hill increased from 7.2% to 8.6% during the same five-year period. Unemployment at the state level also increased, but by less than 1%. In 2016, Morgan Hill's unemployment rates dropped to around 4%, which was higher than the County's unemployment level, but lower than the State^{8, 9}.

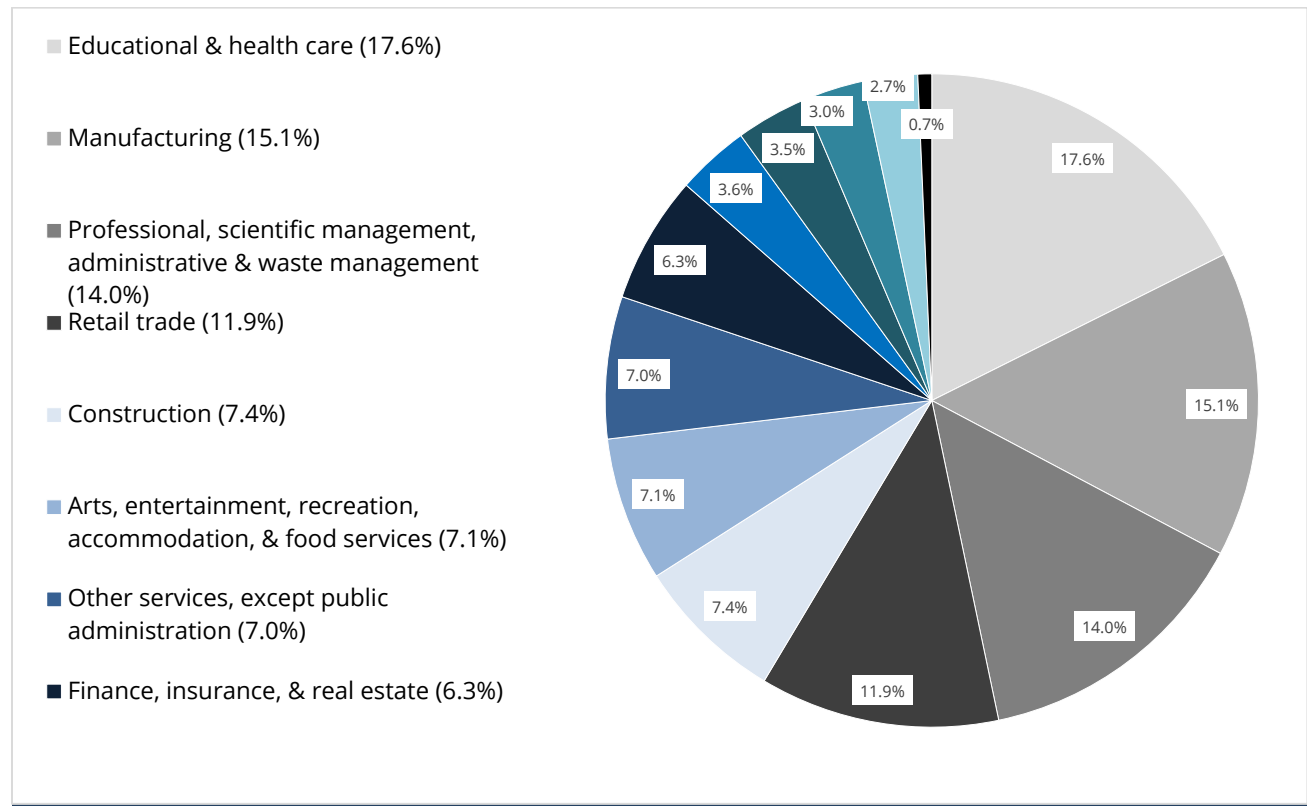
3.4.4 EMPLOYMENT BY INDUSTRY AND OCCUPATION

Employment data reflects Morgan Hill's distribution of population into key industry and occupation categories. The largest industry for Morgan Hill residents is education and health care (17.6%), followed by manufacturing (15.1%) and professional, scientific, and business services (14%). The industries that comprise a higher percent share relative to the County are other services, public administration, and construction. Other services include automobile and equipment repair, dry cleaners, beauty salons, religious organizations, and other similar types of services. Almost 12% of Morgan Hill residents are employed in retail trade, which is a slightly concentrated cluster compared to the County.

⁸ Joint Venture Silicon Valley, Institute for Regional Studies. *2017 Silicon Valley Index* (2017); Bureau of Labor Statistics, Unemployment rate – Not Seasonally Adjusted (2016).

⁹ Retirees, students, and those unable to work (e.g., disabled) are not considered part of the labor force or factored into unemployment rate calculations.

FIGURE 3-B MORGAN HILL TOP EMPLOYMENT BY INDUSTRY, 2015



Jobs within Morgan Hill, when compared to the County, are more focused towards manufacturing, retail, and arts, entertainment, and recreation with relatively fewer jobs in education and healthcare, and professional and scientific services¹⁰. Manufacturing represents the fastest growing industry sectors in Morgan Hill.

¹⁰ City of Morgan Hill, *Economic Blueprint* (April 7, 2017).

TABLE 3-6 EMPLOYMENT BY LAND USE AND INDUSTRY CLUSTER

Employment by Land Use & Industry Cluster (2010-2015)			
	2010	2015	% Change (2010- 2015)
Office/R&D/Industrial			
Miscellaneous Manufacturing	671	1,271	89%
Building/Construction/Real Estate	662	961	45%
Semiconductors	597	915	53%
Transportation/Distribution	1,174	878	-25%
Business Services	924	836	-10%
Innovation Services	663	693	5%
Industrial Supplies and Services	429	596	39%
Bioscience	458	555	21%
Corporate Offices	545	542	-1%
Electronic Component Manufacturing	421	482	14%
Financial Services	374	340	-9%
Software	143	106	-26%
Computer and Communications Hardware Manufacturing	10	64	540%
Retail			
Retail/Consumer Services	3,705	4,578	24%
Visitor			
Visitor (Tourism)	203	163	-20%
Other			
Civic (Government and Education)	2,212	1,977	-11%
Healthcare	589	649	10%
Other	479	117	-76%
Total Jobs	14,260	15,723	10%

Source: City of Morgan Hill Economic Blueprint, Figure 6 (CAA EDD, Quarterly Census of Employment Wages; City of Morgan Hill; Joint Venture Silicon Valley Industry Cluster Definitions)

The largest occupation category for Morgan Hill residents is management, business, science, and arts¹¹ (43%), followed by sales and office¹² (24.9%). Sales and office occupations also comprise a higher percent share in Morgan Hill relative to the County. More than 75% of retail trade occupations are in the sales and office category.

¹¹ Examples of management, business, science, and arts occupations include chief executives, computer and information system managers, accountants, software developers, biomedical engineers, civil engineers, lawyers, teachers, physicians, and artists.

¹² Examples of sales and office occupations include cashiers, sales representatives, administrative assistants, and postal service clerks,

TABLE 3-7 EMPLOYMENT BY OCCUPATION

Employment by Occupation (2015)						
Occupation	Morgan Hill		Santa Clara County		Share of County	LQ (County)
	Total Jobs	% of Total	Total Jobs	% of Total		
Civilian employed population 16 years and over	19,512	N/A	915,619	N/A	2.1%	N/A
Management, business, science, and arts	8,380	43.0%	462,714	50.5%	1.8%	0.85
Sales and office	4,854	24.9%	179,238	19.6%	2.7%	1.27
Service	3,099	15.9%	139,416	15.2%	2.2%	1.04
Natural resources, construction, and maintenance	1,636	8.4%	59,477	6.5%	2.8%	1.29
Production, transportation, and material moving	1,543	7.9%	74,774	8.2%	2.1%	0.97

Source: U.S. Census American Community Survey 5-year Estimate, Table DP-03

Note: Location Quotient (LQ) is a metric used to quantify how concentrated a particular industry, cluster, or occupation is in an area as compared to a larger region. The industries listed with LQ values above 1.0 present a greater concentration of jobs relative to Santa Clara County.

3.4.5 WAGES

More than two-thirds of Morgan Hill's residents are in management, business, science, and arts or sales and office occupations. The median income for management, business, science, and arts occupations (43% of residents) is \$80,180, which is 11.5% lower than the same occupation category in the County. Sales and office occupations (24.9% of residents) have a median income of \$37,267, which is 6.4% higher than the County.

Median employee salary in Morgan Hill is \$51,444, which is \$6,229 below the Santa Clara County's median employee salary \$57,673¹³.

3.5 INDUSTRY & OCCUPATIONAL TRENDS

Industry trends illustrate a city or a region's ability to address where opportunities for expansion and change in the business or employment "mix" exist, considering other demographic and socio-economic data such as household growth, median income, and education levels.

On a percentage basis, the fastest growing industry for Morgan Hill residents was transportation, warehousing, and utilities, at 87.5% between 2010 and 2015, although this industry represented only 3.6% of Morgan Hill's employed population. Retail trade grew at the second highest rate of 84.6%, and in absolute terms, no industry added more jobs than the 1,061 retail trade jobs between 2010 and 2015. Unlike Morgan Hill, retail trade grew only 7.5% in the County during the same five-year

¹³ EconSolutions by HdL, Employment Profile for the City of Morgan Hill, February 28, 2017.

period. The County experienced the highest growth in the leisure and hospitality industry¹⁴, at 22% between 2010 and 2015, while Morgan Hill saw only 6.2% growth.

TABLE 3-8 INDUSTRY TRENDS

Industry Trends (2010-2015)						
Industry	City of Morgan Hill			Santa Clara County		
	2010	2015	% Change 2010-2015	2010	2015	% Change 2010-2015
Civilian employed population 16 years and over	17,506	19,512	11.5%	843,854	915,619	8.5%
Transportation and warehousing, and utilities	375	703	87.5%	22,914	25,364	10.7%
Retail trade	1,254	2,315	84.6%	80,847	86,926	7.5%
Other services, except public administration	1,061	1,372	29.3%	35,725	38,809	8.6%
Professional, scientific, and management, and administrative and waste management services	2,231	2,724	22.1%	149,441	173,964	16.4%
Finance and insurance, and real estate and retail and leasing	1,058	1,232	16.5%	45,318	43,837	-3.3%
Information	450	524	16.4%	34,058	39,872	17.1%
Construction	1,286	1,442	12.1%	48,391	47,111	-2.7%
Arts, entertainment, and recreation, and accommodations, and food services	1,313	1,394	6.2%	59,604	72,686	22.0%
Wholesale trade	587	592	0.9%	21,396	20,172	-5.7%
Manufacturing	3,071	2,952	-3.9%	166,851	169,787	1.8%
Educational services, and health care and social assistance	3,592	3,439	-4.3%	152,679	169,496	11.0%
Public administration	902	689	-23.6%	22,150	22,220	0.3%
Agriculture, forestry, fishing and hunting, and mining	326	134	-58.9%	4,480	5,375	20.0%

Source: U.S. Census American Community Survey 5-year Estimate, Table S2403

Note: Census data for industry trends unavailable for the year 2000. Earliest information available is for 2007.

¹⁴ The “leisure and hospitality” industry describes arts, entertainment, and recreation, and accommodations, and food services. Examples include performing arts, spectator sports, museums, art galleries, amusement centers, restaurants, and bars.

Service occupations grew the fastest for Morgan Hill residents, at a rate of 72.3% from 2000 to 2015, and comprise approximately 9% of total employed population. These service occupations are concentrated primarily in the leisure and hospitality industry (approximately 908 people).

3.6 MAJOR EMPLOYERS

An assessment of major employers illustrates the type of businesses that have chosen to locate in Morgan Hill and where opportunities for expansion or diversification might exist. While the largest employer in Morgan Hill is the Morgan Hill Unified School District (730 jobs), the manufacturing industry employs the most workers through companies such as Anritsu Company, Specialized Bicycles Components, and Paramit Corporation. The largest retail employers are Safeway Inc. and Wal-Mart Supercenter.

3.7 CONSUMER EXPENDITURES

Consumer expenditures illustrate changing preferences and spending habits. These trends are critical when assessing future market potential for businesses or industries. The Bureau of Labor Statistics tracks consumer expenditure data nationally, and at the metropolitan area level as the smallest or most focused geography. For the San Francisco Metropolitan Statistical Area, the change in household spending between 1999 to 2015 for few key categories are listed below:

- Healthcare – 130.8%
- Education – 86.8%
- Food away from home – 45.8%
- Entertainment – 44.9%
- Apparel and services – (24.6%)

“Consumers are spending more on eating out, holidays and, to their chagrin, health care. They are spending less on clothes, typically the main offering of department stores and malls. When shoppers do buy a dress or jacket, they want a bargain, an attitude spawned in the recession and ingrained in the years since. (The Economist, 2017).

A discussion of consumer spending in Morgan Hill relative to the region is included in Subsection 4.1.3 (Retail Leakage). Businesses and industries, as always, must adapt to changing consumer preferences and spending patterns.

4 COMMERCIAL MARKET ANALYSIS

Data for Morgan Hill's retail, office, and residential markets is identified and analyzed in the context of regional conditions and larger market trends. Existing market conditions and trends are useful to forecast potential outlooks for these various market segments, which can inform land use policy and economic development strategies.

4.1 RETAIL

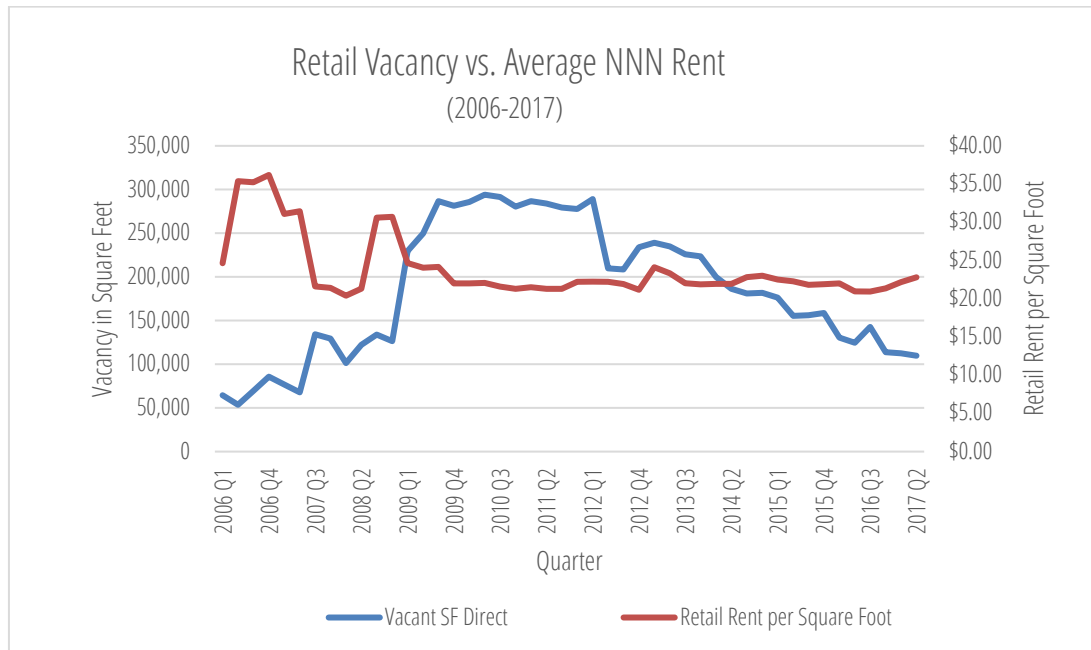
Outside of Downtown, the retail environment in Morgan Hill is primarily auto-oriented and located along Highway 101 and other major thoroughfares (e.g., Cochrane Road, Dunne Avenue, Tennant Avenue, and Monterey Road); however, retail destinations are somewhat scattered throughout the western portion of Morgan Hill. Eight shopping centers within Morgan Hill comprise approximately 1.3 million square feet of retail space, and major retailers include Target, Home Depot, Wal-Mart, TJ-Maxx, Ross Dress-for-Less, and others¹⁵. Numerous smaller strip centers are situated throughout the city and comprise much of the retail space along the Monterey Road Corridor. Regional shopping is available outside of Morgan Hill in Gilroy (Premium Outlets) and South San Jose (Westfield Oakridge Mall), where there are greater densities to support regional retail opportunities.

4.1.1 RETAIL DATA

The amount of vacant retail square footage in Morgan Hill has been on the decline since 2013 and is now below the vacant square footage levels of 2008. Despite decreasing vacancies, retail rents citywide have only increased moderately since 2008, from \$1.70 per square foot per month (\$20.40 per square foot per year) in 2008 to \$1.90 square foot per month (\$22.80 square foot per year) in 2017. An August 27, 2017 LoopNet search (www.LoopNet.com) for retail space in Morgan Hill returned five retail properties with space available ranging from \$1.50 to \$2.75 per square foot per month; median asking price was \$2.03 per square foot per month. Recent projects and construction in Downtown are furnishing new retail spaces, as reflected in the rents of approximately \$3.00 per square foot¹⁶ for new buildings. Downtown is experiencing growth in commercial, hotel, residential, and mixed-use projects. The current retail vacancy rate is 4.9%, which has been generally declining since 2013.

¹⁵ City of Morgan Hill, *Economic Blueprint* (April 7, 2017).

¹⁶ Ibid.

FIGURE 4-A RETAIL VACANCY AND NNN RENT PER SQUARE FOOT

Source: The Concord Group (CoStar, REIS)

Note: NNN (triple net) rent includes property taxes, property insurance, and common area maintenance in addition to base rent.

Morgan Hill has almost 2.3 million square feet of retail space, and this total square footage has slightly decreased since 2008; 2017 square footage is approximately 40,000 square feet lower than 2013, representing a 1.7% reduction. However, Downtown Morgan Hill will soon have a net increase of 20,000 square feet of retail space with developments recently completed or underway. Also, approved entitlements for new retail space at two lifestyle shopping centers, Cochrane Commons and the Madrone Village Shopping Center, could increase overall retail square footage, although construction has not been initiated.

The only modest increase in rents with decreasing vacancies are indicative of a relatively stable retail market, which likely reflects several factors (e.g., existing retail space and environments, regional competition, changing retail preferences, and e-commerce growth). Increasing median income of Morgan Hill residents may improve opportunities for retail resulting from higher discretionary income locally; however, this may be abated by the Bay Area's high cost of living, the City's Residential Development Control System, and current retail trends (see Subsection 4.1.4 (Retail Trends), below).

4.1.2 SALES TAX

Sales tax is the largest revenue source for the City's General Fund at 25% of revenues¹⁷. Between 2012 and 2016, sales tax revenues rose 16.3% and sales tax per capita increased 5.4%.

TABLE 4-1 SALES TAX PER CAPITA

Sales Tax per Capita (2012 - 2016)						
	2012	2013	2014	2015	2016	% Change 2012-2016
Sales Tax Revenue	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Population	39,426	40,463	41,517	42,331	43,484	10.3%
Sales Tax per Capita	\$167.85	\$174.37	\$171.07	\$173.85	\$176.95	5.4%

Source: MuniServices and Claritas, California Department of Finance

Between 2012 and 2016, with a net retail square footage decline of 1.3% and annualized sales tax revenue increases of more than 3%, sales tax per retail square foot increased 17.8%.

TABLE 4-2 SALES TAX PER RETAIL SQUARE FOOT

Sales Tax per Retail Square Foot (2012 - 2016)						
	2012	2013	2014	2015	2016	% Change 2012-2016
Sales Tax Revenue	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Retail Sq. Ft.	2,340,907	2,332,657	2,329,907	2,319,717	2,310,268	-1.3%
Sales Tax per Retail Sq. Ft.	\$2.83	\$3.02	\$3.05	\$3.17	\$3.33	17.8%

Source: MuniServices and Claritas, The Concord Group (CoStar, REIS)

Approximately 9% of Morgan Hill's sales tax is realized from businesses in the Study Area. Over the last five years, the Study Area has experienced slightly higher growth in sales tax revenue than Morgan Hill overall.

TABLE 4-3 SALES TAX CITYWIDE AND STUDY AREA

Sales Tax Citywide and Study Area (2012 - 2016)						
	2012	2013	2014	2015	2016	% Change 2012-2016
Sales Tax Revenue	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Morgan Hill	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Study Area	\$592,926	\$627,312	\$739,104	\$744,858	\$693,837	17.0%
Study Area % of Citywide Tax Revenue	8.96%	8.89%	10.41%	10.12%	9.02%	0.6%

Source: MuniServices and Claritas, The Concord Group (CoStar, REIS)

¹⁷ Ibid.

4.1.3 RETAIL LEAKAGE

Retail leakage quantitatively examines a community's retail opportunities. It is a guide to indicate how well local retail establishments are meeting the needs of residents and to understand potential unmet demand and opportunities. Retail leakage means that residents are spending more for products than local businesses are providing or capturing.

Morgan Hill experiences sales tax leakage in all economic categories except Transportation (vehicle sales, service stations, and auto parts and repair). Net capture has been achieved in recent years, except 2014, because of such significant capture in the Transportation category. Since 2012, leakage has increased in all categories where leakage is experienced except for Construction (wholesale and retail of building materials).

Retail leakage data demonstrates "how well Morgan Hill is capturing potential sales tax based on its residents' effective buying income (disposable income) compared to regional purchasing habits." (MuniServices, 2017).

TABLE 4-4 SALES TAX LEAKAGE

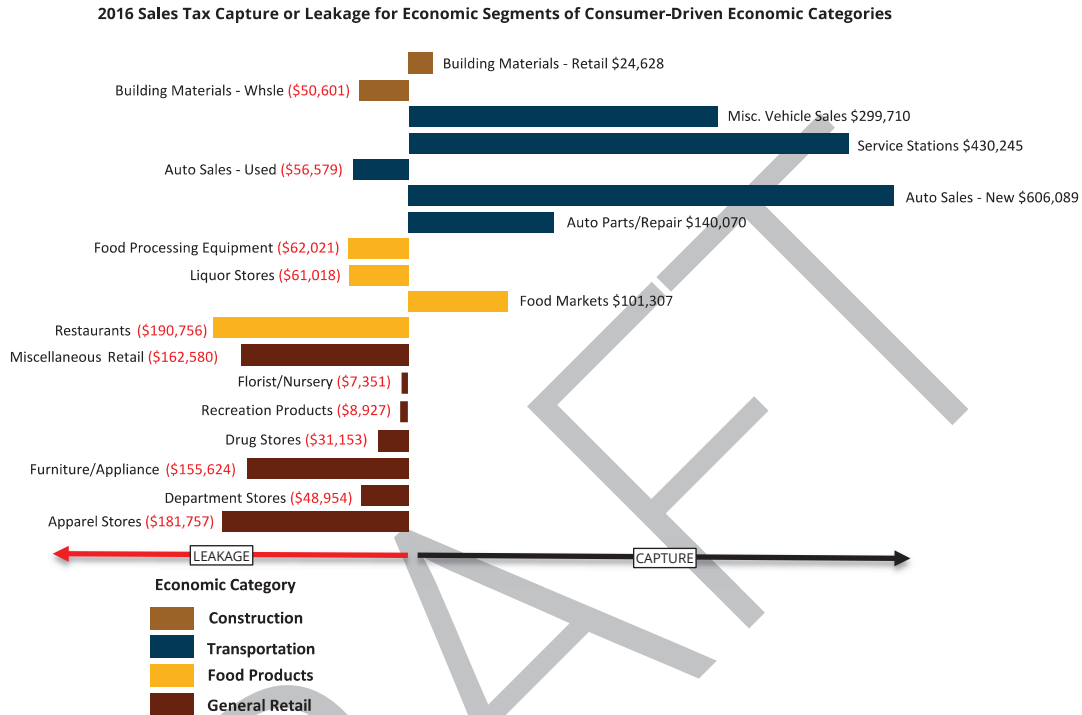
Sales Tax Leakage (2012 - 2016)						
Economic Category	2012	2013	2014	2015	2016	% Change 2012-2016
General Retail	(\$550,043)	(\$511,177)	(\$622,992)	(\$617,792)	(\$596,346)	8.4%
Food Products	(\$172,100)	(\$153,959)	(\$240,294)	(\$243,326)	(\$212,488)	23.5%
Transportation	\$1,234,060	\$1,416,912	\$1,381,968	\$1,469,408	\$1,419,536	15.0%
Construction	(\$65,472)	(\$39,858)	(\$84,133)	(\$73,020)	(\$25,973)	(60.3%)
Business to Business	(\$44,752)	(\$178,203)	(\$400,933)	(\$456,249)	(\$301,318)	573.3%
Miscellaneous	(\$42,441)	(\$44,303)	(\$55,256)	(\$53,073)	(\$54,413)	28.2%
TOTAL	\$359,252	\$489,412	(\$21,640)	\$25,948	\$228,998	(36.3%)

Source: MuniServices and Claritas

Notes: Red numbers represent sales leakage; black numbers represent sales capture or surplus.

Each economic category is comprised of numerous economic segments, some of which perform better or worse than the category overall. Figure 4-B identifies the 2016 sales tax capture or leakage experienced in the economic segments of consumer-driven economic categories: General Retail, Food Products, Transportation, and Construction.

FIGURE 4-B SALES TAX LEAKAGE OR CAPTURE FOR ECONOMIC SEGEMENTS OF CONSUMER-DRIVEN ECONOMIC CATEGORIES (2016)



Source: MuniServices, LWC

All economic segments in General Retail experience leakage; however, 'food markets' in Food Products and 'building materials – retail' in Construction capture sales tax. 'Auto sales – used' is the only economic segment in Transportation with leakage. Morgan Hill's largest sales tax leakage is found in restaurants, followed by apparel stores, indicating potential opportunities for upper end restaurants and boutiques.

4.1.4 RETAIL TRENDS

Retail continues to be dynamic, adjusting to competition with online channels, often through new

"The change in appetite for grocery product is evident by the increased vacancy within centers...with major online retailers making large investments in their online grocery platforms, the fear is now real, and as a result, investors are shying away from grocery-anchored assets." (JLL, 2017).

store formats (e.g., smaller, urban footprints within a walkable mixed-use environment), the provision of more experience-based retail environments (in-store demonstrations and classes, performances, and other attractions), or convenience retail (including "click and collect" programs where customers purchase online and

pick up in store)¹⁸. Experience-based retail environments reflect the notion of placemaking – creating quality places where people want to live, work, play, shop, learn, and visit¹⁹. High-end stores and “lifestyle towns” that focus on the customer experience continue to do well, and the trend of converting Class B malls to open-air centers with a mix of retail uses and amenities is expected²⁰.

Furthermore, the aging of baby boomers has shifted millions of people out of prime consumption ages, and over the next 20 years, millennials will drive consumption. Current retail trends reflect the industry’s attempts to adapt to this market driver. Morgan Hill has seen the largest population gains for baby boomers (those 55 years old and older) and a 2.1% decline for millennials (those 20 to 34 years old) (see Section 3.3.1 and Appendix A).

Higher densities and walkable design can create foot traffic needed to support retail, and temporary uses, such as food trucks and pop-up shops, can generate foot traffic in the interim period until new construction or investment is viable. Mixing residential with retail can help to support retail (e.g., horizontal or vertical mixed-use); however, the current high cost of vertical mixed-use construction combined with the rents commanded in Morgan Hill is a significant obstacle²¹. A more viable option for most communities is to focus retail activity at the corners of intersections of major thoroughfares and place residential mid-block within easy walking or bicycling distance to the retail corners. Off-street parking requirements also limit the financial feasibility of new development²². Adaptable construction, which can more efficiently accommodate a variety of uses or be repurposed is another way to respond to the dynamic and evolving nature of retail.

4.2 OFFICE

Office space in Morgan Hill is mainly available within industrial and research and development areas²³.

4.2.1 OFFICE DATA

The amount of vacant office space in Morgan Hill has declined over 80% since 2013; and accordingly, office rents have increased during the same time. Asking office rents rose from \$1.66 per square foot in 2013 to a peak of \$2.13 per square foot in late 2015/early 2016, then down to \$2.05 per square foot in 2017. An August 27, 2017 LoopNet search (www.loopnet.com) for office space in

¹⁸ Buxton, *2017 Real Estate Outlook Report* (2017).

¹⁹ Land Policy Institute, Michigan State University, *Placemaking as an Economic Development Tool* (2015).

²⁰ Cohn Reznick, LLP. *Momentum 2017, Commercial Real Estate Outlook: Agility and Discipline in a Time of Uncertainty* (2017).

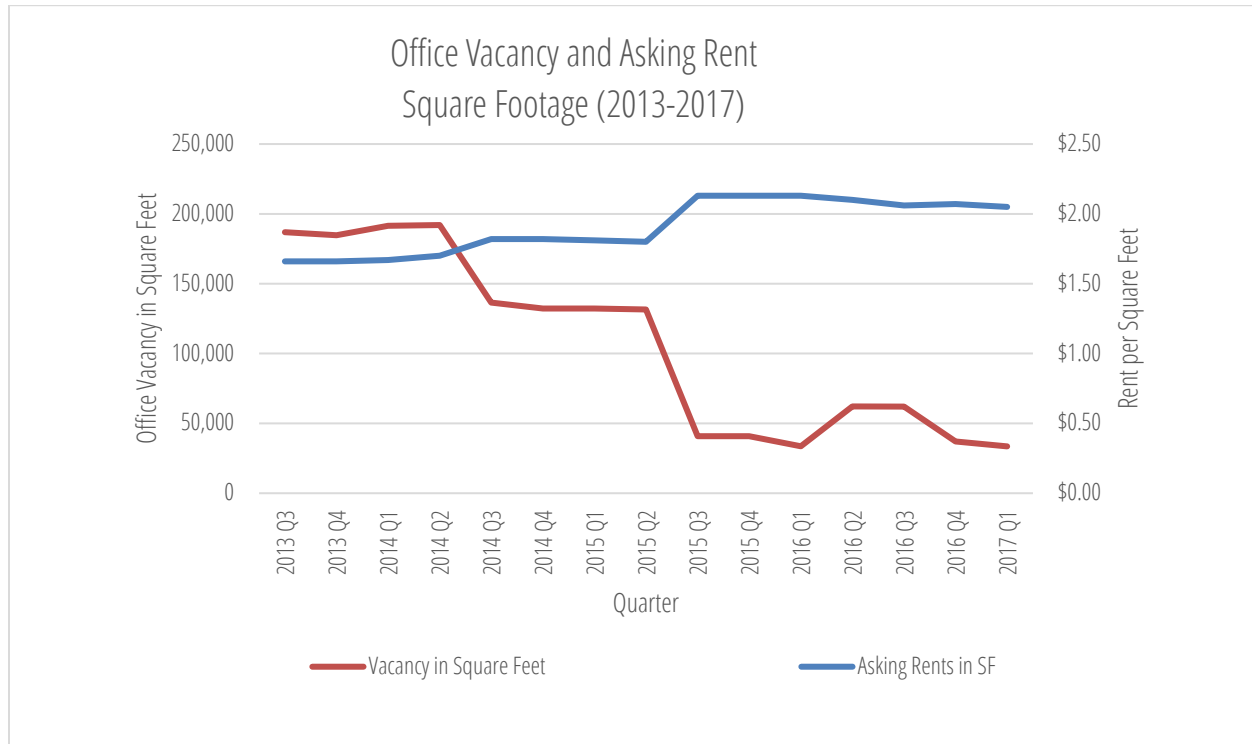
²¹ Christine Firstenberg, Senior Vice President, JLL – Retail Brokerage, telephone correspondence (August 29, 2017).

²² Strategic Economics, Morgan Hill PDA Plan: Feasibility Study Initial Findings (October 4, 2016 – updated 11/16).

²³ Ibid.

Morgan Hill returned 12 office properties with space available ranging from \$1.15 to \$3.67 per square foot per month; median asking price was \$1.55 per square foot per month. The current office vacancy rate is 4.4%.

FIGURE 4-C OFFICE VACANCY AND ASKING RENT



Source: Colliers International

Office square footage in Morgan Hill has remained around 700,000 square feet since 2013, but is currently at a high of 757,379 square feet. The slight decline in asking rents over the last year and stable inventory indicate a low activity office market. Regionally, however, substantial construction of new office space is occurring in Silicon Valley with 5.48 million new square feet completed in 2016, reflecting higher office rents²⁴. Office vacancy in Silicon Valley has been declining for the past six years, and the current vacancy rate is 12%²⁵.

²⁴ Joint Venture Silicon Valley, Institute for Regional Studies, *2017 Silicon Valley Index* (2017).

²⁵ Ibid.

4.2.2 OFFICE TRENDS

General office trends include smaller square footage requirements per employee. This trend is being driven by the demand for more standardized, collaborative, and shared work spaces, as well as the increased prevalence for telecommuting²⁶. As this type of office environment is financially efficient, the trend for less space on average for each employee is expected to continue.

Furthermore, suburban office parks have been somewhat trending out of favor, indicated by the number of offices relocating to more urban areas to attract younger talent. However, some secondary markets, particularly those with access to transit hubs, may see interest or growth in suburban office spaces because of limited land and cost associated with urban office development²⁷. Bay Area companies with sizable hiring plans are preferring office sites near housing as well as Caltrain and BART stations²⁸.

4.3 RESIDENTIAL

4.3.1 RESIDENTIAL DATA

Home values are an indicator of a community's economic health. Between 2011 and 2017, the median sales price for a home in Morgan Hill increased by 57.4%, which is lower than the increase experienced in the County, but slightly above the State. Morgan Hill's median home price continues to increase but remains around 15.5% lower than the San Jose Metro area²⁹.

TABLE 4-5 MEDIAN SINGLE-FAMILY HOME SALES PRICE CHANGE

Median Single-Family Home Sales Price Change (2011-2017)								
2011	2012	2013	2014	2015	2016	2017 (Jan - Apr)	Difference (2011 - 2017)	% Change (2011 - 2017)
City of Morgan Hill								
\$534,308	\$546,025	\$646,767	\$705,700	\$759,208	\$812,050	\$840,875	\$306,567	57.4%
Santa Clara County								
\$575,358	\$605,242	\$715,917	\$794,217	\$898,775	\$972,958	\$1,004,000	\$428,642	74.5%
State of California								
\$314,650	\$315,450	\$369,108	\$412,975	\$439,367	\$470,575	\$493,200	\$178,550	56.8%

Source: Zillow; Median Home Value – Zillow Home Value Index; ZHVI Single-Family Homes Time Series and ZHVI Condo/Co-op Time Series (\$). Median home sale prices are estimated by Zillow per Zillow Home Value Index Methodology, which involves modelling that results in minimal statistical error between estimated sales prices and actual sales prices.

²⁶ Heschmeyer, Mark, CoStar News (2013).

²⁷ Cohn Reznick, LLP. *Momentum 2017, Commercial Real Estate Outlook: Agility and Discipline in a Time of Uncertainty* (2017); Williams, Champaign (April 3, 2017). *This is Where Office Occupiers are Focusing their Efforts in 2017*.

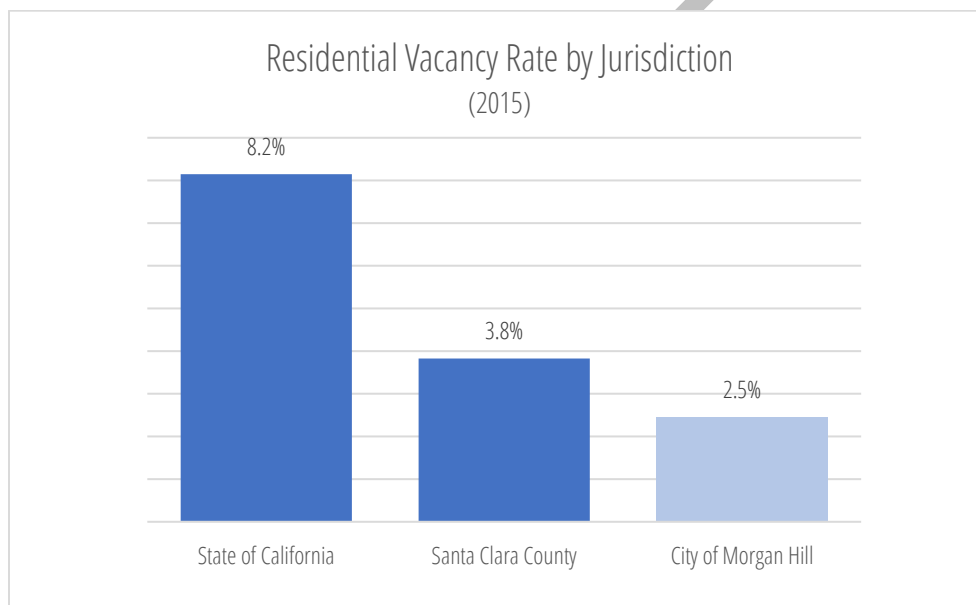
²⁸ Littman, Julie, Silicon Valley Office Rents Increase While Sublease Space Doubles, *Bisnow Bay Area* (August 30, 2017).

²⁹ Zillow, Zillow Home Value Index, data through July 31, 2017.

Median home rental prices also increased during the same period, but at a slower rate (37.3%), which is again more sluggish than the County (42.7%), but faster than the State (26%).

The home ownership rate in Morgan Hill is over 70%, which is higher than both the County (57%) and the State (54%). The vacancy rate for Morgan Hill's housing stock is extremely low, at 2.5%, which is 1.3% lower than the County and 5.7% lower than the State. However, new multi-family residential completions in the Bay Area, along with a slight slowdown in employment growth, is expected to raise vacancy rates and depress rents³⁰.

FIGURE 4-D RESIDENTIAL VACANCY RATE BY JURISDICTION (2015)



Source: U.S. Census American Community Survey 5-Year Estimate, Table DP04

Increasing sales and rent prices coupled with very low vacancies indicate a tight housing market. Compared to higher demand housing markets in the Bay Area, Morgan Hill remains an option for homebuyers seeking more affordable prices. As the number of residential units in Silicon Valley is not keeping pace with the region's rapidly growing population, housing is expected to be the most highly favored market sector in Morgan Hill³¹.

³⁰ Littman, Julie, Bay Area Multifamily Markets may have Peaked. Time to Sell, Ten-X says, *Bisnow Bay Area* (August 8, 2017).

³¹ Joint Venture Silicon Valley, Institute for Regional Studies, *2017 Silicon Valley Index* (2017).

4.3.2 RESIDENTIAL TRENDS

Baby boomers and millennials are the key demographic cohorts moving the residential market, which is being affected by their financial constraints, needs, and preferences. Trends show increasing demand for smaller units that are in walkable settings, but also an increase in multigenerational living. These cohorts often have preferences for environments that provide convenience, quality of life, physical activity, and social engagement. Renting has also rebounded and is at the highest levels since the 1960s, at over 36% nationally. Nonetheless, Morgan Hill demonstrates high home ownership rates since it has served as a more affordable Bay Area housing option. If walkable mixed-use environments do not mature and relatively affordable single-family homes remain available, Morgan Hill is less likely to attract some of these potential buyers.

The significant growth in the 65 and over population over the next 20 years will have a dramatic impact on housing needs as well as necessary services. Generally, these services include providing health care and assistance for those who have disabilities, from a mobility disability (e.g., difficulty walking, getting in and out of bed, climbing a flight of stairs) and cognitive impairment (e.g., dementia) to long-term care (e.g., home health aide, assisted living care, nursing, etc.). Existing or new residential units will need to reasonably accommodate the aging population, which may be through modifications to existing building and development standards.

5 COMMERCIAL CAPACITY ASSESSMENT

A Commercial Capacity Assessment (Assessment) of the Study Area was conducted to evaluate a range of optimal amounts of commercial space in the Study Area to support future market demand. This Assessment does not include a criteria-driven analysis to forecast retail and office space separately based on the characteristics typically demanded by retail or office tenants (e.g., access/circulation, visibility, foot traffic, clustering of like businesses, etc.). The capacity methods employed for this Assessment were drawn from a range of options reviewed and authorized by the City. Five capacity methods were used:

1. Commercial Capacity Based on Existing Land Use Inventory
2. Commercial Square Footage per Capita
3. Commercial Square Footage per Job
4. Projected Residential Growth in Study Area
5. Retail Leakage

The following is a discussion of each capacity method's results and a summary evaluating the results in aggregate. Calculation sheets for each method are contained in Appendix C.

5.1 COMMERCIAL CAPACITY BASED ON EXISTING LAND USE INVENTORY

Using the Study Area's existing land use inventory, this method calculates how much commercial space could be built on vacant or underutilized parcels in the Study Area based on development intensity or floor area ratio (FAR³²). This method represents the net square footage increase. Two scenarios were evaluated:

- Maximum FAR Capacity (High) – Net development if future projects are built at 0.5 FAR for commercial parcels and 0.6 FAR for industrial parcels. This determines the maximum developable area within the Study Area.
- Stable FAR Capacity (Low) – Net development if future projects are built at the current median FAR for developed parcels in the Study Area (0.19 FAR). This may be considered a “floor” or baseline of anticipated development within the Study Area.

Method 1 - Commercial Capacity
Based on Existing Land Use
Inventory

High: 1,551,150 s.f.

Low: 597,058 s.f.

The outcome was a very wide range of commercial capacity: 597,058 – 1,551,150 square feet³³. The high end of this range is the largest square footage result from all methods; however, this method

³² FAR is the ratio of building floor area on a lot divided by the total lot area.

³³ For reference, existing buildings in the Study Area comprise approximately 1,195,257 square feet.

does not reflect market conditions. The high scenario is strictly a calculation of remaining developable building volume in the Study Area.

5.2 COMMERCIAL SQUARE FOOTAGE PER CAPITA

This method uses the ratio of commercial square foot per capita to forecast long-term commercial space needs of a growing community. Using the 2035 Residential Development Control System (RDSCS) population cap of 58,200 people (Table 3-1, (Population)), 848,210 square feet of additional future commercial space would be appropriate citywide. Assuming the proportion of commercial space in the Study Area compared to citywide remains stable (around 25%), 215,755 net new square feet of future commercial space would be appropriate in the Study Area.

Method 2 - Commercial Square Footage per Capita

215,755 s.f.

5.3 COMMERCIAL SQUARE FOOTAGE PER JOB

Similar to the previous method, commercial capacity can be calculated based on the relationship of jobs to commercial space. This approach addresses the different daytime (worker) and nighttime (resident) populations in Morgan Hill. The calculations use the current ratio of commercial square foot per job to forecast future commercial square footage based on job projections (i.e., jobs located in Morgan Hill). Using employment projections (Table 3-5), 1,785,130 of additional future commercial space would be appropriate citywide. Assuming the proportion of commercial space in the Study Area compared to citywide remains stable, 434,106 net new square feet of future commercial space would be appropriate in the Study Area.

Method 3 - Commercial Square Footage per Job

434,106 s.f.

5.4 PROJECTED RESIDENTIAL GROWTH IN STUDY AREA

Focusing on residential instead of commercial, this method determines how much square footage is needed for future residential space if the vacant and underutilized parcels in the Study Area develop within the allowable General Plan density (7 to 24 units/acre). At 14 units per acre, 780 residential units are projected to be located the Study Area³⁴. Considering a range of 800 to 2,500 gross square feet per unit, total residential square footage was then subtracted from the high and low FAR capacities calculated in the first method (Section 5.1).

If development continues at a similar intensity as currently exists, (Net Stable FAR), there would not be adequate building space to accommodate residential densities at 14 units per acre. A density of 7 units per acre (398 units) could be achieved at existing development intensity assuming 1,500 gross square feet per unit

Method 4 – Projected Residential Growth in Study Area

Net Maximum FAR (High):
(399,050 s.f.) - 927,086 s.f.

Net Stable FAR (Low):
(1,353,142 s.f.) - (27,006 s.f.)

³⁴ This calculation does not reflect any particular dwelling unit size and could reflect strictly residential projects or mixed-use projects.

and only new residential development in the Study Area (no new mixed-use or commercial). However, a mix of residential at 14 units per acre and commercial space could be accommodated under the high FAR scenario (Net Maximum FAR) if average gross square foot per unit remains below 2,000 square feet.

5.5 RETAIL LEAKAGE

This method employs citywide sales capture and gap (leakage) data to determine retail square footage needed to eliminate sales leakage. Square footage associated with capture or leakage is calculated using the current citywide average for dollar of revenue per retail square foot (\$333.06). The percent of citywide taxable sales occurring in the Study Area is applied to calculate the square footages in the Study Area.

Method 5 – Retail
Leakage

(15,895 s.f.)

As previously discussed in Subsection 4.1.3 (Retail Leakage), Morgan Hill experiences leakage in all economic categories except for Transportation, and the capture in Transportation is significant enough to result in net sales capture. While this results in a finding of excess retail square footage (over retailed by 15,895 square feet), it is appropriate to look at individual economic categories for potential opportunities. For example, in the Study Area, there are sales gaps in General Retail of 17,931 square feet and Food Products (e.g., restaurants) of 5,406 square feet.

5.6 SUMMARY OF RESULTS

Table 5-1 shows the compiled Commercial Capacity Assessment results.

TABLE 5-1 COMMERCIAL CAPACITY ASSESSMENT RESULTS

Commercial Capacity Assessment Results (Sq. Ft.)				
Method		Low	High	Average
1	Capacity Based on Inventory	597,058	1,551,150	1,074,104
2	Commercial Sq. Ft. per Capita	215,755	215,755	215,755
3	Commercial Sq. Ft. per Job	434,106	434,106	434,106
4	Projected Residential Growth	(1,353,142)	927,086	(213,028)
5	Retail Leakage	(15,895)	(15,895)	(15,895)
Median		215,755	434,106	215,755
Average		(24,423)	622,440	299,008

Source: LWC

Note: Where a method produced a single result (i.e., not low and high), that single result is identified in the low, high, and average columns.

Based on these results, a reasonable range for future commercial space³⁵ in the Study Area appears to be 215,000 to 440,000 square feet, with the lower end considered most realistic because of the data inputs used in Method 2 (Commercial Sq. Ft. per Capita), such as the RDCS population cap, and market conditions. However, considering demographic and market trends discussed in Sections 3 and 4, even the low end of potential commercial market demand should be considered theoretical and may shift (e.g., lower retail demand from increasing volumes of online transactions, changing medical office demand from aging population, etc.).

Based on the capacity within the Study Area (Method 1) and the theoretical commercial market demand of 215,000 square feet, approximately 385,000 to 1,300,000 square feet could be available for non-commercial uses, such as residential. Assuming between 1,500 to 2,500 gross square feet per dwelling unit, this space could accommodate between 150 to 890 residential units. If Net Maximum FAR is realized in the Study Area, 14 dwelling units per acre (780 units at 1,600 gross square feet each) could be built and accommodate up to 300,000 square feet of commercial or other uses.

Many factors should be considered when forecasting what types of commercial uses may build or occupy this future space, and such an analysis would facilitate a refinement of the estimated square foot range. Market conditions and trends suggest that economic segments experiencing leakage and that are least susceptible to online retailers are good candidates (e.g., restaurants, furniture/appliance stores, health services, etc.). Analyzing criteria demanded by these types of tenants in relation to the Study Area would be informative. While smaller main spaces may be appropriate to house certain new retail tenants, supplemental space will likely be needed for distribution activities associated with e-commerce³⁶. Subsequently, compatibility of mixing uses (retail, distribution, residential) should be examined during the development of zoning and land use standards for the Study Area. Land use policy directs Monterey Road to be revitalized into a mixed-use corridor that encourages walking and biking, and particular commercial uses may be less compatible with this vision (e.g., automobile or large equipment sales). Lastly, obstacles to new development such as inadequate utility infrastructure, costly off-site improvements (e.g., undergrounding overhead utilities), flood zone requirements, high construction costs, and lengthy permit processes affect the types of new commercial uses and businesses that establish.

³⁵ Commercial space includes both retail and office uses, such as medical and professional offices (see definitions in Section 1.1.2).

³⁶ Christine Firstenberg, Senior Vice President, JLL – Retail Brokerage, telephone correspondence (August 3, 2017).

6 CONCLUSION

This Report will serve as a foundation for market-based zoning recommendations to effectively implement the General Plan's vision for a revitalized mixed-use Monterey Road Corridor. Some preliminary zoning recommendations are offered below:

- To effectively respond to fluctuating market conditions, consider a zoning approach that provides some flexibility and regulates uses less rigidly.
- Focus commercial space in strategically located nodes or corridor segments to capture theoretical demand (Section 5) and on sites that can accommodate anticipated and desired tenants space requirements (e.g., certain retailers or office types). Additional analysis will be necessary to evaluate the short and long-term retail viability of specific sites or block segments along the Corridor as discussed in Section 1.1.3.
- Develop zoning standards that facilitate the development of mixed-use corridors (e.g., build-to lines, parking located behind buildings, parking alternatives or reduction options, building frontage standards, pedestrian connectivity requirements, public realm standards, floodplain design requirements, etc.). Plan for high quality public spaces, including flexibility to allow temporary public spaces, that are vital to connecting the corridor with surrounding neighborhoods.
- Allow "Missing Middle" housing types³⁷ that may serve as workforce housing and continue to diversify the residential product mix in Morgan Hill.
- Encourage well-designed projects that provide additional density to support revitalization of the Study Area by reducing permit review requirements and calibrating development standards (e.g., parking rates, site area requirements per unit requirements, etc.).
- Allow temporary uses and events with streamlined permitting to animate the Study Area.

The outcome from this Report and any subsequent analysis will be the successful update of the City's Zoning Map and Zoning Code to effectuate the Mixed Use Flex General Plan Land Use Designation and preserve adequate and appropriate spaces for future commercial uses.

³⁷ Missing Middle is a range of multi-unit or clustered housing types compatible in scale with single-family homes that help to meet the growing demand for walkable urban living (e.g., bungalow courts, fourplexes, courtyard apartments, etc.) (missingmiddlehousing.com).

7 CITED LITERATURE

Becker, Gary S. "A Theory of the Allocation of Time." *The Economic Journal* (1965): 493-517.

Brown, Barbara; Perkins, D. Douglas; and Brown, Graham. "Place Attachment in a Revitalizing Neighborhood: Individual and Block Levels of Analysis." *Journal of Environmental Psychology* 23.3 (2003): 259-271.

JLL Research. "A focus on value and risk shaping investor behavior." *Investment Outlook, United States, Retail*, H1 2017.

Locay, Luis. "Economic Development and the Division of Production Between Households and Markets." *Journal of Political Economy* 98.5, Part 1 (1990): 965-982.

The Economist. "Sorry, we're closed – The decline of established American retailing threatens jobs" (May 13, 2017).

DRAFT

APPENDIX A – MARKET ANALYSIS DATA

DRAFT

APPENDIX A

DEMOGRAPHIC AND SOCIO-ECONOMIC DATA

TABLE 1 POPULATION

Population (2000-2035)						
Area	2000	2010	2015	Growth Rate 2000-2015	2035	Growth Rate 2015-2035
Morgan Hill	33,556	37,882	42,331	26.2%	58,200	37.5%
Santa Clara County	1,682,585	1,781,642	1,903,209	13.1%	2,337,470	22.8%
California	33,871,648	37,253,956	38,915,880	14.9%	45,521,334	17.0%

Source: U.S. Decennial Census, Summary File 1, Table DP-1; California Department of Finance, February 2017; City of Morgan Hill, Residential Development Control System

TABLE 2 HOUSEHOLDS

Households (2000-2035)						
Morgan Hill	2000	2010	2015	Growth Rate 2000-2015	2035	Growth Rate 2015-2035
Number of Households	10,855	12,323	13,324	22.8%	18,082	35.7%
Average Household Size	3.05	3.04	3.15	3.3%	3.09	-1.9%
Santa Clara County	2000	2010	2015	Growth Rate 2000-2010	2035	Growth Rate 2015-2035
Number of Households	565,863	604,145	623,120	10.1%	776,461	24.6%
Average Household Size	2.92	2.90	3.00	2.7%	2.89	-3.7%

Source: U.S. Decennial Census, Summary File 1, Table QT-P11; American Community Survey 5-year Estimate, Table S1101; ABAG Projections, 2013; California Department of Finance

TABLE 3 QUANTIFIED HOUSING OBJECTIVES

Morgan Hill Quantified Housing Objectives (2015-2023)		
Income Category	Number	% of Total
Extremely Low Income	75	2.59%
Very Low Income	75	2.59%
Low Income	70	2.41%
Moderate Income	170	5.86%
Moderate Income and Below	390	13.45%
Above Moderate Income	2,510	86.55%
Total	2,900	100.00%

Source: City of Morgan Hill General Plan 2015-2023 Housing Element, Table 1-12

TABLE 4 MEDIAN HOUSEHOLD INCOME

Median Household Income (2000-2015)				
Area	2000	2010	2015	% Change 2000-2015
Morgan Hill	\$81,958	\$92,771	\$96,051	17.2%
Santa Clara County	\$74,335	\$86,850	\$96,310	29.6%
California	\$47,493	\$60,883	\$61,818	30.2%

Source: U.S. Decennial Census, Summary File 3, Table DP-3; American Community Survey 5-year Estimate, Table DP03

TABLE 5 INCOME DISTRIBUTION BY HOSEHOLD

Income Distribution by Household (2015)		
	Units	%
Total Households	13,460	100.0%
Less than \$10,000	403	3.0%
\$10,000 to \$14,999	435	3.2%
\$15,000 to \$24,999	1,066	7.9%
\$25,000 to \$34,999	789	5.9%
\$35,000 to \$49,999	999	7.4%
\$50,000 to \$74,999	1,653	12.3%
\$75,000 to \$99,999	1,741	12.9%
\$100,000 to \$149,999	2,509	19.6%
\$150,000 to \$199,999	1,447	10.8%
\$200,000 or more	2,418	18.0%

Source: U.S. Census American Community Survey 5-year Estimate, Table DP03

TABLE 6 POVERTY LEVEL

Poverty Level (2015)		
Age	Morgan Hill	Santa Clara County
Overall Estimate	9.80%	9.5%
Under 18 years	11.90%	10.9%
18 to 34 years	12.80%	12.1%
35 to 64 years	7.50%	7.6%
65 years and over	8.50%	8.8%

Source: U.S. Census American Community Survey 5-year Estimate: Table S1701

TABLE 7 MORGAN HILL AGE DISTRIBUTION

Morgan Hill Age Distribution (2000-2015)								
Age Group	2000		2010		2015		Percent Change in Age Group (2000-2015)	
	Population	% of Total	Population	% of Total	Population	% of Total	Population	% of Total
Under 5 years	2,729	8.1%	2,794	7.4%	2,752	6.7%	0.8%	-17.2%
5 to 9 years	2,984	8.9%	3,049	8.1%	2,909	7.1%	-2.5%	-20.0%
10 to 14 years	2,751	8.2%	3,043	8.0%	3,131	7.7%	13.8%	-6.6%
15 to 19 years	2,643	7.9%	2,926	7.7%	3,158	7.7%	19.5%	-1.9%
20 to 24 years	1,677	5.0%	1,935	5.1%	2,426	5.9%	44.6%	18.8%
25 to 34 years	4,530	13.5%	4,331	11.4%	4,366	10.7%	-3.6%	-20.9%
35 to 44 years	6,121	18.2%	5,669	15.0%	5,999	14.7%	-2.0%	-19.5%
45 to 54 years	4,958	14.8%	6,258	16.5%	6,405	15.7%	29.2%	6.1%
55 to 59 years	1,625	4.8%	2,370	6.3%	2,460	6.0%	51.4%	24.3%
60 to 64 years	1,030	3.1%	1,909	5.0%	2,735	6.7%	165.5%	118.0%
65 to 74 years	1,302	3.9%	2,146	5.7%	2,735	6.7%	110.1%	72.5%
75 to 84 years	927	2.8%	959	2.5%	1,153	2.8%	24.4%	2.1%
85 years and over	279	0.8%	493	1.3%	643	1.6%	130.5%	89.2%
Total	33,556	33,556	37,882	37,882	40,872	40,872	21.8%	21.8%

Source: U.S. Decennial Census Summary File 1, Table QT-P1; U.S. Census American Community Survey 5-year Estimate, Table QT-P1

TABLE 8 REGIONAL AND STATE COMPARISON OF AGE DISTRIBUTION

Regional and State Comparison of Age Distribution (2010)			
Age Group	Morgan Hill	Santa Clara County	California
Under 5 years	7.4%	7.2%	6.8%
5 to 9 years	8.0%	6.6%	6.7%
10 to 14 years	8.0%	6.5%	7.0%
15 to 19 years	7.7%	6.5%	7.6%

20 to 24 years	5.1%	6.5%	7.4%
25 to 29 years	5.5%	7.6%	7.4%
30 to 34 years	6.0%	7.8%	6.9%
35 to 39 years	7.1%	8.3%	6.9%
40 to 44 years	7.8%	7.8%	7.0%
45 to 49 years	8.7%	7.8%	7.2%
50 to 54 years	7.8%	6.8%	6.9%
55 to 59 years	6.3%	5.6%	5.9%
60 to 64 years	5.0%	4.4%	4.9%
65 to 69 years	3.4%	3.2%	3.5%
70 to 74 years	2.2%	2.5%	2.6%
75 to 79 years	1.4%	2.0%	2.1%
80 to 84 years	1.1%	1.6%	1.6%
85 and over	1.3%	1.4%	1.6%

Source: U.S. Decennial Census Summary File 1, Table QT-P1

TABLE 9 REGIONAL AND STATE COMPARISON OF MEDIAN AGE

Regional and State Comparison of Median Age (2015)			
	Morgan Hill	Santa Clara County	California
Median Age	37.9	36.8	35.8

Source: U.S. Census American Community Survey 5-year Estimate, Table S0101

TABLE 10 REGIONAL AND STATE COMPARISON OF RACE DISTRIBUTION

Regional and State Comparison of Race Distribution (2015)			
Ethnicity	Morgan Hill	Santa Clara County	California
White	67.8%	48.3%	61.8%
Black or African American	3.0%	2.6%	5.9%
American Indian or Alaska Native	0.6%	0.5%	0.8%
Asian	9.5%	33.8%	13.7%
Native Hawaiian and Other Pacific Islander	0.5%	0.4%	0.4%
Other	12.1%	9.8%	13.0%
Two or More Races	6.6%	4.7%	4.5%
Total	100.0%	100.0%	100.0%
Hispanic or Latino (of any race)	33.7%	26.6%	38.4%

Source: U.S. Census American Community Survey 5-year Estimate, Table B02001

TABLE 11 EDUCATIONAL ATTAINMENT

Educational Attainment (2010-2015)						
Attainment Level	Morgan Hill			Santa Clara County		
	2010	2015	% Change or Difference 2010-2015	2010	2015	% Change or Difference 2010-2015
Population 25 years and over	23,010	26,496	15.2%	1,161,850	1,268,629	9.2%
Less than 9th grade	1,703	1,400	-17.8%	85,977	89,994	4.7%
% of Total Population 25 years and over	7.4%	5.3%	-2.1%	7.4%	7.1%	-0.3%
9th to 12th grade, no diploma	1,680	1,550	-7.7%	73,197	75,235	2.8%
% of Total Population 25 years and over	7.3%	5.8%	-1.5%	6.3%	5.9%	-0.4%
High school graduate (includes equivalency)	3,659	4,537	24.0%	191,705	192,414	0.4%
% of Total Population 25 years and over	15.9%	17.1%	1.2%	16.50%	15.2%	-1.3%
Some college, no degree	5,039	6,219	23.4%	199,838	212,282	6.3%
% of Total Population 25 years and over	21.9%	23.5%	1.6%	17.20%	16.7%	-0.5%
Associates degree	2,140	2,558	19.5%	85,977	90,475	5.2%
% of Total Population 25 years and over	9.3%	9.7%	0.4%	7.40%	7.1%	-0.3%
Bachelor's degree	5,614	6,199	10.4%	298,595	330,869	10.8%
% of Total Population 25 years and over	24.4%	23.4%	-1.0%	25.70%	26.1%	0.4%
Graduate or professional degree	3,175	4,033	27.0%	227,723	277,360	21.8%
% of Total Population 25 years and over	13.8%	15.2%	1.4%	19.60%	21.9%	2.3%

Source: U.S. Census American Community Survey 5-year Estimate, Table S1501

TABLE 12 EMPLOYMENT PROJECTION

Employment Projection (2010-2035)				
Area	2010	2035	Annualized Growth Rate	Growth Rate 2010-2035
Morgan Hill	13,135	21,549	2%	64.0%
Santa Clara County	852,855	1,115,594	1%	31.8%

Source: U.S. Census American Community Survey 5-year Estimate, Table S2301; 2010 Census OnTheMap Area Profile Analysis for all Jobs, City of Morgan Hill & Santa Clara County

Notes:

- (1) Morgan Hill projections calculated using historic annualized job growth rate of 2%, as 2040 ABAG/MTC projection shows employment gains unrealistically low at 300 jobs from 2010 to 2040.
- (2) Santa Clara County projections calculated using annualized growth rate of 1.08%, which represents the County's historic job growth from 2003 to 2014.

TABLE 13 EMPLOYMENT INFLOW/OUTFLOW

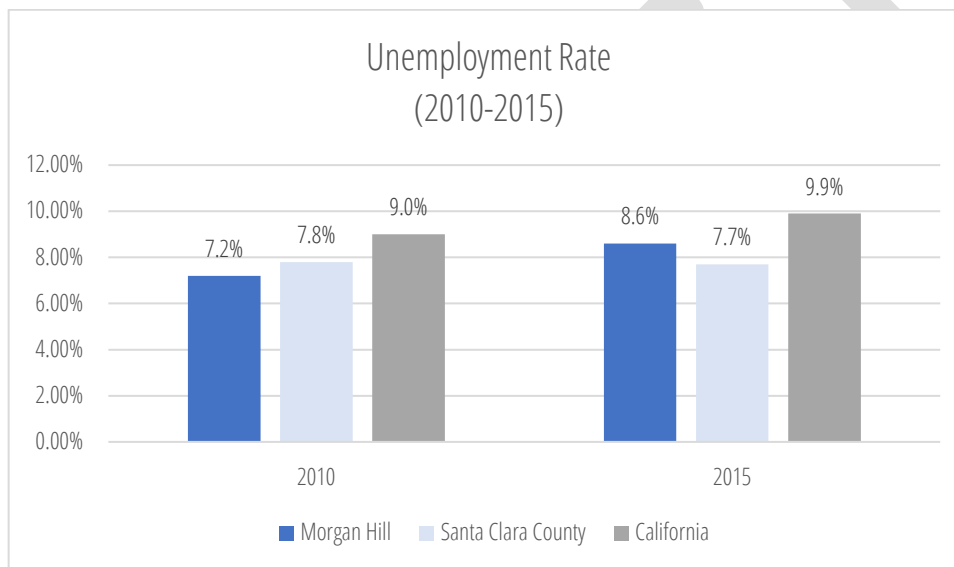
Employment Inflow/Outflow (2014)						
Live and employed in Morgan Hill		Live in Morgan Hill, employed elsewhere (Outflow)		Live elsewhere, employed in Morgan Hill (Inflow)		Mean travel time to work (mins)
2,473 people	12.9% ¹	16,734 people	87.1% ¹	11,173 people	81.9% ²	31.7 ³

U.S. Census American Community Survey 5-year Estimate, Table S0801; 2014 Census OnTheMap Area Profile Analysis for all Jobs: City of Morgan Hill

Notes:

1. Calculated with the total employed city population as a base.
2. Calculated with the total number of jobs in Morgan Hill serving as base.
3. Travel time to work only applies to those living in Morgan Hill (i.e., residents).

FIGURE 1 UNEMPLOYMENT TRENDS



Source: U.S. Census American Community Survey 5-year Estimate, 2011-2015 and 2006-2010, Table DP-03

TABLE 14 UNEMPLOYMENT TRENDS

Unemployment Trends (2010-2015)		
Place, County, State	Unemployment Rate	
	2010	2015
Morgan Hill	7.2%	8.6%
Santa Clara County	7.8%	7.7%
California	9.0%	9.9%

Source: U.S. Census American Community Survey 5-year Estimate, Table DP-03

TABLE 15 MORGAN HILL INDUSTRY BY OCCUPATION

Morgan Hill Industry by Occupation (2015)						
Industry	Occupation					
	Total	Mgmt., Business, Science, & Arts	Service	Sales & Office	Natural Resources, Construction, & Maint.	Production, Trans., & Material Moving
Total civilian employed population (16 years and over)	19,512	42.9%	15.9%	24.9%	8.4%	7.9%
Educational services, and health care and social assistance	3,439	67.8%	20.9%	7.9%	0.1%	3.3%
Manufacturing	2,952	54.6%	2.8%	13.1%	6.0%	23.5%
Professional, scientific, and management, and administrative and waste management services	2,724	68.9%	17.7%	13.0%	0.3%	0.0%
Retail trade	2,315	12.5%	2.2%	75.2%	3.7%	6.4%
Construction	1,442	19.8%	0.0%	7.4%	69.9%	2.9%
Arts, entertainment, and recreation, and accommodation and food services	1,394	11.8%	65.1%	22.1%	0.4%	0.5%
Other services, except public administration	1,372	43.0%	37.3%	9.2%	8.1%	2.4%
Finance and insurance, and real estate and rental and leasing	1,232	35.0%	5.0%	57.0%	2.5%	0.5%
Transportation and warehousing, and utilities	703	28.4%	0.0%	21.6%	13.4%	36.6%
Public administration	689	22.8%	38.2%	34.8%	0.0%	4.2%
Wholesale trade	592	23.8%	2.0%	40.4%	2.0%	31.8%
Information	524	50.6%	1.9%	38.0%	9.5%	0.0%
Agriculture, forestry, fishing and hunting, and mining	134	25.4%	0.0%	19.4%	37.3%	17.9%

Source: U.S. Census American Community Survey 5-year Estimate, Table S2403

Note: Percentages rounded by Census in table C24050 -Industry by Occupation for The Civilian Employed Population 16 Years and Over.

TABLE 16 EMPLOYMENT BY INDUSTRY

Employment by Industry (2015)						
Industry	Morgan Hill		Santa Clara County		Share of County	LQ ¹ (County)
	Total Jobs	% of Total	Total Jobs	% of Total		
Civilian employed population 16 years and over	19,512	N/A	915,619	N/A	2.1%	N/A
Educational services, and health care and social assistance	3,439	17.6%	169,496	18.5%	2.0%	0.95
Manufacturing	2,952	15.1%	169,787	18.5%	1.7%	0.82
Professional, scientific, and management, and administrative and waste management services	2,724	14.0%	173,964	19.0%	1.6%	0.73
Retail trade	2,315	11.9%	86,926	9.5%	2.7%	1.25
Construction	1,442	7.4%	47,111	5.2%	3.1%	1.44
Arts, entertainment, and recreation, and accommodation and food services	1,394	7.1%	72,686	7.9%	1.9%	0.90
Other services, except public administration	1,372	7.0%	38,809	4.2%	3.5%	1.66
Finance and insurance, and real estate and rental and leasing	1,232	6.3%	43,837	4.8%	2.8%	1.32
Transportation and warehousing, and utilities	703	3.6%	25,364	2.8%	2.8%	1.30
Public administration	689	3.5%	22,220	2.4%	3.1%	1.46
Wholesale trade	592	3.0%	20,172	2.2%	2.9%	1.38
Information	524	2.7%	39,872	4.4%	1.3%	0.62
Agriculture, forestry, fishing and hunting, and mining	134	0.7%	5,375	0.6%	2.5%	1.17

Source: U.S. Census American Community Survey 5-year Estimate, Table DP-03

Note:

1. LQ = 1.0 identifies average industry concentration; LQ > 2.0 identifies a strong industry cluster; LQ < 0.5 identifies a weak industry cluster.

TABLE 17 EMPLOYMENT BY LAND USE AND INDUSTRY CLUSTER

Employment by Land Use & Industry Cluster (2010-2015)			
	2010	2015	% Change (2010- 2015)
Office/R&D/Industrial			
Miscellaneous Manufacturing	671	1,271	89%
Building/Construction/Real Estate	662	961	45%
Semiconductors	597	915	53%
Transportation/Distribution	1,174	878	-25%
Business Services	924	836	-10%
Innovation Services	663	693	5%
Industrial Supplies and Services	429	596	39%
Bioscience	458	555	21%
Corporate Offices	545	542	-1%
Electronic Component Manufacturing	421	482	14%
Financial Services	374	340	-9%
Software	143	106	-26%
Computer and Communications Hardware Manufacturing	10	64	540%
Retail			
Retail/Consumer Services	3,705	4,578	24%
Visitor			
Visitor (Tourism)	203	163	-20%
Other			
Civic (Government and Education)	2,212	1,977	-11%
Healthcare	589	649	10%
Other	479	117	-76%
Total Jobs	14,260	15,723	10%

Sources: City of Morgan Hill Economic Blueprint, Figure 6 (CAA EDD, Quarterly Census of Employment Wages; City of Morgan Hill; Joint Venture Silicon Valley Industry Cluster Definitions)

TABLE 18 EMPLOYMENT BY OCCUPATION

Employment by Occupation (2015)						
Occupation	Morgan Hill		Santa Clara County		Share of County	LQ (County)
	Total Jobs	% of Total	Total Jobs	% of Total		
Civilian employed population 16 years and over	19,512	N/A	915,619	N/A	2.1%	N/A
Management, business, science, and arts	8,380	43.0%	462,714	50.5%	1.8%	0.85
Sales and office	4,854	24.9%	179,238	19.6%	2.7%	1.27
Service	3,099	15.9%	139,416	15.2%	2.2%	1.04
Natural resources, construction, and maintenance	1,636	8.4%	59,477	6.5%	2.8%	1.29
Production, transportation, and material moving	1,543	7.9%	74,774	8.2%	2.1%	0.97

Source: U.S. Census American Community Survey 5-year Estimate, Table DP-03

TABLE 19 INCOME BY OCCUPATION

Median Income by Occupation (2015)			
Occupation	Morgan Hill	Santa Clara County	California
Management, business, science, and arts	\$80,180	\$90,616	\$62,541
Management, business, and financial	\$91,769	\$95,667	\$67,480
Computer, engineering, and science	\$107,232	\$106,685	\$82,288
Health diagnosing and treating practitioners and other technical occupations	\$86,875	\$96,563	\$67,327
Education, legal, community service, arts, and media	\$50,886	\$48,979	\$45,041
Service	\$21,092	\$20,418	\$18,708
Healthcare support	\$25,771	\$30,874	\$24,740
Protective service	\$80,493	\$35,951	\$51,429
Food preparation and serving	\$15,660	\$16,815	\$15,724
Building and grounds cleaning and maintenance	\$27,346	\$21,928	\$19,061
Personal care and service	\$13,581	\$15,674	\$15,070
Sales and office	\$37,267	\$35,037	\$30,125
Sales	\$36,837	\$33,068	\$26,947
Office and administrative support	\$40,096	\$35,691	\$31,110
Natural resources, construction, and maintenance	\$56,123	\$35,954	\$30,259
Farming, fishing, and forestry	\$22,049	\$20,844	\$16,730
Construction and extraction	\$51,382	\$32,488	\$31,645
Installation, maintenance, and repair	\$67,143	\$45,142	\$39,652
Production, transportation, and material moving	\$31,175	\$31,376	\$26,832
Production	\$36,768	\$33,794	\$27,501
Transportation	\$31,832	\$34,082	\$33,111
Material moving	\$13,158	\$21,682	\$20,357
Calculated Mean	\$45,167	\$42,680	\$35,693

Source: U.S. Census American Community Survey 5-year Estimate, Table S2411

TABLE 20 INDUSTRY TRENDS

Industry Trends (2010-2015)						
Industry	City of Morgan Hill			Santa Clara County		
	2010	2015	% Change 2010-2015	2010	2015	% Change 2010-2015
Civilian employed population 16 years and over	17,506	19,512	11.5%	843,854	915,619	8.5%
Transportation and warehousing, and utilities	375	703	87.5%	22,914	25,364	10.7%
Retail trade	1,254	2,315	84.6%	80,847	86,926	7.5%
Other services, except public administration	1,061	1,372	29.3%	35,725	38,809	8.6%
Professional, scientific, and management, and administrative and waste management services	2,231	2,724	22.1%	149,441	173,964	16.4%
Finance and insurance, and real estate and retail and leasing	1,058	1,232	16.5%	45,318	43,837	-3.3%
Information	450	524	16.4%	34,058	39,872	17.1%
Construction	1,286	1,442	12.1%	48,391	47,111	-2.7%
Arts, entertainment, and recreation, and accommodations, and food services	1,313	1,394	6.2%	59,604	72,686	22.0%
Wholesale trade	587	592	0.9%	21,396	20,172	-5.7%
Manufacturing	3,071	2,952	-3.9%	166,851	169,787	1.8%
Educational services, and health care and social assistance	3,592	3,439	-4.3%	152,679	169,496	11.0%
Public administration	902	689	-23.6%	22,150	22,220	0.3%
Agriculture, forestry, fishing and hunting, and mining	326	134	-58.9%	4,480	5,375	20.0%

Source: U.S. Census American Community Survey 5-year Estimate, Table S2403

Note: Census data for industry trends unavailable for the year 2000. Earliest information available is for 2007.

TABLE 21 MORGAN HILL OCCUPATIONAL TRENDS

City of Morgan Hill Occupational Trends (2000-2015)				
Occupation	2000	2010	2015	% Change 2000-2015
Service	1,799	2,975	3,099	72.3%
Production, transportation, and material moving	1,290	1,192	1,543	19.1%
Sales and office	4,129	4,279	4,854	17.6%
Management, business, science, and arts	7,245	7,560	8,380	15.7%
Natural resources, construction, and maintenance	1,601	1,500	1,636	2.2%

Source: U.S. Decennial Census, Summary File 3, Table QT-P27; American Community Survey 5-year Estimate, Table S2411

TABLE 22 MORGAN HILL MAJOR EMPLOYERS

Morgan Hill Major Employers (Feb. 2017)	
Major Employers	Jobs
Morgan Hill Unified School District	730
Anritsu Company	477
Specialized Bicycle Components	400
Paramit Corporation	320
Lusamerica Foods	270
NxEdge	265
Safeway Inc.	257
Mission Bell Mfg., Inc.	226
Del Monaco Specialty Foods, Inc.	165
Wal-Mart Supercenter	158
Young's Market Company	146
TenCate Advanced Composites USA	142
The Home Depot	138
Covenant Care MH: Pacific Hills Manor	135
Velodyne	133
The Ford Store	130
Target Store	123
Shoe Palace Corporation	122
Gryphon Financial Group	114
Andpak	114
Sakata Seed America	105
Infineon Technologies	84
Lin Engineering	83
Exelis Inc.	82
Nob Hill Foods	75
Johnson Lumber Co.	73
Airtronics Metal Products	71
In-N-Out Burger	68
Pinnacle Manufacturing Corp	66
Hillview Convalescent	65

Source: City of Morgan Hill, <https://www.morgan-hill.ca.gov/1317/Largest-Employers>

TABLE 23 CONSUMER EXPENDITURES

Consumer Expenditures - San Francisco MSA							
Item	1999-2000		2009-2010		2014-2015		Percent Change 1990-2015
People	2.5		2.5		2.6		4.0%
Children under 18	0.6		0.6		0.6		N/A
Adults 65 and older	0.3		0.2		0.3		N/A
Earners	1.4		1.4		1.4		N/A
Vehicles	1.8		1.8		1.8		N/A
Income before taxes	\$64,818	N/A	\$90,270	N/A	\$101,998	N/A	57.3%
Food	\$7,442	11.5%	\$7,920	8.8%	\$8,612	8.4%	15.7%
Food at home	\$4,355	6.7%	\$4,214	4.7%	\$4,114	4.0%	-5.5%
Food away from home	\$3,086	4.8%	\$3,706	4.1%	\$4,498	4.4%	45.8%
Alcoholic beverages	\$781	1.2%	\$676	0.8%	\$1,005	1.0%	28.7%
Housing	\$19,682	30.4%	\$26,268	29.1%	\$26,483	26.0%	34.6%
Shelter	\$12,963	20.0%	\$19,190	21.3%	\$18,724	18.4%	44.4%
Owned dwellings	\$8,266	12.8%	\$11,194	12.4%	\$8,947	8.8%	8.2%
Rented dwellings	\$3,963	6.1%	\$6,573	7.3%	\$8,743	8.6%	120.6%
Other lodging	\$734	1.1%	\$1,423	1.6%	\$1,034	1.0%	40.9%
Utilities, fuels, and public services	\$2,226	3.4%	\$3,207	3.6%	\$3,493	3.4%	56.9%
Household operations	\$1,477	2.3%	\$1,498	1.7%	\$2,171	2.1%	47.0%
Housekeeping supplies	\$595	0.9%	\$611	0.7%	\$581	0.6%	-2.4%
Household furnishings and equipment	\$2,421	3.7%	\$1,762	2.0%	\$1,514	1.5%	-37.5%
Apparel and services	\$3,137	4.8%	\$2,230	2.5%	\$2,366	2.3%	-24.6%
Transportation	\$9,726	15.0%	\$8,509	9.4%	\$9,911	9.7%	1.9%
Vehicle purchases (net outlay)	\$4,409	6.8%	\$2,457	2.7%	\$2,677	2.6%	-39.9%
Gasoline and motor oil	\$1,424	2.2%	\$1,931	2.1%	\$2,219	2.2%	55.8%
Other vehicle expenses	\$2,992	4.6%	\$3,058	3.4%	\$3,411	3.3%	14.0%
Public and other transportation	\$900	1.4%	\$1,062	1.2%	\$1,603	1.6%	78.1%
Healthcare	\$2,030	3.1%	\$3,461	3.8%	\$4,685	4.6%	130.8%
Entertainment	\$2,290	3.5%	\$3,116	3.5%	\$3,318	3.3%	44.9%
Personal care products and services	\$692	1.1%	\$782	0.9%	\$845	0.8%	22.1%
Reading	\$230	0.4%	\$158	0.2%	\$147	0.1%	-36.1%
Education	\$967	1.5%	\$1,754	1.9%	\$1,806	1.7%	86.8%

Tobacco products and smoking supplies	\$222	0.3%	\$153	0.1%	\$133	0.1%	-40.1%
Miscellaneous	\$1,023	1.6%	\$1,077	1.2%	\$780	0.8%	-23.8%
Cash contributions	\$904	1.4%	\$2,020	2.2%	\$2,262	2.2%	150.2%
Personal insurance and pensions	\$5,915	9.1%	\$9,237	10.2%	\$9,079	8.9%	53.5%

Source: Bureau of Labor Statistics, Expenditures by Western Metropolitan Statistical Areas

DRAFT

MARKET DATA

RETAIL

TABLE 24 MORGAN HILL RETAIL VACANCY (2008-2017)

Morgan Hill Retail Vacancy (2008-2017)				
	2008	2012	2017	% Change
Vacant Square Footage	120,977	235,279	111,155	-8.1%

Source: Concord Group (CoStar, REIS)

TABLE 25 MORGAN HILL RETAIL INVENTORY (2008-2017)

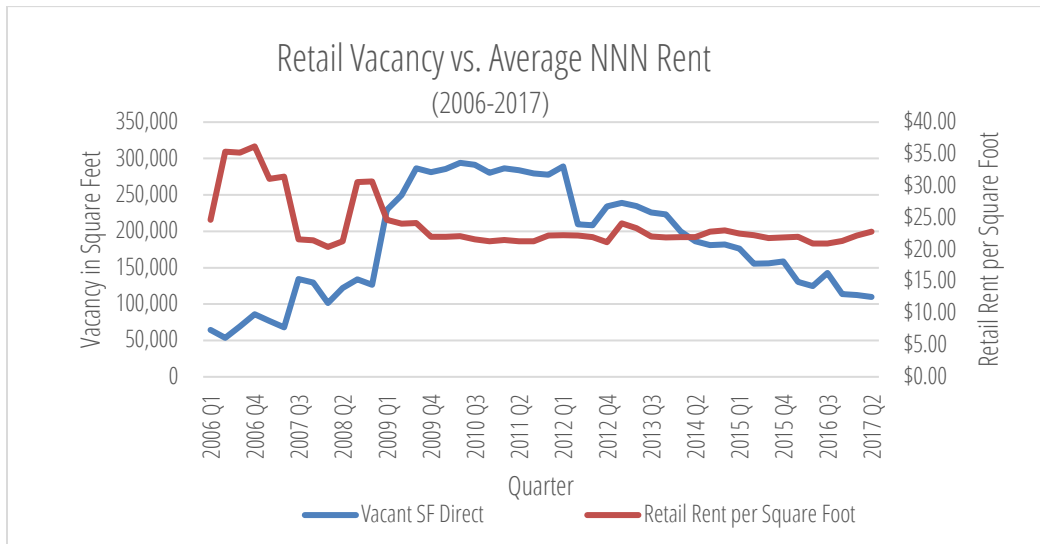
Morgan Hill Retail Inventory (2008-2017)		
Year	Number of Buildings	Total Square Footage
2008	232	2,296,752
2009	233	2,325,114
2010	233	2,329,188
2011	233	2,334,333
2012	233	2,340,907
2013	232	2,332,657
2014	232	2,329,907
2015	230	2,319,717
2016	228	2,310,268
2017	226	2,292,597
% Change	-2.7%	-0.2%

Source: The Concord Group (CoStar, REIS)

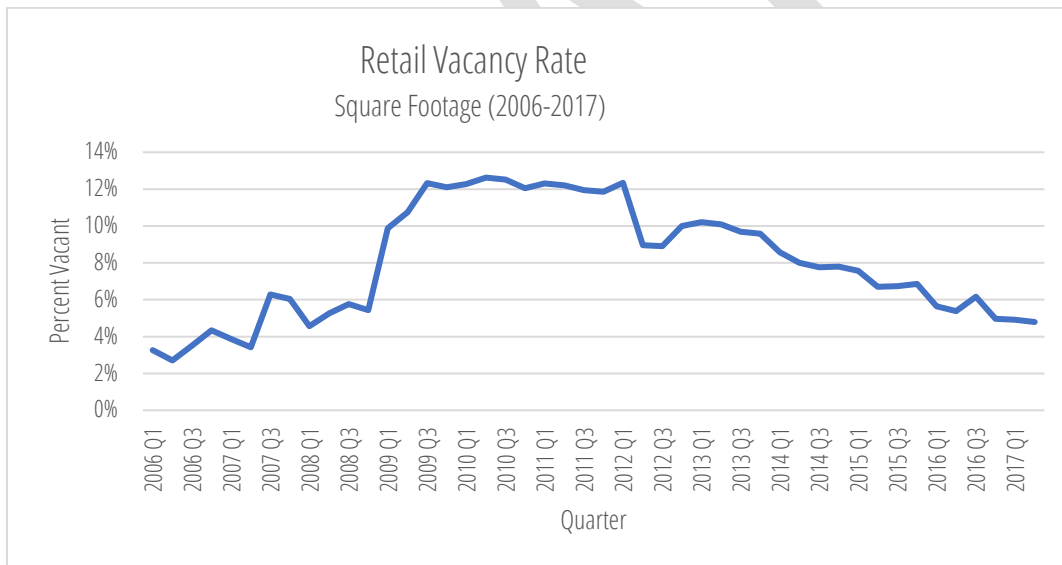
TABLE 26 MORGAN HILL NNN RETAIL RENT (2008-2017)

Morgan Hill NNN Retail Rent (2008-2017)				
	2008	2012	2017	% Change
Rent/SF/year	\$20.40	\$22.24	\$22.80	11.8%
Rent/SF/month	\$1.70	\$1.85	\$1.90	

Source: The Concord Group (CoStar, REIS)

FIGURE 2 RETAIL VACANCY AND NNN RENT PER SQUARE FOOT

Source: The Concord Group (CoStar, REIS)

FIGURE 3 RETAIL VACANCY PERCENT OF TOTAL SF

Source: The Concord Group (CoStar, REIS)

TABLE 27 SALES TAX PER CAPITA

Sales Tax per Capita (2012 - 2016)						
	2012	2013	2014	2015	2016	% Change 2012-2016
Sales Tax Revenue	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Population	39,426	40,463	41,517	42,331	43,484	10.3%
Sales Tax per Capita	\$167.85	\$174.37	\$171.07	\$173.85	\$176.95	5.4%

Source: MuniServices and Claritas, California Department of Finance

TABLE 28 SALES TAX PER RETAIL SQUARE FOOT

Sales Tax per Retail Square Foot (2012 - 2016)						
	2012	2013	2014	2015	2016	% Change 2012-2016
Sales Tax Revenue	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Retail Sq. Ft.	2,340,907	2,332,657	2,329,907	2,319,717	2,310,268	-1.3%
Sales Tax per Retail Sq. Ft.	\$2.83	\$3.02	\$3.05	\$3.17	\$3.33	17.8%

Source: MuniServices and Claritas, The Concord Group (CoStar, REIS)

TABLE 29 SALES TAX CITYWIDE AND STUDY AREA

Sales Tax Citywide and Study Area (2012 - 2016)						
Sales Tax Revenue	2012	2013	2014	2015	2016	% Change 2012-2016
Citywide	\$6,617,777	\$7,055,468	\$7,102,245	\$7,359,251	\$7,694,571	16.3%
Study Area	\$592,926	\$627,312	\$739,104	\$744,858	\$693,837	17.0%
Study Area % of Citywide Tax Revenue	8.96%	8.89%	10.41%	10.12%	9.02%	0.6%

Source: MuniServices and Claritas, The Concord Group (CoStar, REIS)

TABLE 30 SALES TAX LEAKAGE

Sales Tax Leakage (2012 - 2016)						
Economic Category	2012	2013	2014	2015	2016	% Change 2012-2016
General Retail	(\$550,043)	(\$511,177)	(\$622,992)	(\$617,792)	(\$596,346)	8.4%
Food Products	(\$172,100)	(\$153,959)	(\$240,294)	(\$243,326)	(\$212,488)	23.5%
Transportation	\$1,234,060	\$1,416,912	\$1,381,968	\$1,469,408	\$1,419,536	15.0%
Construction	(\$65,472)	(\$39,858)	(\$84,133)	(\$73,020)	(\$25,973)	(60.3%)
Business to Business	(\$44,752)	(\$178,203)	(\$400,933)	(\$456,249)	(\$301,318)	573.3%
Miscellaneous	(\$42,441)	(\$44,303)	(\$55,256)	(\$53,073)	(\$54,413)	28.2%
TOTAL	\$359,252	\$489,412	(\$21,640)	\$25,948	\$228,998	(36.3%)

Source: MuniServices and Claritas

OFFICE

TABLE 31 MORGAN HILL OFFICE VACANCY (2013-2017)

Gross Office Vacancy (2013-2017)						
	2013	2014	2015	2016	2017	% Change
Vacant Square Footage	185,842	163,047	86,369	48,725	33,537	-82.0%

Source: Colliers International

TABLE 32 MORGAN HILL OFFICE ASKING RENTS (2013-2017)

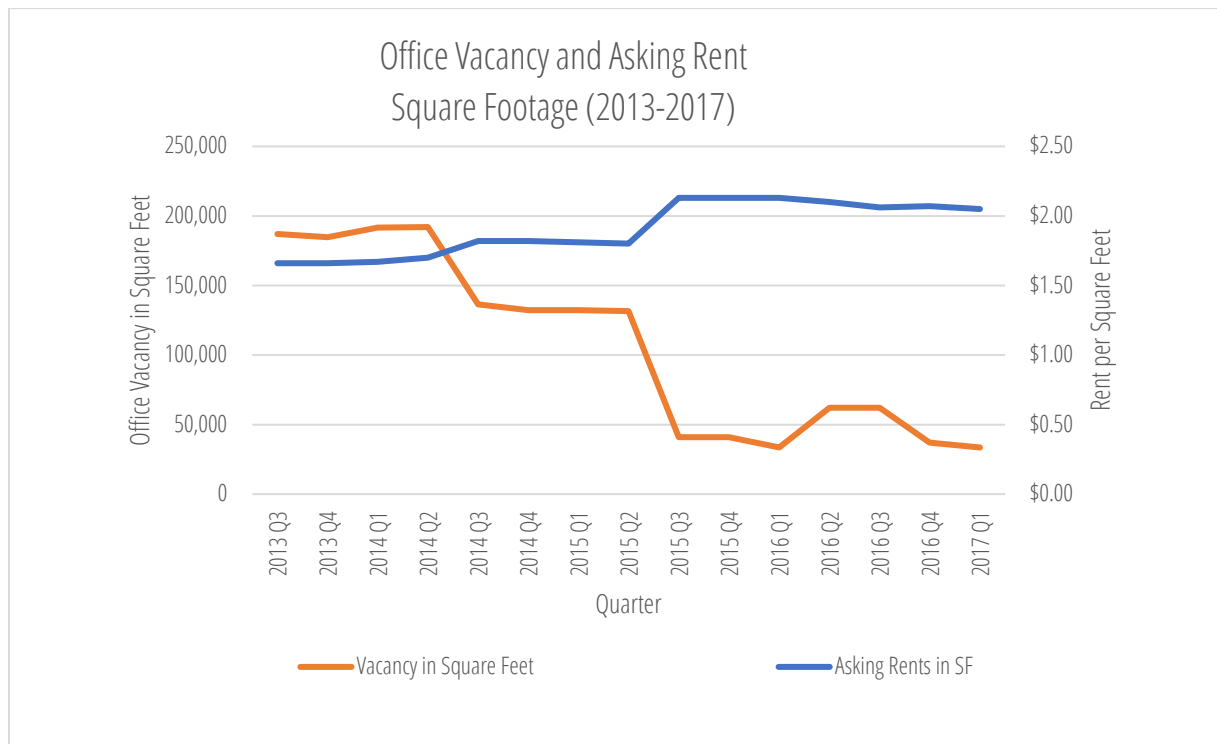
Morgan Hill Office Asking Rent (2013-2017)						
	2013	2014	2015	2016	2017	% Change
Rent/SF/month	\$1.66	\$1.75	\$1.97	\$2.09	\$2.05	23.5%

Source: Colliers International

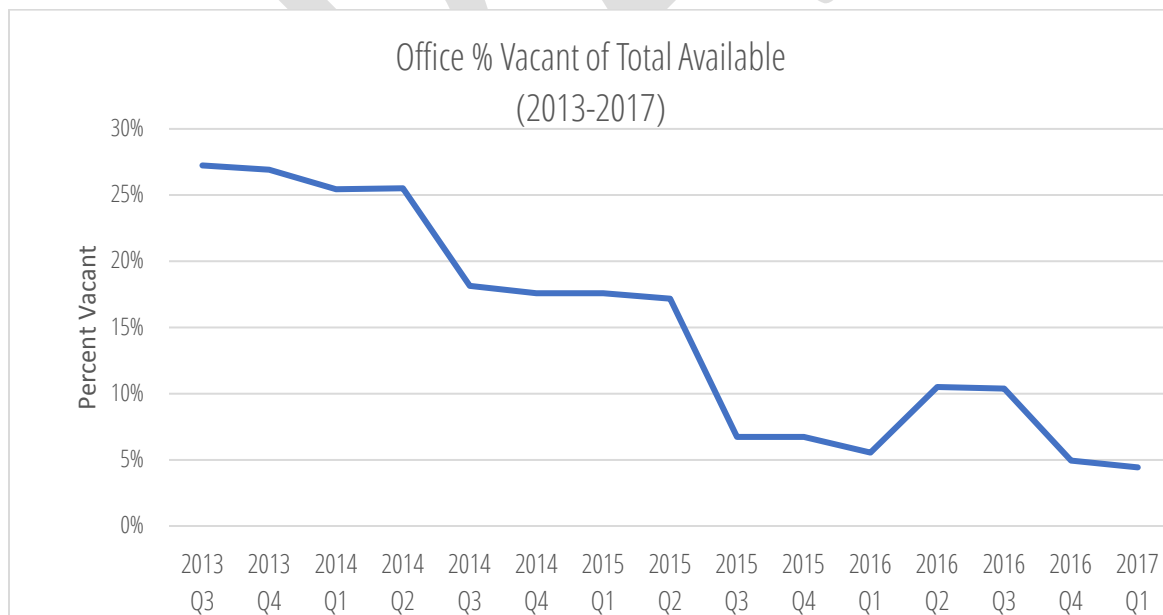
TABLE 33 MORGAN HILL OFFICE INVENTORY (2013-2017)

Gross Office Inventory (2013-2017)						
	2013	2014	2015	2016	2017	% Change
Total Square Footage	686,249	752,452	683,136	636,545	757,379	10.4%

Source: Colliers International

FIGURE 4 OFFICE VACANCIES AND ASKING RENT

Source: Colliers International

FIGURE 5 OFFICE VACANCY PERCENT OF TOTAL SF

Source: Colliers International

RESIDENTIAL

TABLE 35 MEDIAN HOME SALES PRICE CHANGE

Median Single-Family Home Sales Price Change (2011-2017)								
2011	2012	2013	2014	2015	2016	2017 (Jan - Apr)	Difference (2011 - 2017)	% Change (2011 - 2017)
City of Morgan Hill								
\$534,308	\$546,025	\$646,767	\$705,700	\$759,208	\$812,050	\$840,875	\$306,567	57.4%
Santa Clara County								
\$575,358	\$605,242	\$715,917	\$794,217	\$898,775	\$972,958	\$1,004,000	\$428,642	74.5%
State of California								
\$314,650	\$315,450	\$369,108	\$412,975	\$439,367	\$470,575	\$493,200	\$178,550	56.8%

Source: Zillow; Median Home Value – Zillow Home Value Index; ZHVI Single-Family Homes Time Series and ZHVI Condo/Co-op Time Series (\$). Median home sale prices are estimated by Zillow per Zillow Home Value Index Methodology, which involves modelling that results in minimal statistical error between estimated sales prices and actual sales prices.

TABLE 36 MEDIAN HOME RENTAL PRICE CHANGE

Median Home Rental Price Change (2011-2017)								
2011	2012	2013	2014	2015	2016	2017 (Jan - Apr)	Difference (2011 - 2017)	% Change (2011 - 2017)
City of Morgan Hill								
\$2,462	\$2,490	\$2,547	\$2,740	\$3,163	\$3,361	\$3,379	\$917	37.3%
County of Santa Clara								
\$2,434	\$2,511	\$2,636	\$2,917	\$3,342	\$3,512	\$3,474	\$1,040	42.7%
State of California								
\$1,911	\$1,902	\$1,951	\$2,040	\$2,222	\$2,344	\$2,408	\$498	26.0%

Source: Zillow; Median Home Value – Zillow Home Value Index; ZHVI Single-Family Homes Time Series and ZHVI Condo/Co-op Time Series (\$). Median home sale prices are estimated by Zillow per Zillow Home Value Index Methodology, which involves modelling that results in minimal statistical error between estimated sales prices and actual sales prices.

TABLE 37 OCCUPIED HOUSING UNITS BY TENURE

Occupied Housing Units By Tenure (2015)						
	City of Morgan Hill		Santa Clara County		State of California	
	Estimate	%	Estimate	%	Estimate	%
Total	13,460	N/A	N/A	12,717,801	N/A	N/A
Owner Occupied	9,544	70.9%	56.8%	6,909,176	54.3%	56.8%
Renter Occupied	3,916	29.1%	43.2%	5,808,625	45.7%	43.2%

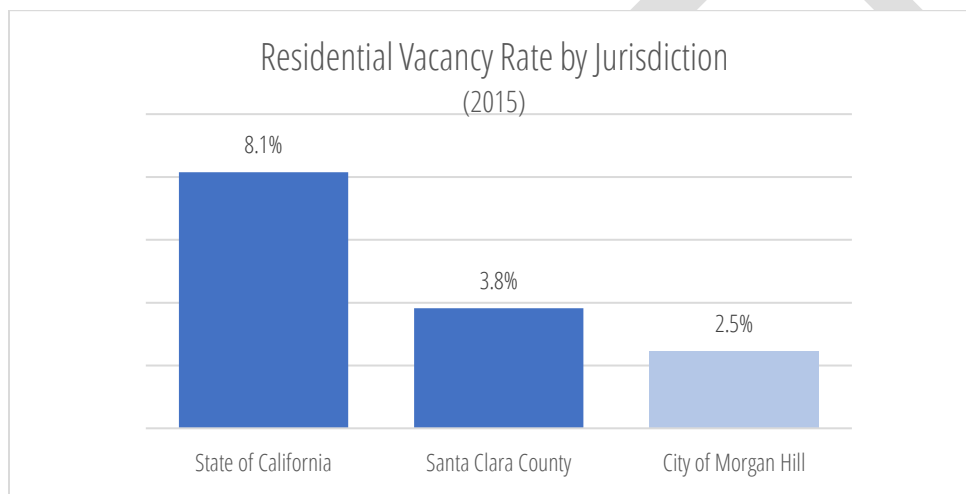
Source: U.S. Census American Community Survey 5-Year Estimate, Table DP04

TABLE 38 RESIDENTIAL VACANCY RATE BY JURISDICTION (2015)

Residential Vacancy Rate (2015)			
	City of Morgan Hill	Santa Clara County	State of California
Occupied	13,460	621,463	12,717,801
Vacant	339	24,727	1,127,989
Total	13,799	646,190	13,845,790
Percent Vacant	2.5%	3.8%	8.2%

Source: U.S. Census American Community Survey 5-Year Estimate, Table DP04

FIGURE 6 RESIDENTIAL VACANCY RATE BY JURISDICTION (2015)



Source: U.S. Census American Community Survey 5-Year Estimate, Table DP04

TABLE 39 VACANT HOUSING UNITS

Vacant Housing Units (2015)						
	City of Morgan Hill		Santa Clara County		State of California	
	Estimate	%	Estimate	%	Estimate	%
Total:	339	N/A	24,727	N/A	1,127,989	N/A
For rent	43	12.7%	7,549	30.5%	248,662	22.0%
Rented, not occupied	0	0.0%	2,460	10.0%	56,694	5.0%
For sale only	143	42.2%	2,382	9.6%	100,608	8.9%
Sold, not occupied	0	0.0%	1,496	6.1%	51,716	4.6%
For seasonal, recreational, or occasional use	84	24.8%	3,460	14.0%	367,882	32.6%
For migrant workers	0	0.0%	0	0.0%	2,934	0.3%
Other vacant	69	20.4%	7,380	29.9%	299,493	26.6%

Source: U.S. Census American Community Survey 5-Year Estimate, Table B25004

TABLE 40 MORGAN HILL HOUSING STOCK BY TYPE OF UNIT

Morgan Hill Housing Stock by Unit Type (2000-2015)						
Type of Unit	2010	%	2013	%	2015	%
1 unit, detached	7,874	61.5%	8,067	61.4%	8,684	62.9%
1 unit, attached	1,866	14.6%	1,873	14.3%	1,797	13.0%
2 to 4 units	794	6.2%	1,148	8.7%	1,167	8.5%
5+ units	1,039	8.1%	1,104	8.4%	1,272	9.2%
Mobile homes, RV, Van, Etc.	1,222	9.6%	941	7.2%	879	6.4%
Total	12,795	100.0%	13,133	100.0%	13,799	100.0%

Source: U.S. Census American Community Survey 5-Year Estimate, Table DP04

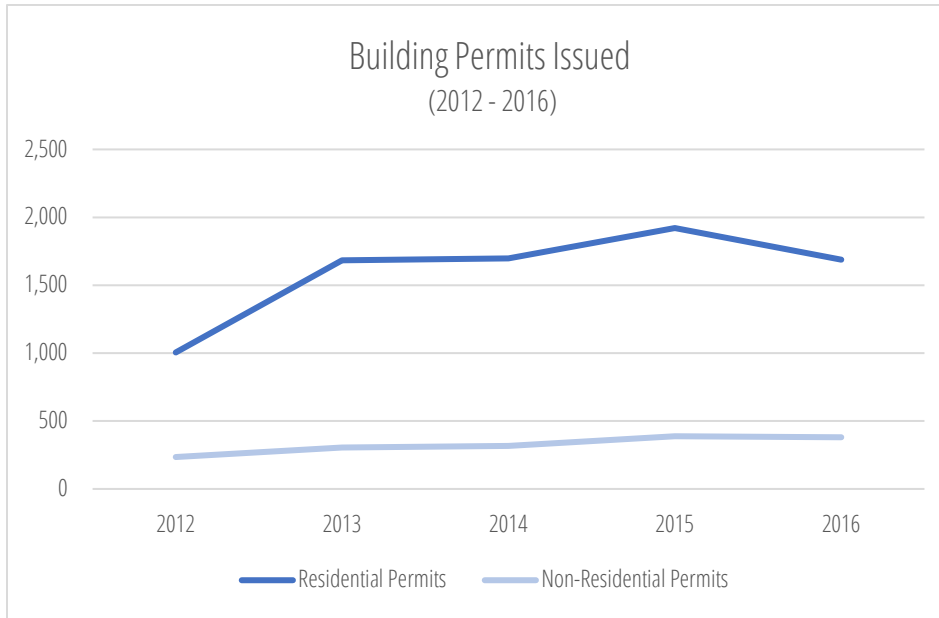
TABLE 41 MORGAN HILL HOUSING STOCK BY AGE

City of Morgan Hill Age of Housing Stock by Year Built (2015)		
Year Structure Built	Number of Units	Percent
Built 2014 or later	92	0.7%
Built 2010 to 2013	324	2.4%
Built 2000 to 2009	2,042	14.8%
Built 1990 to 1999	3,031	22.0%
Built 1980 to 1989	3,014	21.8%
Built 1970 to 1979	3,625	26.3%
Built 1960 to 1969	713	5.2%
Built 1950 to 1959	391	2.8%
Built 1940 to 1949	291	2.1%
Built 1939 or earlier	276	2.0%
Total	13,799	100.0%

Source: U.S. Census American Community Survey 5-Year Estimate, Table B25126

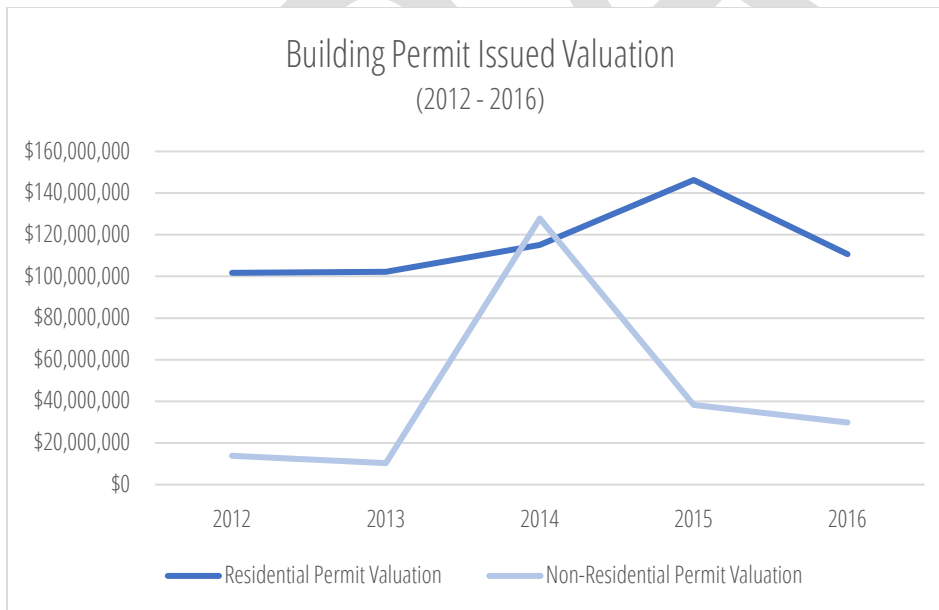
BUILDING PERMITS

FIGURE 7 MORGAN HILL BUILDING PERMITS ISSUED



Source: City of Morgan Hill Permit Summary by Type; LWC

FIGURE 8 MORGAN HILL BUILDING PERMITS ISSUED - VALUATION



Source: City of Morgan Hill Permit Summary by Type; LWC

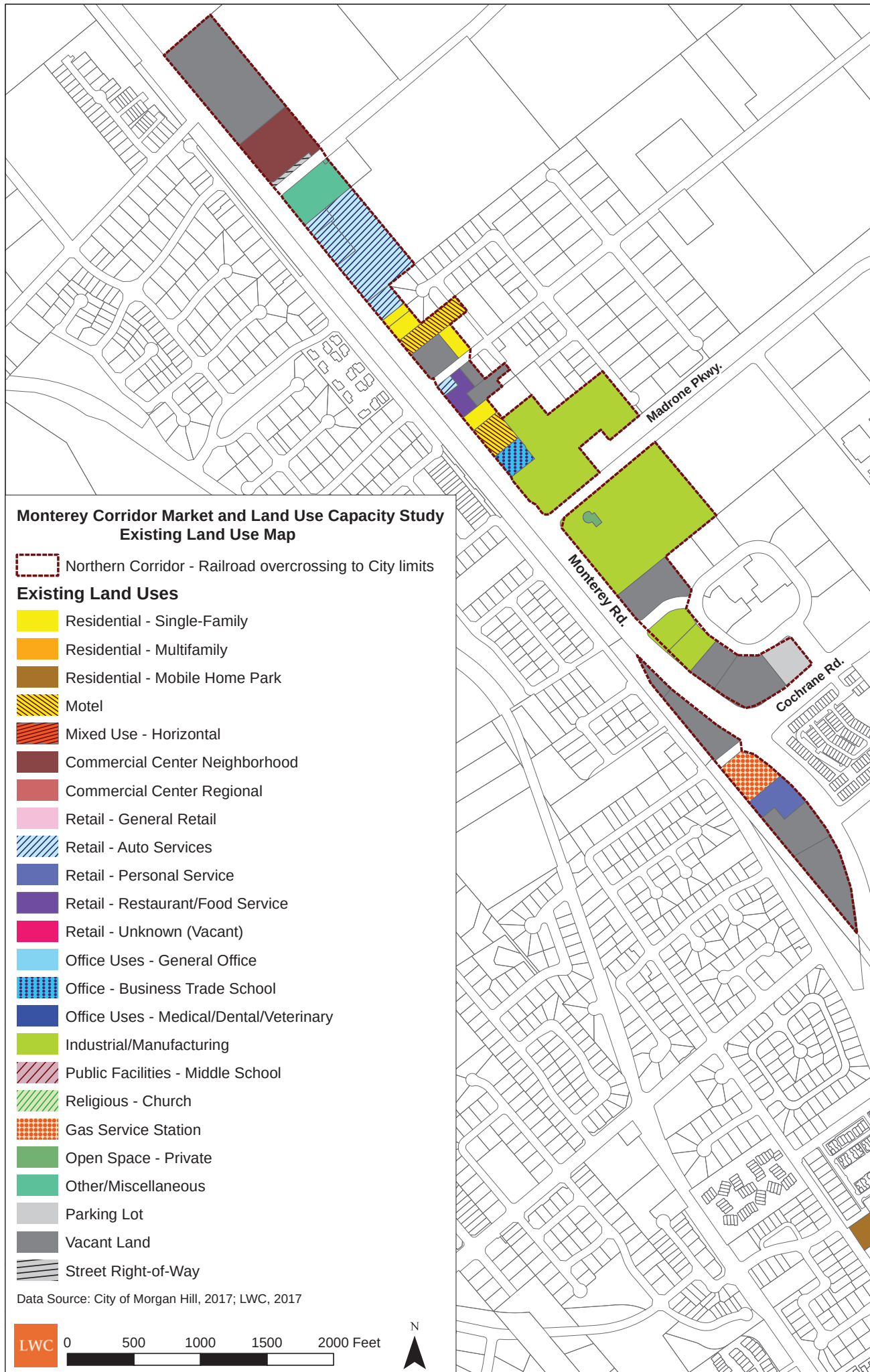
TABLE 42 MORGAN HILL BUILDING PERMITS ISSUED AND VALUATIONS

Building Permits Issued & Valuation (2012-2016)						
	2012	2013	2014	2015	2016	Percent Change (2012-2016)
Residential Permits	1,005	1,684	1,697	1,921	1,687	67.9%
Residential Permit Valuation	\$101,711,797	\$102,202,155	\$115,089,989	\$146,292,407	\$110,731,679	8.9%
Non-Residential Permits	235	304	316	388	380	61.7%
Non-Residential Permit Valuation	\$13,830,273	\$10,314,167	\$127,788,457	\$38,348,932	\$29,851,433	115.8%

Source: City of Morgan Hill Permit Summary by Type; LWC

APPENDIX B – STUDY AREA INVENTORY

DRAFT



Monterey Corridor Market and Land Use Capacity Study
Existing Land Use Map

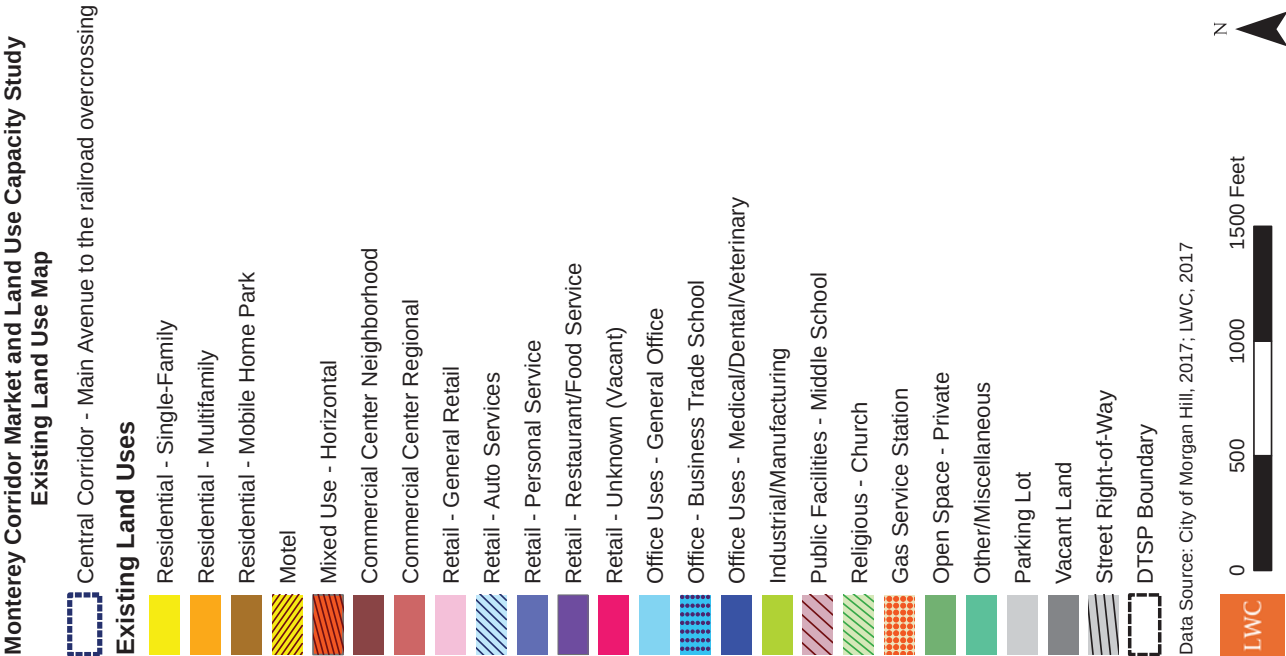
Northern Corridor - Railroad overcrossing to City limits

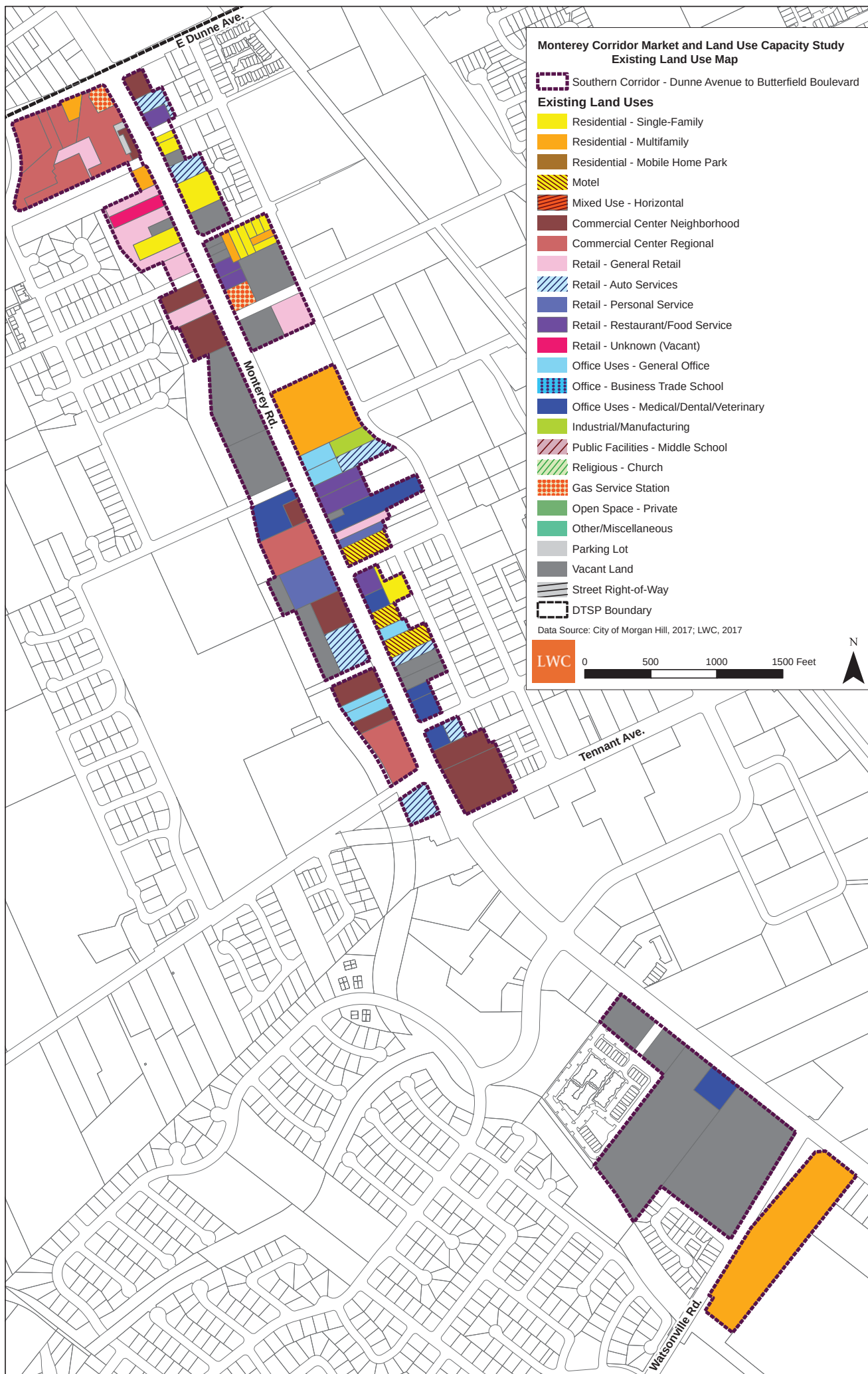
Existing Land Uses

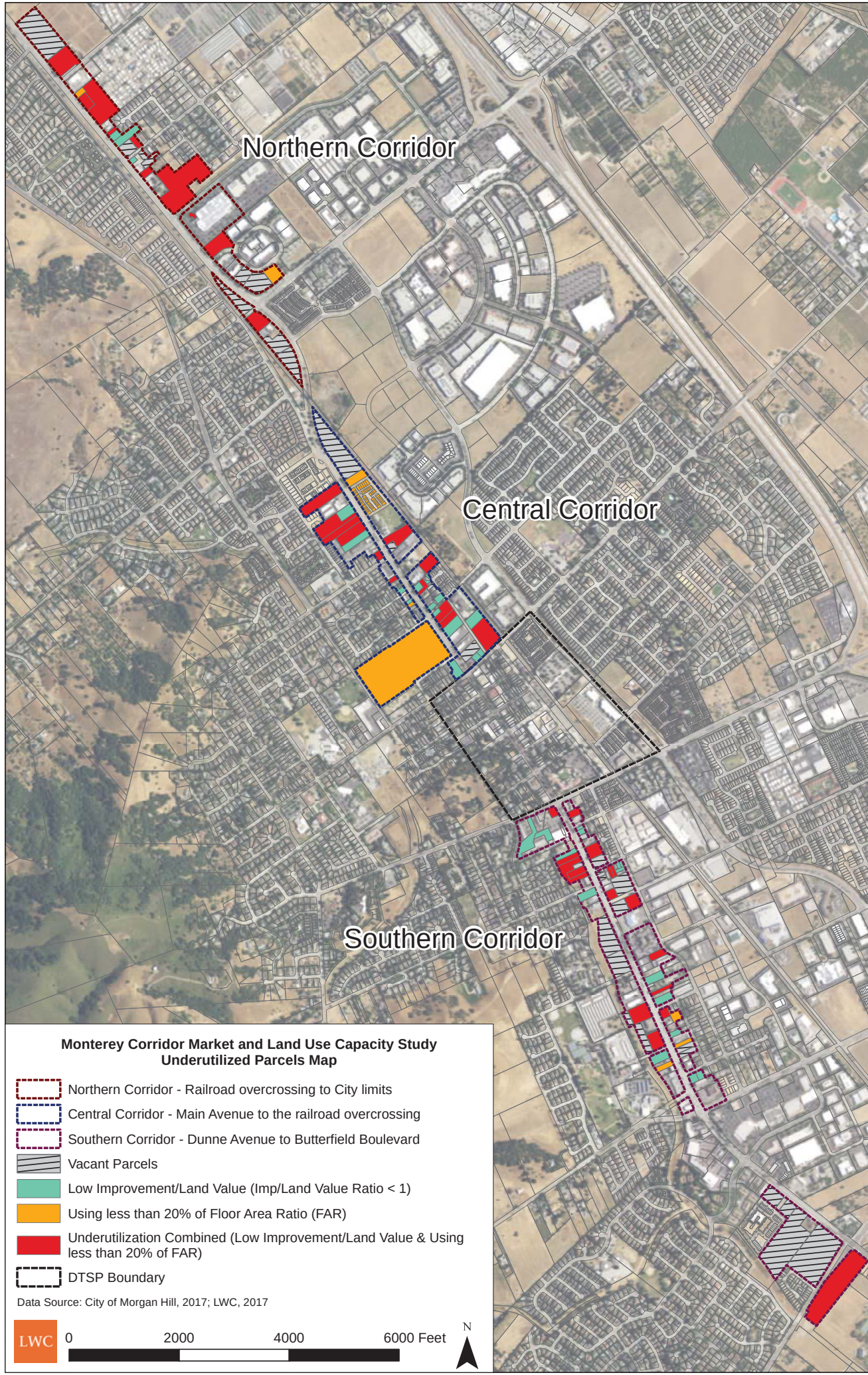
- Residential - Single-Family
- Residential - Multifamily
- Residential - Mobile Home Park
- Motel
- Mixed Use - Horizontal
- Commercial Center Neighborhood
- Commercial Center Regional
- Retail - General Retail
- Retail - Auto Services
- Retail - Personal Service
- Retail - Restaurant/Food Service
- Retail - Unknown (Vacant)
- Office Uses - General Office
- Office - Business Trade School
- Office Uses - Medical/Dental/Veterinary
- Industrial/Manufacturing
- Public Facilities - Middle School
- Religious - Church
- Gas Service Station
- Open Space - Private
- Other/Miscellaneous
- Parking Lot
- Vacant Land
- Street Right-of-Way

Data Source: City of Morgan Hill, 2017; LWC, 2017









Northern Corridor

Central Corridor

Southern Corridor

**Monterey Corridor Market and Land Use Capacity Study
Underutilized Parcels Map**

- Northern Corridor - Railroad overcrossing to City limits
- Central Corridor - Main Avenue to the railroad overcrossing
- Southern Corridor - Dunne Avenue to Butterfield Boulevard
- Vacant Parcels
- Low Improvement/Land Value (Imp/Land Value Ratio < 1)
- Using less than 20% of Floor Area Ratio (FAR)
- Underutilization Combined (Low Improvement/Land Value & Using less than 20% of FAR)
- DTSP Boundary

Data Source: City of Morgan Hill, 2017; LWC, 2017

LWC 0 2000 4000 6000 Feet



APPENDIX C – COMMERCIAL CAPACITY ASSESSMENT CALCULATION SHEETS

DRAFT

City of Morgan Hill
Monterey Corridor Market & Land Use Capacity Study
Prepared by Lisa Wise Consulting, Inc.

**COMMERCIAL CAPACITY ANALYSIS
SUMMARY**

Commercial Capacity Assessment Results (Sq. Ft.)				
	Method	Low	High	Average
1	Capacity Based on Inventory	597,058	1,551,150	1,074,104
2	Commercial Sq. Ft. per Capita	215,755	215,755	215,755
3	Commercial Sq. Ft. per Job	434,106	434,106	434,106
4	Projected Residential Growth	(1,353,142)	927,086	(213,028)
5	Retail Leakage	(15,895)	(15,895)	(15,895)
	Median	215,755	434,106	215,755
	Average	(24,423)	622,440	299,008

Notes

1. Where a method produced a single result (i.e., not low and high), that single result is identified in the low, high, and average columns.

City of Morgan Hill
Monterey Corridor Market & Land Use Capacity Study
Prepared by Lisa Wise Consulting, Inc.

COMMERCIAL CAPACITY ANALYSIS

METHOD 1 - COMMERCIAL CAPACITY BASED ON EXISTING LAND USE INVENTORY

Results	
Net Maximum FAR Capacity (Sq. Ft.) ¹	1,551,150
Net Stable FAR Capacity (Sq. Ft.) ¹	597,058

Notes

1. See Net Maximum FAR and Net Stable FAR totals in table below.

Sources: City of Morgan Hill; LWC

Assumptions

Parcels with buildings currently occupying less than 20% of the maximum developable floor area ratio (FAR) will redevelop.

Public institutional uses (e.g., schools, community centers), residential uses, private open space, churches, parcels dedicated to public utilities, and historic structures will not redevelop and are not included.

Entitled projects will develop as entitled.

Maximum FAR capacity is 0.5 FAR for commercial/limited-use parcels and 0.6 FAR for industrial parcels. FAR reflects current development standards. A retail (non-office commercial) project would typically have a lower FAR, around 0.25, mostly due to increased parking.

Stable FAR is the median FAR for study area parcels that are not vacant (0.19 FAR).

APN	Address	Existing Land Use	Business Name(s)	Parcel Acres	Building Sq Ft	FAR (Building Sq Ft / Acre)	Maximum Developable FAR	Utilization - Percentage of Maximum Developable FAR	Under Capacity (% of Units < 20% of allowed FAR per GP Designation)	Net Maximum FAR Sq Ft	Stable FAR Capacity (Sq Ft)	Net Stable FAR (Sq Ft)	General Plan Designation	Zoning
72624018	325 COCHRANE CL	Parking Lot		1.18	5,140	0	0.00	0%	0%	30,241	9,766	9,766 Industrial	ML	ML
72624019	420 COCHRANE CL	Parking Lot		1.08	4,704	0	0.00	0%	0%	50,666	16,705	16,705 Industrial	ML	ML
72624023	320 COCHRANE CL	Vacant Land		2.1	9,147	0	0.00	0%	0%	54,866	17,380	17,380 Industrial	ML	ML
81702025	SAN PEDRO AV	Vacant Land		1.42	6,185	0	0.00	0%	0%	30,928	11,752	11,752 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626007	ROSE AV	Vacant Land		0.55	2,958	0	0.00	0%	0%	11,979	4,502	4,502 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626008	MONTEREY RD	Parking Lot		5.8	23,395	0	0.00	0%	0%	126,976	48,231	48,231 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626009	MONTEREY RD	Parking Lot		0.01	436	0	0.00	0%	0%	218	83	83 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	MONTEREY RD	Vacant Land		0.25	10,890	0	0.00	0%	0%	5,445	2,060	2,060 Commercial	CG	CG
72626011	MONTEREY RD	Parking Lot		0.32	1,430	0	0.00	0%	0%	22,651	8,601	8,601 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626019	MONTEREY RD	Parking Lot		0.32	1,430	0	0.00	0%	0%	22,651	8,601	8,601 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626020	MONTEREY RD	Vacant Land		1.1	4,791	0	0.00	0%	0%	23,958	9,104	9,104 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626026	MONTEREY RD	Vacant Land		1.1	4,791	0	0.00	0%	0%	23,958	9,104	9,104 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626027	COMO AV	Vacant Land		2.03	8,842	0	0.00	0%	0%	44,214	16,801	16,801 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626031	55 E MAIN AV	Retail - Auto Services		2.52	10,971	300	0.03	5%	0%	54,866	20,956	20,956 Mixed Use	CL-R	CL-R
72626061	30 FEEBLES AV	Vacant Land	A Tool Shed Equipment Rentals	0.34	1,064	0	0.00	0%	0%	5,227	1,986	1,986 Mixed Use (7.24 du/ac)	ML	ML
72626062	30 FEEBLES AV	Vacant Land		0.39	394	0	0.00	0%	0%	19,602	7,449	7,449 Mixed Use (7.24 du/ac)	CS	CS
72626063	11000 MONTEREY RD	Retail - Auto Services	NA - Scrapyard	0.31	1,924	625	0.05	5%	0%	6,762	2,566	2,566 Mixed Use (7.24 du/ac)	CS	CS
72626064	19380 MONTEREY RD	Retail - Auto Services	Family RV	0.74	3,234	360	0.01	0%	0%	16,117	15,757	6,124 Mixed Use (7.24 du/ac)	CS	CS
72626202	19380 MONTEREY RD	Retail - Auto Services	Family RV	3.33	17,131	600	0.04	0%	7%	85,596	79,596	33,520 Mixed Use (7.24 du/ac)	CS	CS
72626201	18625 MONTEREY RD	Vacant Land		1.25	5,445	0	0.00	0%	0%	27,225	10,346	10,346 Commercial	PGD	PGD
72626008	76410008	Vacant Land		1.6	6,666	360	0.00	0%	0%	34,446	13,442	13,442 Commercial	PGD	PGD
72626015	18665 MONTEREY RD	Vacant Land		1.6	6,666	360	0.00	0%	0%	34,446	13,442	13,442 Commercial	PGD	PGD
72626013	18645 MONTEREY RD	Vacant Land		2.22	9,693	0	0.00	0%	0%	48,352	18,374	18,374 Commercial	ML	ML
72626006	18170 MONTEREY RD	Vacant Land		6.69	29,146	0	0.00	0%	0%	145,708	53,469	53,360 Mixed Use (7.24 du/ac)	ML	ML
72626204	18170 MONTEREY RD	Retail - Auto Services	No name	1.34	5,992	108	0.02	3%	0%	33,445	12,445	12,445 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626002	17920 MONTEREY RD	Retail - Auto Services	Prote Auto Repair	1.55	6,751	3516	0.05	10%	0%	33,759	30,243	12,828 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626003	17920 MONTEREY RD	Gas Services Station		0.4	1,742	126	0.07	14%	0%	8,712	3,311	3,311 Commercial	CG	CG
72626202	17920 MONTEREY RD	Parking Lot		0.19	476	0	0.00	0%	0%	4,158	1,572	1,572 Mixed Use (7.24 du/ac)	CG	CG
72626049	17770 MONTEREY RD	Office Uses - General Office	1) Prospectors Property Management 2) Bailey's Property Accountant 3) Bailey's Property Admin	0.72	3,193	2648	0.08	0%	17%	15,682	13,034	5,990 Mixed Use (7.24 du/ac)	CL-R with PD Overlay	CL-R with PD Overlay
72626009	17555 MC LAUGHLIN CT	Vacant Land		0.15	6534		0.00	0%	0%	3,267	1,241	1,241 Mixed Use (7.24 du/ac)	ML	ML
72626012	72626012	Office Uses - General Office	Farmers Insurance	0.68	2,961	2196	0.07	0%	0%	14,811	12,655	5,628 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626013	16950 MONTEREY RD	Gas Services Station	Golden Eagle Gas	0.37	1,672	1072	0.07	13%	0%	8,059	3,062	3,062 Mixed Use	PGD	PGD
72626009	16950 MONTEREY RD	Gas Services Station	Golden Eagle Gas	0.37	1,672	1072	0.07	13%	0%	8,059	3,062	3,062 Mixed Use	PGD	PGD
81701051	16040 MONTEREY RD	Retail - Auto Services	Torini & Country Car Wash	0.48	2,019	912	0.04	0%	0%	10,455	9,543	3,973 Mixed Use	CG-R	CG-R
72626002	16835 MONTEREY RD	Retail - Unknown (Vacant)		0.38	2,585	1534	0.06	0%	12%	12,881	11,999	4,800 Mixed Use	CG	CG
72626003	16825 MONTEREY RD	Retail - General of Retail	Sun Shine Bicycles	1.745	9,162	1760	0.03	0%	0%	25,621	16,001	16,001 Mixed Use	CG	CG
72626015	16702 MONTEREY RD	Gas Services Station		0.48	2,020	927	0.04	0%	0%	10,455	9,543	3,973 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626016	16685 CHURCH ST	General Office Retail	Sew Bee's Quilting	0.26	2,342		0.06	13%	0%	17,262	7,448	7,448 Mixed Use (7.24 du/ac)	ML	ML
72626009	16595 MONTEREY RD	Vacant Land		2.33	12,931	0	0.00	0%	0%	63,816	24,550	24,550 Mixed Use (7.24 du/ac)	CL-R	CL-R
81702008	16485 CHURCH ST	Industrial/Manufacturing		0.6	2636	1800	0.07	0%	14%	13,868	4,966	4,966 Commercial	CG	CG
72626009	16380 MONTEREY RD	Vacant Land		0.09	3920	0	0.00	0%	0%	1,960	745	745 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626016	16340 MONTEREY RD	Retail - General of Retail	Sourcream Creamery	0.4	1,742	680	0.04	0%	0%	8,712	3,311	3,311 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626009	16350 MONTEREY RD	Retail - Personal Service	21 The Daily Method	1.57	6,889	3800	0.06	0%	11%	30,395	12,994	12,994 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16290 MONTEREY RD	Retail - Restaurant/Food Service	Li's Costa	0.43	1,831	1150	0.04	0%	12%	9,366	3,559	3,559 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY RD	Retail - Auto Services	Li's Costa Car Wash & Gift Shop	1.13	4,923	2160	0.04	0%	0%	24,921	9,552	9,552 Mixed Use (7.24 du/ac)	CL-R	CL-R
72626010	16225 MONTEREY													

City of Morgan Hill
Monterey Corridor Market & Land Use Capacity Study
Prepared by Lisa Wise Consulting, Inc.
COMMERCIAL CAPACITY ANALYSIS
METHOD 2 - COMMERCIAL SQUARE FOOTAGE PER CAPITA

Results				
Commercial Space Type ¹	Commercial Space (Sq. Ft.) Per Capita (2016)	Projected Population Increase (2016 to 2035)	Projected Commercial Space Growth Citywide (Sq. Ft.)	Projected Commercial Space Growth in the Study Area (Sq. Ft.)
Retail	43	14,716	632,788	160,959
Office	15		215,422	54,796
Total	58		848,210	215,755
Average Total Retail Sq. Ft. Citywide (2016)				
Average Total Office Sq. Ft. Citywide (2016)				
Total Citywide Commercial Sq. Ft. (2016)				
Total Commercial Sq. Ft. in the Study Area ²				
Percent of Citywide Commercial Sq. Ft. Located in the Study Area				
National average retail Sq. Ft. per capita ³				
Morgan Hill Population (2016)				
Retail Sq. Ft. in Morgan Hill based on national average (2016)				
Total Citywide Commercial Sq. Ft. based on national average (2016)				
Residential Development Control System 2035 Population Cap				

Notes

1. "Retail" and "office" are defined in the Monterey Corridor Market Analysis (December 2017).
 2. See total Building Sq. Ft. in table below.
 3. The national average is approximately 46 sq. ft. of retail space per capita, with most metropolitan areas having between 40 to 55 sq. ft. per capita.
- Sources: The Concord Group (CoStar, Reis); City of Morgan Hill, Colliers International; California Department of Finance; JLI; LWC

Assumptions

Non-commercial parcels are not considered in the total commercial building square foot calculation (i.e., industrial/manufacturing; open space; street right-of-ways; preschools and middle-schools; public utilities; churches; residential uses).
The proportion of existing commercial square footage in the Study Area to citywide commercial square footage will remain stable.
Commercial space per capita will remain stable.
2035 population will reach the Residential Development Control System cap of 58,200.

APN	Address	Existing Land Use	Business Name(s)	Parcel Sq. Ft.	Building Sq. Ft.
76723009	15585 MONTEREY RD	Office Uses - Medical/Dental/Veterinary	Pamela Stuart MD	39640	7100
76723030	15335 MONTEREY RD	Vacant Land		353272	0
76723016	15335 MONTEREY RD	Vacant Land		0	0
76723016	520 COCHRANE CL	Parking Lot		51401	0
76723017	480 COCHRANE CL	Vacant Land		98446	0
76723016	440 COCHRANE CL	Vacant Land		47045	0
76723013	320 COCHRANE CL	Vacant Land		91476	0
81702025	SAN PEDRO AV	Vacant Land		61855	0
76723007	ROSE AV	Vacant Land		23958	0
72501018	MONTEREY RD	Vacant Land		253955	0
76413020	MONTEREY RD	Parking Lot		436	0
76410006	MONTEREY RD	Vacant Land		10890	0
76724019	MONTEREY RD	Parking Lot		45302	0
81701018	MONTEREY RD	Vacant Land		8712	0
76718046	MONTEREY RD	Vacant Land		47916	0

76718036	16165 MONTEREY RD	Commercial Center Neighborhood	1) MicroArtistry 2) California Prenatal Imaging 3) Pure Skin & Body 4) All About Seniors Care 5) Dunne Insurance	18731	10390
76723019	E MAIN AV	Retail - Auto Services		0	0
76717047	COSMO AV	Vacant Land		88427	0
76623018	95 E MAIN AV	Retail - Auto Services	ATool Shed Equipment Rentals	109771	3000
76623006	35 E MAIN AV	Retail - Restaurant/Food Service	La Nina Perdida	10890	1467
76636010	30 PEBBLES AV	Vacant Land		10454	0
76641065	25 PEBBLES AV	Vacant Land		39204	0
76501032	19500 MONTEREY RD	Commercial Center Neighborhood		110642	5780
76642010	19490 MONTEREY RD	Other - Construction Yard & Office		80586	18004
76642003	19400 MONTEREY RD	Retail - Auto Services	Irish Communication Co	13504	625
76642002	19380 MONTEREY RD	Retail - Auto Services	NA - Scrapyard	32234	360
76642001	19380 MONTEREY RD	Retail - Auto Services	Family RV	171191	6000
76641018	19240 MONTEREY RD	Retail - Auto Services	Superior Automotive & Radiator Services	23958	12532
76641018	19240 MONTEREY RD	Motel	Budget Inn Motel	47480	8587
76636008	19150 MONTEREY RD	Retail - Auto Services	Ponzi's Community Garage	6970	3088
76636008	19080 MONTEREY RD	Retail - Restaurant/Food Service	1) Barber Shop	17860	6700
76636003	19010 MONTEREY RD	Motel	Rancho Motel	36590	5118
76636002	18980 MONTEREY RD	Office - Business Trade School	MMS Behavioral Day Program	28314	4060
76410008	18675 MONTEREY RD	Vacant Land		54450	0
76410010	18605 MONTEREY RD	Gas Service Station		56192	3600
76410014	18585 MONTEREY RD	Retail - Personal Service	1) Artistry salon 2) Blank salon 3) Starbucks	46174	6740
76410015	18585 MONTEREY RD	Vacant Land		69696	0
76410013	18545 MONTEREY RD	Vacant Land		96703	0
76262006	18110 MONTEREY RD	Vacant Land		291416	0
76412024	18025 MONTEREY RD	Other - Storage	StorageMart	89734	49397
76412003	17995 MONTEREY RD	Retail - Auto Services	Rocco's Auto Body	37462	5330
76412006	17980 MONTEREY RD	Office - Business Trade School	No name	67082	1058
76262003	17960 MONTEREY RD	Office - Business Trade School	Wegman Hill Community Adult School	148975	151242
76412007	17945A MONTEREY RD	Retail - Auto Services	1) A. Muller & Brake 2) Strong on Motors & Small Engines	44867	7475
76262002	17920 MONTEREY RD	Retail - Auto Services	Pronto Auto Repair	67518	3516
76262001	17910 MONTEREY RD	Vacant Land		14810	1592
76412020	17905 MONTEREY RD	Gas Service Station		17434	1245
76413075	17865 MONTEREY RD	Commercial Center Neighborhood	From Google and Yelp: 1) J & S Signs & Fashions 2) Super El Grullense 3) La Soledad Bakery 4) Jose Barber Shop 5) Sunlight Landromat 6) La Chesa Taqueria	35719	9550
76413022	17845 MONTEREY RD	Parking Lot		8276	0
76413045	17775 MONTEREY RD	Office Uses - General Office	Real Estate Solutions	5227	1379
76624049	17770 MONTEREY RD	Office Uses - General Office	1) Prospectors Property Management 2) Bradley A Leach, Accountant 3) Vacant - up for lease	31363	2648
76624009	17755 MC LAUGHLIN CT	Office Uses - General Office	1) Vacant - up for lease 2) The Pauchon Research Foundation 3) Healthy Concepts 4) Mouse Mania Cuts 5) Vacant - up for lease 6) Beau J. Jacob Attorney at Law	14810	6765
76413048	17735 MONTEREY RD	Vacant Land		6534	0
76623014	17698 MONTEREY RD	Commercial Center Neighborhood	Dani Delite Drive-In	15246	2456
76623012	17680 MONTEREY RD	Office Uses - General Office	1) Donuts N Things 2) Family Hair Care Farmers Insurance	13068	2450
76623011	17660 MONTEREY RD	Mixed Use - Horizontal	1) Milton Acupuncture 2) Body Lab	43996	7604
76623010	17650 MONTEREY RD	Retail - Auto Services	NAPA Auto Parts	43996	8400
76623009	17650 MONTEREY RD	Retail - General Retail	Goodwill	43996	6250
76623008	17650 MONTEREY RD	Vacant Land		43996	0
76416029	17605 MONTEREY RD	Retail - Restaurant/Food Service	El Toro Brewpub	27878	7257
76623007	17600 MONTEREY RD	Office Uses - Medical/Dental/Veterinary	1) Ricardo Perez, MD, APC 2) Joseph R. Ferrito, AUD, Associates	14810	5849
76624014	17720 MONTEREY RD	Funeral Home/Mortuary	3) Van Keulen & van Keulen, Mortuary	18731	7658
76709019	16999 MONTEREY RD	Commercial Center Regional	1) Variant Comics & Collectibles 2) Borshay Hair & Beauty 3) Blinds 4 Design 4) Canine Concepts 5) Las Delicias Ice Cream & Bontanitas 6) Mr. Scissors 7) Chaks Place 8) Suzanne's Hair Salon & Boutique 9) Tacos Jalisco H.	30056	8720
76709009	16995 MONTEREY RD	Gas Service Station	10) Main Street Barber Shop Golden Eagle Gas	16117	1072

81702059	16390 MONTEREY RD	Commercial Center Neighborhood	1) Jung Hee Hong Dentist 2) Morgan Hill Discount Cleaners	20473	4696
76709018	16385 MONTEREY RD	Commercial Center Regional	3) Via Mia Piza 1) A.K. Rehm Inc	57064	13470
76709017	16375 MONTEREY RD	Commercial Center Regional	Dollar Tree	64033	18300
76709016	16365 MONTEREY RD	Commercial Center Regional	1) Pho Morgan Hill 2) Golden China Restaurant 3) Tailor's Design	47480	10920
76709015	16359 MONTEREY RD	Retail - General Retail	California Sports Center	27007	5775
76709010	16355 MONTEREY RD	Commercial Center Regional	Ross Dress for Less	84506	23200
81702051	16340 MONTEREY RD	Retail - Auto Services	Town & Country Car Wash	20909	912
81702050	16335 MONTEREY RD	Retail - Restaurant/Food Service	Taco Bell	15682	1580
76709011	16335 MONTEREY RD	Parking Lot		6970	3000
76709012	16305 MONTEREY RD	Commercial Center Neighborhood	1) Teddy Bear Laundromat	9148	4376
81702060	16280 MONTEREY RD	Retail - Auto Services	Advanced Wheels	23522	7350
76702001	16285 MONTEREY RD	Retail - General Retail		21344	3558
76702002	16285 MONTEREY RD	Retail - Unknown (Vacant)	Sun Shine Bicycles	63162	1960
76702004	16285 MONTEREY RD	Vacant Land		8712	900
76702004	16285 MONTEREY RD	Retail - General Retail	Vacant - up for lease	26136	5824
81702007	16275 MONTEREY RD	Vacant Land		5227	1176
81702006	16270 MONTEREY RD	Vacant Land		5227	936
81702005	16270 MONTEREY RD	Vacant Land		5663	1013
81702004	16260 MONTEREY RD	Retail - Restaurant/Food Service	Taqueria	12632	1597
81702003	16250 MONTEREY ST	Retail - Restaurant/Food Service	Round Table Pizza	12139	3924
81702002	16250 MONTEREY RD	Gas Service Station		20669	822
76712051	16215 MONTEREY RD	Commercial Center Neighborhood	1) Paul's Liquor and Market 2) Jasia Motors	40511	5400
81702001	16200 CHURCH ST	Retail - General Retail	Sew Bee It Quilting	39204	2342
76712046	16195 MONTEREY RD	Vacant Land		127631	0
81702009	16455 CHURCH ST	Retail - Auto Services		50094	10698
81702037	16450 MONTEREY RD	Office Uses - General Office	1) Morgan Hill Federation of Teachers 2) Nor Cal Business & Tax Services 3) Waxing at Tiffany's & Spa Services 4) Rumour Has It Salon 5) NL Hair Studio 6) Hair Designs By Deborah At Perfections Salon 1) Cos Softer Total Construction Management, Inc	20038	5396
81702036	16430 MONTEREY RD	Office Uses - General Office	2) New Hair Studio	21780	4712
76718032	16425 MONTEREY RD	Office Uses - Medical/Dental/Veterinary	3) Carlos Bookkeeping Services Cosmo Dental Office	50094	8526
76718002	16415 MONTEREY RD	Commercial Center Neighborhood	1) Metro PCS 2) Vacant - up for lease		
16410B MONTEREY RD	16410B MONTEREY RD	Retail - Restaurant/Food Service	3) Panaderia Ortiz	13939	3933
81702051	16390 MONTEREY ST	Retail - Restaurant/Food Service	Las Isabelas	23958	2726
16380 MONTEREY RD	16380 MONTEREY RD	Vacant Land	Country Store	30928	3500
				3920	0
76718031	16375 MONTEREY RD	Commercial Center Regional	1) Trilogy Salon 2) Collective Strength & Fitness 3) Active Mind & Body Vitality Center LLC 4) Body Care Massage Therapy 5) The Print Shop 6) Shear Color & Design 7) Morgan Hill TV Service & Repair 8) Sabal Beauty & Wellness Body & Skin Care 9) Timeless Barbers 10) Kumon 11) Natural Nails by Lisa 12) Community Chiropractic 13) NV Salon Services 14) California Detail Center	71003	21500
81702017	16360 MONTEREY RD	Office Uses - Medical/Dental/Veterinary	1) Healththerapeutic Massage 2) Lerna Chiropractic	60548	21375
81702016	16340 MONTEREY RD	Retail - General Retail	3) Discover Chiropractic	17424	680
81702015	16330 MONTEREY RD	Retail - Personal Service	Sourcewise	14810	1512
81702014	16310C MONTEREY RD	Motel	Beauty Salon Paradise Motel	33977	3828
76718055	16295 MONTEREY RD	Retail - Personal Service	1) Matinsium 2) The Daily Method		
81703010	16290 MONTEREY RD	Retail - Restaurant/Food Service	3) deJa vu Salon	68389	3800
76718019	16275 MONTEREY RD	Commercial Center Neighborhood	La Costa	18731	1150
81703009	16270 MONTEREY RD	Office Uses - Medical/Dental/Veterinary	1) Martin Group Lending	39640	16190
81703008	16250 MONTEREY RD	Office Uses - Medical/Dental/Veterinary	1) MPET Medical Group	14375	3575
81703006	16230 MONTEREY RD	Office Uses - General Office	2) Awelness Acupuncture	17424	8476
76718020	16225 MONTEREY RD	Retail - Auto Services	Morgan Hill Inn	13604	1720
			Morgan Hill Car Wash & Gift Shop	49223	2106
81703006	16210 MONTEREY RD	Motel	Holiday Hotel	31363	6568

[illegible]

City of Morgan Hill
Monterey Corridor Market & Land Use Capacity Study
Prepared by Lisa Wise Consulting, Inc.

COMMERCIAL CAPACITY ANALYSIS
METHOD 3 - COMMERCIAL SQUARE FOOTAGE PER JOB

Results		Projected Job Increase (2014 to 2035)	Projected Commercial Space Growth Citywide (Sq. Ft.)	Projected Commercial Space Growth in the Study Area (Sq. Ft.)
Commercial Space (Sq. Ft.) Per Job (2014) ¹	225.88	7,903	1,785,130	434,106
Average Total Retail Sq. Ft. Citywide (2014)	2,329,907			
Average Total Office Sq. Ft. Citywide (2014)	752,452			
Total Citywide Commercial Sq. Ft. (2014)	3,082,359			
Total Commercial Sq. Ft. in the Study Area ²	749,565			
Percent of Citywide Commercial Sq. Ft. Located in the Study Area	24.32%			
Morgan Hill Number of Jobs (2014)	13,646			
Morgan Hill Employment Projection (2035)	21,549			

Notes

1. 2014 employment data was used from Census On The Map; more recent years (2015 and 2016) are not yet available.
 2. See total Building Sq. Ft. from Method 2 - Commercial Square Footage Per Capita.
- Sources: The Concord Group (CoStar, Reis); City of Morgan Hill, Colliers International; Census On The Map; LWC

Assumptions

- The proportion of existing commercial square footage in the Study Area to citywide commercial square footage will remain stable.
- Commercial space per job will remain stable.
- The number of Morgan Hill jobs will follow the historic annualized growth rate of 2%.

City of Morgan Hill
Monterey Corridor Market & Land Use Capacity Study
Prepared by Lisa Wise Consulting, Inc.
COMMERCIAL CAPACITY ANALYSIS
METHOD 4 - PROJECTED RESIDENTIAL GROWTH IN STUDY AREA

Results					
Projected Number of Residential Units ¹	Average Gross Sq. Ft. per Residential Unit	Total Residential Sq. Ft.	Net Maximum FAR Capacity Less Total Residential Sq. Ft.	Net Stable FAR Capacity Less Total Residential Sq. Ft.	
780	800	624,064	927,086	-27,006	
	1,000	780,080	771,070	-183,022	
	1,200	936,096	615,054	-339,038	
	1,400	1,092,112	459,038	-495,054	
	1,500	1,170,120	381,030	-573,062	
	1,600	1,248,128	303,022	-651,070	
	1,800	1,404,144	147,006	-807,086	
	2,000	1,560,160	-9,010	-963,102	
	2,200	1,716,176	-165,026	-1,119,118	
	2,400	1,872,192	-321,042	-1,275,134	
Units per Acre ²		14	-399,050	-1,353,142	
Net Maximum FAR Capacity (sq. ft.) ³		1,551,150			
Net Stable FAR Capacity (sq. ft.) ³		597,058			

Notes

1. See Total Parcel Acres in table below.
 2. The Mixed Use Flex Designation is allowed a density of 7 to 24 units per acre.
 3. Net and Maximum FAR Capacity calculated in Method 1 - Capacity Based on Existing Land Use Inventory.
- Sources: City of Morgan Hill; LWC

Assumptions

Parcels with a Commercial or Industrial General Plan Land Use Designation will not develop with residential.
Residential uses will develop at 14 units per acre, as assumed in the 2040 General Plan EIR.
Residential unit sizes are inclusive of garages and common area.

APN	Address	Existing Land Use	Business Name(s)	Parcel Acres	General Plan Designation	Zoning
81702025	SAN PEDRO AV	Vacant Land		1.42	Mixed Use Flex (7-24 du/ac)	CL-R
72636007	ROSE AV	Vacant Land		0.55	Mixed Use Flex (7-24 du/ac)/Residential Detached	CG & R-1
72501018	MONTEREY RD	Vacant Land		5.83	Medium (up to 7 du/ac)	PUD
76413020	MONTEREY RD	Parking Lot		0.01	Mixed Use Flex (7-24 du/ac)	CL-R

72624019	MONTEREY RD	Parking Lot		1.04 Mixed Use Flex (7-24 du/ac)	CL-R
81701018	MONTEREY RD	Vacant Land		0.2 Mixed Use	CC-R
76718046	MONTEREY RD	Vacant Land		1.1 Mixed Use Flex (7-24 du/ac)	CL-R
76717047	COSMO AV	Vacant Land		2.03 Mixed Use Flex (7-24 du/ac)	CL-R
72623018	95 E MAIN AV	Retail - Auto Services	A Tool Shed Equipment Rentals	2.52 Mixed Use	CC-R
72636010	30 PEEBLES AV	Vacant Land		0.24 Mixed Use Flex (7-24 du/ac)	R1
72641065	25 PEEBLES AV	Vacant Land		0.9 Mixed Use Flex (7-24 du/ac)	CS
72501032	19500 MONTEREY RD	Commercial Center Neighborhood		2.54 Mixed Use Flex (7-24 du/ac)	CS
72642003	19400 MONTEREY RD	Retail - Auto Services	NA - Scrapyard	0.31 Mixed Use Flex (7-24 du/ac)	CS
72642002	19380 MONTEREY RD	Retail - Auto Services	Family RV	0.74 Mixed Use Flex (7-24 du/ac)	CS
72642001	19380 MONTEREY RD	Retail - Auto Services	Family RV	3.93 Mixed Use Flex (7-24 du/ac)	CS
72625006	18110 MONTEREY RD	Vacant Land		6.69 Mixed Use Flex (7-24 du/ac)	ML
76412006	17965 MONTEREY RD	Retail - Auto Services	No name	1.54 Mixed Use Flex (7-24 du/ac)	C-G
72625002	17920 MONTEREY RD	Retail - Auto Services	Pronto Auto Repair	1.55 Mixed Use Flex (7-24 du/ac)	CL-R
76413022	17845 MONTEREY RD	Parking Lot		0.19 Mixed Use Flex (7-24 du/ac)	CL-R
72624049	17770 MONTEREY RD	Office Uses - General Office	1) Prospectors Property Management 2) Bradley A Leach, Accountant 3) Vacant - up for lease	0.72 Mixed Use Flex (7-24 du/ac)	CL-R with PD Overlay
72624009	17755 MC LAUGHLIN CT	Vacant Land		0.15 Mixed Use Flex (7-24 du/ac)	R-2
72623012	17680 MONTEREY RD	Office Uses - General Office	Farmer's Insurance	0.68 Mixed Use	CC-R
72623008	17620 MONTEREY RD	Vacant Land		1.01 Mixed Use	CC-R
76709009	16995 MONTEREY RD	Gas Service Station	Golden Eagle Gas	0.37 Mixed Use	PUD
81701051	16940 MONTEREY RD	Retail - Auto Services	Town & Country Car Wash	0.48 Mixed Use	CC-R
76710002	16835 MONTEREY RD	Retail - Unknown (Vacant)		0.58 Mixed Use	C-G
76710003	16825 MONTEREY RD	Retail - General Retail	Sun Shine Bicycles	1.45 Mixed Use	C-G
81701002	16720 MONTEREY RD	Gas Service Station		0.48 Mixed Use Flex (7-24 du/ac)	CL-R
81702001	16685 CHURCH ST	Retail - General Retail	Sew Bee It Quilting	0.9 Mixed Use Flex (7-24 du/ac)	R-2
76717046	16595 MONTEREY RD	Vacant Land		2.93 Mixed Use Flex (7-24 du/ac)	CL-R
81702018	16380 MONTEREY RD	Vacant Land		0.09 Mixed Use Flex (7-24 du/ac)	CL-R
81702016	16340 MONTEREY RD	Retail - General Retail	Sourcewise	0.4 Mixed Use Flex (7-24 du/ac)	CL-R
76718055	16295 MONTEREY RD	Retail - Personal Service	1) Mathnasium 2) The Daily Method		
81703010	16290 MONTEREY RD	Retail - Restaurant/Food Service	3) déjà vu Salon	1.57 Mixed Use Flex (7-24 du/ac)	CL-R
76718020	16225 MONTEREY RD	Retail - Auto Services	La Costa Morgan Hill Car Wash & Gift Shop From Yelp:	0.43 Mixed Use Flex (7-24 du/ac) 1.13 Mixed Use Flex (7-24 du/ac)	CL-R
76718035	16165 MONTEREY RD	Office Uses - General Office	1) MicroArtistry 2) California Prenatal Imaging 3) Pure Skin & Body 4) All About Seniors Care 5) Dunne Insurance	0.46 Mixed Use Flex (7-24 du/ac) Residential Attached Low (6-16 du/ac)/Mixed Use Flex (7-24 du/ac)	CL-R
72636059	11110 MONTEREY RD	Industrial/Manufacturing	California Tow & Salvage	7.52 Flex (7-24 du/ac)	CG & R-1
81703005	16190 MONTEREY RD	Retail - Auto Services	Enterprise Rental Car	0.36 Flex (7-24 du/ac) Residential Attached Low (6-16 du/ac)/ Mixed Use	CL-R & R-2
81736033		Vacant Land		0.68 Mixed Use	PUD
TOTAL:				55.72	

City of Morgan Hill
Monterey Corridor Market & Land Use Capacity Study
Prepared by Lisa Wise Consulting, Inc.
COMMERCIAL CAPACITY ANALYSIS
METHOD 5 - RETAIL LEAKAGE

Results		Economic Category ¹	Taxable Sales Capture/(Gap) Citywide	Square Footage Capture/(Gap) Citywide ²	Percent of Citywide Taxable Sales Realized in Study Area ³	Square Footage Capture/(Gap) in Study Area
	General Retail		(\$59,634,590)	(179,051)	10.01%	(17,931)
	Food Products		(\$21,248,778)	(63,799)	8.47%	(5,406)
	Transportation		\$141,953,570	426,211	11.42%	48,688
	Construction		(\$2,597,291)	(7,798)	1.18%	(92)
	Business to Business		(\$30,131,815)	(90,470)	6.68%	(6,040)
	Miscellaneous		(\$5,441,274)	(16,337)	20.35%	(3,324)
	TOTAL		\$22,899,822	68,756	--	15,895
Taxable Sales - Citywide (2016)						
Total Citywide Retail Sq. Ft. (2016)			\$769,457,061			
Dollar of Revenue per Sq. Ft. of Retail (2016)			2,310,268			
			\$333.06			

Notes

1. Categories identified in MuniServices' Taxable Sales Capture & Gap Analysis Report.
 2. Calculated using 2016 Dollar of Revenue per Sq. Ft. of Retail.
 3. Square Footage Capture/(Gap) by economic category in Study Area is calculated using percentages based on realized taxable sales, and it assumes the proportion of square footage lost to leakage in economic categories is related to observed category performance and is not comparable to the Total Square Footage Capture/(Gap) Citywide.
- Sources: MuniServices and Claritas; The Concord Group (CoStar, Reis); City of Morgan Hill; LWC

Assumptions

Per capita sales are comparable to the region (e.g., South San Jose, Gilroy, etc.); leakage data provided by MuniServices.
Dollar of revenue per square foot is constant across all economic categories (e.g., Transportation, Food Products, etc.).

CITY OF MORGAN HILL

MONTEREY CORRIDOR IMPLEMENTATION MEMO

Lisa Wise Consulting, Inc.

February 2018

BACKGROUND AND PURPOSE

In January 2017, the City of Morgan Hill (City) hired Lisa Wise Consulting, Inc. (LWC) to provide services to assist the City with a Market and Land Use Capacity Study along the Monterey Corridor. LWC is an experienced land use planning and economics firm that specializes in facilitating pedestrian-oriented neighborhoods and well-designed places to live, work, and recreate. LWC has a deep understanding of planning policy, implementation, and market opportunities, and frequently conducts market analyses and code updates in communities like Morgan Hill.

This Implementation Memo provides market-based options to implement the General Plan's vision for a revitalized mixed-use Monterey Corridor. The key findings and recommendations from the Monterey Corridor Market Analysis Report (attached) are incorporated into the discussion of options. This Memo will be used by the City to determine which option is preferred and next steps to effectuate desired change along the Monterey Corridor.

SUMMARY OF THE GENERAL PLAN'S VISION FOR THE MONTEREY CORRIDOR

The City's General Plan, Morgan Hill 2035, was adopted in 2016 and establishes the goals, policies, and actions that guide land use and development decisions for Morgan Hill. The overarching vision of the General Plan is to maintain the City as a unique, family-friendly Silicon Valley community that incorporates infill development and sustainable change to future growth. The City and Neighborhood Form (Land Use) Element describes the intent of the Mixed Use Flex land use designation, which is primarily applied to properties along the Monterey Corridor, as allowing for a variety of uses (residential, commercial, and office) that can be applied either vertically or horizontally, and allowing residents and employees to meet daily needs without the use of an automobile.

OPTIONS

The following options have been formulated for the City's review and discussion. As recommended in the Market Analysis Report, a zoning approach that can effectively respond to fluctuating market conditions and strategically focus commercial space is desirable. The Implementation Options Table provides a summary of the options, including pros and cons of each option.

1. FORM-BASED CODE (FBC) FOR THE STUDY AREA

Option 1 offers the most amount of change to the City's Zoning Code (Code)¹. It includes integrating new chapters and sections of form-based zones and standards into the City's existing conventional Zoning Code. A form-based code (FBC) is an approach to zoning that prioritizes the placement and relationship of buildings relative to each other and to the public right-of-way (i.e., the form of a community) over the conventional regulation of use². FBCs typically rely on the extensive use of illustrations, photographs, and tables in addition to supplemental text, which makes them easier to use and apply than most conventional codes. FBCs are most effective at regulating the placement of buildings, building frontages (i.e., façades), building types, and in establishing streetscape standards than a conventional code, and for enabling by-right mixed-use development. If a FBC approach is implemented, a hybrid code for the City (i.e., it includes the City's existing conventional zoning code with the FBC integrated within it) would be created, which, will allow for greater predictability in the built form of development and less rigid regulation of use in the Corridor. Additionally, the form-based zones and standards will be responsive to the contextual form of the Monterey Corridor by focusing commercial form and use in strategically located nodes or corridor segments. Option 1 may be implemented in either of the following ways.

1.1 COMPREHENSIVE FBC

Option 1.1 would integrate a comprehensive FBC into the City's existing Code. The FBC could be based on the principle of the transect in which standards are developed based on the character of places. Transects transition from rural to urban along a scale of increasing intensity, making form-based standards appropriate in many

¹ All indications of the "Code" refer to the soon-to-be adopted City of Morgan Hill Zoning Code.

² For additional information on FBCs and a comprehensive definition and how they have been applied across the US, see www.formbasedcodes.org. An example FBC is the City of Livermore's Development Code (<http://www.codepublishing.com/CA/Livermore/>)

contexts, including residential neighborhoods, historic areas, areas transitioning from low to higher intensity centers, or areas rapidly growing or changing.



Image from www.dpz.com (Duany Plater-Zyberk & Company) illustrating the urban to rural transect approach to form-based standards. Form-based standards take into consideration how buildings contribute to the intended form and intensity of an area, rather than the individual uses inside the building.

Transect zones would replace the existing zones along the Monterey Corridor and would be specifically calibrated based on the existing or desired built form and character of the Corridor. A design charrette³ could be held to refine the vision for the Corridor and intended objectives of the form-based zones and standards, as well as test the feasibility of development scenarios on opportunity sites. It would include standards specific to each transect zone (building height, setbacks or build-to lines, lot coverage, etc.) as well as building type standards, frontage type standards, open space type standards, thoroughfare (street) type standards. Administration and procedures specific to the application of the FBC would also be included that could, for example, reduce permit review requirements and allow temporary uses to occur in the transect zones more frequently. Building types, specifically, would provide “Missing Middle” housing types that match the character and scale of the Corridor and surrounding neighborhoods and that can serve as workforce housing and continue to diversify the residential product mix in the City (See www.missingmiddlehousing.com). Frontage type standards would address base flood elevation design issues along the street and allow for prescriptive variation in the context of the Corridor. This option typically would not include regulations based on density, the implications of which would need to be discussed within the Residential Development Control System (RDCS) context. This option would achieve the highest degree of predictability in building form and flexibility for uses to adjust to changing market demands along the mixed-use Corridor.

³ A design charrette is an interactive workshop, typically over the course of two or more days, where the public and design team interact closely to develop a vision and desired concepts for the study area.

1.2 SCALED-DOWN FBC

Option 1.2 would include only some of the form-based code components described in Option 1.1 and would not be a fully calibrated FBC. Anticipated form-based code components may include frontage type standards and form-focused conventional standards (e.g., build-to-line requirements, fenestration standards (i.e., the minimum area for windows on certain frontage types), updated parking rates and alternatives, pedestrian connectivity requirements, etc.), and it may include one to two new zones. Frontage type standards would be included as they are critical to achieving desired building design and engagement at the street. This option would achieve a moderate amount of predictability in building form and flexibility for uses to adjust to changing market demands along the mixed-use Corridor without going through the extensive public process required for a fully calibrated comprehensive FBC.

2. CONVENTIONAL CODE WITH UPDATES TO STANDARDS

Option 2 offers an intermediate amount of change to the Code. This option would include a review and update of the zones applicable to the Corridor, and it is anticipated to include amending use regulations to be more flexible, rethinking standards to be more form-based (e.g., include build-to-line standards, fenestration standards, updated parking rates and alternatives, pedestrian connectivity requirements, etc.), adjusting Floor Area Ratio standards, and adding graphics, as appropriate, for clarity and readability. Unlike Option 1.2, frontage types would not be included. This option does not include the addition of any new chapters into the Code and, therefore, allows the existing Code structure to remain unchanged. However, this option may require creating one to two additional conventional zones. This option would retain the existing conventional Code structure but would accomplish some intermediate changes to standards.

3. SPECIFIC PLAN FOR THE STUDY AREA

Option 3 offers no immediate change to the Code and instead supplies the City with a policy tool to refine the General Plan's vision for the Monterey Corridor outside of the Code. A Specific Plan for the Corridor would provide the ability to develop specific goals and policies that capture the desired intent of the area beyond what is directed by the General Plan, which would inform new development standards. The Specific Plan would include a code with standards (e.g., allowed uses, development standards, etc.) that could ultimately be incorporated into the Zoning Code through an amendment process. Also, implementation measures within the Specific Plan would provide actionable direction to achieve the desired vision in the Corridor. This option would prioritize the

establishment of unique and further refined goals and policies for the Corridor, rather than implementation the General Plan solely and immediately through Code standards. This option would likely require the longest timeline due to the typical community engagement process for goal setting and policy development.

4. GUIDELINES FOR "BLOCK-LEVEL MASTER PLANS"

Option 4 offers no change to the Code and instead supplies the City with guidance for implementing the General Plan through finer grain plans (block-level master plans) outside of the Code. The General Plan requires block-level master plans for residential or mixed-use projects within the Mixed Use Flex designation (Policy CNF-13.4), which comprises much of the Monterey Corridor. Provided that the proper guidelines are in place, a given block-level master plan would include a conceptual plan showing relationships and connectivity among the parcels on the block. The guidelines could require depicting building(s) relationship to the street, pedestrian connectivity, and commercial development in key strategic locations (e.g., a conceptual regulating plan). The guidelines would assist the City with identifying how commercial uses would be incorporated within the development of the given block and how individual development projects would connect with each other. Furthermore, the guidelines could establish a process for the City's review and acceptance of block-level master plans, as well as amendments to those plans over time.

Block-level master plans, prepared consistent with these guidelines, could be initiated by the City, a property owner, or project applicant. Once block-level master plans are completed, residential and mixed-use projects proposed within the block-level master plan area would be eligible to compete in the RDCS⁴.

However, it will be difficult to ensure consistency in form and character of development from one block to another as guidelines allow for interpretation. This option would prioritize a set of master plans or conceptual regulating plans that enables each block of the Corridor to have unique characteristics, reviewed by the City on a case-by-case basis according to the guidelines. This option would achieve a lower degree of predictability in building form compared to options that would amend the Code because it would not alter Code standards.

⁴ To be eligible to complete in the RDCS, a project must be consistent with the General Plan.

5. STREETScape IMPROVEMENT PLAN & A FAÇADE INCENTIVE PROGRAM

Option 5 offers no change to the Code and instead provides the City with strategies to implement street improvements and encourage façade upgrades along the Corridor. A street improvement plan would prioritize projects in the Corridor that might otherwise burden new development financially (walkability/connectivity projects, beautification projects, utility undergrounding or upgrades, etc.). A façade incentive program could include permit fees or nonconforming restrictions to be waived if certain façade improvement thresholds are met (e.g., façade improvements that provide pedestrian interest and engagement, outdoor activity, etc.). This would influence aspects of the public realm, but would have limited control over building form, and would be dependent on City funding of street improvement projects and property owner funding of façade upgrades. This option would prioritize street and façade improvements over Code standards, which would be least likely to result in desired change along the Corridor.

The following table summarizes the five options, including estimated rough budgets and timelines, as well as considerations (pros and cons) associated with each option. Not all items in the description may be included in the low-end budget estimate.

Implementation Options						
Option		Description	Pros	Cons	Rough Budget Estimate	Timeframe Estimate
1.1	COMPREHENSIVE FORM-BASED CODE (FBC)	Form-based standards incorporated into existing Code (hybrid code); form-based zones; building types, frontage types, open space types, thoroughfare types; streamlined administration and procedures; design charrette for visioning and feasibility testing; promotes walkable urban places and encourages pedestrian activity; building form supersedes use; allows and promotes mixed-use development	Most effective implementation of General Plan's vision; addresses all aspects of urban form; easier to mix uses; provides the most certainty and predictability; high use of graphics and tables; prescriptive – gives desired urban form results	Highest cost; perception that FBCs are more complicated; may need staff training and community education sessions to transition to this approach	\$125,000 - \$330,000 ¹	10 - 18 months
1.2	SCALED-DOWN FORM-BASED CODE (FBC)	Form-based standards incorporated into existing Code (hybrid code); frontage types; conventional code standards updated; may add 1-2 zones; promotes walkable urban places and encourages pedestrian activity; allows and promotes mixed-use development	Effective implementation of General Plan's vision; addresses building frontages; easier to mix uses; provides more certainty and predictability; use of graphics and tables; prescriptive – gives desired building frontage results	Limited FBC application is less effective than full FBC application; does not include building types, open space types, or thoroughfare types	\$95,000 - \$200,000 ¹	8 - 12 months
2	CONVENTIONAL CODE WITH UPDATES TO STANDARDS	Conventional Code remains; conventional code standards updated; may add 1-2 conventional zones if needed	Somewhat effective implementation of General Plan's vision; provides some predictability; existing Code structure retained; cost effective	Less likely to achieve desired building form; may be less effective in enabling mixed use development	\$60,000 - \$110,000 ²	6 - 10 months

3	SPECIFIC PLAN FOR THE STUDY AREA	High-level planning document with targeted goals and policies; can be implemented in Code, but no immediate Code changes	Robust community involvement in specific goal setting and policy development; provides more guidance for code standards; regulates use and built form; actionable implementation program	Expensive and lengthy process	\$350,000 - \$700,000+ ³	18 - 24 months
4	GUIDELINES FOR "BLOCK-LEVEL MASTER PLANS"	Finer grain set of planning documents with conceptual plans block-by-block; no Code changes	Compliant with General Plan; provides direction for future planning; cost effective; short timeline	Guidelines allow for interpretation; case-by-case review of each master plan; difficult to ensure consistency from block to block	\$25,000 - \$45,000 ⁴	4 - 6 months
5	STREETSCAPE IMPROVEMENT PLAN & A FAÇADE INCENTIVE PROGRAM	Strategies focused on public realm and façade improvements; no Code changes	Addresses some public realm considerations	Limited implementation of General Plan's vision; City funding required for improvement projects; façade improvements dependent on property owners' funding	TBD – Based on the extent of plan/program desired	TBD – Based on the extent of plan/program desired

¹ CEQA assumed to be an EIR Addendum.

² CEQA assumed to be a Categorical Exemption or an EIR Addendum.

³ CEQA assumed to be a Subsequent EIR.

⁴ CEQA assumed to be a Categorical Exemption.

CONCLUSION

Based on LWC's experience, which includes approximately 30 zoning code updates and 20 master or specific plans for jurisdictions throughout the United States, Option 1.1 or 1.2 (Form-Based Code for the Study Area) is recommended as most effective to realize the General Plan's vision for the Monterey Corridor considering the Market Analysis Report (attached). A specific plan (Option 3) would also be effective but requires a longer timeline and higher cost. The City may also consider a near term solution involving Option 4 (Guidelines for "Block-Level Master Plans") to facilitate projects' eligibility in the upcoming RDCS.

Monterey Corridor Block Level Master Plan

Framework for a Near-Term Solution

I. Purpose of Block Level Master Plan (from Morgan Hill 2035 General Plan)

Mixed Use Flex. The Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). Density should transition from higher to lower at the ends of Monterey corridor. The Mixed Use Flex designation allows 7 to 24 units per acre and a maximum FAR of 0.5. Prior to development of Residential or Mixed-Use projects within the Mixed Use Flex designation **a block level master plan is required to identify how commercial uses will be incorporated within the development of the block and how individual development projects will connect with each other.**

Commercial development may proceed without preparation of a block level master plan consistent with the Commercial designation.

II. Zoning Ordinance – Mixed Use Flex Zoning District

(Adopted w/ Zoning Code Update by Ordinance, May 2018)

18.22.010.B.3. Mixed Use Flex (MU-F)

The purpose of the MU-F zoning district is to accommodate a mixture of residential and commercial uses along the Monterey Road corridor north and south of Downtown. New mixed use development may be vertical (residences above ground floor commercial) or horizontal (separate buildings with different uses on a single site). Development in the MU-F zoning district creates attractive gateways into Morgan Hill, provides a range of housing options, and creates new centers of activity to serve surrounding neighborhoods.

III. Block Level Master Plan

(Prepared by City, adopted by Ordinance, Summer/Fall 2018)

Applicability

The Block Level Master Plan applies to those segments of the Monterey Road Corridor north and south of Downtown listed in “**A. Blocks**” below that include properties that have a Mixed Use Flex General Plan Land Use designation. Blocks may include properties with a variety of General Plan designations (e.g., Commercial, Residential Attached Low, Public Facilities, Mixed Use Flex, etc.) and Zoning Districts (e.g., CG General Commercial, RAL 3,500, PF Public Facilities, MU-F Mixed Use Flex, etc.).

Properties that have a Mixed Use Flex General Plan Land Use designation that are located outside of the Monterey Road Corridor segments listed in “**A. Blocks**” may satisfy the Block Level Master Plan requirement with implementation of, or amendment to, an existing Planned Unit Development (PUD) or Planned Development (PD) Zoning. These properties are listed in “**B. Existing PUDs or PDs**”.

Framework for a Block-Level Master Plan

A. Blocks (See Attached Maps)

North: City limits to Madrone Parkway

1. City Limits to Burnett Avenue*
 - Commercial **required** at ne/c Burnett Avenue and Monterey Road
 2. Burnett Avenue to Peebles Avenue
 - Commercial **required** at se/c Burnett Avenue and Monterey Road
 - Commercial **required** at ne/c Peebles Avenue and Monterey Road
 3. Peebles Avenue to Madrone Parkway
 - Commercial **required** at se/c Peebles Avenue and Monterey Road
 - Commercial **required** at ne/c Madrone Parkway and Monterey Road
- * Plan for future Burnett Avenue connection to Tilton Avenue at Monterey Road

North of Downtown (East): Railroad overcrossing to East Central Avenue

4. Railroad overcrossing to MH Community Adult School
 - Commercial **required** at se/c Old Monterey Road (extension) and Monterey Road
5. MH Community Adult School to East Central Avenue
 - Commercial **required** at ne/c East Central Avenue and Monterey Road

North of Downtown (West): Old Monterey Road to West Central Avenue

6. Old Monterey Road to Wright Avenue
 - No additional commercial required
7. Wright Avenue to West Central Avenue
 - No additional commercial required

South of Downtown (East): Bisceglia Avenue to East Edmundson Avenue

8. Bisceglia Avenue to San Pedro Avenue
 - No additional commercial required
9. San Pedro Avenue to Barrett Avenue
 - Commercial **required** at se/c San Pedro Avenue and Monterey Road
 - Commercial **required** at ne/c Barrett Avenue and Monterey Road
10. Barrett Avenue to East Edmundson Avenue
 - Commercial **required** at ne/c E Edmundson Avenue and Monterey Road

South of Downtown (West): Spring Avenue to Edmondson Court

11. Spring Avenue to Cosmo Avenue
 - Commercial **required** at sw/c Spring Avenue and Monterey Road
 - Commercial **required** at nw/c Cosmo Avenue and Monterey Road
12. Cosmo Avenue to Edmondson Court
 - Commercial **required** at sw/c Cosmo Avenue and Monterey Road

Default is Commercial (existing or proposed standalone or mixed-use) is required on corners formed by intersecting streets with full access to/from site, pending independent Commercial Study for each block.

Framework for a Block-Level Master Plan

B. Existing PUDs or PDs (See Attached Maps)

13. South Monterey Road Planned Development (Ord. No. 2028 n.s.)
14. East Dunne Avenue Planned Unit Development (Ord. No. 1460 n.s.)
15. Cochrane Commons Planned Unit Development (Ord. No. 1746 n.s.)

C. Commercial Requirements for Mixed Use Flex Portion of Blocks

1. Standalone Commercial. Standalone commercial (e.g., retail, office, etc.) projects are allowed, but not required, on any of the segments of the Monterey Corridor that are designated Mixed Use Flex.
2. Interior Lot Commercial. Vertical mixed-use (commercial and residential) projects on interior lots are allowed, but not required, on any of the segments of the Monterey Corridor that are designated Mixed Use Flex.
3. Corner Lot Commercial. Commercial at the corners formed by intersecting streets with full access to/from site is required pending independent commercial study considering whether blocks:
 - a. Have the physical characteristics to support commercial or additional commercial uses
 - b. Are adequately served by existing commercial uses
 - c. Include sufficient land designated for future commercial uses (e.g., land with a Commercial General Plan designation).

D. Permitted Uses.

See Table 18.22-1 in Section 18.22.020 of the Zoning Code.

E. Temporary Uses.

In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

F. Development Standards.

See Tables 18.22-2 and 18.22-3 in Section 18.22.040 of the Zoning Code.

G. General Specifications

1. Primary entrances for new buildings should be oriented toward the street.
2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.
5. Building depth for non-residential uses: 35-feet minimum.

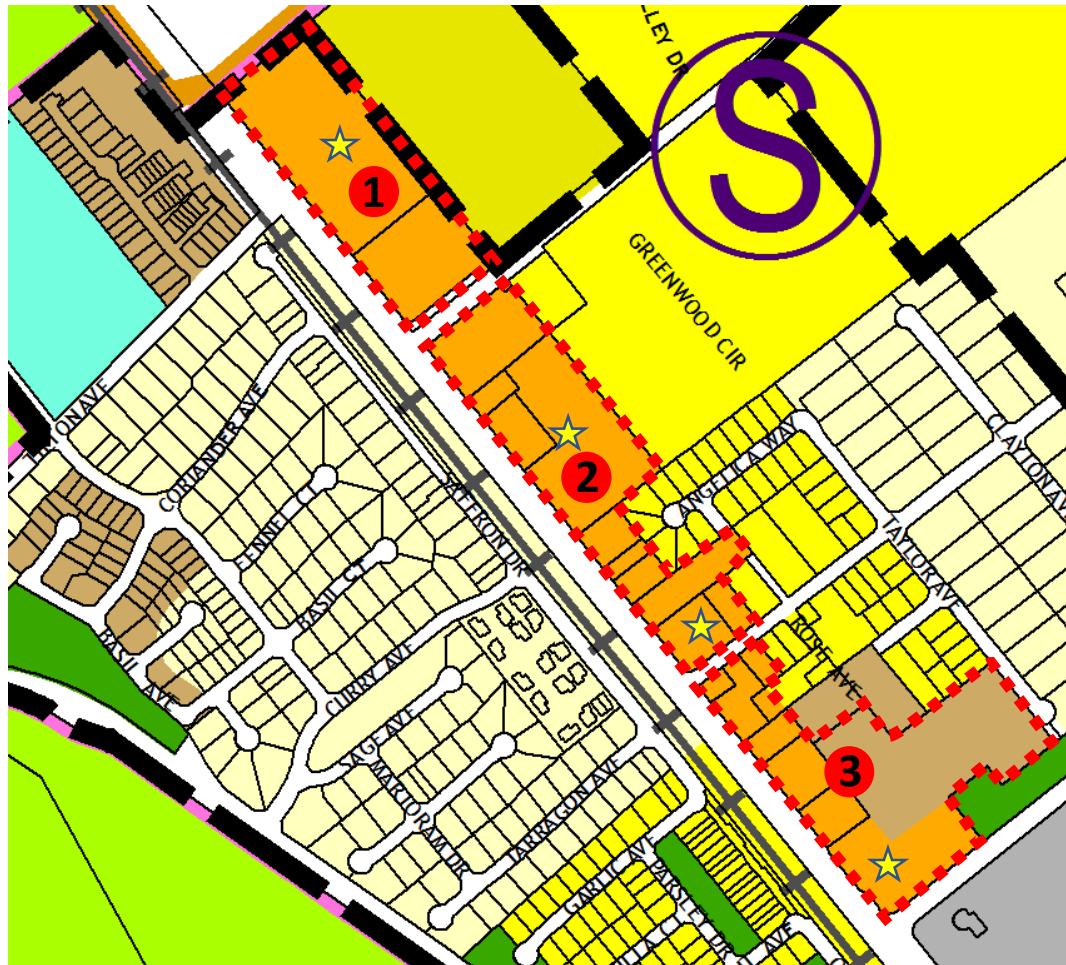
Framework for a Block-Level Master Plan

6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space

Monterey Corridor Block-Level Master Plan Blocks

North: City Limits to Madrone Parkway

15.d

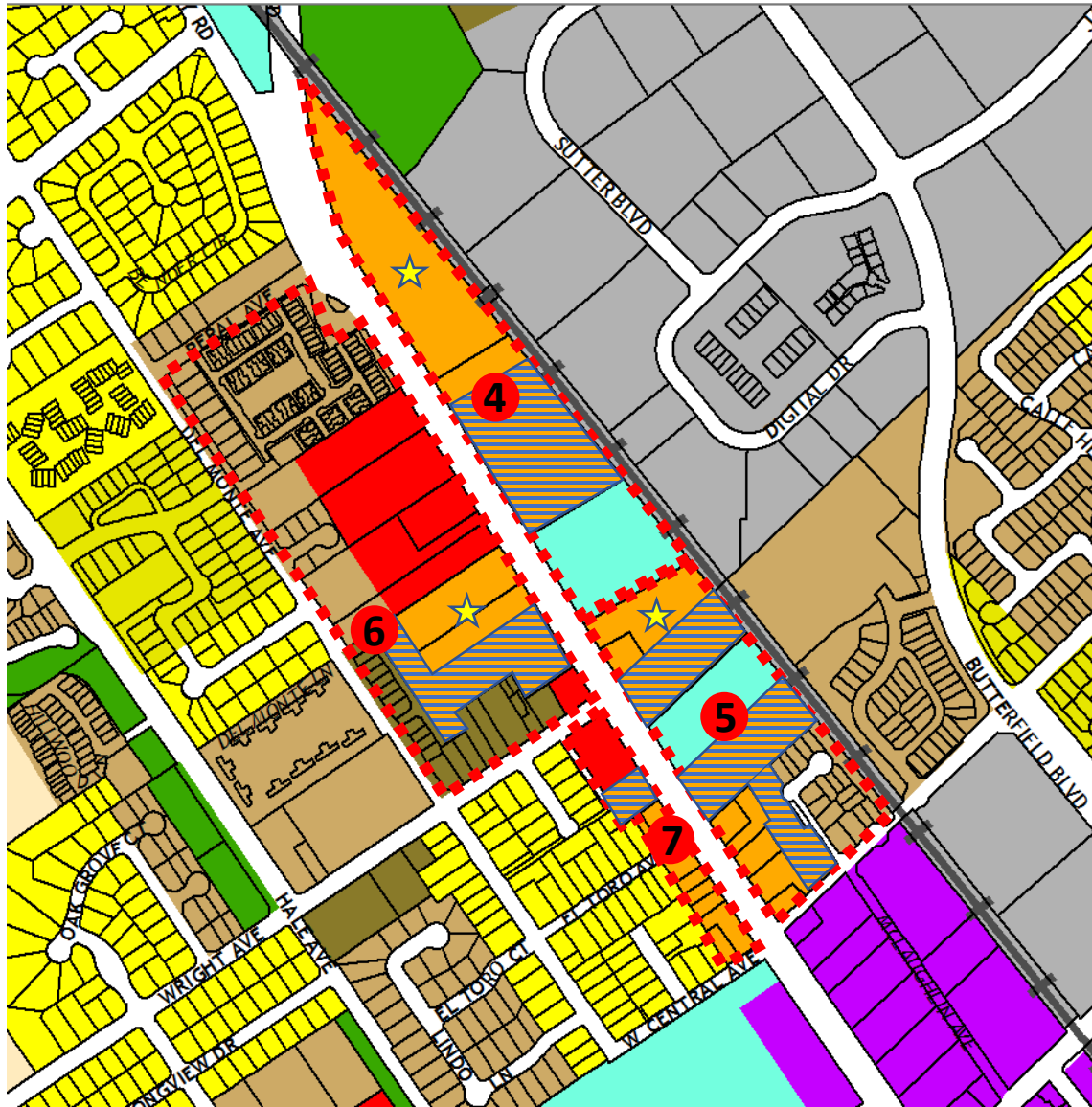


- Mixed Use Flex Site
- Block
- # Block Number
- Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
- Vacant/Underutilized Opportunity Site

Attachment: Monterey Corridor Blocks Map (1695 : Monterey Corridor Study and

North of Downtown: RR Overcrossing to Central Avenue

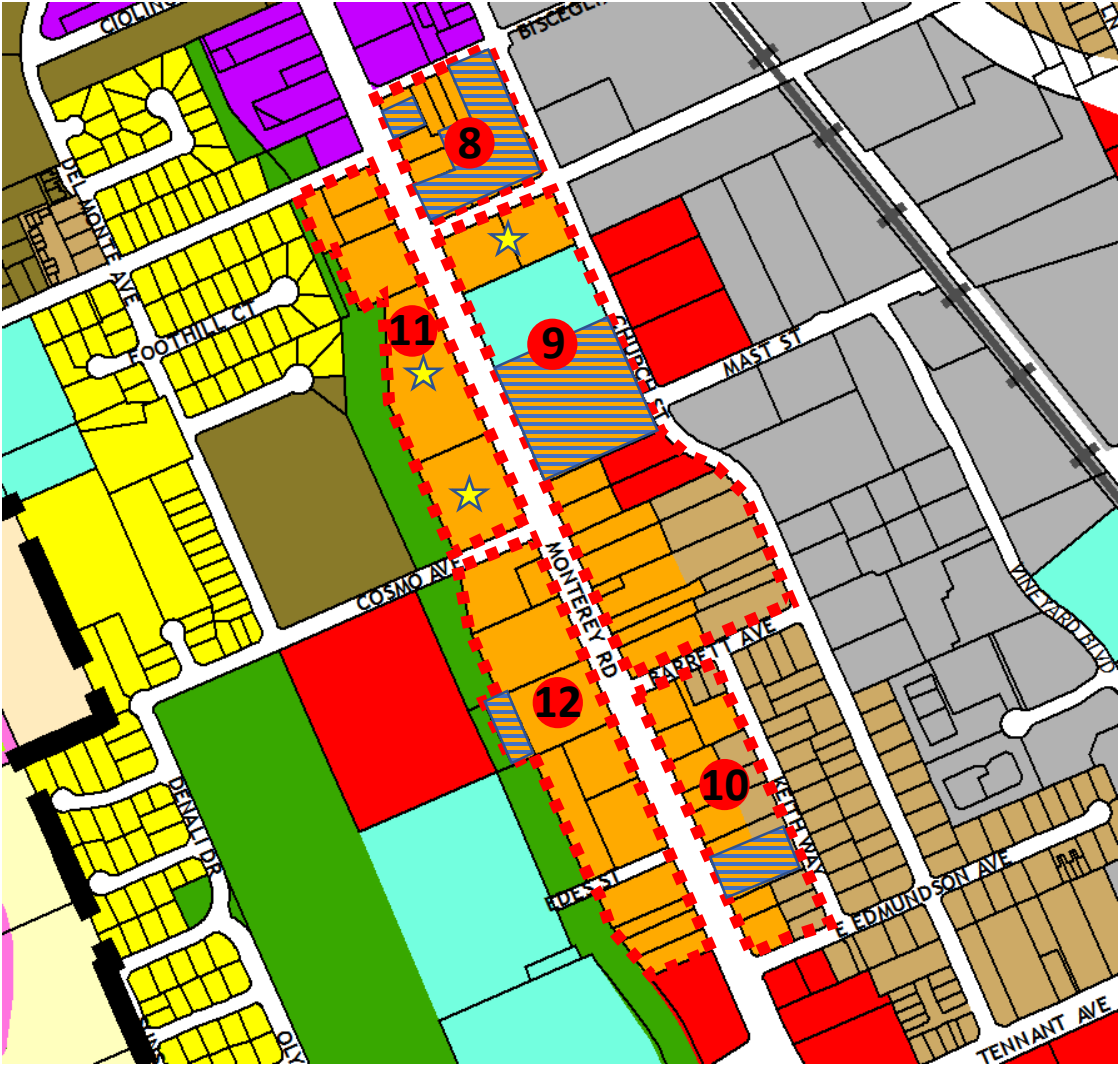
15.d



- Mixed Use Flex Site
- Block
- # Block Number
- Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
- Vacant/Underutilized Opportunity Site

Attachment: Monterey Corridor Blocks Map (1695 : Monterey Corridor Study and

South of Downtown: Bisceglia Avenue to Edmundson Avenue



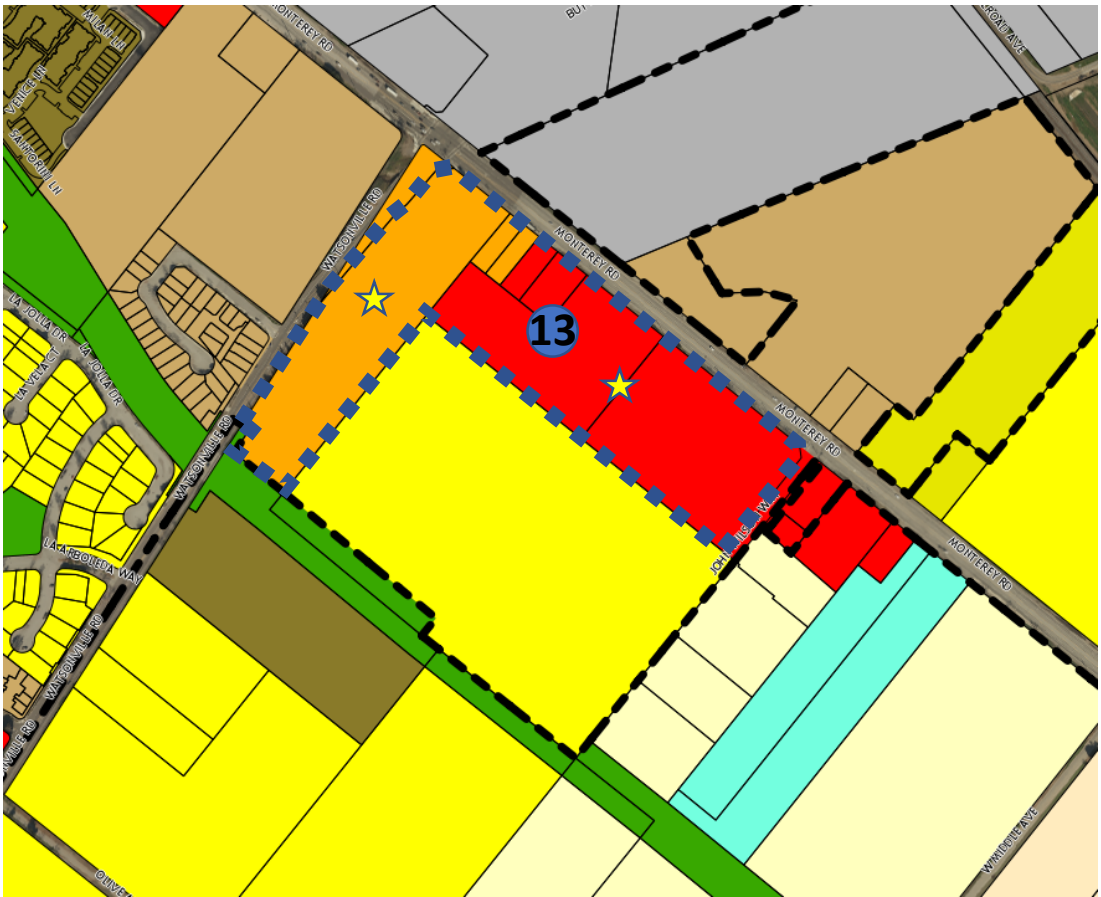
-  Mixed Use Flex Site
-  Block
-  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
-  Vacant/Underutilized Opportunity Site

Attachment: Monterey Corridor Blocks Map (1695 : Monterey Corridor Study and

South Monterey Road Planned Development

(Ord. No. 2028 n.s.)

15.d



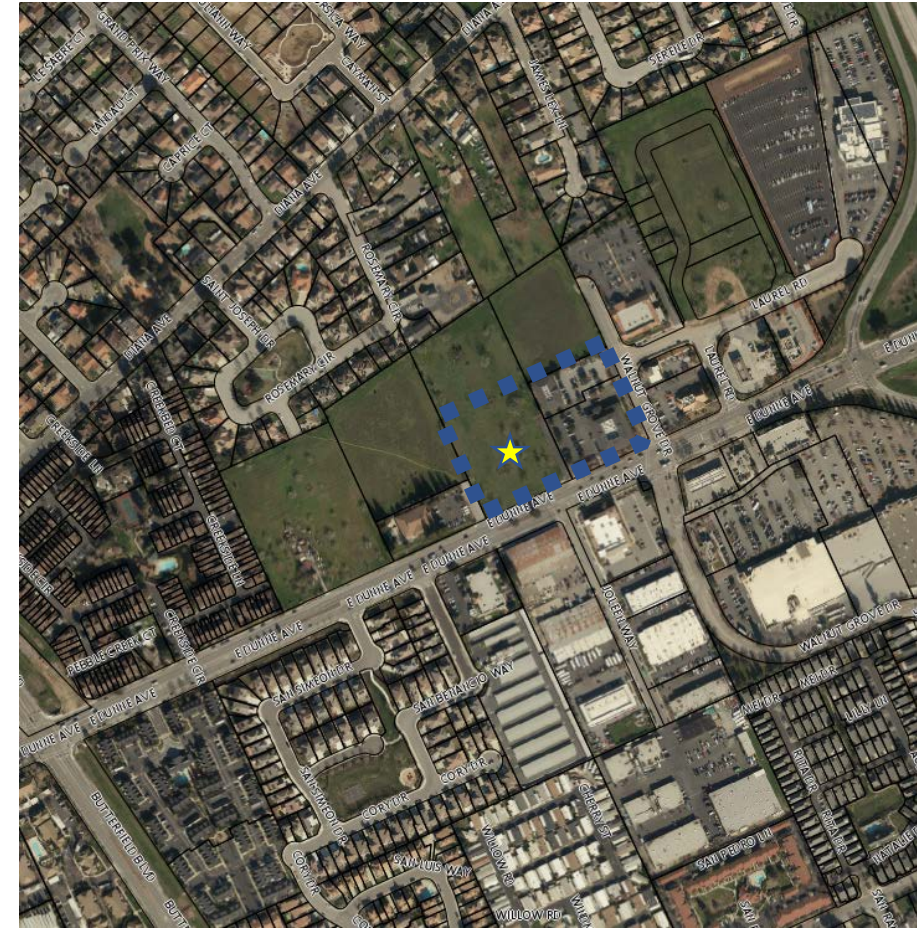
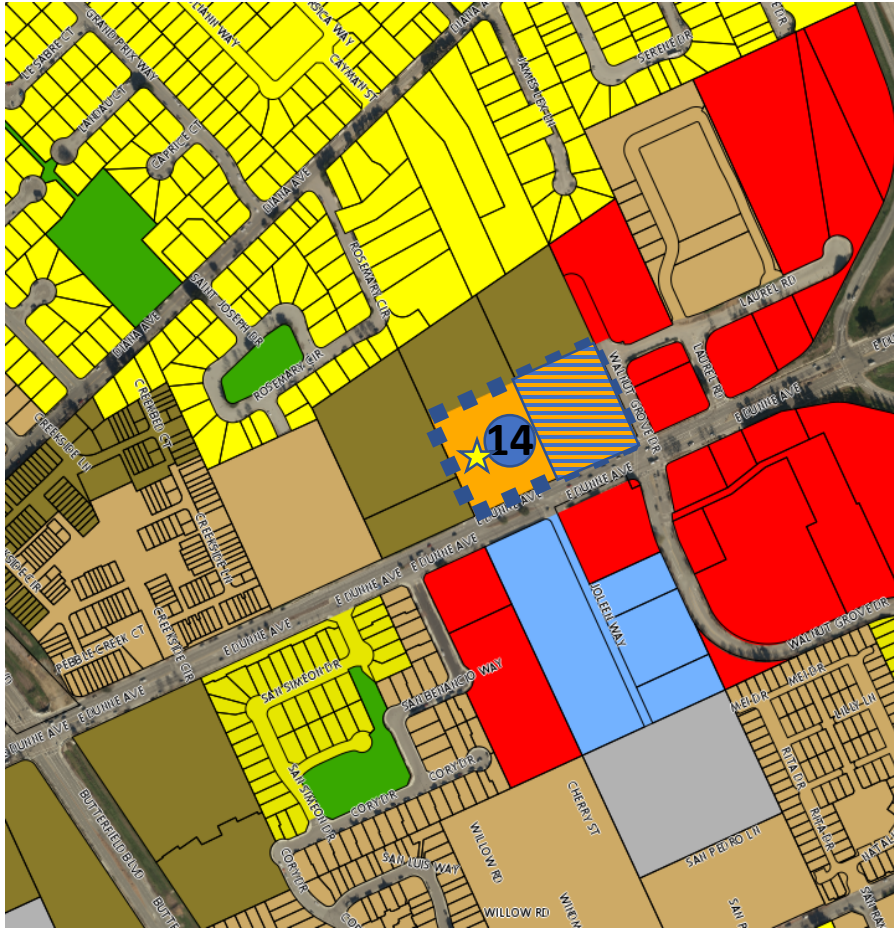
- Mixed Use Flex Site
- PD Block
- Block Number
- Vacant/Underutilized Opportunity Site

Attachment: Monterey Corridor Blocks Map (1695 : Monterey Corridor Study and

East Dunne Avenue Planned Unit Development

(Ord. No. 1460 n.s.)

15.d



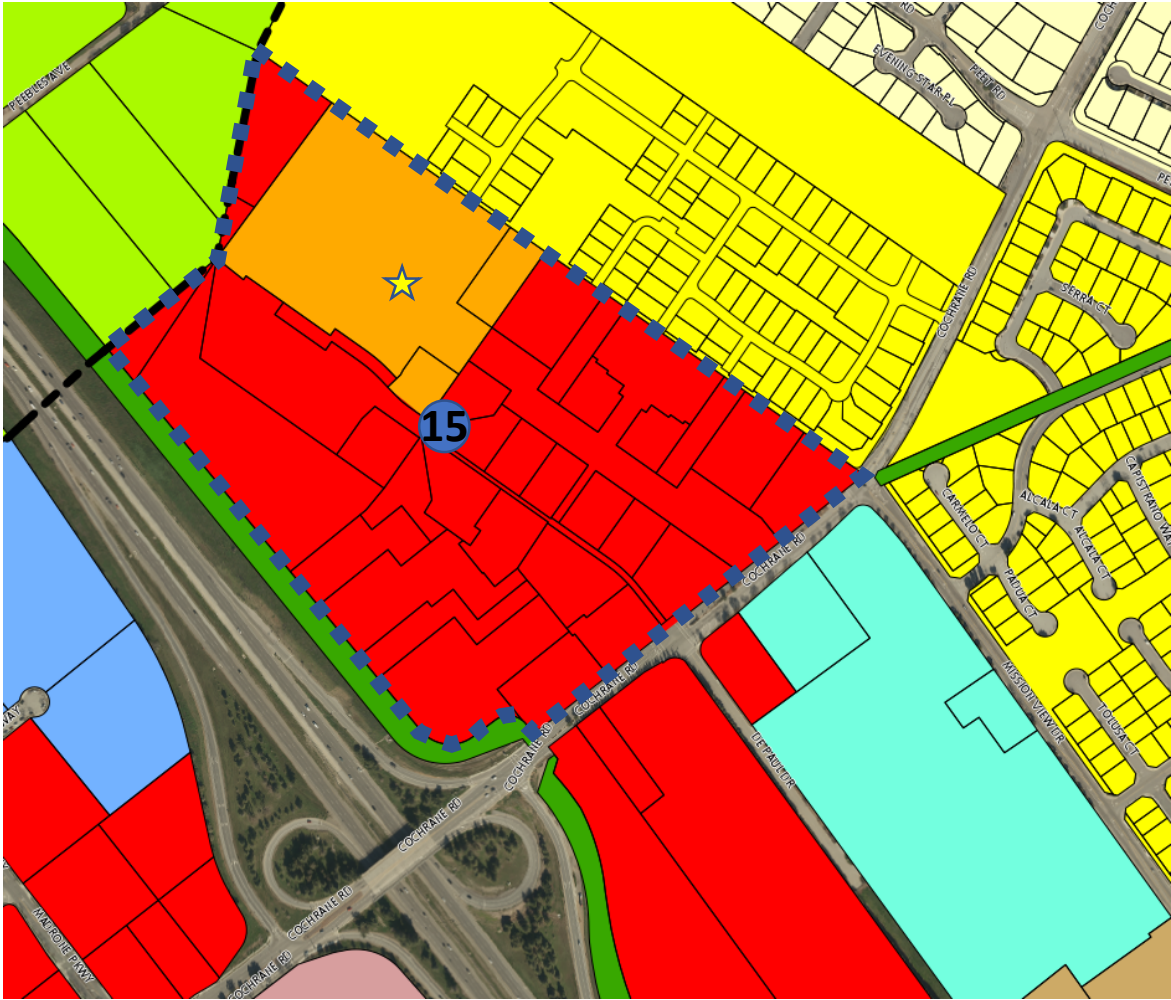
Attachment: Monterey Corridor Blocks Map (1695 : Monterey Corridor Study and

Mixed Use Flex Site
 PUD Block
 # Block Number

Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
 Vacant/Underutilized Opportunity Site

Cochrane Commons Planned Unit Development

(Ord. No. 1746 n.s.)



- Mixed Use Flex Site
- PUD Block
- Block Number
- Vacant/Underutilized Opportunity Site

Attachment: Monterey Corridor Blocks Map (1695 : Monterey Corridor Study and



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

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

PROVIDE DIRECTION REGARDING THE OUTDOOR SPORTS CENTER OPERATOR SELECTION

RECOMMENDATION(S)

1. Direct staff to negotiate an agreement with NewCo for operation of the Outdoor Sports Center; and
2. Provide direction on any additional agreement considerations the Council may have, in addition to those already established in the guiding principles and outcomes outlined in the Request for Proposals.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Economic Development and
Telecommunications

POLICY CONSIDERATIONS:

The purpose of this report is to seek City Council direction on the next step in the Request for Proposals (RFP) process, to select an operator for the Outdoor Sports Center (OSC). Policy considerations include:

1. Upon review of the proposal from one of the finalists in the RFP process, should the Council move forward and direct City staff to enter negotiations with the NewCo organization?
2. In addition to the guiding principles and outcomes previously approved by the Council for the RFP process, are there additional considerations the Council would like City staff to consider during the negotiation process?

REPORT NARRATIVE:

On May 17 and July 19, 2017, the City Council received updates on the OSC operations and provided staff with direction to issue a Request for Proposals (RFP) for the operations of the OSC. The primary concerns during those periods were the economic status of the current operator and the maintenance of the OSC.

The concessionaire agreement with the Morgan Hill Youth Sports Alliance (MHYSA) currently runs through June 2019 and the schedule for the RFP process was established to allow for a new operator to be selected a year before the conclusion of the current agreement. This would allow for an appropriate transition between operators. During the meetings, the Council provided direction and feedback on the development of the RFP. This included:

- Concern of ending up with the same business plan from RFP results
- Finding out what is “cutting edge” and innovative and looking for opportunities to move our facility in that direction
- Discussing revenue generation versus community access
- Facility improvements that could elevate the level of the facility
- Looking inward to determine City needs first

The Council approved the guiding principles of future operations to be Community Access and Economic Development. Specific outcomes were established to support these principles.

Basic Outcomes

1. Balance community access with regional use
2. Operate the OSC without any City subsidy
3. Maintain the facility at an exceptional level
4. Provide sustainable, fiscally responsible, and transparent operations
5. Ensure a diverse mix of field use by sport type
6. Coordinate and manage event parking plans
7. Operations that integrate with:
 - a. City facilities, including the adjacent Morgan Hill Dennis Kennedy Aquatics Center
 - b. Local businesses and hotel operators
 - c. The future planned Destination Management Organization

Additional Desired Outcomes

1. Propose innovative facility use approaches and improvements. Potential approaches may include, but are not limited to:
 - a. Facility improvements to the OSC
 - b. Facility development at the OSC or on adjacent and nearby City owned or private property
 - c. The ability to work with the City or other partners/operators in overall management of facilities
 - d. Joint capital funding opportunities
2. Development of a funding mechanism for future planned maintenance and replacement
3. Open public (non-organized) use hours at the facility

Using this information staff developed the RFP (Attachment 3). The RFP was distributed locally, regionally, and nationally through local contacts and professional contacts in the sports tourism and management industry.

RFP Process

The RFP consists of a two-part process with a request for Letters of Interest (LOI) from potential respondents, before requiring a complete proposal. This was designed to allow the City to receive an early look at which organizations would be able to bring varying attributes to the overall operation and move those organizations forward. This was also designed to allow for further innovative operational partnerships between organizations and the City. The RFP timeline for the process is as follows:

September 8, 2017	Request for Letters of Interest Opens
October 2017	Tours and Informational Meetings
November 17, 2017	Letters of Interest Due (Close of Work Day, 5pm)
Early December 2017	Interviews with LOI Submitters
January 17, 2018	Review of LOIs by City Council
January 18, 2018	Invitation for Proposals Released
February 16, 2018	Proposals Due (Close of Work Day, 5pm)
Late February 2018	Interviews on Proposals
March 20, 2018	Recommendations by the Parks & Recreation Commission
April 4, 2018	Review by City Council
April- May 2018	Agreement(s) negotiated by City Staff
June 2018	Agreement(s) to City Council for Approval

Letters of Interest Review

Letters of Interest were received in November and reviewed by a review committee and then brought to the City Council. The review committee moved the organizations into two “buckets”. The first were those organizations proposing to operate the Outdoor Sports Center, which included:

1. San Jose Soccer Complex Foundation (SJSCF) in partnership with the California Youth Soccer Association (CYSA) and Orchard Valley Youth Soccer (OVYS), which has established the Name NewCo for the collaboration
2. Sports Facilities Management (SFM)
3. Morgan Hill Youth Sports Alliance (MHYSA)
4. MC Elite

The second “bucket” was made up of organizations not proposing to operate the Center but proposing to partner with the City to develop sports facilities on City owned property.

1. Northern California Volleyball Association (NCVA)
2. Silicon Valley Cricket (SVC)

On January 17, 2018, the City Council directed staff to move forward and seek full proposals from the San Jose Soccer Complex Foundation (now using the name NewCo) and SFM. The Council also directed staff to move forward and investigate partnership opportunities with NCVA and SVC. Staff has continued to move forward on both of these opportunities.

Following Council action on January 17, both organizations (NewCo and SFM) originally committed to submitting full proposals. However, on the day proposals were due, SFM

submitted a letter indicating they would not be submitting a proposal. This letter is included as Attachment 1. A proposal from NewCo was submitted prior to the deadline. This proposal is included as Attachment 2. City staff as well as members of the original review committee have reviewed the proposal and believe it meets the outcomes established in the RFP and recommends the negotiation process begin with NewCo.

On April 20, the Parks and Recreation Commission reviewed the final proposal and recommended that the City Council direct staff to negotiate an operator agreement for NewCo for operation of the Outdoor Sports Center. Individual Commissioners also shared considerations on development of the agreement, which included:

- A clear process on managing perceived bias that may accompany NewCo, as a soccer-based organization, when dealing with other sports groups;
- Accounting for “internal customer fees” when the fields are utilized by the partner organizations;
- A minimum income to the City in the shared profit model;
- A joint management approach, which involves the City as a “partner”; and
- Consult with the current operator management on agreement points.

During past meetings and within the proposal, NewCo has demonstrated an understanding of the City’s anticipated outcomes and explained how these outcomes can be achieved in tandem with the goals with its partner organizations. Should the Council move forward with the staff recommendation, negotiations would begin immediately, and City staff would anticipate returning to Council in late May or early June with a draft agreement.

COMMUNITY ENGAGEMENT: Inform

City teammates have performed a variety of outreach to local sports organizations and the community in general through this process. Multiple local organizations have submitted proposals. Outreach to our largest baseball and softball organizations specific to development of the Ball Field Site has also occurred. Coordination on this process has also involved our local business community through the Chamber of Commerce and local hotel coalition.

ALTERNATIVE ACTIONS:

The City Council could alternatively select to not move forward with negotiations with NewCo and alternatively solicit full proposals from other organizations, and direct City staff to develop a City operated facility option, or provide other direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- May 19, 2010 - Selected the MHYSA as the operator of the OSC
- June 16, 2010 - Approved the Concessionaire Agreement with the MHYSA
- June 19, 2013 - Approved First Amendment to Concessionaire Agreement with the MHYSA
- September 24, 2014 - Audits of MHYSA operations of OSC presented
- October 1, 2014 - Council received OSC operations update and directed staff to offer the MHYSA a one-year extension to the Concessionaire Agreement
- December 3, 2014 – Council approved Second Amendment to the

Concessionaire Agreement with the MHYSA extending it for one year through June 2016

- February 17, 2015 – The Parks and Recreation Commission reviewed operations and made a recommendation to Council on future OSC operations
- March 4, 2015 – Council directed staff to negotiate an agreement extension with the MHYSA
- May 18, 2016 – City approved Third Amendment to the Concessionaire Agreement with the MHYSA extending it for an additional three years and updating various provisions.
- May 17, 2017 – City staff presented an update on OSC operations and made recommendations on future operations.
- July 19, 2017 – The City Council directed City Staff to issue an RFP for operations of the Outdoor Sports Center and approved the guiding principles for the RFP.
- January 17, 2018 – The City Council directed City Staff to request full proposals from NewCo and Sports Facilities Management.
- March 20, 2018 – The Parks and Recreation Commission recommended to the City Council that City staff move forward with negotiations with NewCo to operate the Outdoor Sports Center.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact associated with the proposed recommendations and this step of identifying an operating partner for the Outdoor Sports Center. Fiscal impacts of a proposed agreement will be brought back for Council review during the next step of this process.

CEQA (California Environmental Quality Act):

Not a Project

The recommended actions by Council are administrative and will not result in a change to the physical environment, these actions do not constitute a project under the California Environmental Quality Act. Any future improvements to sites would require appropriate environmental review which would be conducted to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. SFM Decline to Submit Full Proposal Letter
2. NewCo Full Proposal
3. Request for Proposals - Morgan Hill Outdoor Sports Center
4. January Council Report with LOI Submittals



Date: February 23, 2018
Addressed to: City of Morgan Hill
Attention: Chris Ghione
Subject: Morgan Hill Outdoor Sports Center Management

Dear Chris,

We appreciate the opportunity to submit a proposal for management of the Morgan Hill Outdoor Sports Center. Since our last discussion, our team has analyzed the historical data related to MHYSA operations of the park and completed a high-level audit and assessment of performance against industry benchmarks and comparable facility performance.

Based on the RFP, SFM understands the City of Morgan Hill is currently seeking creative solutions to optimize the programming and the usage of the Morgan Hill Sports and Recreation Facilities. This includes “balancing community access with regional use” and “operating without any City subsidy.” While SFM is uniquely suited to meet the majority of the City of Morgan Hill’s goals related to diverse programming, economic impact, exceptional park standards, and guest experience; we do not believe the facility can financially operate without a subsidy. For this reason, SFM is not proposing full-time management of the Outdoor Sports Center.

During our review of the information related to MHYSA operations for the park, we found the financial performance to be relatively healthy. For publically owned outdoor multi-purpose long field complexes, the industry average for revenue on a per field basis is \$50,000. For fiscal years '16, '15, and '14 the MHYSA operated the park at \$60,868, \$78,725, and \$75,034 respectively – all above industry averages. The high-performing threshold is \$100,000 per field and the top-performing facilities are at \$180,000 per field. However, this level of revenue generation above and beyond industry averages typically comes by way of investment into the facility. In other words, they generate more dollars but not profitably. The two revenue areas that stood out as opportunities for the Center are Food & Beverage Sales, as well as, Sponsorship and Advertising. Both revenue categories are below industry average. Otherwise, parking, rentals, team fees, and other revenue categories looked relatively strong.

Related to expenses, cost of goods sold were not clearly broken down from overhead operating expenses. This is likely due to the rental nature of the current business. The industry average for facility expenses is around 60% of revenue. The MHSYA operated between 30 – 40% for the last three (3) years of reported financial data. This falls within the “high-performing” threshold of industry benchmarks. Operating expenses fell directly in line with industry averages around 35%. MHYSA Management payroll for the last 3 years also fell within the “high-performing” threshold of industry benchmarks.

EBITDA is an accounting term that stands for Earnings Before Interest, Tax, Depreciation, and Amortization. This is essentially a measure of bottom-line operating performance that provides a more “apples-to-apples” comparison with other operations. Most community owned outdoor multi-sport facilities are there to provide: 1) community access to recreation to improve the health and quality of life in a community, as well as 2) to generate economic impact through sports tourism. In both scenarios, there is typically a community investment that subsidizes the operation. This investment is either into community health and overall wellness or an economic driver of “heads in beds.” Therefore, industry average for this type of facility is -73% EBITDA. The high-performing range is -18% and the top-performing range is +25%. MHYSA has been operating the Outdoor Sports Center at -6.5%, +2.5%, and +3.1% in '16, '15, and '14 respectively. This is strong bottom line performance for this type of facility.



For this reason, SFM does not believe that we will be able to make a dramatic improvement in bottom-line performance for the City and achieve the goal of operating this venue without annual subsidy. If the City was willing to make an investment in the operation to drive economic impact, we believe that we could generate between \$5-10M on an annual basis. This level of economic impact would require an investment of the city between \$100,000 - \$300,000 annually. Spending \$100,000 - \$300,000 by the City on operations to generate \$5-10M in direct economic benefit could be a good decision if the City has the right means to capture the incremental revenue through hotel/lodging tax, sales tax, fuel tax, job creation, and other means.

If the City was interested in exploring this type of scenario, SFM would work with the City of Morgan Hill to establish a detailed operating budget for the Sports Center on a one-time fee basis. If adopted and agreed upon, SFM would then provide management as a service in a cost-plus model. SFM would manage the facility on a monthly management fee basis with deferred management opportunities on financial performance, economic impact, and sponsorship sales.

We also believe that if the City was willing to consider management of the Aquatic Center and future baseball-softball complex, combined with the existing Outdoor Sports Center, SFM could be of great value by creating efficiencies in the management and promotion of the collective group of assets. We appreciate the City of Morgan Hill's commitment to youth and amateur sports!

Sincerely,

A handwritten signature in black ink that reads "Eric Sullivan". The signature is fluid and cursive, with the first name "Eric" and last name "Sullivan" clearly distinguishable.

Eric Sullivan
Partner
Sports Facilities Management, LLC
727.474.3845 | esullivan@sportadvisory.com

NewCo, LLC

Orchard Valley Youth Soccer League • San Jose Soccer Complex Foundation • California Youth Soccer Association

Response to Request for Proposals

Morgan Hill Outdoor Sports Center Operations and Adjacent Recreation Facility Opportunities

February 21, 2018

1. Management Structure

The San Jose Soccer Complex Foundation (SJSCF), Orchard Valley Youth Soccer League (OVYSL), and California Youth Soccer Association (CYSA) District 2 propose to operate and manage the City of Morgan Hill's Outdoor Sports Center (OSC) and work toward expanding the complex in the coming years. NewCo, LLC is being formed by the three soccer organization partners for this purpose and will be registered as a 501c3 nonprofit limited liability corporation (LLC) in the State of California. NewCo's mission is to invest the time and money necessary to address and remedy the complex's recent shortcomings — particularly in the area of field maintenance and facility upkeep — and to explore various options to create a complex that's innovative and cutting edge to better serve the needs of local youth and adult recreational groups, as well as to attract large regional and national events of the highest caliber — with the intent of bringing significant economic benefits to the local community.

NewCo will be governed by a three-member board consisting of one member from each of the three sponsoring organizations:

- **OVYSL** — A soccer club based here in Morgan Hill with over 1,500 players. OVYSL's territory encompasses the greater Morgan Hill area including OSC, and it's essential for OVYSL to be able to access OSC for practices, games, and tournaments.
- **SJSCF** — A nonprofit organization established to develop and continually improve fields to host local, regional, and national tournaments for the 17 soccer leagues and approximately 25,000 players it represents in the surrounding five-county area.

- **CYSA District 2** — A group of affiliated leagues serving Santa Clara County, San Mateo County, and Santa Cruz/Monterey/San Benito Counties with a need for a large sports complex to host tournaments. As an organization, CYSA District 2 hosts tournaments on six weekends (three in the spring and three in the fall) each year. In addition, individual District 2 leagues currently host tournaments on another 12 weekends per year. All of these tournaments — as well as other tournaments created by local leagues in the future — could potentially be booked into the OSC.

Primary objectives of NewCo, LLC

No senior rights have been granted to any of the three sponsoring organizations — all will have vital roles to play in operating and managing Morgan Hill's OSC. The primary objectives of NewCo are as follows:

- Implement facility upgrades and perform ongoing maintenance to make OSC a premier venue of exceptional quality
- Ensure access for local recreational groups and sports organizations of all types, balancing local access with regional uses
- Operate the OSC without any subsidy from the City of Morgan Hill
- Maximize economic impacts for Morgan Hill businesses and the surrounding community by attracting regional and national events
- Effectively coordinate and manage parking operations to minimize traffic control issues — moving away from event-day collection of parking fees by including parking costs in tournament registration fees to mitigate traffic impacts
- Ensure fiscally responsible, sustainable, and transparent operations
- Integrate OSC operations to work with other city facilities including the adjacent Dennis Kennedy Aquatics Center
- Explore improvements and additions to the OSC that can elevate it into a premier regional sports complex to address opportunities to attract major sporting events to the complex in the future — to deliver substantial economic benefits to Morgan Hill
- Work closely with the planned Destination Management Organization envisioned in the future by the City of Morgan Hill

Backgrounds and experience of sponsoring groups

SJSCF is a 501c3 charitable nonprofit organization created to identify, build, and/or expand a soccer complex within District 2 to host large local, regional, and national soccer events. The foundation is committed to making a \$400,000 donation from its substantial field development

funds to renovate the grass playing fields at OSC. This will complement the city of Morgan Hill's commitment to refurbish the two synthetic turf fields at the complex.

The SJSCF board consists of representatives from each of the 17 leagues in CYSA District 2. The board currently has a total \$1.4 million in capital to invest in projects, with the ability to raise additional capital from the leagues it represents.

OVYSL is the youth soccer league that serves the local Morgan Hill community. The organization is also a 501c3 charitable nonprofit that has operated in the area for more than three decades. As the largest user of the OSC, OVYSL offers recreational, competitive, and special-needs programs for youths of all abilities. The league is committed to continuing to use the complex extensively for training sessions, league games, and its annual October Thriller Soccer Tournament. OVYSL is run by a 16-member voting board, with all members drawn from the local community. Each board member has a vested interest in ensuring that the OSC meets community needs in addition to attracting events that will provide regional or national exposure and economic benefits to the City of Morgan Hill. This will help ensure the balance the City is looking for in terms of local usage versus regional or national uses.

CYSA-North is the parent organization of District 2. As with the other two entities, it is also a 501c3 charitable nonprofit that organizes and delivers soccer experiences for approximately 160,000 youth and 30,000 adults across Northern California. This includes recreation, competitive, and special-needs individuals. Prior to MHYSA taking over as operator of the complex, CYSA-North managed the OSC, bringing more than 30 weekends of large soccer events annually to the local community.

Today, CYSA-North hosts three to four major tournaments yearly, spread over **eight** weekends. These would likely be hosted once again at OSC should NewCo be selected to manage and operate the OSC. When added to the 18 soccer tournaments held within CYSA District 2, this provides the potential to run soccer tournaments on as many as 26 of the 52 available weekends per year. That excludes other soccer events that could potentially be scheduled at the OSC, such as Olympic Development Program (ODP) training sessions, coaching courses, and more.

In addition, CYSA-North is affiliated with US Youth Soccer (USYS) — the largest youth soccer organization in the U.S. with more than three million members. USYS holds a number of soccer tournaments annually that extend up to a week or longer. A few years ago, one of these — the USYS Presidents Cup — was hosted at the OSC, bringing a week's worth of out-of-town visitors

and the economic benefits from extended hotel stays, local dining, and shopping revenues to the greater Morgan Hill community.

Functional responsibilities of the organizations

As mentioned above, NewCo will be governed by a three-member board, with one member drawn from each of the sponsoring organizations: OVYSL, SJSCF, and CYSA District 2. The following individuals are prospective members of NewCo's board, subject to appointment by the boards of the three sponsoring groups:

- Allison Bass, board member and director of under-12 competitive coaching, OVYSL; director of operations, Orchard Valley Toros FC
- Rodney Robinson, board member and secretary, SJSCF
- Lela Huenergardt, district commissioner, CYSA District 2

NewCo will hire a business manager for OSC (*see description of professional staff, below*) who will report to the board in all matters. The business manager will recruit and hire a groundskeeper/facilities manager and a concessions/vendor manager — again with the approval of the board. All contracts will be reviewed by the business manager and presented to the NewCo board for one of its members to execute before implementation.

The NewCo management team will meet monthly to oversee all matters pertaining to OSC operations, conduct budget reviews, prepare annual operating budgets — including capital improvements — and provide required reporting requirements to the City of Morgan Hill. We will also be able to create additional committees to oversee projects such as fundraising (including grant applications) and other projects, as needed.

We have identified an outstanding individual to lead our grant outreach efforts. That team member is:

- Anne Warner Cribbs, a 1960 gold medal-winning U.S. Olympian in swimming — Anne runs her own public relations firm, Anne Cribbs & Company, and has served as president and CEO of the Bay Area Sports Organizing Committee (BASOC). *Please see more about grants outreach under Revenue Sources and Pricing.*

Brief biographies are included as addenda at the end of this document.

Funds to operate NewCo, LLC will be raised as needed through the three constituent groups: SJSCF, OVYSL, and CYSA District 2. The precise method(s) will be at the discretion of each group and the funds will be provided to NewCo through either a donation or a loan. CYSA District 2 hosts several tournaments each year that serve as fundraisers in helping to provide money for field development activities through the SJSCF. These funds are drawn from fees charged to teams participating from all over the San Francisco Bay and Monterey Bay areas — from Hillsborough to Half Moon Bay, from Palo Alto to Pajaro Valley, from Los Gatos to Los Altos, and from Morgan Hill to Mountain View. It's also possible for CYSA District 2 to request direct support from individual leagues or to increase player registration fees for specific purposes such as acquisition of land to expand the OSC should that prove desirable.

Professional staff

The OSC will be professionally managed and operated with the help of three individuals — two of whom will be full-time and one part-time. These individuals are:

- Business manager — Responsible for marketing, scheduling, and overall management
- Groundskeeper — Handles field maintenance and facilities upkeep
- Concessions and vendor manager (half-time) — Works with on-site vendors and concessionaires

OSC Business Manager

Degree Level	College degree preferred, but not required
Degree Field(s)	Sports marketing
License/Certification	None required
Experience	Large sports complex management
Key Skills	Written/oral communications, general field and equipment maintenance knowledge and skills, marketing, vendor management
Median Annual Salary (2015)	\$80,000

Key Responsibilities

- Speak to rental groups, handle community outreach and business relations, review terms/fees for field rentals, and negotiate agreements
- Oversee accounts payable (including collections)
- Manage vendors, including field maintenance and janitorial
- Balance the needs of a high-quality complex against the requirements of rental constituents
- Manage disparate local subcontractors (field marshals, facility maintenance, field maintenance, security, and more)

OSC Groundskeeper

Degree Level	High school diploma or equivalent
Degree Field(s)	None
License/Certification	Certifications preferred, acceptable if not
Experience	Previous groundskeeping experience (farm field maintenance acceptable)
Key Skills	Written/oral communications, general field and equipment maintenance knowledge and skills
Median Annual Salary (2015)	\$60,000

Key Responsibilities

- Establish and review periodic field maintenance list with vendor(s)
- Handle routine to complex field and facility maintenance
 - Repair and adjust field equipment (e.g. irrigation, field water coverage issues, excessive field wear in certain areas, and so on)
 - Do weekly field lining and setup as needed
 - Set and adjust sprinklers
 - Mow grass fields
 - Manage weed/gopher abatement program
 - Handle soccer goal setup and repair
 - Provide hands-on oversight of locks and day-to-day security issues

OSC Concessions/Vendor Manager

Degree Level	None
---------------------	------

Degree Field(s)	None
License/Certification	None required
Experience	Vendor management, negotiating
Key Skills	Written/oral communications, food service and concessions knowledge and skills, vendor management capabilities
Median Annual Salary	\$40,000
Part time	Half-time position

Key Responsibilities

- Negotiate with and manage concessions vendors
- Collect revenue share from each vendor

2. Community Access and Regional Use Philosophy

NewCo is in full agreement with the objective of balancing local community access to the OSC with regional use for larger sports tournaments and other events. We fully anticipate continuing to reach out to and serve local Morgan Hill area groups that currently make up a large percentage of users at the OSC including:

- Orchard Valley Youth Soccer League
- Raiders Football/Cheer Program
- South County Outlaws (lacrosse)
- South Valley Rugby Club
- Sobrato High School (soccer and football)
- Britton Middle School (soccer)
- Charter School of Morgan Hill (soccer and flag football)
- Oakwood High School and Middle School (soccer)
- Silicon Valley Cricket Group

- City of Morgan Hill Adult Soccer

As in the past, community use will primarily take place during the week, with the entire complex often reserved for weekend tournaments and events when competitive teams in soccer and other sports can most easily travel. However, it's important to note that the local OVYSL also relies on the OSC for both weekday soccer practices and weekend games throughout the year.

The City's plan to replace the existing synthetic turf on the two lighted turf will enable us to continue to make optimum use of these valuable fields, which experience particularly heavy usage during the late fall and winter months as local sports groups seek lighted fields for practices and games after dark. Installing lights on nearby grass fields could further enhance field rental revenues on a year-round basis, and this is something we would like to explore with the City as part of our planned improvements going forward.

Once NewCo has invested the funds necessary to refurbish the grass fields and bring the OSC back to the exceptional quality it has long been known for, we plan to reach out to the local business community to create destination packages with hotels, restaurants, and perhaps even retail stores — to further enhance the opportunities for having weekend tournaments deliver desired economic benefits to the local community.

Our long-range vision for the complex is to negotiate an appropriate price to purchase an additional 15-acre parcel adjacent to the swim center, which would enable us to expand the total number of soccer fields to 18 — creating a “super complex” similar to those in a handful of regions across the country. Nothing like this exists in the state outside of Southern California, where several large complexes host annual tournaments that deliver millions of dollars in economic benefits to the surrounding communities. Destination packages created for these tournaments would ensure that the expected revenues are shared by local businesses in addition to the host organizations.

3. Market Strategy

With its tri-party arrangement involving OVYSL, SJSCF, and CYSA District 2, NewCo brings a significant marketing advantage to the management and operations of the OSC. With the soccer leagues the sponsoring groups represent not only in Morgan Hill, but also throughout the San Francisco Bay and Monterey Bay areas and, in fact, across Northern California, we expect to be able to funnel a significant increase in soccer usage at the complex over time — while

remaining cognizant of and fully committed to the goal of ensuring local access for a diverse mix of sports and recreation groups and users within the City of Morgan Hill.

This simplifies the marketing challenges for NewCo as well as the City of Morgan Hill in returning the OSC to the level of prominence it had earned in the past when it was the go-to facility for high-level competitions for soccer teams from Eureka and Redding to Fresno — as well as a major destination for sports organizations drawn from Southern California, Oregon, Washington, Nevada, and other states throughout the West and across the U.S.

Building upon the broad community outreach that the MHYSA has conducted over the past seven years, we plan to continue to work to attract:

- Community sports leagues led by youth soccer, but also including adult soccer, youth tackle football, youth flag football, cricket, lacrosse, rugby, and more.
- Local high schools and middle schools, primarily for soccer practices and games as needed — but the OSC could also be used for other sports such as lacrosse and field hockey should those groups find it difficult to access school facilities for practices and games.
- Local competitions and tournaments — from OVYSL’s annual soccer tournament to dog agility training and competitions.

Beyond the local community, the OSC will once again be home to:

- Premier Northern California sports competitions such as CYSA’s California Regional League (CRL) and regional soccer tournaments such as District 2’s Spring and Fall District Cups tournaments, potentially CYSA’s State Cup soccer championships, and perhaps even USYS national soccer championships on some sort of rotating basis in the future.
- Other regional and national tournaments hosted by sports groups of every type that require an outdoor sports complex of the highest possible caliber and a community with all the assets that Morgan Hill provides in the areas of lodging, dining, shopping, and support services.
- Specialty events — ranging from car shows to music festivals — that may be attracted to a facility such as the OSC on open weekends.

Promising near-term marketing results

For the purposes of this proposal and business plan, we have assumed that we will attract **a minimum of at least four additional soccer tournaments annually** beyond what has been held at the OSC in the past. This **very conservative** assumption will generate additional revenue of at least \$50,000 annually — and together with reduced expenses on several line items will help move the complex from a negative to a positive cash flow — even with the additional maintenance and upkeep that we anticipate investing in the complex.

But this assumption of hosting four additional tournaments at OSC each year is really only the beginning. With the City committed to refurbishing the two synthetic turf fields and purchasing an additional ten acres of property for overflow parking at least in the interim, and with NewCo committed to investing approximately \$400,000 in renovated grass fields including in-ground sprinklers and significantly improved ongoing upkeep — the complex should in very short order regain its reputation as one of the premier soccer complexes in the West.

As noted earlier, the leagues represented by CYSA District 2 host tournaments on at least 12 weekends annually. Parent organization, CYSA-North, which encompasses leagues from the Oregon border to Fresno, hosts three to four statewide tournaments spread over up to eight weekends per year. That's 20 weekends of soccer tournaments, of which the included three-year financial pro forma (Attachment D) assumes we will only attract an additional four weekends of soccer. In the past leagues specifically sought to hold their tournaments at the Morgan Hill complex because it was known as the premier field complex in all of Northern California. By regaining this distinction, the OSC will become a powerful sales tool once again and we expect to substantially exceed the minimum assumptions in our pro forma (Attachment D) over the coming months and years.

In addition, if we are able to successfully negotiate for the purchase of the additional 15 acres adjacent to the property the City proposes to use as an overflow parking area — and if we achieve our vision of developing an additional 7 fields to create an 18-field “super complex” — that will open the door to unprecedented opportunities for the OSC to host extraordinarily prestigious regional and national soccer and other sporting events. This could ultimately enable us to market the OSC in ways never before imagined — bringing significant benefits to the City and local business community.

4. Risk Management

Public facilities such as the OSC must necessarily be concerned with risk exposure and management. While not all risk can be mitigated, paying proper attention to the potential risks involved and addressing those through appropriate measures can help protect both the City of Morgan Hill as the OSC's owner and NewCo and its sponsoring groups as operators and managers of the complex.

Improving playing conditions reduces risk

From our perspective, effective risk management begins with bringing the quality of the fields up to the exceptional level expected at a premier outdoor sports venue. When youth players are competing in sports — moving at high speeds, changing directions, trying to work together with teammates and avoid contact with opponents, and kicking soccer balls or passing or shooting lacrosse balls at speeds of 60 mph or higher — field defects can result in significant injuries to players as well as spectators. These defects may include burrows dug by rodents, uneven surfaces due to poor maintenance, improperly installed or maintained goals, and other issues. So, the first and best approach to minimizing risk and liability is to do what we already have planned: invest in renovating fields and taking care of other maintenance issues to restore the OSC to its previous top-quality condition.

Properly caring for synthetic turf and natural grass fields, goals and nets, lights, fencing, the grandstands lining the turf fields, scoreboards, buildings, and parking areas will not only substantially mitigate risk for the City and NewCo, but will also provide long-term protection for the OSC's valuable assets. IN addition, these enhancements will tend to alleviate risk associated with dissatisfied customers (the various leagues and sports organizations that we build relationships with) — namely that these organizations decide to choose to continue to host events at the OSC rather than seek other venues for tournaments, games, and practices.

Having OVYSL as one of our sponsoring partners ensures on-going patronage from what is currently the OSC's highest volume user. The local roots of members of OVYSL's board of directors will help us stay connected with and aware of the needs of other Morgan Hill area groups using the facility. And by meeting the highest quality standards, the OSC will have the drawing power to attract the kinds of local as well as regional and national weekend tournaments and events necessary to grow the complex's revenues over time.

Beyond that, we plan to address risks regarding personal injury and potential property damage by relying on the liability insurance that sports organizations are required to carry, as well as through damage waivers and rental deposits. OSC's professional staff and representatives of the groups that contract to use the facilities will be charged with monitoring usage and ensuring that uses remain within acceptable guidelines and that appropriate behavior is maintained at all times.

NewCo's board of directors will ensure that we comply with the City's contractor guidelines and regulations, and will also make certain that all operations at the center are in accordance with state laws and regulations regarding workers' compensation, health and environmental statutes, and other related issues. Regular reporting by NewCo and its representatives will keep the City apprised of any potential exposures or gaps in coverage.

5. Revenue Sources and Pricing

The primary sources of revenue for the OSC have been the following:

- Field rentals
- Concessions
- Parking
- Tournament fees
- Services
- Hotel commissions

The attached financial pro forma (Attachment D) shows significant increases in revenues from field rentals and parking and a small increase in concessions as a result of adding the projected four weekend tournaments we have assumed once NewCo becomes OSC's operator and manager.

At this point, we do not anticipate making any changes to the current fee structure at the OSC. With minimal inflation in recent years and families' entertainment dollars relatively constrained, we want to make sure that we stay highly competitive in terms of our fee structure, including field rentals, parking fees, and so on. However, we do believe that once we have restored the

OSC to the exceptional quality level expected from one of the premier sports complexes in the region, we may be able to implement modest increases in fees in the future.

Additional revenue opportunities

There are quite a number of additional revenue opportunities that we can address to enhance the OSC's revenue streams. These include:

- **OSC naming/sponsorship** — Based on our analysis, we believe it might be possible to raise \$25,000 to \$40,000 annually from the right family-oriented, health-focused corporate partner.
- **Team training camps** — Many European professional teams now spend a portion of their summers in the U.S. They come for preseason training, to play exhibition games in front of U.S. crowds to boost their visibility in the U.S. TV market, or to participate in invitational tournaments such as the International Champions Cup presented by Heineken.

Many of these teams — such as well-known international champions, Real Madrid and Manchester United, did last summer — spend up to a week in the Bay Area, ultimately playing matches at the SF 49ers' Levi's Stadium or the Earthquakes' Avaya Stadium. These teams need a home base to train, and have turned to local universities in the past. However, a refurbished OSC with multiple fields available for different purposes — including pristine lighted synthetic turf and grass fields to use in the cool of the evening — could compete effectively for these training dollars.

If we are able to, through the more efficient use of space at OSC, create a training and development center building complete with conference rooms and classrooms, this would further enhance our marketing advantages. In addition, this center could be used to attract CYSA's coaching classes, ODP training sessions, and more.

- **Additional lighted fields** — As mentioned above, if we can raise the capital — perhaps through the help of a grant — to add lighting to a number of the grass fields adjacent to the synthetic turf fields, these lighted fields would generate higher rental fees.
- **Variety of sponsorship opportunities** — Beyond the lead corporate naming sponsorship, we believe there are many other sponsorship opportunities for the OSC. Sports apparel and equipment providers such as Adidas or Nike; local technology leaders such as Apple, Google, or Facebook; and local hotels all might have an interest

in investing in local youths participating in healthy sports activities by purchasing advertising on scoreboards, signage throughout the complex, or in programs for particular events.

- **Expanded food services and concessions** — While the food, drink, and concessions options have expanded at the OSC in recent years, there's still room for much more improvement — which would drive additional revenue to the bottom line. We plan to explore ways to attract more vendors and concessionaires, and are also interested in looking into additional food services options that may be able to be attached to the existing office at the OSC.

Grants

Another promising source of revenue that NewCo could potentially tap into is grants. We intend to pursue grants for:

- Specific capital improvement projects, including installation of lights or in-ground irrigation and potential funding for purchases of additional land to support the creation of a “super complex” of 18 or more fields
- Unique events designed to reach out to underserved groups within the local community

Unfortunately, the notion of grants as readily available “free money” that can be easily obtained by any organization with legitimate aspirations to improve the recreation and fitness opportunities within a community is a bit misleading — as has been demonstrated by the difficulty in obtaining grants in the past.

There are two truisms about grants today:

- With belt-tightening everywhere — from large corporations to federal and state government entities, nonprofit organizations, and foundations — there is simply a lot less money to be divided among worthy grant applicants.
- Obtaining grants is an art, one that requires working with a grant writer who truly understands the field in which the applications will be submitted. As noted under the Organization Structure section of this document, we intend to contract with Anne Warner Cribbs — a 1960 U.S. Olympian in swimming, who held several American records at the time and was part of the gold medal-winning 400-meter medley relay team. Cribbs has gone on to devote her professional career in serving sport and the local community as head of her

public relations firm, Anne Cribbs & Company, in addition to as president and CEO of the Bay Area Sports Organizing Committee (BASOC).

With Anne's help, one of our key targets for grant money will be US Soccer. Because the OSC has historically served and will continue to cater to the local soccer community, U.S. Soccer Foundation's Safe Places to Play field grants would appear to be a real possibility as a source of funding to help improve and expand the OSC. Below are some details on the application process for one of these grants:

U.S. Soccer's Safe Places to Play Grants

Applying for a Safe Places to Play grant is a two-step process. First, you will need to submit a Letter of Interest (LOI) to the U.S. Soccer Foundation's Grants department. Second, if the Foundation approves the LOI, your organization will be invited to complete an official application.

Safe Places to Play LOIs are accepted on a rolling basis throughout the year. For 2018, LOIs are due by September 28, with full applications due by October 5.

As part of our LOI submission, we would be expected to obtain and submit an official project quote from one of U.S. Soccer Foundation Corporate Partner(s) relating to our proposed project in areas such as irrigation, lighting, synthetic turf, or other improvements. Before submitting our LOI, we would be asked to contact the appropriate partner(s) for our project from the list below.

To be eligible, we would need to prove that we own or have a ten-year lease on the land we intend to improve; that we are at least 50% funded; that the project has a clear timeline for completion; and that the field space would be for majority-use soccer. Funding is available to support from 15% to 50% of a given project, except that for irrigation, the funds can support up to 100% of a project. Maximum grants for irrigation are \$15,000, while lighting grants can be up to \$25,000 per field or \$50,000 if multiple fields are involved.

NewCo is committed to working diligently to identify the most promising sources of grant funds that we have a realistic chance of obtaining, and dedicating the resources needed to hopefully succeed in obtaining our fair share for development of the OSC.

6. Itemized Expenses

The attached financial pro forma (Attachment D) includes itemized expenses for OSC. As on the revenue side of the operation, we anticipate making minimal changes to most of the line items on the expense side. However, we propose to make substantial changes in several areas:

Increased investment in field maintenance

The first is in field maintenance as we discussed in our letter of intent. We are planning to increase the field maintenance budget by \$80,000 annually, which we believe is necessary to restore the playing conditions to the premier level desired. As part our field renovation efforts, the SJSCF will invest \$300,000 in capital into an in-ground irrigation system for the grass fields. The sprinklers will be amortized over 15 years, which shows up as a \$20,000 annual line item on line 20 of the attached Excel spreadsheet. An additional \$100,000 will be used to pay for deferred maintenance on the grass playing surfaces.

Reduced salaries and payroll taxes

The other substantial change is that we believe that we can reduce the salary costs of the professional staff. By relying on 2.5 people with oversight from the NewCo board of directors, we project that we can reduce salaries by more than \$86,000 annually — with a corresponding decrease of not quite \$14,000 annually in payroll taxes. Should a significant increase in usage lead to a corresponding growth in responsibilities and work hours for the professional staff, we anticipate that the additional revenues would be more than adequate to cover any additional salaries required. We do not expect any increase in the salaries line item over the initial three-year period that we have detailed in the pro forma (Attachment D).

Proposed profit-sharing rather than annual lease

We are also proposing to eliminate the \$32,000 annual lease expense for the facility (see *financial pro forma (Attachment D) beginning in FY2020*), and instead will submit terms for a profit-sharing arrangement between NewCo and the City of Morgan Hill when we negotiate the final contract with the City. We believe that this will be mutually beneficial for both parties, especially with the anticipated development and marketing of the OSC going forward.

7. 3-Year Financial Pro Forma

The attached three-year financial pro forma (*Attachment D*) shows the income and expenses for having NewCo operate and manage the complex for the period from FY2020 – FY2022. The yellow highlighting calls out revenue and expense line items that have been changed (along with the elimination of the annual lease for the facility) from the existing management and operations of the sports complex.

8. Capital Funding Plans

As mentioned above, the San Jose Soccer Complex Foundation intends to make a donation of \$400,000 to NewCo, LLC to be used in renovating the grass fields at the OSC. That will still leave the SJSCF with ample funds on hand — in excess of \$1 million — to explore additional ways to enhance or expand the OSC — with potential assistance from significant grants and ongoing fundraising through CYSA District 2's member leagues. Our ultimate hope is to be able to create a “super complex” that would make Morgan Hill a major destination for the largest regional or national soccer tournaments or other sports competitions in the future.

Deferred maintenance

In addition to the \$400,000 we plan to use to renovate the grass fields at the OSC, there are a number of deferred maintenance items that we would like to be able to address in the near term as cash flow or additional capital permits. These deferred maintenance items include:

- Improving the bathrooms
- Refurbishing the nets between the synthetic turf fields
- Refurbishing the turf field sunshades
- Upgrading the scoreboards for the turf fields
- Replacing the water fountain by the turf fields
- Repairing the gates for the parking lot and football turf field
- Addressing the gopher issues in the front grass areas lining the parking lot — renovating the grass or replacing it with synthetic turf to avoid turned ankles
- Cleaning up the back maintenance yard

9. Integration of Operations with City Facilities

Our goal is to continue to integrate the operations of the OSC with other City facilities such as the swim center next door, and to work in concert with City systems (such as the online reservation system) whenever possible. We look forward to discussing the specifics of this in greater detail with City administration in the future.

10. Use of Subcontractor and Partner Organizations

We anticipate that the majority of work performed at the complex will be carried out by the proposed professional staff. However, when specialized services are required — such as for maintaining lighting standards and replacing bulbs or for specialized gopher abatement procedures, we may find that hiring subcontractors makes the most sense. When subcontractors are required, the OSC business manager will review candidates and bring his or her recommendations to the NewCo board of directors — which will make the final selections and sign appropriate contracts. Due diligence will always be performed to ensure that the subcontractors meet City standards and comply with applicable policies and requirements.

As for partners, we anticipate getting a tremendous amount of support — including ample volunteer time and effort — from the three sponsoring soccer organizations that will be benefitting from access to a premier soccer facility for tournaments, games, practices, and other usage. This is one of the key built-in advantages of selecting NewCo to operate and manage the OSC going forward.

11. Collaboration with Future Destination Management Organization

When the City of Morgan Hill implements its plan to launch a Destination Management Organization (DMO) to better understand the social and economic impact of tourism on the surrounding community and the resulting benefits that can be derived by having an organization to lead these efforts, NewCo will be happy to collaborate with its efforts to enhance the value of destination marketing and management for the City and its businesses and residents.

Operating a premier outdoor sports center at a premier level offers tremendous potential for delivering economic benefits within a community. If we are successful in negotiating for the additional 15 acres of property that we hope to acquire to create an 18-field complex, it will magnify this potential many fold at the OSC.

Case in point: San Diego Surf Cup

San Diego Surf Cup, played each year in late July and early August, is one of the most prestigious soccer tournaments in the nation. The tournament is played on more than 20 soccer fields set up on the city's polo fields.

Attracting 700 – 800 teams over two three-day weekends, the tournament generates more than 85,000 booked hotel rooms and an astounding \$139 million in overall economic impact according to a recent study by San Diego State University.

Now, it should be noted that the tournament has been in existence for more than 35 years and has used that time well — establishing itself as a tournament where “The Best of the Best,” as its entrance banner proclaims — come to play, with players watched by recruiters from leading colleges and universities as well as representatives of US Soccer’s national team programs.

But the point is that Morgan Hill and the surrounding South Valley have a lot in common with San Diego (minus the ocean beaches!) — an idyllic climate, abundant sunshine making for perfect playing conditions, a welcoming community, and many local attractions including world-class wineries, shopping, parks and recreation facilities, farm-direct produce, and more. So if we are able to create a “super complex” of up to 18 fields at the OSC, the sky’s the limit for the kinds of tournaments and events the City’s DMO will be able to bring to the community.

Conclusion

We are truly excited to be on the cusp of once again working in close cooperation with the City of Morgan Hill to elevate the OSC to the world-class facility it can be and to ensure that it receives broad, diverse usage from not only soccer organizations, but also a cross-section of local organizations in other sports. This will ensure that the OSC meet the needs of the local community as well as groups coming from throughout Northern California or across the nation.

We have the financial capital to invest to quickly bring the existing natural grass fields up to the desired level of quality and maintain that standard over time. And we have the will and financial support from a built-in constituency — families that love soccer — to make realistic plans to purchase the additional land necessary to create a sports complex that could literally emerge as a nationally known destination for sports organizations everywhere.

NewCo, LLC looks forward to establishing a mutually beneficial relationship with the City of Morgan Hill — with the strong participation of local OVYSL, close neighbor SJSCF, and long-time user CYSA — to create a true partnership that will be a win-win for the Morgan Hill community and the kids and adults who play the beautiful game of soccer throughout Northern California.

Addenda

Following are brief biographies for the prospective key executives within NewCo, LLC:

Rodney A. Robinson, SJSCF

Soccer volunteering experience

CYSA District 2 Commissioner — November, 2007 – December, 2017

SJSCF board member — 2006 – present

Work history

CEO, President, and Founder • Omney — Sold and delivered a real-time network for disbursing deposits to U.S. bank accounts and prepaid cards. Provides services to U.S. insurance companies, merchant acquirers, lenders, and other organizations. Sold Omney to MasterCard in November, 2014, and currently operate the company as a wholly owned MasterCard subsidiary.

Vice President of Product Management • Obopay — Led U.S. product management for Obopay, the world's leading mobile payment company.

Director of Product Management • Intuit — Led a team of product managers responsible for Intuit's data aggregation business including bank deposit account opening, account funding, money transfers, bill payment switching, and financial account aggregation.

Principal of Internet Services • IBM Global Services — National principal for banking, finance, and securities industries, as well as Western U.S. principal for Internet application development and systems integration contracts.

Education

Stanford University — BS in electrical engineering and BS in industrial engineering

Santa Clara University — MBA with emphasis in marketing and finance

Allison Bass, OVYSL

Soccer volunteering experience

Director of Operations, Orchard Valley Toros FC

Board Member, Director of Under-12 Competitive Coaching, OVYSL

Has held various positions with OVYSL including tournament director, coach, and team manager. As director of operations for the OV Toros, she is involved in almost every aspect of running the club — assisting with daily management of 37 competitive and 20 recreational teams. Allison is also a licensed coach and referee.

Work history

Owner and Operator • South County Collision Center

Manages the business and runs the production side of the facility. She is also a certified estimator for South County Collision Center.

Active in the Morgan Hill community — Allison has lived and worked in Morgan Hill for more than 20 years. She is an dedicated volunteer within the community and local schools, which her three children attend. She is thoroughly familiar with the needs of the local business community, Morgan Hill schools, sports groups, and city events and activities.

Lela Huenergardt, CYSA District 2

Soccer volunteering experience

CYSA District 2 Commissioner — December, 2017 – present

CYSA District 2 Tournament Director — 2013 – present

Responsible for CYSA District 2 Spring Cup and Fall Cup tournaments, played over five to six weekends each year. A majority of games are played at the OSC.

CYSA Tournament Committee — 2006 – present

Responsible for helping to place CYSA statewide tournaments at the OSC and overseeing all CYSA activities in Morgan Hill.

CYSA District 2 Tournament Committee — 2006 – 2012

Supported CYSA District 2 Spring and Fall Cup competitions.

Tournament Director, Almaden Valley Youth Soccer League — 2002 – 2013

Responsible for hosting annual Almaden Champions Cup (September) and the Almaden Halloween Classic (October). All matches scheduled and played at the OSC.

Anne Warner Cribbs, Grants Outreach

Work history

President and CEO • San Francisco Bay Area Sports Organizing Committee (BASOC) —

Led the San Francisco 2012 Olympic bid. Organized the 2006 FINA World Masters Championships, 2007 World Junior Table Tennis Championships, and the 2014 WFG Continental Cup of Curling in Las Vegas featuring Team North America vs. Team World.

Founder and President • Anne Cribbs & Company — Provides public and community relations services to a variety of clients throughout Northern California.

Board member — Has served on a broad portfolio of board positions and is currently serving as a commissioner of the City of Palo Alto Parks and Recreation Commission.

Education

Stanford University — BS in political science

Foothill College — AA degree, President's Medal for outstanding female graduate

Henry W. Cord, Project Management and Real Estate Consulting

Work history

Principal • Cord Associates — Provides real estate consulting and advisory services to a varied client base. Is active in assisting government, public entities, and private sector clientele in handling property acquisitions, development agreements, land-use entitlements, redevelopment efforts, land-valuation issues, public-private partnerships, and other related real estate advisory and support services.

Chief Negotiating Officer • San Jose Redevelopment Agency — Directed and administered real estate acquisition program and negotiated public-private development agreements for new downtown development projects.

Assistant Executive Director for Real Estate and Development • Dallas Rapid Transit

Authority — Responsible for overall direction and implementation of acquisitions and development agreements.

Director of Real Estate and Development • Southern California Rapid Transit District —

Charged with organizing full-service real estate operation for land acquisitions, leasing, business and residential relocations, property management, and joint development.

Head of Development Group • Washington Metropolitan Area Transit Authority —

Directed development, planning and project implementation for joint development of commercial office, retail, and hotel projects at major transit sites. Handled property management, sales, and special acquisitions.

Education

American University — Certificate program in real estate

Attachments

- Mission Statement for the San Jose Soccer Complex Foundation
- Mission Statement for Orchard Valley Youth Soccer League
- Mission Statement for CYSA District 2
- NewCo's 3-Year Financial Pro Forma

Attachment A**City of Morgan Hill RFP Response****San Jose Soccer Complex Foundation****Mission: To Develop and Manage a Soccer Complex Serving Youths Ages 4 – 19**

District 2 of the California Youth Soccer Association (CYSA), one of the largest youth soccer organizations in the U.S., serves families in 17 local leagues in Santa Clara, Santa Cruz, San Benito, San Mateo, and Monterey Counties.

Santa Clara County leagues include Almaden Valley, Alum Rock, Central Valley San Jose, De Anza, Foothill, Los Gatos, Milpitas, Mt. Hamilton, North Valley, Orchard Valley, Santa Clara, South San Jose, and West Valley.

CYSA District 2's goal is to offer youth players, ages 4 to 19, of all abilities the opportunity to play the greatest game in the world — and learn some valuable life lessons along the way as well.

In its mission to continue the long-term commitment to soccer and ensure adequate future playing fields, CYSA District 2 established the **San Jose Soccer Complex Foundation** in 2003. As a 501c3 charitable nonprofit organization, its purpose is to:

- ***Develop and manage a soccer complex capable of hosting soccer games***
- ***Provide excellent facilities for local teams to educate and develop players and coaches in the best practice and playing environment possible***

The SJSCF receives most of its funding from CYSA District 2 donations. These donations are from the fees generated from the fall and spring leagues and tournaments. Additional donations for land purchases and/or capital improvements have also been received from the CYSA District 2 leagues. The SJSCF board of directors is comprised of the CYSA District 2 league presidents, the District 2 commissioner and assistant commissioner, a treasurer, and two board members from parent, CYSA.

Attachment B

City of Morgan Hill RFP Response

Orchard Valley Youth Soccer League

Mission Statement

The Orchard Valley Youth Soccer League (OVYSL) and OV Toros FC are committed to providing South County area children with a fun and rewarding soccer experience and to teach them to love the game of soccer. All players participate as active and contributing team

members, while coaches support and encourage players to achieve their soccer goals. We as a league and club, establish a fun, yet disciplined environment that emphasizes the individual development of advanced skills, team ethics, team tactics, and good sportsmanship.

OVYSL and OV Toros FC strive to achieve the following goals:

- Instilling the fundamental principles of teamwork and fair play
- Focusing on skill development, tactics, and game strategy
- Helping players achieve the highest level of competitive play desirable
- Building self-esteem and confidence for each participant
- Educating the youth to respect their peers
- Developing local players to the level that will allow them to play at the high school, Olympic development, national, or professional level

Currently OVYSL has 37 competitive teams and 20 recreational teams. In addition, our U8 and U6 recreational program has approximately 150 local children participating.

Attachment C

City of Morgan Hill RFP Response

CYSA District 2

Serving Youth Playing the World's Greatest Game

CYSA District 2 is part of the California Youth Soccer Association (CYSA-North) — one of the largest youth soccer organizations in the U.S. We serve families in 17 local leagues in San Mateo, Santa Clara, Santa Cruz, San Benito, and Monterey Counties.

Our goal is to offer youth players of all abilities the opportunity to play the greatest game in the world — and learn some valuable life lessons along the way as well. Some call it soccer; others *futbol*. But all can call CYSA District 2 home.

Recreational players can play within their home league, or as part of a play-through league that includes teams from several neighboring leagues. Competitive players can

play on teams bracketed within a metro area — or all the way up to statewide leagues. CYSA District 2's Olympic Development Program (ODP) offers those with exceptional abilities and commitment levels a path to state, regional, and US Soccer's youth national teams.

While the primary playing season for CYSA District 2 teams is the fall, District 2 also offers a developmental spring season — with tournament play for fun soccer experiences throughout the summer.

Attachment D
City of Morgan Hill RFP Response
Pro Forma OSC Financials

P&L		FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
Growth rate		Actuals						
		June-June	June-June	June-June	June-June	June-June	June-June	June-June
		MHYSA	MHYSA	MHYSA	MHYSA	NewCo LLC	NewCo LLC	NewCo LLC
Revenue								
1	Field rentals	\$ 349,373	\$ 349,373	\$ 349,373	\$ 349,373	\$ 379,373	\$ 379,373	\$ 379,373
2	Concessions	\$ 64,805	\$ 64,805	\$ 64,805	\$ 64,805	\$ 68,805	\$ 68,805	\$ 68,805
3	Hotel commissions	\$ 1,172	\$ 1,172	\$ 1,172	\$ 1,172	\$ 1,172	\$ 1,172	\$ 1,172
4	Parking	\$ 132,491	\$ 132,491	\$ 132,491	\$ 132,491	\$ 149,491	\$ 149,491	\$ 149,491
5	Services	\$ 43,497	\$ 43,497	\$ 43,497	\$ 43,497	\$ 43,497	\$ 43,497	\$ 43,497
6	Tournament fees	\$ 78,212	\$ 78,212	\$ 78,212	\$ 78,212	\$ 78,212	\$ 78,212	\$ 78,212
	Total Revenue	\$ 669,550	\$ 669,550	\$ 669,550	\$ 669,550	\$ 720,550	\$ 720,550	\$ 720,550
Expenses								
7	Alarm	\$ 1,298	\$ 1,298	\$ 1,298	\$ 1,298	\$ 1,298	\$ 1,298	\$ 1,298
8	Administrative	\$ 403	\$ 403	\$ 403	\$ 403	\$ 403	\$ 403	\$ 403
9	Bank fees	\$ 2,660	\$ 2,660	\$ 2,660	\$ 2,660	\$ 2,660	\$ 2,660	\$ 2,660
10	MH capital contributions	\$ 9,332	\$ 9,332	\$ 9,332	\$ 9,332	\$ 9,332	\$ 9,332	\$ 9,332
11	MH revenue sharing	\$ 1,866	\$ 1,866	\$ 1,866	\$ 1,866	\$ 1,866	\$ 1,866	\$ 1,866
12	Consulting	\$ 8,706	\$ 8,706	\$ 8,706	\$ 8,706	\$ 8,706	\$ 8,706	\$ 8,706
13	Contractors	\$ 24,186	\$ 24,186	\$ 24,186	\$ 24,186	\$ 24,186	\$ 24,186	\$ 24,186
14	Depreciation	\$ 2,068	\$ 2,068	\$ 2,068	\$ 2,068	\$ 2,068	\$ 2,068	\$ 2,068
15	Equipment rental	\$ 14,406	\$ 14,406	\$ 14,406	\$ 14,406	\$ 14,406	\$ 14,406	\$ 14,406
16	Event expense	\$ 1,435	\$ 1,435	\$ 1,435	\$ 1,435	\$ 1,435	\$ 1,435	\$ 1,435
17	Event expense - rentals	\$ 650	\$ 650	\$ 650	\$ 650	\$ 650	\$ 650	\$ 650
18	Facility lease	\$ 32,500	\$ 32,500	\$ 32,500	\$ 32,500	\$ -	\$ -	\$ -
19	Field maintenance	\$ 98,134	\$ 98,134	\$ 98,134	\$ 98,134	\$ 178,134	\$ 178,134	\$ 178,134

20	In-ground irrigation					\$ 20,000	\$ 20,000	\$ 20,000
21	Insurance – liability	\$ 22,807	\$ 22,807	\$ 22,807	\$ 22,807	\$ 22,807	\$ 22,807	\$ 22,807
22	Interest	\$ 3,892	\$ 3,892	\$ 3,892	\$ 3,892	\$ 3,892	\$ 3,892	\$ 3,892
23	Janitorial	\$ 26,064	\$ 26,064	\$ 26,064	\$ 26,064	\$ 26,064	\$ 26,064	\$ 26,064
24	License and permits	\$ 21,403	\$ 21,403	\$ 21,403	\$ 21,403	\$ 21,403	\$ 21,403	\$ 21,403
25	Marketing	\$ 5,415	\$ 5,415	\$ 5,415	\$ 5,415	\$ 5,415	\$ 5,415	\$ 5,415
26	Misc	\$ 15,049	\$ 15,049	\$ 15,049	\$ 15,049	\$ 15,049	\$ 15,049	\$ 15,049
27	Non-cap equipment	\$ 7,931	\$ 7,931	\$ 7,931	\$ 7,931	\$ 7,931	\$ 7,931	\$ 7,931
28	Office supplies	\$ 4,389	\$ 4,389	\$ 4,389	\$ 4,389	\$ 4,389	\$ 4,389	\$ 4,389
29	Parking security	\$ 2,398	\$ 2,398	\$ 2,398	\$ 2,398	\$ 2,398	\$ 2,398	\$ 2,398
30	Payroll taxes	\$ 42,068	\$ 42,068	\$ 42,068	\$ 42,068	\$ 28,207	\$ 28,207	\$ 28,207
31	Property taxes	\$ 4,189	\$ 4,189	\$ 4,189	\$ 4,189	\$ 4,189	\$ 4,189	\$ 4,189
32	Professional Services	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
33	Refunds	\$ 1,263	\$ 1,263	\$ 1,263	\$ 1,263	\$ 1,263	\$ 1,263	\$ 1,263
34	Repairs and maintenance	\$ 19,005	\$ 19,005	\$ 19,005	\$ 19,005	\$ 19,005	\$ 19,005	\$ 19,005
35	Salaries	\$ 261,692	\$ 261,692	\$ 261,692	\$ 261,692	\$ 175,000	\$ 175,000	\$ 175,000
36	T&E	\$ 1,006	\$ 1,006	\$ 1,006	\$ 1,006	\$ 1,006	\$ 1,006	\$ 1,006
37	Utilities	\$ 81,009	\$ 81,009	\$ 81,009	\$ 81,009	\$ 81,009	\$ 81,009	\$ 81,009
38	Total expenses	\$ 723,224	\$ 723,224	\$ 723,224	\$ 723,224	\$ 690,171	\$ 690,171	\$ 690,171
39	P&L (Loss)	\$ (53,674)	\$ (53,674)	\$ (53,674)	\$ (53,674)	\$ 30,379	\$ 30,379	\$ 30,379

Line 18: Field maintenance increase from \$98k->178k/year

Line 20: In-ground irrigation: 15-year straightline depreciation (\$300k, \$20k/year)

Line35: Salaries include (i) business manager (ii) groundskeeper (iii) 1/2 time vendor mgmt

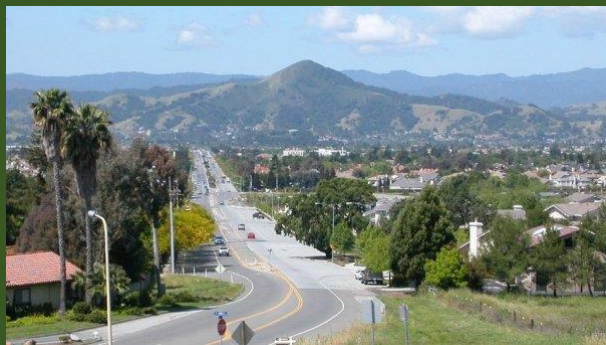
Line 30: Commensurate reduction in payroll taxes

Lines 1,2,4: 4 additional CYSA tournaments, \$50k additional revenue



Request for Proposals

Morgan Hill Outdoor Sports Center Operations and adjacent Recreation Facility Opportunities



An exciting opportunity for Sports Facility and Event Venue Operators, Regional Sports Organizations and Developers.

RFP Issued September 8, 2017

Attachment: Request for Proposals - Morgan Hill Outdoor Sports Center (1699 : Outdoor Sports Center Operator Selection)

Background

The City of Morgan Hill is seeking proposals to operate the 38-acre Outdoor Sports Center (OSC). The facility is located at 16500 Condit Road and is easily accessible from Highway 101. The City of Morgan Hill desires to be a mecca for sports and recreation related events and the OSC is the key facility in this effort.

Since 2010, the Morgan Hill Youth Sports Alliance (MHYSA) has operated the facility for both regional and local use hosting a variety of regional sporting events ranging from soccer tournaments to the Dog Agility World Championships, to concerts. The current operating agreement with the MYHSA concludes in June 2019 and the intent of the process is to have a new operator(s) for the OSC by July 2018 or earlier to ensure a smooth transition. The transition period is anticipated to begin in July 2018.

The Outdoor Sports Center is located within the City's proposed Sports Recreation and Leisure District and located directly adjacent to the City owned and operated Dennis Kennedy Aquatics Center (AC). The City additionally owns 10 acres of property adjacent to both sites and is currently being used as overflow parking as well as 26 acres of property a block away that has been land banked for future ball fields (see Attachment A).

In early 2017, the City completed an update to the City's Bikeways, Trails, Parks and Recreation Master Plan. As part of this plan the City hired Johnson Consulting to develop a Sports Market Business Strategy. A key recommendation in the study is the development of a Destination Management Organization (DMO) to support sports tourism. City staff is actively working with the local Chamber of Commerce and Hotel Group to move forward with the development of a Tourism Based Improvement District that can support a DMO type of organization.

Purpose of the RFP

The purpose of the RFP is for the City to explore operator proposals that could lead to a wide range of collaborative partnerships. Possible scenarios include:

- a) An agreement with an organization or multiple organizations to operate the Outdoor Sports Center.
- b) A development agreement that for potential development or use of the OSC in combination with adjacent public and/or private property to accomplish innovative sports recreation proposals, in addition to the operation of the OSC.
- c) An agreement to promote the OSC and other city facilities for the purpose of attracting sport events to the city.
- d) An agreement for a combination of any of the above scenarios. The City is open to all forms of partnerships including public/private partnerships, as long as the basic outcomes identified by the City are achieved.

The Facilities

Morgan Hill is located in South Silicon Valley, just 10 miles south of San Jose. The OSC is located just minutes off the freeway with two separate off ramps providing service to the facility and surrounding area. The location provides convenient access to many of the City's hotels. A map of facility locations is included as Attachment 1.

The Outdoor Sports Center

In 2007, the City invested approximately \$16 million in acquiring the property and constructing two synthetic turf fields with lights and bleachers, concession/restroom building, and improved parking for 325 vehicles. These improvements were added to the existing open grass areas, which provide space for up to 9 full size soccer fields. The OSC was developed to accommodate local youth non-profit athletic organizations (ie. soccer, football, lacrosse, field hockey, rugby), youth and adult regional tournaments, sports camps, high school games/practices, and other special events. The two artificial turf fields have reached their usable life and are scheduled for replacement by the City in December 2017.

Presently, the MHYSA maintains and operates the entire site including two artificial turf fields, nine grass fields, concessions, parking lot and restrooms. The facility has "limited access" because paid reservations are required to use the facility. The MHYSA uses several contractors to support maintenance, concessions and other operations. The 23 acres of grass fields do not have an in-ground irrigation system and are watered with large water cannons owned by the MHYSA, that is supported by one onsite well owned by the City. The City has expressed a desire for improved maintenance at the facility to the MHYSA, but overall the facility could be brought back up to a high standard with work.

Weekdays are normally used by local users for soccer, football and other sports, while weekends are often scheduled for large tournaments and events. Detailed photos and layout of the OSC are included in Attachment 2

The Morgan Hill Dennis Kennedy Aquatics Center

The Aquatics Center is currently operated and managed by City staff. The facility is located on a ten-acre site and devoted to both recreational and competitive swimming. The facility houses a 50-meter competition pool, instructional pool, recreation pool with water playground, two large waterslides, spray ground, meeting rooms, picnic areas, and locker rooms. The facility hosts summer recreation swim, which brings in between 500-2000 participants daily. The facility is also host to approximately 10 local and regional swim meets, which can bring in thousands of people on weekends.

City staff at the Aquatics Center regularly coordinate and collaborate with the current operator of the OSC in the areas of: parking management, cross promotion of facility use and shared advertising sales. It is not anticipated that operation of the Aquatics Center would be included

in proposals, however, the City is very interested in opportunities for innovative partnerships relating to coordinated management of the facilities.

City Owned Property designated for Parking and Future Recreation Use

This 10-acre property is currently vacant, unimproved property. It was purchased recently for future parking and recreation facility use. No City funding is allocated for permanent development. The property is currently being used as additional overflow parking for the OSC and Aquatics Center. The City is open to innovative future uses of this site in coordination with operations of the OSC and Aquatics Center. The site is located outside of the City limits within the County. Future development of this site will require the use of water wells as it cannot be connected to City services (in the near future).

City Owned Future Ball Field Site

This 26-acre property is currently undeveloped. It was purchased by the City in 2016 to land bank the property for the future development of baseball fields on the site. No funding is allocated for the permanent development of the ball fields within the next five years. The property is currently used for agricultural purposes. The City is open to innovative future uses of this site in coordination with operations of the OSC. The site is located outside of the City limits within the County. Future development of this site will require the use of water wells as it cannot be connected to City services (in the near future).

Adjacent Private Property

There is significant private property near the OSC both within the City limits and County. The City is open to innovative partnership models that utilize adjacent and nearby property in coordination with the operations of the OSC.

The Opportunity

The opportunity presented through this process is for an organization or multiple organizations to operate the 38-acre Outdoor Sports Center site. The City's primary goal is to ensure the ongoing operation of the OSC with the intention to meet two guiding principles approved by the City Council.

1. Provide athletic facilities for Morgan Hill community use for local organized sports groups.
2. Maximize the economic impact of the Outdoor Sports Center for the City of Morgan Hill.

To provide greater detail on the Guiding Principles a set of Basic Outcomes have been established. The Basic Outcomes are the baseline of what must be achieved through the RFP Process. The City has also established some Additional Desired Outcomes achievable through this process and the resulting collaborative agreement(s).

Basic Outcomes:

1. Balance community access with regional use
2. Operate without any city subsidy
3. Maintain the facility at an exceptional level
4. Provide sustainable, fiscally responsible, and transparent operations
5. Ensure a diverse mix of field use by sport type
6. Coordinate and manage event parking plans
7. Operations that integrate with:
 - a. City facilities, including the adjacent Morgan Hill Dennis Kennedy Aquatics Center.
 - b. Local businesses and hotel operators
 - c. The future planned Destination Management Organization

Additional Desired Outcomes:

1. Propose innovative facility use approaches and improvements
Potential approaches may include, but are not limited to:
 - a. Facility improvements to the Outdoor Sports Center
 - b. Facility development at the Outdoor Sports Center or on adjacent and nearby City owned or private property
 - c. The ability to work with the City or other partners/operators in overall management of facilities
 - d. Joint capital funding opportunities
 - e. Sponsorship models/advertising
2. Development of a funding mechanism for future planned maintenance and replacement
3. Open public (non-organized) use hours at the facility

RFP Process

The RFP Process will be one that occurs in two parts. Those interested in ultimately submitting a proposal shall submit a Letter of Interest (LOI) to participate in the proposal process. Subsequently, the City will request detailed proposals from selected organizations.

RFP Schedule

September 8, 2017	Request for Letters of Interest Opens
October 2017	Tours and Informational Meetings (By appointment, contact staff)
November 17, 2017	Letters of Interest Due (Close of Work Day, 5pm)
Early December 2017	Interviews with LOI Submitters
January 17, 2018	Review of LOIs by City Council
January 18, 2018	Invitation for Proposals Released
February 16, 2018	Proposals Due (Close of Work Day, 5pm)
Late February 2018	Interviews on Proposals
March 20, 2018	Proposal Recommendations to the Parks and Recreation Commission
April 4, 2018	Review by City Council
April- May 2018	Agreement(s) negotiated by City Staff
June 2018	Agreement(s) to City Council for Approval

Letter of Interest Submission Requirements

Letters shall be submitted electronically in PDF format and shall not exceed 20 pages (including any attachments, diagrams, etc.) in length or 10 megabytes (MB) in file size. All proposals shall be submitted via email to Chris.Ghione@morganhill.ca.gov.

The LOI is not intended to be a complete business plan, but is intended to provide enough data for the City to understand the concept of your future proposal.

Letters of Interest should include the following information:

1. **Organization Background.** Provide an introduction to your organization, its' goals and rational for submitting a proposal.
2. **Concept and Approach.** Provide an executive summary of your intended proposal. Describe how your proposal will support the Guiding Principles and if your organization intends to meet all outcomes individually or support some of the outcomes and collaborate with others to meet all outcomes.

3. Relevant Experience. Provide experience of your organization as it relates to your intended proposal.
4. Organizational Structure and Staffing. Describe the future planned structure of your organization to support your intended proposal.
5. Facility Use. Describe what components of the facilities are necessary for your intended proposal. Describe capital improvements and maintenance planning and method of funding.
6. Financial Considerations. Include information on intended revenue and expenses related to your intended proposal.

Letters of Interest will be reviewed for alignment with the City Guiding Principles, organizational capacity, compatibility with City operations, and financial stability. Selected organizations will be invited to participate in the next stage and submit a full proposal.

Full Proposals

Those organizations invited to submit a full proposal, will be required to submit a full business plan that includes the following:

1. Management structure
2. Community access and regional use philosophy
3. Market strategy
4. Risk management plan
5. Revenue sources and pricing system
6. Itemized expenses
7. 3 year revenue/expense pro-forma
8. Capital funding plan
9. Integration of operations with City facilities
10. Use of sub-contractors and partner organizations
11. Planned collaboration with future Destination Management Organization

Other Information

- The City reserves the right to reject any and all submittals.
- The City is not responsible for any costs incurred by applicants in the preparation of a response to this RFP.
- Applicants should be aware that the City, as a public entity, cannot guarantee the confidentiality of information contained in the RFP submittal. While the City will attempt to maintain confidentiality of submitted materials, applicants may choose not to submit some information requested in the RFP. If such an instance occurs, the affected applicants should note for the reviewers the specific information purposely withheld and indicate that it will be provided to the City if granted an interview.
- City reserves the right to waive any informality in the process.
- City reserves the right to accept proposals from organizations that have not submitted a Letter of Intent, should the City determine, at its sole discretion, that it is in the best interest of the City.

Contact Information

Chris Ghione, Community Services Director

408.782.9154

chris.ghione@morganhill.ca.gov

Supporting Documents

1. Current Concessionaire Agreement and associated information – <http://www.morganhill.ca.gov/1028/Operating-Agreement>
2. Sports Market Business Strategy – <http://www.morganhill.ca.gov/1429/Master-Plan-for-Parks-Trails-and-Bikeway>
3. MHYSA Website (Current Operator – not a City site) - <http://morganhilloutdoorsportscenter.com/>
4. Morgan Hill Economic Development Website - <http://ca-morganhill2.civicplus.com/628/Economic-Development>
5. Area Site Layout – Attachment 1
6. Outdoor Sports Center Site Layout - Attachment 2

Attachment 1 - Morgan Hill Sports and Recreation Facilities

Morgan Hill Outdoor Sports Center

16500 Condit Road

11 Fields – 9 Grass & 2 Synthetic Turf

Morgan Hill Aquatics Center

16200 Condit Road

3 Pools including Competition Pool, Instructional Pool and Water Park Features

Future Baseball/Softball Site

26 acres to be used for a 6 Ball Field Complex

Future Recreation Facilities Site

10 acres to be used for parking and recreation facilities expansion



Attachment 2 Outdoor Sports Center Site Layout

Grass Fields

- 9 fields
- 23 +/- acres
- Watered by above ground water cannon system
- No field lights

Synthetic Turf Fields

- 2 fields
- Field lights
- Bleachers with seating for 600 and 200
- PA system
- Electronic scoreboards

Other

- Improved parking for 325 vehicles
- Unimproved parking for 200 +/-
- Restrooms
- Concession stand
- Tournament/meeting room





Attachment: Request for Proposals - Morgan Hill Outdoor Sports Center (1699 : Outdoor Sports Center Operator Selection)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

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

APPROVE FIFTH AMENDMENT TO MORGAN HILL YOUTH SPORTS ALLIANCE CONCESSIONAIRE AGREEMENT

RECOMMENDATION(S)

Authorize the City Manager to execute and subsequently administer a Fifth Amendment to the Concessionaire Agreement with the Morgan Hill Youth Sports Alliance for the operations of the Outdoor Sports Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Economic Development and
Telecommunications

POLICY CONSIDERATIONS:

The purpose of this report is to 1) propose an amendment to the agreement with the Morgan Hill Youth Sports Alliance (MHYSA) and 2) provide an update on the status of the current operator at the Outdoor Sports Center (OSC). A primary consideration the Council may wish to review is the reduction of the concessionaire payment obligations for the MHYSA through the completion of the agreement term in June 2019. While considering this reduction, the Council may want to consider the transition to a new operator in relation to the ongoing maintenance and use of the facility.

REPORT NARRATIVE:

On October 4, 2017, the City Council approved a fourth amendment to the concessionaire agreement with the MHYSA for operations at the OSC. This agreement reduced the scheduled payments to the City to \$45,000 annually, to support the MHYSA through the remaining term of the agreement.

The MHYSA is currently delinquent on payments to the City in the amount of \$45,000 through the first half of Fiscal Year 2017/18. The MHYSA recently provided City staff with its audited financials for the 2016/17 Fiscal Year (Attachment 2), which demonstrate the significant debt of the organization. Staff at the MHYSA have explained that the debt has been reduced slightly since June 30, 2016, but that significant debt remains and that they will not be in a position to make payments to the City through the term of the agreement. The MHYSA has informed the City that they are determined to meet their obligation to manage the OSC through the contract term, but they are requesting relief from past due and future payment obligations to the City.

The City is currently in the process of establishing an agreement with a new operator for the OSC, and the MHYSA was not selected to move forward in that process. The MHYSA continues to operate the OSC without any direct cost to the City, however there are ongoing maintenance issues associated with their operations. These issues will likely increase as the contract term nears conclusion with the MHYSA knowing they will no longer be operating the facility after June 30, 2019.

As a first step in the transition process to a new operator, City staff recommends the proposed amendment to the agreement be approved by the City Council. This amendment will eliminate all past due and upcoming payment obligations for the MHYSA through the contract term, in support of the MHYSA continuing to operate and maintain the facility. This amendment will also support the MHYSA continuing to provide local field use through the contract term.

COMMUNITY ENGAGEMENT: Inform

No engagement has been conducted as it relates specifically to contract negotiations. This report serves to share information on the status of the operator at the OSC.

ALTERNATIVE ACTIONS:

The Council may alternatively not approve the amendment and provide staff with further direction on negotiations with the MHYSA. City staff do not believe MHYSA will be able to adequately maintain the facility and make the full payments to the City through the contract term.

The MHYSA is currently in default, therefore, the City Council could direct staff to terminate the agreement. Should the Council move forward with this action, a significant amount of work conducted by the Community Services Department would need to be eliminated or delayed to accommodate the task of immediately managing the facility. This would also create new expenses associated with operating the OSC. For these reasons, staff is not recommending this option.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- May 19, 2010 - Selected the MHYSA as the operator of the OSC
- June 16, 2010 - Approved the Concessionaire Agreement with the MHYSA
- June 19, 2013 - Approved First Amendment to Concessionaire Agreement with the MHYSA
- September 24, 2014 - Audits of MHYSA operations of OSC presented
- October 1, 2014 - Council received OSC operations update and directed staff to offer the MHYSA a one-year extension to the Concessionaire Agreement
- December 3, 2014 – Council approved Second Amendment to the Concessionaire Agreement with the MHYSA extending it for one year through June 2016
- February 17, 2015 – The Parks and Recreation Commission reviewed operations and made a recommendation to Council on future OSC operations
- March 4, 2015 – Council directed staff to negotiate an agreement extension with the MHYSA

- May 18, 2016 – City approved Third Amendment to the Concessionaire Agreement with the MHYSA extending it for an additional three years and updating various provisions.
- May 17, 2017 – City staff presented an update on OSC operations and made recommendations on future operations.
- July 19, 2017 – The City Council directed City Staff to issue an RFP for operations of the Outdoor Sports Center and approved the guiding principles for the RFP.
- October 4, 2017 – City Council approved the Fourth Amendment to the Concessionaire Agreement with the MHYSA, reducing payment obligations to the City.
- January 17, 2018 – The City Council directed City Staff to request full proposals from NewCo and Sports Facilities Management, not moving the MHYSA forward in the RFP process.

FISCAL AND RESOURCE IMPACT:

If approved, the amendment will eliminate the required payment by the MHYSA to the City for past due payments of \$45,000 and future payments of \$67,500. This amendment would result in loss of revenue in the General Fund (010). However, it is not believed this revenue could be collected due to the significant debt incurred by the MHYSA.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Attachment 1 - MHYSA Fifth Amendment
2. Exhibit A to Attachment 1 - MHYSA Agreement through Amendment 4
3. Attachment 2 - OSC Financial Status 170302
4. Attachment 3 - Letter from MHYSA

**FIFTH AMENDMENT TO
AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE OUTDOOR SPORTS CENTER CONCESSION
BETWEEN
THE CITY OF MORGAN HILL
AND
MORGAN HILL YOUTH SPORTS ALLIANCE**

This FIFTH AMENDMENT TO AGREEMENT ("FIFTH AMENDMENT") is made and entered into as of this ____ day of _____, 2018 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

RECITALS

The Parties intend that the following recitals are a substantive part of this FIFTH AMENDMENT:

1. This FIFTH AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on April 4, 2018.
2. A Fourth Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 4, 2017 ("FOURTH AMENDMENT").
2. A Third Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on May 18, 2016 ("THIRD AMENDMENT").
2. A Second Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on December 3, 2014 ("SECOND AMENDMENT").
3. A First Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 2, 2012 ("FIRST AMENDMENT").
4. CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT, FIRST AMENDMENT, SECOND AMENDMENT, THIRD AMENDMENT, and FOURTH AMENDMENT are collectively attached as Exhibit "A" to this FIFTH AMENDMENT and incorporated herein by this reference.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

SECTION 1. Amendments: Pursuant to the provisions of Section 31 of the AGREEMENT, the Parties agree that all of the terms and conditions of the AGREEMENT, as amended by the FIRST AMENDMENT, SECOND AMENDMENT, THIRD AMENDMENT and FOURTH AMENDMENT attached collectively hereto as Exhibit "A", shall remain in full force and effect except that the parties hereto agree that the following further amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 5 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 5. CONCESSION FEE AND PAYMENT

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
9. For the FISCAL YEAR 2015-2016, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
10. For the FISCAL YEAR 2016-2017, payments totaling \$22,500.
11. For the FISCAL YEAR 2017-2018, no payments will be due.

12. For the FISCAL YEAR 2018-2019, no payments will be due.

Sections B through D are unchanged and incorporated herein by this reference.

F. SECTION 35 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 35 CONFLICTING PROVISIONS

Except as expressly set forth in this FIFTH AMENDMENT, the AGREEMENT, as amended by the prior FOURTH AMENDMENT, THIRD AMENDMENT, SECOND AMENDMENT and FIRST AMENDMENT, shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between the terms and conditions of this FIFTH AMENDMENT and the terms and conditions of the AGREEMENT, as amended by the prior FIRST AMENDMENT, SECOND AMENDMENT, THIRD AMENDMENT and FOURTH AMENDMENT, the terms and conditions of this FIFTH AMENDMENT will control, govern, and prevail.

IN WITNESS WHEREOF, the parties to this FIFTH AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

ATTEST:

Michelle Wilson, Deputy City Clerk
Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney
Date: _____

CITY OF MORGAN HILL:

Christina Turner, City Manager
Date: _____

MORGAN HILL YOUTH SPORTS
ALLIANCE:

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: _____

FOURTH AMENDMENT TO
AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE OUTDOOR SPORTS CENTER CONCESSION
BETWEEN
THE CITY OF MORGAN HILL
AND
MORGAN HILL YOUTH SPORTS ALLIANCE

This FOURTH AMENDMENT TO AGREEMENT ("FOURTH AMENDMENT") is made and entered into as of this 29th day of March 2017, 2017 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

RECITALS

The Parties intend that the following recitals are a substantive part of this FOURTH AMENDMENT:

1. This FOURTH AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on October 4, 2017.
2. A Third Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on May 18, 2016 ("THIRD AMENDMENT").
2. A Second Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on December 3, 2014 ("SECOND AMENDMENT").
3. A First Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 2, 2012 ("FIRST AMENDMENT").
4. CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT, FIRST AMENDMENT, SECOND AMENDMENT and THIRD AMENDMENT are collectively attached as Exhibit "A" to this FOURTH AMENDMENT and incorporated herein by this reference.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

SECTION 1. Amendments: Pursuant to the provisions of Section 31 of the AGREEMENT, the Parties agree that all of the terms and conditions of the AGREEMENT, as amended by the FIRST AMENDMENT, SECOND AMENDMENT, and THIRD AMENDMENT attached collectively hereto as Exhibit "A", shall remain in full force and effect except that the parties hereto agree that the following further amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 5 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 5. CONCESSION FEE AND PAYMENT

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
9. For the FISCAL YEAR 2015-2016, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

10. For the FISCAL YEAR 2016-2017, equal quarterly payments totaling \$45,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.
11. For the FISCAL YEAR 2017-2018, equal semi-annual payments totaling \$45,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter. Semi-annual payments shall be due January 10, 2018 and July 10, 2018.
12. For the FISCAL YEAR 2018-2019, equal semi-annual payments totaling \$45,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter. Semi-annual payments shall be due January 10, 2019 and July 10, 2019.

Sections B through D are unchanged and incorporated herein by this reference.

F. SECTION 35 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 35 CONFLICTING PROVISIONS

Except as expressly set forth in this FOURTH AMENDMENT, the AGREEMENT, as amended by the prior THIRD AMENDMENT, SECOND AMENDMENT and FIRST AMENDMENT, shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between the terms and conditions of this FOURTH AMENDMENT and the terms and conditions of the AGREEMENT, as amended by the prior FIRST AMENDMENT, SECOND AMENDMENT AND THIRD AMENDMENT, the terms and conditions of this FOURTH AMENDMENT will control, govern, and prevail.

IN WITNESS WHEREOF, the parties to this FOURTH AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

ATTEST:

Michelle Wilson, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney

Date: 3/29/2018

CITY OF MORGAN HILL:

Christina Turner, City Manager

Date: 3/29/16

MORGAN HILL YOUTH SPORTS ALLIANCE:

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:

124-04-10-057

**THIRD AMENDMENT TO
AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE OUTDOOR SPORTS CENTER CONCESSION
BETWEEN
THE CITY OF MORGAN HILL
AND
MORGAN HILL YOUTH SPORTS ALLIANCE**

This THIRD AMENDMENT TO AGREEMENT ("THIRD AMENDMENT") is made and entered into as of this 13th day of June, 2016 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

RECITALS

The Parties intend that the following recitals are a substantive part of this THIRD AMENDMENT:

1. This THIRD AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on May 18, 2016.
2. A Second Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on December 3, 2014 ("SECOND AMENDMENT").
3. A First Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 2, 2012 ("FIRST AMENDMENT").
4. CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT, FIRST AMENDMENT, AND SECOND AMENDMENT are collectively attached as Exhibit "A" to this THIRD AMENDMENT and incorporated herein by this reference.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

SECTION 1. Amendments: Pursuant to the provisions of Section 31 of the AGREEMENT, the Parties agree that all of the terms and conditions of the AGREEMENT, as amended by the FIRST AMENDMENT AND SECOND AMENDMENT attached collectively hereto as Exhibit "A", shall remain in full force and effect except that the parties hereto agree that the following further amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 4 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 4. TERM OF AGREEMENT

A. The term of the Concession AGREEMENT shall be nine (9) years subject to early termination as set forth below.

Sections B through D are unchanged and incorporated herein by this reference.

B. SECTION 5 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 5. CONCESSION FEE AND PAYMENT

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
9. For the FISCAL YEAR 2015-2016, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
10. For the FISCAL YEAR 2016-2017, equal quarterly payments totaling \$45,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.
11. For the FISCAL YEAR 2017-2018, equal quarterly payments totaling \$60,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.
12. For the FISCAL YEAR 2018-2019, equal quarterly payments totaling \$70,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.

Sections B through D are unchanged and incorporated herein by this reference.

C. SECTION 6 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS

For the purposes of this Section 6 and this AGREEMENT, the term "gross revenue" shall mean the total amount charged for the use of the PREMISES or OSC, or sale of any goods, services (whether or not such services are performed as a part of or in connection with the sale of goods) or advertising provided in connection with this AGREEMENT. "Net income" shall mean the gross revenue less operation and interest expenses.

A. Capital Improvement Fund: CONCESSIONAIRE shall deposit the following into an OSC Capital Improvement Fund to be established and held by the CITY:

1. Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2011-2012, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to that amount of CONCESSIONAIRE'S "net income" that exceeds one hundred thousand dollars (\$100,000) of net income during the first two FISCAL YEARS of the term of this AGREEMENT.
2. Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of the net income of that FISCAL YEAR, **through FISCAL YEAR 2015-16.**

3. No later than the ninetieth (90th) day after the end of FISCAL YEAR 2016-17, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of that amount of CONCESSIONAIRE'S "net income" that exceeds one hundred thousand dollars (\$100,000) of net income during FISCAL YEAR 2016-17.

4. No later than the ninetieth (90th) day after the end of FISCAL YEAR 2017-18, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of that amount of CONCESSIONAIRE'S "net income" that exceeds seventy thousand dollars (\$70,000) of net income during FISCAL YEAR 2017-18.

5. No later than the ninetieth (90th) day after the end of FISCAL YEAR 2018-19, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of that amount of CONCESSIONAIRE'S "net income" that exceeds fifty thousand dollars (\$50,000) of net income during FISCAL YEAR 2018-19.

6. CITY shall use amounts deposited in the Capital Improvement Fund only for the purpose of constructing or improving IMPROVEMENTS according to the Capital Improvement Program referenced in Section 10.

B. Net Income Share: Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY the amount equal to ten percent (10%) of the net income of that FISCAL YEAR, **through FISCAL YEAR 2015-16.**

Sections C through E are unchanged and incorporated herein by this reference.

D. SECTION 9 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 9. OPERATING RESPONSIBILITIES

Sections A through D are unchanged and incorporated herein by this reference.

E. Marketing and Promotion CONCESSIONAIRE shall use its best efforts to market and promote the usage of the OSC and Premises for purposes permitted under this AGREEMENT. The CITY reserves the right to concurrently market and promote the use of the OSC. Status on marketing efforts shall be included in quarterly status report provided as outlined in Section 5D. The CITY shall commit to dedicate staff resources and funding to support regional sports tourism promotion on, including promotion of use of, the Outdoor Sports Center.

Sections F through L are unchanged and incorporated herein by this reference.

M. Special Event Permits: CONCESSIONAIRE shall submit a City special event application for any uses occurring outside the PREMISES, including, but not limited to, the closure of adjacent streets. All required traffic control responsibilities will be documented in the permit. The CITY will issue permits at no charge as long as permit applications are submitted 30 days in advance.

N. Parking Plans: CONCESSIONAIRE shall be required to submit a written parking plan to the CITY for all events that are anticipated to exceed 2,500 people in attendance.

O. Joint Advertising: CONCESSIONAIRE and the CITY shall develop a joint advertising plan for the PREMISES and the adjacent Morgan Hill Aquatics Center. The CONCESSIONAIRE shall have the ability to sell joint advertising.

E. SECTION 10 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 10. MAINTENANCE AND REPAIR

Sections A through J are unchanged and incorporated herein by this reference.

K. The CITY shall make good faith effort to include provisions within requests for proposals and contracts for citywide maintenance services that provide for City pricing to be extended to the CONCESSIONAIRE for work performed at the PREMISES.

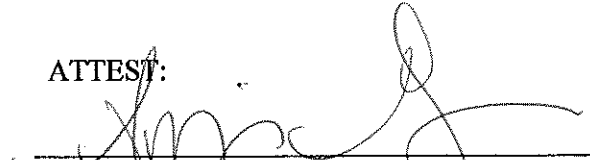
F. SECTION 35 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 35 CONFLICTING PROVISIONS

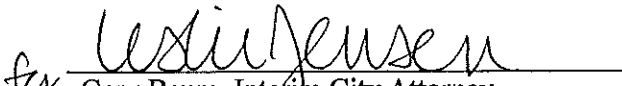
Except as expressly set forth in this THIRD AMENDMENT, the AGREEMENT, as amended by the prior SECOND AMENDMENT and FIRST AMENDMENT, shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between the terms and conditions of this THIRD AMENDMENT and the terms and conditions of the AGREEMENT, as amended by the prior FIRST AMENDMENT AND SECOND AMENDMENT, the terms and conditions of this THIRD AMENDMENT will control, govern, and prevail.

IN WITNESS WHEREOF, the parties to this THIRD AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

ATTEST:


 Michelle Wilson, Deputy City Clerk
 Date: 6/11/16

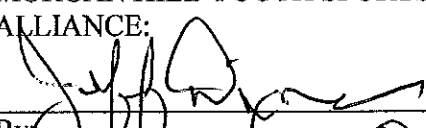
APPROVED AS TO FORM:

for 
 Gary Baum, Interim City Attorney
 Date: 06/01/16
 Resolution NO. 16-079

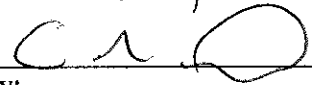
CITY OF MORGAN HILL:


 Steve Rymer, City Manager
 Date: 6/1/16

MORGAN HILL YOUTH SPORTS ALLIANCE:


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

Date: 5/11/16


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

Date: 5/11/2016

126-09-10-039

SECOND AMENDMENT TO
AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE OUTDOOR SPORTS CENTER CONCESSION
BETWEEN
THE CITY OF MORGAN HILL
AND
MORGAN HILL YOUTH SPORTS ALLIANCE

This SECOND AMENDMENT TO AGREEMENT ("AMENDMENT") is made and entered into as of this third day of December, 2014 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

RECITALS

The parties intend that the following recitals are a substantive part of this AMENDMENT:

1. This AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on December 3, 2014.
2. A First Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 2, 2012 and is attached hereto as Exhibit "B" and incorporated herein by this reference.
2. CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT is attached as Exhibit "A" to this AMENDMENT and incorporated herein by this reference.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

SECTION 1. Amendments: Pursuant to the provisions of Section 31 of the AGREEMENT, the parties agree that all of the terms and conditions of the AGREEMENT as attached as Exhibit "A" and as amended by the First Amendment to the AGREEMENT attached as Exhibit "B" shall remain in full force and effect except that the parties hereto agree that the following further amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 4 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 4. TERM OF AGREEMENT

A. The term of the Concession AGREEMENT shall be six (6) years subject to early termination as set forth below.

B. The CITY may terminate this Agreement upon an event of default and notice as set forth in Section 20.

C. The CITY may terminate this Agreement pursuant to Section 14C.

D. The CITY or CONCESSIONAIRE may terminate this Agreement without cause 180 days after the delivery of notice to the other party of its intent to terminate this Agreement.

B. SECTION 5 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

SECTION 5. CONCESSION FEE AND PAYMENT

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
9. For the FISCAL YEAR 2015-2016, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

B. Payment Due Date

Payments of quarterly concession fees every FISCAL YEAR to the City shall be made for each quarter ending March 31, June 30, September 30 and December 31 of each FISCAL YEAR and shall be due and payable by the tenth day after the quarters ending March 31, September 30 and December 31 (April 10, October 10 and January 10 respectively) and the thirtieth day after the quarter ending June 30 (July 30) ("Payment Due Dates") during the term of the AGREEMENT.

C. Method of Payment

The quarterly concession payments shall be addressed to:

Community Services Department
ATTN: Director of Community Services
Outdoor Sports Center Concession Agreement
17575 Peak Avenue
Morgan Hill, CA 95037

D. Quarterly Concession Reports:

CONCESSIONAIRE shall transmit with each quarterly concession fee payment a quarterly Status Report, which includes quarterly statistical information on the following: ongoing programs, field reservations, participant levels, use by sports type, community and regional use levels, hours of use, marketing and sponsorship revenue, gross revenue and net receipts, expenses and revenues.

C. SECTION 35 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

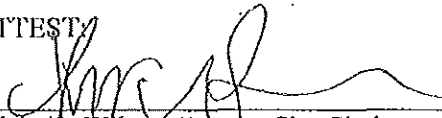
SECTION 35 CONFLICTING PROVISIONS

Except as expressly set forth in this AMENDMENT, the AGREEMENT, as amended by

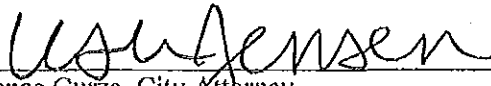
the prior First Amendment, shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between the terms and conditions of this AMENDMENT and the terms and conditions of the AGREEMENT, as amended by the prior First Amendment, the terms and conditions of this AMENDMENT will control, govern, and prevail.

IN WITNESS WHEREOF, the parties to this AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

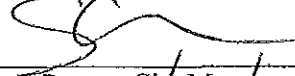
ATTEST:


Michelle Wilson, Deputy City Clerk
Date: 2/25/15

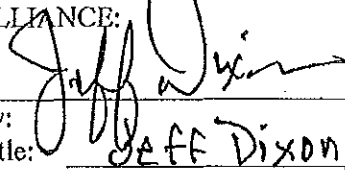
APPROVED AS TO FORM:


Renee Gurza, City Attorney
Date: 02/18/15

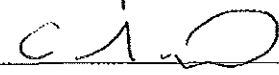
CITY OF MORGAN HILL:


Steve Rymer, City Manager
Date: 2/20/15

MORGAN HILL YOUTH SPORTS
ALLIANCE:


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

Date: 11/25/14


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

Date: 11/25/2014

126-04-10-039

FIRST AMENDMENT TO
AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE OUTDOOR SPORTS CENTER CONCESSION
BETWEEN
THE CITY OF MORGAN HILL
AND
MORGAN HILL YOUTH SPORTS ALLIANCE

This FIRST AMENDMENT TO AGREEMENT is made and entered into this 8/14/13 day of June, 2013, by the CITY OF MORGAN HILL, a municipal corporation ("CITY") and MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

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 action taken on October 2, 2012.
2. The CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT is attached as Exhibit "A" to this First Amendment to Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: Pursuant to the provisions of Section 31, all terms and conditions of the AGREEMENT as attached as Exhibit "A" shall remain in full force and effect; except that the following amendments shall be made as follows:

SECTION 1. DEFINITIONS

AGENCY: The City of Morgan Hill

All other Definitions included in this Section 1 are unchanged and incorporated herein by this reference.

SECTION 5. CONCESSION FEE AND PAYMENT

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

B. Payment Due Date

Payments of quarterly concession fees every FISCAL YEAR to the City shall be made for each quarter ending March 31, June 30, September 30 and December 31 of each FISCAL YEAR and shall be due and payable by the tenth day after the quarters ending March 31, September 30 and December 31 (April 10, October 10 and January 10 respectively) and the thirtieth day after the quarter ending June 30 (July 30) ("Payment Due Dates") during the term of the AGREEMENT.

C. Method of Payment

The quarterly concession payments shall be addressed to:

Community Services Department
ATTN: Director of Community Services
Outdoor Sports Center Concession Agreement
17575 Peak Avenue
Morgan Hill, CA 95037

D. Quarterly Concession Reports:

CONCESSIONAIRE shall transmit with each quarterly concession fee payment a quarterly Status Report, which includes quarterly statistical information on the following: ongoing programs, field reservations, participant levels, use by sports type, community and regional use levels, hours of use, marketing and sponsorship revenue, gross revenue and net receipts, expenses and revenues.

SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS

For the purposes of this Section 6 and this AGREEMENT, the term "gross revenue" shall mean the total amount charged for the use of the PREMISES or OSC, or sale of any goods, services (whether or not such services are performed as a part of or in connection with the sale of goods) or advertising provided in connection with this AGREEMENT. "Net income" shall mean the gross revenue less operation and interest expenses.

A. Capital Improvement Fund: CONCESSIONAIRE shall deposit the following into an OSC Capital Improvement Fund to be established and held by the CITY:

1. Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2011-2012, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to that amount of CONCESSIONAIRE'S "net income" that exceeds one hundred thousand dollars (\$100,000) of net income during the first two FISCAL YEARS of the term of this AGREEMENT.

2. Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of the net income of that FISCAL YEAR.

3. CITY shall use amounts deposited in the Capital Improvement Fund only for the purpose of constructing or improving IMPROVEMENTS according to the Capital Improvement Program referenced in Section 10.

B. Net Income Share: Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY the amount equal to ten percent (10%) of the net income of that FISCAL YEAR.

Sections C through E are unchanged and incorporated herein by this reference.

SECTION 8. OSC USAGE

F. Advertising. CONCESSIONAIRE shall have the right to pursue advertising and sponsorship agreements and offer space and locations at the OSC for advertising that are consistent with the City's approved policy (restricts pornography, religious and political organizations, firearms, tobacco, alcohol). CONCESSIONAIRE may be allowed to have temporary advertising for alcohol products for exclusively adult only tournaments occurring at the OSC upon approval by the GENERAL MANAGER. As a part of Morgan Hill tourism efforts CONCESSIONAIRE may be allowed to have advertising for local wineries and winery events upon approval by the GENERAL MANAGER. 15% of revenues derived from such advertising and sponsorship agreements shall be paid to the City quarterly as described in Section 5. A.2 & 5B.

Sections A through E and G through J are unchanged and incorporated herein by this reference.

SECTION 9. OPERATING RESPONSIBILITIES

B. Marketing and Promotion. CONCESSIONAIRE shall use its best efforts to market and promote the usage of the OSC and Premises for purposes permitted under this AGREEMENT. The CITY reserves the right to concurrently market and promote the use of the OSC. Status on marketing efforts shall be included in quarterly status report provided as outlined in Section 5.D.

Sections A through D and F through L are unchanged and incorporated herein by this reference.

SECTION 11. CAPITAL IMPROVEMENT PROGRAM

The CITY and CONCESSIONAIRE shall negotiate in good faith to develop and agree by December 31, 2013 upon a 10-year capital improvement program for the PREMISES and

OSC. Such program shall set forth the needed capital IMPROVEMENTS to be made within the 10 year program and the respective responsibilities of the CITY and CONCESSIONAIRE to fund and complete such program. The respective share of responsibility of the program shall reasonable reflect the following factors: the term of this AGREEMENT and possible future extension of the AGREEMENT, the expected life of IMPROVEMENTS, the degree to which the activities of each party contributes to the wear and tear on the IMPROVEMENTS or the need for the Improvements, and the expertise of each respective party to make any such IMPROVEMENTS.

SECTION 14. PERFORMANCE DEPOSIT AND ASSURANCES

B. Annual Progress Report. CONCESSIONAIRE shall submit no later than sixty (60) days after the end of each FISCAL YEAR a progress report of an annual compilation of information contained in the quarterly reports required in Section 5.D., as well as gross revenue and net receipts for each FISCAL YEAR (as defined in Section 6). CONCESSIONAIRE will include a profit and loss statement and balance sheet with each annual report.

Sections A and C are unchanged and incorporated herein by this reference.

SECTION 29. NOTICES

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to Community Services Department, Attn: Director of Community Services, Outdoor Sports Center Concession Agreement, 17575 Peak Avenue, Morgan Hill, CA 95037.

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide CONCESSIONAIRE with written notice of any address change within thirty (30) days of the occurrence of said address change.

B. To CONCESSIONAIRE:

All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for

delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to CONCESSIONAIRE shall be addressed to CONCESSIONAIRE as follows:

Morgan Hill Youth Sports Alliance
16755 Jackson Oaks Drive
Morgan Hill, CA 95037

CONCESSIONAIRE shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

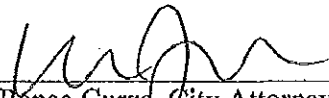
SECTION 34 CONFLICTING PROVISIONS

Except as expressly set forth in this First Amendment, the AGREEMENT shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between this First Amendment and the AGREEMENT, the terms of this First Amendment will control and prevail.

ATTEST:


Michelle Wilson, Deputy City Clerk
Date: 8/15/13

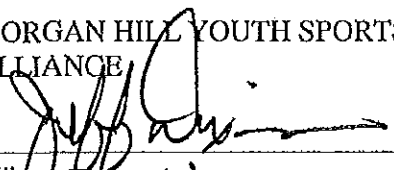
APPROVED AS TO FORM:

for 
Renee Gurza, City Attorney
Date: 08/14/13
Council Approval:
06/19/13

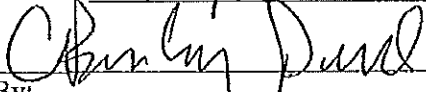
CITY OF MORGAN HILL


Steve Rymer, City Manager
Date: 8/14/13

MORGAN HILL YOUTH SPORTS
ALLIANCE

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

Date: 6/12/13


By: C BRADLEY DANIEL
Title: Secretary
Print Name and Title of Signer: Treasurer
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 6/12/13

**AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF
THE OUTDOOR SPORTS CENTER CONCESSION
Between
THE CITY OF MORGAN HILL
And
MORGAN HILL YOUTH SPORTS ALLIANCE**

Dated: July 1, 2010

AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE
OUTDOOR SPORTS CENTER CONCESSION

TABLE OF CONTENTS

Contents

SECTION 1. DEFINITIONS.....	5
SECTION 2. PERMISSION GRANTED.....	5
SECTION 3. PREMISES	6
SECTION 4. TERM OF AGREEMENT.....	6
SECTION 5. CONCESSION FEE AND PAYMENT	7
SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS.....	9
SECTION 7. LATE PAYMENT	10
SECTION 8. OSC USAGE.....	10
SECTION 9. OPERATING RESPONSIBILITIES.....	12
SECTION 10. MAINTENANCE AND REPAIR	15
SECTION 11. CAPITAL IMPROVEMENT PROGRAM.....	17
SECTION 12. LIABILITY	17
SECTION 13. PROHIBITED ACTS.....	19
SECTION 14. PERFORMANCE DEPOSIT AND ASSURANCES.....	19
SECTION 15. INDEPENDENT CONTRACTORS / CONSULTANTS.....	20
SECTION 16. TAXES, PERMITS, AND LICENSES.....	20
SECTION 17. ASSIGNMENT, SUBLEASE, BANKRUPTCY.....	21
SECTION 18. BUSINESS RECORDS	21
SECTION 19. REGULATIONS, INSPECTION, AND DIRECTIVES	22
SECTION 20. TERMINATION	23
SECTION 21. SURRENDER OF POSSESSION	26
SECTION 22. WAIVER.....	26
SECTION 23. FORCE MAJEURE	26
SECTION 24. REMEDIES ARE NON-EXCLUSIVE	27

SECTION 25. AGREEMENT BINDING UPON SUCCESSORS	27
SECTION 26. LAW OF CALIFORNIA APPLIES	27
SECTION 27. AGENT FOR SERVICE OF PROCESS	27
SECTION 28. VENUE	27
SECTION 29. NOTICES	28
SECTION 30. INTERPRETATION	28
SECTION 31. AGREEMENT CONTAINS ENTIRE AGREEMENT	29
SECTION 32. TIME OF THE ESSENCE	29
SECTION 33. INCORPORATION OF DOCUMENTS	29

AGREEMENT FOR THE OPERATION AND MAINTENANCE

OF

THE OUTDOOR SPORTS CENTER CONCESSION

Between

THE CITY OF MORGAN HILL

And

MORGAN HILL YOUTH SPORTS ALLIANCE

THIS AGREEMENT is made and entered into on this day of July 1, 2010 ("EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

WHEREAS, CITY advertised for proposals for the operation and maintenance of the fields and related improvements known as the Outdoor Sports Center ("OSC") and related concessions; and

WHEREAS, the City Council determined, pursuant to Section 3.04.150 of the Morgan Hill Municipal Code, that the use of competitive bidding upon notice would not be likely to result in a lower price to the City from a responsible bidder, or would cause unnecessary expense or delay under the circumstances because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the City for the improvement, operation and maintenance of the OSC or the Concessions. To select the best proposer for this Concession, the City Council found it is necessary to utilize a request for proposals process and to evaluate proposals received based upon the criteria included in the Request for Proposals ("RFP"); and

WHEREAS, the CITY'S Parks and Recreation Commission and Recreation and Community Services Department ("DEPARTMENT"), received and analyzed the proposals which were received on March 19, 2010; and

WHEREAS, the City Council determined that CONCESSIONAIRE was responsive to the RFP and was the best responsible proposer, and selected said proposer to operate the CONCESSION in accordance with the terms and conditions of this Concession Agreement (hereinafter "AGREEMENT"); and

WHEREAS, CONCESSIONAIRE desires to secure and enter into an agreement in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at the OSC; and

WHEREAS, the principal purpose of CITY entering into this AGREEMENT is to serve the public by providing a well-maintained and operated sports field and related facilities, services, and advertising opportunities (hereinafter "CONCESSIONS");

NOW THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. DEFINITIONS

For the purpose of this AGREEMENT, the following capitalized words and phrases not defined elsewhere in this AGREEMENT are defined and shall be construed as hereinafter set forth:

AGENCY: The Morgan Hill Redevelopment Agency.

AGREEMENT: This "AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE OUTDOOR SPORTS CENTER CONCESSION" and exhibits (A-E) attached hereto.

CODE: The Morgan Hill Municipal Code.

FISCAL YEAR: The period from July 1 to June 30 of the next calendar year.

GENERAL MANAGER: The Director of the DEPARTMENT.

IMPROVEMENTS: All buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY owned facilities (such as buildings, turf, fences, posts, signs, electrical hook-ups, irrigation systems, plumbing, tracks, tanks, etc.).

PREMISES: The geographical area, as defined in Exhibit A, which is the subject of this AGREEMENT and in which the CONCESSION may be operated.

SECTION 2. PERMISSION GRANTED

A. For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, CITY hereby grants the CONCESSIONAIRE, subject to all of the terms and conditions of this AGREEMENT, the exclusive right and obligation within the PREMISES to: offer the use of the OSC and CONCESSIONS approved by the GENERAL MANAGER; to operate and maintain the OSC and CONCESSIONS for the purpose of hosting, organizing or scheduling of the OSC for sporting events appropriate for the OSC, including, but not limited to football, soccer, lacrosse, field hockey, rugby and cheerleading; and not for any other purpose without the prior written

consent of GENERAL MANAGER. The CONCESSION rights herein granted shall be carried on solely within the limits and confines of said areas designated as PREMISES (Exhibit A).

B. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, and its successors and assigns, that it will not make use of the PREMISES in any manner which might interfere with the recreational uses of the OSC.

C. CITY reserves the right to further develop or improve the PREMISES as it sees fit, without interference or hindrance, however the CITY shall consider the desire and views of CONCESSIONAIRE. No other activity, service or amenity shall be provided by CONCESSIONAIRE unless related to CONCESSION and without the express written approval of DEPARTMENT.

SECTION 3. PREMISES

A. The PREMISES (Exhibit A) subject to this AGREEMENT is located at:

16500 Condit Road

Morgan Hill, CA 95037

B. The OSC includes, but is not limited to, two (2) synthetic turf fields, nine (9) grass soccer fields, bleachers, field lights, an improved parking lot, overflow parking lot, concession/restroom building, corporation yard, well with booster pump, exterior fencing, public address system, and scoreboards.

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

D. At any time during the term of this AGREEMENT, CITY may, by resolution of the City Council fully setting forth the reasons therefor, require the CONCESSIONAIRE to surrender any portion of the PREMISES for a public necessity. Should CITY impose such a requirement on CONCESSIONAIRE, DEPARTMENT shall attempt to provide CONCESSIONAIRE with equivalent, substitute space.

SECTION 4. TERM OF AGREEMENT

A. The term of the Concession AGREEMENT shall be five (5) years subject to early termination as set forth below.

B. The CITY may terminate this Agreement upon an event of default and notice as set forth in Section 20.

C. The CITY may terminate this Agreement pursuant to Section 14D.

D. Either the CITY or CONCESSIONAIRE may terminate this Agreement without cause 180 days after the delivery of notice to the other party of its intent to terminate this Agreement.

SECTION 5. CONCESSION FEE AND PAYMENT

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY a quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012: equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-13: equal quarterly payments totaling the greater of (a) \$130,000 or (b) fifteen percent (15%) of the gross receipts.
7. For the FISCAL YEAR 2013-2014: equal quarterly payments equal to the greater of (a) \$130,000 or (b) fifteen percent (15%) of the gross receipts.
8. For the FISCAL YEAR 2014-2015: equal quarterly payments equal to the greater of (a) \$130,000 or (b) fifteen percent (15%) of the gross receipts.

B. Payment Due Date.

Payments of quarterly concession fees every FISCAL YEAR to the City shall be made for each quarter ending March 31, June 30, September 30 and December 31 of each FISCAL YEAR and shall be due and payable by the tenth day after the quarters ending March 31, September 30 and December 31 (April 10, October 10 and January 10 respectively) and the thirtieth day after the quarter ending June 30 (July 30) ("Payment Due Dates") during the term of the AGREEMENT.

C. Method of Payment.

The quarterly concession payments shall be addressed to:

Recreation and Community Services Department
ATTENTION: Director of Recreation and Community Services
Outdoor Sports Center Concession Agreement
17555 Peak Avenue
Morgan Hill, CA 95037

D. Gross Receipts Defined:

For the purposes of this Section 5 and this AGREEMENT, the term "gross receipts" shall mean the total amount charged for the use of the PREMISES or OSC, or sale of any goods, services

(whether or not such services are performed as a part of or in connection with the sale of goods) or advertising provided in connection with this AGREEMENT. Gross receipts shall not include:

1. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE;
2. California Redemption Value (CRV);
3. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
4. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
5. Receipts from the sale at cost of uniforms, clothing, or supplies to CONCESSIONAIRE'S employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
6. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
7. Fair market trade-in allowance, in the event merchandise is taken in trade;
8. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

CONCESSIONAIRE shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

1. Any discount or reduced-price programs (such as the "Home Field Program") so that the full price that would have been charged absent any such discount or reduced-price program shall constitute the amount of gross receipts. (For example, if a regularly established rate is \$100, but the customer only pays \$75 through a discount or reduced-price program, the \$100 market rate will be used to calculate gross revenue.). Free usage by the CITY pursuant to Section 8D shall not be a discount or reduced-price program and shall not be counted as gross receipts;
2. Any error in cash handling by CONCESSIONAIRE or CONCESSIONAIRE'S employees or agents;
3. Any losses resulting from bad checks received from the consumers or dishonored payment to CONCESSIONAIRE by customer or purchaser; or
4. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

E. Quarterly Concession Reports:

1. CONCESSIONAIRE shall transmit with each concession fee payment a Quarterly Gross Receipts, also referred to as a Quarterly Remittance Advice Form, for the quarter for which concession fee is submitted.

2. Additionally, CONCESSIONAIRE shall maintain and submit to the CITY quarterly statistical information and reports on the following: ongoing programs, field reservations, participant levels, use by sports type, community and regional use levels, hours of use, gross receipts and net receipts, expenses and revenues.

SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS

For the purposes of this Section 6 and this AGREEMENT, "net receipts" shall mean the gross receipts (as defined in Section 5) less operation and interest expenses.

A. Capital Improvement Fund: CONCESSIONAIRE shall deposit the following into an OSC Capital Improvement Fund to be established and held by the CITY:

1. Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2011-2012, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to that amount of CONCESSIONAIRE'S net receipts that exceeds one hundred thousand dollars (\$100,000) of net receipts during the first two FISCAL YEARS of the term of this AGREEMENT.
2. Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of the net receipts of that FISCAL YEAR.
3. City shall use amounts deposited in the Capital Improvement Fund only for the purpose of constructing or improving IMPROVEMENTS according to the Capital Improvement Program referenced in Section 10.

B. Net Receipts Share: Not later than the thirtieth (30th) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY the amount equal to ten percent (10%) of the net receipts of that FISCAL YEAR.

C. Reimbursements: If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants, and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs (including CITY'S 15% administrative overhead cost), damages, and penalties. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations, and to charge CONCESSIONAIRE with the cost of same,

receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE.

D. Impermissible Use. Use of the PREMISES for purposes not expressly permitted herein may result in additional charges; however, any such use without the prior written approval of the GENERAL MANAGER shall also constitute a material breach of this AGREEMENT and is prohibited.

E. Additional Concession Fees: Any amount due in subsection B, C and D shall be added to the concession fee payment thereafter due hereunder, and each and every part of the same shall be and become additional concession fee payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic concession fee payment set forth in Section 6 hereof.

SECTION 7. LATE PAYMENT

A. Failure of CONCESSIONAIRE to pay any of the concession fee payments pursuant to Section 5 on Payment Due Date or any payments, charges, or fees required pursuant to Section 6 when due is a breach of the AGREEMENT for which CITY may terminate same pursuant to Section 20 or take such other legal action as it deems necessary.

B. Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments, CONCESSIONAIRE recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, CONCESSIONAIRE agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and or damages and loss resulting from said late or delinquent payments.

C. The charges for late or delinquent payments shall be \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum or one and one-half percent (1.5%) each month, assessed daily, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the tenth (10th) day of the month in which payment is due.

SECTION 8. OSC USAGE

Subject to the conditions set forth below, CITY agrees that CONCESSIONAIRE, upon payment of the concession fees, and all other charges and payments to be paid by CONCESSIONAIRE under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, and provided that CONCESSIONAIRE is not in breach or default of this AGREEMENT, shall lawfully and quietly hold, use and enjoy the concession PREMISES during the term of and for purposes specified in this AGREEMENT. In the case of disputes, during the life of the AGREEMENT, over any conditions which may impede upon the CONCESSIONAIRE'S quiet enjoyment of the concession PREMISES, the GENERAL MANAGER shall have final determination of any solution to such dispute; the GENERAL MANAGER'S final determination shall be binding upon all parties in such dispute.

A. Charges and Pricing. CONCESSIONAIRE shall have the right to charge and establish prices for the usage of the OSC, parking, advertising, and any other usage of the PREMISES permitted under this AGREEMENT; subject, however, to disapproval by GENERAL MANAGER if he or she determines that any of said prices are discriminatory or excessively high or low. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. CONCESSIONAIRE shall provide the GENERAL MANAGER with a list of prices for all services and goods offered pursuant to this AGREEMENT. This list shall be updated whenever prices are changed.

B. Scheduling. CONCESSIONAIRE shall establish and implement a field reservation system and shall schedule OSC field usage for Community Use and other regional uses.

C. Morgan Hill Community Use and Sports Mix. CONCESSIONAIRE shall make available the turf fields and grass fields in a manner that maximizes use of the OSC while maintaining the OSC at standards specified in this AGREEMENT. CONCESSIONAIRE shall use reasonable efforts to assure that (1) approximately sixty percent (60%) of the field usage shall be usage by Morgan Hill residents and community groups ("Community Use") and (2) field usage comprises a variety of permitted sports.

D. City Use. CITY shall have the right to four hundred (400) field hours of scheduled use at the OSC at no charge to the CITY. CONCESSIONAIRE shall use reasonable efforts to schedule the CITY's request. Charges forgone for the CITY's scheduled use shall not be counted as a gross receipt for the purpose of Section 5D.

E. Parking Use. The improved and overflow parking lots are part of the Premises under this AGREEMENT. However, CITY shall have the right to utilize fifty (50%) the overflow parking lot during the Aquatics Center's ("AC") summer recreation swim season and during days when regional swim meets or other large events are held at the AC. The City shall provide sufficient notice to CONCESSIONAIRE when the lot is needed. CONCESSIONAIRE and the City shall provide each other with monthly calendars in advance to ensure clear communication when events are occurring at each location. During shared use, a parking fee can only be charged for the portion of the lot for OSC customers, unless prior approval is provided by the City. AC customers will be required to enter from the south gate and OSC customers will be required to enter from the paved parking lot gate. In the event that the City requires the use of both the improved parking lot and overflow parking lot for large community events and events at the AC, the City and CONCESSIONAIRE will work in a good faith effort to accommodate the City's request unless the parking is already needed for events occurring at the OSC. When the City utilizes any parking lot, parking fees shall not be allowed unless the parties mutually agree.

F. Advertising. CONCESSIONAIRE shall have the right to pursue advertising and sponsorship agreements and offer space and locations at the OSC for advertising that are consistent with the City's approved policy (restricts pornography, religious and political organizations, firearms, tobacco, alcohol, and gambling). CONCESSIONAIRE may be allowed to have temporary advertising for alcohol products for exclusively adult only tournaments occurring at the OSC

upon approval by the GENERAL MANAGER. Revenues derived from such advertising and sponsorship agreements shall be part of gross receipts.

G. Naming Rights: CONCESSIONAIRE shall have the right to pursue and have the authority to enter into agreements for advertising naming rights for the fields, scoreboards, and other OSC amenities, provided that the term of any such agreement shall not continue beyond the term of this AGREEMENT. CONCESSIONAIRE may also pursue naming rights agreements for the entire OSC; subject to approval by the City Council by resolution. CONCESSIONAIRE and the City shall work in good faith to negotiate the terms of any agreement.

H. Food and Beverage Concession Stand: CONCESSIONAIRE shall have the right to establish or permit food and beverage sales at the concession stand; provided that no such concession shall sell any alcohol or tobacco products without prior written consent from GENERAL MANAGER. Revenues derived from any sales from such concession shall be part of gross receipts.

I. Vending Machines: CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of the GENERAL MANAGER. The GENERAL MANAGER shall have the right to order the immediate removal of any unauthorized machines.

J. Signage. CONCESSIONAIRE may design and construct a sign on the PREMISES to advertise the location and events at the OSC subject to the approval of the GENERAL MANAGER. CONCESSIONAIRE shall provide an advertising sign plan to the GENERAL MANAGER for approval.

SECTION 9. OPERATING RESPONSIBILITIES

CONCESSIONAIRE shall, at all times during the term of the AGREEMENT, comply with the following conditions:

A. Conduct: CONCESSIONAIRE shall at all times conduct its business in a professional, quiet, and orderly manner to the satisfaction of the GENERAL MANAGER. CONCESSIONAIRE shall use its best efforts to permit no intoxicated person(s), profane or indecent language, or boisterous or loud conduct in or about the PREMISES and shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES. CONCESSIONAIRE will call upon peace officers to assist in maintaining peaceful conditions.

B. Non-Discrimination: CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from the PREMISES or OSC or activities thereon, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered by this AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on

the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall contain a like provision.

C. Qualified Personnel: CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by CONCESSIONAIRE, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, the CONCESSIONAIRE shall remove that person from the PREMISES.

D. Concession Manager: CONCESSIONAIRE shall appoint a Concession Manager of CONCESSIONAIRE'S operations at the FACILITY. If CONCESSIONAIRE elects to subcontract the management of any or all of the CONCESSION operations to a managing entity or entities, the provisions of this section shall also apply to any such entity.

E. Marketing and Promotion. CONCESSIONAIRE shall use its best efforts to market and promote the usage of the OSC and Premises for purposes permitted under this AGREEMENT. No later than thirty (30) days after the first day of each FISCAL YEAR, CONCESSIONAIRE shall provide the CITY with an annual marketing plan, which plan shall include goals to support local economic development activities. The CITY reserves the right to concurrently market and promote the use of the OSC.

F. Utilities: CONCESSIONAIRE shall be responsible for utility charges. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, water, heat, air-conditioning, and other utility services to PREMISES, and shall be paid by CONCESSIONAIRE regardless of whether such utility services are furnished by CITY or by other utility service providers.

The DEPARTMENT will incur the cost of all refuse collection from the main dumpster during the term of this AGREEMENT; provided however, the CONCESSIONAIRE shall agree to pay the costs of such refuse collection if and when the CITY's agreement with its current refuse hauler terminates.

CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the concession fee payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake,

wind, civil commotion, or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.

In all instances where damage to any utility service line is caused by CONCESSIONAIRE, its employees, contractors, sub-contractors, suppliers, agents, or invitees, CONCESSIONAIRE shall be responsible for the cost of repairs and any and all damages occasioned thereby.

G. Safety: CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or GENERAL MANAGER notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall notify the CITY in writing describing the person(s) injured, and the time, place and nature of the injury. If CONCESSIONAIRE fails to correct hazardous conditions specified by the GENERAL MANAGER in a written notice, which have led, or in the opinion of CITY could lead, to injury, the GENERAL MANAGER may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

H. Security. CONCESSIONAIRE shall be responsible for the security of the PREMISES. CONCESSIONAIRE may install equipment approved by the CITY, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by CONCESSIONAIRE.

I. Environmental Sensitivity: The CONCESSIONAIRE must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY policies and ordinances regarding protection of the environment. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

J. Fund Raising Activities: CONCESSIONAIRE will be expected to cooperate with CITY personnel on all matters relative to the conduct of fund-raising and/or special events.

K. Community Outreach: CONCESSIONAIRE shall coordinate and cooperate with DEPARTMENT to develop strategies to outreach to all members of the community, particularly those living in low-to-moderate income areas, fixed-income households, youth, the disabled, etc., to provide its services to these members of the community who may not otherwise have the opportunity to partake in the services provided by CONCESSIONAIRE.

L. Resources Supplied by Concessionaire: CONCESSIONAIRE shall supply resource items that are specifically listed in this section in order to ensure business operations are run effectively and efficiently.

SECTION 10. MAINTENANCE AND REPAIR

A. "As Is": CONCESSIONAIRE acknowledges that it is agreeing to a concession of the Premises on an "as is" basis.

B. Maintenance and Operating Standards: During all periods that the PREMISES are used or are under the control of the CONCESSIONAIRE for the uses, purposes, and occupancy set forth in this AGREEMENT, CONCESSIONAIRE shall maintain and operate the PREMISES and the OSC at its own expense, in compliance with law and, unless otherwise more specifically set forth, to a standard equal to or better than standards in place as of the EFFECTIVE DATE of AGREEMENT.

C. General Maintenance and Repair: CONCESSIONAIRE shall be responsible for all necessary janitorial duties and damage and maintenance repairs, to the satisfaction of the GENERAL MANAGER. The cause of said cleaning and repairs may result from normal wear and tear, as well as vandalism.

D. Fields: CONCESSIONAIRE shall, at its own expense, keep and maintain the turf fields and the grass fields to a standard equal or greater than the City's established Park Maintenance Numeric Standard's Rating Guideline 4 (good condition, no increased maintenance required). CONCESSIONAIRE shall maintain and operate all improvements, fixtures, irrigation system and utility systems which may now or hereafter exist on said fields, whether installed by CITY or CONCESSIONAIRE.

E. Improvements: CONCESSIONAIRE shall, at its own expense, keep and maintain IMPROVEMENTS. CONCESSIONAIRE'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior and exterior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the GENERAL MANAGER to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.

F. Correction of Conditions Leading to Damage: If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the opinion of CITY, could lead to significant waste or damage to CITY property, the GENERAL MANAGER may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

G. Property Damage and Theft Reporting: CONCESSIONAIRE shall report to the CITY in writing in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES.

H. Damage or Destruction to Premises:

1. **Partial Damage.** If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by GENERAL MANAGER as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

2. **Complete Destruction:** In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, CONCESSIONAIRE may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. CONCESSIONAIRE shall continue paying CITY quarterly concession fees as determined above during the rebuilding of the facility.

3. **Limits of CITY'S Obligation Defined:** In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder.

4. **Use of Capital Improvement Fund.** CITY may use the funds in the Capital Improvement Fund for the purposes set forth in this Section.

I. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurnishing, equipping shall be equivalent in quality to that originally installed.

J. Pest Control: Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall be responsible for pest control in and around the PREMISES, including but not limited to, abatement of insects (including roaches, bees, etc.), spiders, rodents, vermin, and other nuisance pests, if the pests are found in or on structures or areas used and maintained by CONCESSIONAIRE.

SECTION 11. CAPITAL IMPROVEMENT PROGRAM

The CITY and CONCESSIONAIRE shall negotiate in good faith to develop and agree by December 31, 2010 upon a 10-year capital improvement program for the PREMISES and OSC. Such program shall set forth the needed capital IMPROVEMENTS to be made within the 10 year program and the respective responsibilities of the CITY and CONCESSIONAIRE to fund and complete such program. The respective share of responsibility of the program shall reasonable reflect the following factors: the term of this AGREEMENT and possible future extension of the AGREEMENT, the expected life of IMPROVEMENTS, the degree to which the activities of each party contribute to the wear and tear on the IMPROVEMENTS or the need for the Improvements, and the expertise of each respective party to make any such IMPROVEMENTS.

SECTION 12. LIABILITY

A. Indemnification:

1. Except for the active negligence or willful misconduct of CITY OR AGENCY, CONCESSIONAIRE undertakes and agrees to defend, indemnify and hold harmless CITY, AGENCY and any and all of their officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONCESSIONAIRE'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this AGREEMENT on the part of CONCESSIONAIRE, its officers, agents, employees, or sub-contractor of any tier.

2. The CONCESSIONAIRE or licensee, in consideration of the granting of this concession or license, agrees to hold the CITY and the AGENCY harmless for any and all claims or rights of action for damages which may or might arise or accrue to said CONCESSIONAIRE or licensee, his officers, agents, servants, employees, or others who may be on the licensed premises at his invitation or the invitation of any one of them, by reason of injury to the property, or the persons of any of them resulting from the entry upon or the use of the licensed premises, by the CITY or AGENCY at any time, for any purpose necessary or convenient in connection with public works.

B. Insurance Required. CONCESSIONAIRE shall, at its own cost and expense, purchase and maintain throughout the term of this Agreement the following insurance:

1. Automobile and Liability. CONCESSIONAIRE shall maintain business automobile liability insurance (any auto, including owned autos, non-autos and hired autos), comprehensive general liability insurance, and employer liability insurance protecting CONCESSIONAIRE, the CITY and AGENCY and their members (including, without limitation, members of the City Council), officers, agents and employees, all of whom shall be named as additional insureds, from and against any and all liabilities arising out of or relating to CONCESSIONAIRE's use or occupancy of the PREMISES or the conduct of its operations under this AGREEMENT, in such form and with such companies as the CITY may reasonably approve, with a combined single limit (or its equivalent) per occurrence of not less than the amount set forth below, with a deductible reasonably acceptable to the CITY, with a waiver of any right of subrogation that the insurer may have against CITY or AGENCY; with contractual liability coverage for CONCESSIONAIRE's covenants to and indemnification of the CITY and AGENCY under this AGREEMENT. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance CITY or AGENCY may possess, including any self-insured retention or deductible CITY or AGENCY may have, and that CITY and AGENCY shall not be obligated to contribute to cover any loss, damage or liability. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance.

Business Automobile Liability	\$1,000,000
Comprehensive General Liability	\$2,000,000
Employer Liability	\$1,000,000

2. Workers' Compensation. CONCESSIONAIRE shall maintain workers compensation insurance as required by the laws of California; provided, however, that CONCESSIONAIRE may self-insure its workers compensation liability, subject to all applicable requirements of California law, together with employer liability insurance in the coverage amount of not less than \$1,000,000.

3. Insurance Certificates. At least three (3) business days prior to the commencement of the term of this AGREEMENT and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided hereunder by CONCESSIONAIRE, CONCESSIONAIRE shall cause a certificate or certificates of insurance to be furnished to the CITY evidencing all such coverage, and such certificate shall provide that the policy or policies will not be cancelled nor the limits thereunder materially changed without first providing at least thirty (30) days' written notice thereof to CITY. At the CITY's request, copies of all required insurance policies will be provided to CITY.

SECTION 13. PROHIBITED ACTS

CONCESSIONAIRE shall not:

A. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the GENERAL MANAGER;

B. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

C. Use, create, store or allow any hazardous materials as defined in California Health and Safety Code 25117, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;

D. Use the PREMISES in any manner that will constitute waste.

SECTION 14. PERFORMANCE DEPOSIT AND ASSURANCES

A. Financial Assurances: CONCESSIONAIRE represents to the CITY that it has sufficient capital, credit and investment available to it for the purposes of meeting its obligations set forth in this AGREEMENT. In order to demonstrate the CONCESSIONAIRE's financial capacity to perform under this AGREEMENT, CONCESSIONAIRE shall provide to the CITY evidence of its source of capital and operational funding upon the CITY's request, including:

1. Written representation from a bona fide financial institution (bank, lending institution, etc.) evidencing the amount of loan or credit offered or extended to the CONCESSIONAIRE for the purposes set forth in this AGREEMENT.
2. Written representation from investors stating the amount of investment capital invested in, loaned to or offered to CONCESSIONAIRE for the purposes set forth in this AGREEMENT.

B. Annual Progress Report. CONCESSIONAIRE shall submit no later than sixty (60) days after the end of each FISCAL YEAR a progress report of an annual compilation of information contained in the monthly reports required under Section 5C, as well as gross receipts (as defined in Section 5D) and net receipts for each FISCAL YEAR (as defined in Section 6F).

B JD MCO
C. Termination for Failure to Meet Performance Goals. Based on the annual progress reports submitted pursuant to Section 14C, CONCESSIONAIRE shall demonstrate that it has met the following performance goals by the end of FISCAL YEAR 2011-2012: (a) that the CONCESSIONAIRE has achieved net receipts of at least fifty thousand dollars (\$50,000) in FISCAL YEAR 2011-2012, (b) CONCESSIONAIRE has made all payments pursuant to Sections 5 and 6 of this Agreement when due and (c) CONCESSIONAIRE has reasonably complied with covenant and condition set forth in Section 8C. The City Council may determine by resolution within ninety (90) days of the CITY'S receipt of the FISCAL YEAR 2011-2012 annual progress report, that, based on the annual progress reports, CONCESSIONAIRE has not met the performance goals set forth in this paragraph. Upon such determination by the City Council, the CONCESSIONAIRE shall be deemed in default of this AGREEMENT and the CITY may terminate this AGREEMENT upon a 30-day notice (as provided for in Section 20A) to the CONCESSIONAIRE of the termination of this AGREEMENT.

SECTION 15. INDEPENDENT CONTRACTORS / CONSULTANTS

The CONCESSIONAIRE is acting hereunder as an independent contractor and not as an agent or employee of the CITY. The CONCESSIONAIRE shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY or AGENCY.

SECTION 16. TAXES, PERMITS, AND LICENSES

A. CONCESSIONAIRE shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

B. CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

C. During the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a current Morgan Hill business license as required by the CODE Section 5.04.110 and pay applicable fees and taxes pursuant to Chapter 5.04 of the CODE.

SECTION 17. ASSIGNMENT, SUBLEASE, BANKRUPTCY

A. CONCESSIONAIRE shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor or purchaser.

B. CONCESSIONAIRE may not, without prior written permission of the CITY:

1. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
2. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

SECTION 18. BUSINESS RECORDS

A. Record Retention. CONCESSIONAIRE shall maintain during the term of the AGREEMENT and for three (3) years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to the AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by GENERAL MANAGER, or a duly authorized representative of the CITY, during ordinary business hours at any time during the term of this agreement and for at least three (3) years thereafter.

B. Employee Fidelity Bonds. At the GENERAL MANAGER'S discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.

C. Cash and Record Handling Requirements. If requested by GENERAL MANAGER, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to GENERAL MANAGER for approval. CONCESSIONAIRE shall be required to maintain a method of accounting of the CONCESSION which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE from the operation of the CONCESSION. The method of accounting, including bank accounts, established for the CONCESSION shall be separate from the accounting systems used for any other business operated by CONCESSIONAIRE or for recording CONCESSIONAIRE'S personal financial affairs.

D. Annual Statement of Gross Receipts and Expenses:

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations specified in this AGREEMENT in a form acceptable to the GENERAL MANAGER, on or before April 30th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by CONCESSIONAIRE and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross receipts made by CONCESSIONAIRE to CITY shall be found to be less than the amount of gross receipts disclosed by such audit and observation, CONCESSIONAIRE shall pay CITY within 30 days after billing any additional concession fees disclosed by such audit. If discrepancy exceeds 2% and no reasonable explanation is given for such discrepancy, CONCESSIONAIRE shall also pay the cost of the audit.

SECTION 19. REGULATIONS, INSPECTION, AND DIRECTIVES

A. The operations conducted by CONCESSIONAIRE pursuant to the AGREEMENT shall be subject to:

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the CONCESSION;
2. Any and all orders, directions or conditions issued, given, or imposed by GENERAL MANAGER with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the CODE, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the CONCESSIONAIRE'S operations; and,
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons, including the Americans with Disabilities Act.

B. Permissions:

Any permission required by the AGREEMENT shall be secured in writing by CONCESSIONAIRE from CITY or the GENERAL MANAGER and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the GENERAL MANAGER.

C. Right of Inspection:

CITY and the GENERAL MANAGER, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE'S operation.

D. Access to Premises:

CITY shall have absolute and full access to the PREMISES and all its appurtenances during the term of the AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by said CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE.

SECTION 20. TERMINATION

A. Termination by CITY:

CITY may, by 30-day written notice, terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events of default occur:

1. CONCESSIONAIRE fails to pay concession fee pursuant to Section 5, or any other payment obligation pursuant to Sections 6 and 7 and CONCESSION fails to pay within five (5) days after date of a written notice of default for failure to pay from the CITY.
2. CONCESSIONAIRE fails to keep, perform and observe any promise, covenant and condition set forth in the AGREEMENT on its part to be kept, performed or observed and CONCESSIONAIRE fails to perform within ten (10) days after the receipt of written notice from the CITY, or, where fulfillment of CONCESSIONAIRE'S obligation requires activity over a period of time, CONCESSIONAIRE fails to commence to perform whatever may be required within ten (10) days after receipt of such notice and to continue such performance diligently and without interruption except for causes beyond its control;
3. CONCESSIONAIRE fails to meet performance goals pursuant to that procedure and process set forth in Section 14; *GD MCD*
4. The interest of CONCESSIONAIRE under the AGREEMENT is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of GENERAL MANAGER;
5. CONCESSIONAIRE becomes, without the prior, written approval of GENERAL MANAGER a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
6. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set

aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with CONCESSIONAIRE'S use of the PREMISES or with its operations under the AGREEMENT;

7. CONCESSIONAIRE becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the CONCESSION areas;

8. By order or decree of court, CONCESSIONAIRE is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of CONCESSIONAIRE seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;

9. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against CONCESSIONAIRE which materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;

10. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONCESSIONAIRE;

11. Cessation or deterioration of service for any period which, in the opinion of GENERAL MANAGER, materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;

12. Any lien is filed against the PREMISES because of any act or omission of CONCESSIONAIRE and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) days; or

13. CONCESSIONAIRE voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

No acceptance by CITY of the concession fee payment or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by CONCESSIONAIRE, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY including the right to terminate the AGREEMENT on account of such default.

B. CITY'S Right of Reentry:

CITY shall, as an additional remedy, upon an event of default as above provided, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of CONCESSIONAIRE under the AGREEMENT.

C. Additional Rights of CITY:

CITY, upon termination of the AGREEMENT, or upon reentry, regaining, or resumption of possession of the PREMISES, may occupy said PREMISES and shall have the right to permit any person, firm or corporation to enter upon the PREMISES and use the same. Such occupation by others may be of only a part of the PREMISES, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in the AGREEMENT.

D. Survival of CONCESSIONAIRE'S Obligations:

In the event the AGREEMENT is terminated by CITY, or in the event CITY reenters, regains, or resumes possession of the PREMISES, CONCESSIONAIRE shall be responsible to pay the CITY the concession fee due up to and including the date of termination. In addition, CONCESSIONAIRE shall be responsible to pay CITY all deferred revenue, including but not limited to deposits, advances, cash, or checks received for services scheduled to be provided by CONCESSIONAIRE after the date of termination. CITY may maintain an action to recover any monies due.

E. Waiver of Redemption and Damages:

CONCESSIONAIRE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner.

F. Termination by CONCESSIONAIRE:

The AGREEMENT may be terminated by CONCESSIONAIRE, via 30-day written notice, upon the happening of one or more of the following event of default:

1. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission to act of CONCESSIONAIRE, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
2. Any exercise of authority under the AGREEMENT which so interferes with CONCESSIONAIRE'S use and enjoyment of the PREMISES as to constitute a termination, in

whole or in part, of the AGREEMENT by operation of law in accordance with the laws of the State of California; or

3. The default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from CONCESSIONAIRE of written notice to do so.

SECTION 21. SURRENDER OF POSSESSION

CONCESSIONAIRE agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by CONCESSIONAIRE or CITY, normal use and wear and tear thereof excepted. No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and CONCESSIONAIRE. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by CONCESSIONAIRE under the AGREEMENT.

CONCESSIONAIRE shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the AGREEMENT. If CONCESSIONAIRE fails to remove said property within that thirty (30) days, said property shall be considered abandoned and CITY may dispose of same as it sees fit.

SECTION 22. WAIVER

A waiver of a default of any part, term, or provision of the AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

SECTION 23. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the AGREEMENT due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, or any other circumstance for which such party is not responsible and which is not in its power to control.

SECTION 24. REMEDIES ARE NON-EXCLUSIVE

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

SECTION 25. AGREEMENT BINDING UPON SUCCESSORS

The AGREEMENT shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators, and assigns of the parties hereto. The term "CONCESSIONAIRE" shall include any assignee of CONCESSIONAIRE under any assignment permitted and approved by GENERAL MANAGER.

SECTION 26. LAW OF CALIFORNIA APPLIES

The AGREEMENT shall be enforced and interpreted under the laws of the State of California.

SECTION 27. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if CONCESSIONAIRE is not a resident of the State of California, or is a partnership or joint venture without a partner or member resident in said State, or is a foreign corporation, then in any such event CONCESSIONAIRE does designate the Secretary of State, State of California, its agent for the purpose of service of process in any court action between it and CITY arising out of or based upon the AGREEMENT, and the service shall be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, CONCESSIONAIRE may be personally served with such process out of this state by mailing, by registered or certified mail, the complaint and process to CONCESSIONAIRE at the address set out hereafter in the AGREEMENT, and that such service shall constitute valid service upon CONCESSIONAIRE as of the date of mailing, and CONCESSIONAIRE shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that CONCESSIONAIRE is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

SECTION 28. VENUE

Venue of any action brought under the AGREEMENT shall lie in Santa Clara County.

SECTION 29. NOTICES

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to the Department of Recreation and Community Services, Attn: Department Director, 17555 Peak Avenue Morgan Hill, California, 95037.

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide CONCESSIONAIRE with written notice of any address change within thirty (30) days of the occurrence of said address change.

B. To CONCESSIONAIRE:

All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to CONCESSIONAIRE shall be addressed to CONCESSIONAIRE as follows:

Morgan Hill Youth Sports Alliance
17485 Monterey Road, Suite 200
Morgan Hill, CA, 95037

CONCESSIONAIRE shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

SECTION 30. INTERPRETATION

CONCESSIONAIRE and CITY agree that the AGREEMENT shall be deemed to have been jointly drafted and shall be construed according to its fair meaning and not strictly for or against either CITY or CONCESSIONAIRE. The section headings appearing herein are for the convenience of CITY and CONCESSIONAIRE, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT. If any provision of the AGREEMENT is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the AGREEMENT, and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of the AGREEMENT is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The use of any

gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

SECTION 31. AGREEMENT CONTAINS ENTIRE AGREEMENT

The provisions of the AGREEMENT contain the entire Agreement between the parties hereto and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONCESSIONAIRE.

SECTION 32. TIME OF THE ESSENCE

Time is of the essence for all provisions of the AGREEMENT

SECTION 33. INCORPORATION OF DOCUMENTS

This AGREEMENT and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following exhibits are to be attached to and made part of this AGREEMENT by reference:

EXHIBIT B – City Issued Request for Proposals

EXHIBIT C – Morgan Hill Youth Sports Alliance OSC Proposal

EXHIBIT D – Morgan Hill Youth Sports Alliance Parks and Recreation Commission
Supplemental Questions Responses

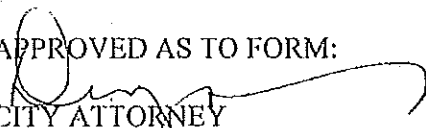
EXHIBIT E – Morgan Hill Youth Sports Alliance City Council Questions Responses

IN WITNESS WHEREOF, THE CITY OF MORGAN HILL has caused this AGREEMENT to be executed on its behalf by its duly authorized representative and CONCESSIONAIRE has executed the same as of the day and year herein below written.

THE CITY OF MORGAN HILL, a municipal corporation

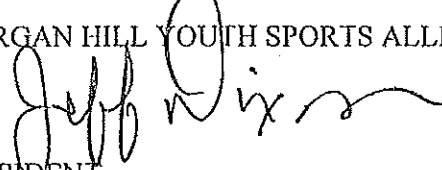
BY: 
CITY MANAGER

APPROVED AS TO FORM:


CITY ATTORNEY

7/7/10 Council
Approval: 6/16/10

MORGAN HILL YOUTH SPORTS ALLIANCE, a California non-profit corporation

BY: 
PRESIDENT

6/14/10

EXHIBIT A

PARCEL ONE:

All of lots 69 and 70, as shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on April 5, 1897 in Book "I" of Maps, at page(s) 59.

PARCEL TWO:

All of lots 10 and 11 as shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 7", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on March 5, 1906 in Book "L" of Maps, at page(s) 26.

Excepting from parcels 1 and 2, above described that certain Parcel of Land more particularly described as follows:

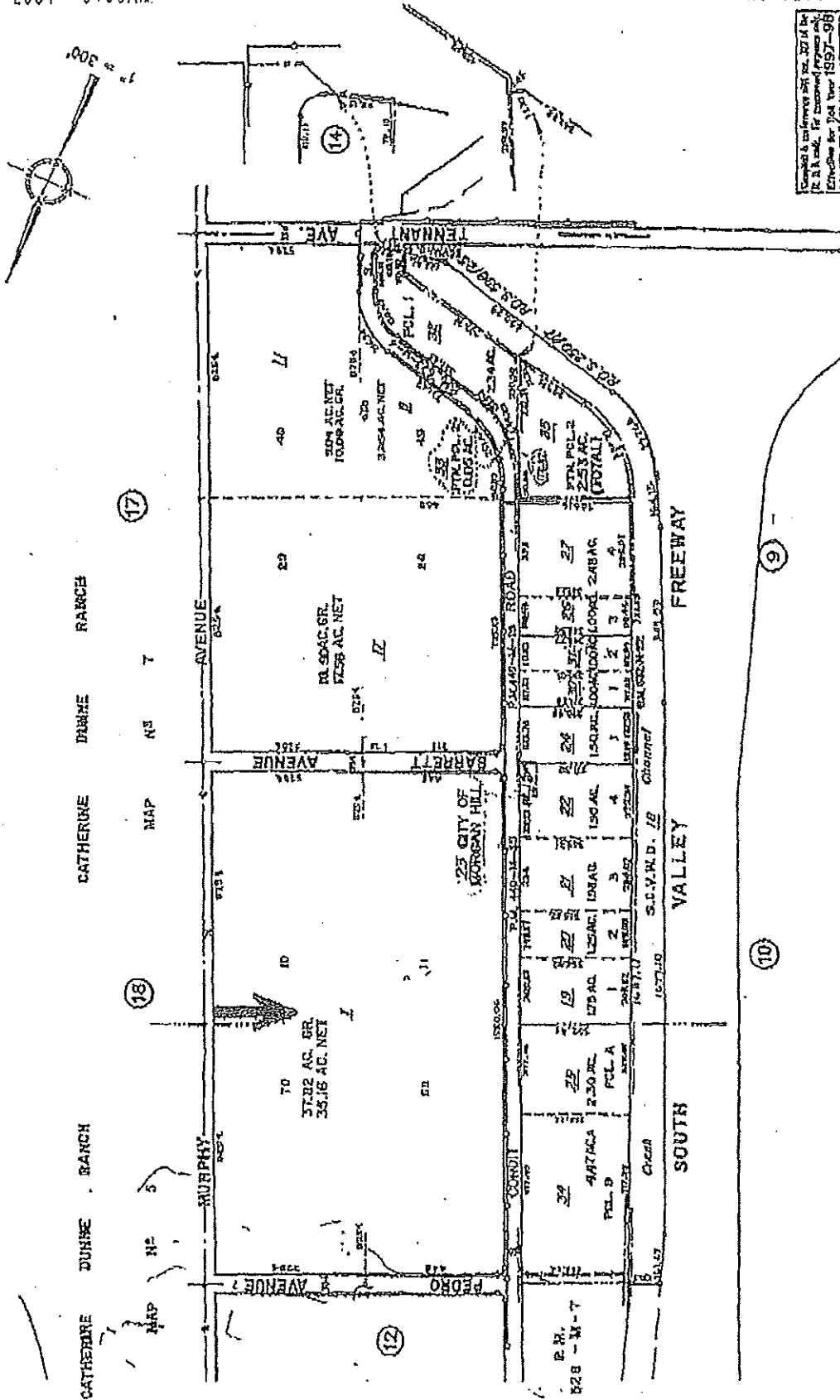
Commencing at the intersection of the Southwesterly line of Lot 11 and the Northwesterly line of Barrett Avenue as said Lot and Avenue are shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 7", filed March 5, 1906 in Book "L" of Maps, at page 26, in the office of the Recorder of Santa Clara County; thence along said Northwesterly line N. 65° 19' 50" E, 80.00 feet; thence from a tangent that bears S. 65° 15' 50" W., along a curve to the right with a radius of 20.00 feet through an angle of 90° 00' 00", an arc length of 31.42 feet; thence N. 24° 44' 10" W., 1550.06 feet; thence along a tangent curve to the right with a radius of 20.00 feet; through an angle of 90° 00' 00", an arc length of 31.42 feet to the Southwesterly line of San Pedro Avenue as said Avenue is shown upon that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", filed on April 5, 1897, in Book "I" of Maps, at page 59, in the Office of the Recorder of Santa Clara County; thence along last said line and along the Southwesterly line of said lots 11 and 69, S. 65° 15' 50" W., 80.00 feet and S. 24° 44' 10", E., 1590.06 feet to the Point of Commencement.

May 23, 2001 9:55AM

No. 0235 P. 7/9

BOOK PAGE
817 13

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA



Created & entered by the Assessor's Office for the State of California for the year 1997-98. This map is for the year 1997-98. Assessor's Office for the State of California.



EXHIBIT B

REQUEST FOR PROPOSAL

Morgan Hill Outdoor Sports Center

The City of Morgan Hill is seeking proposals to operate the 38 acre Outdoor Sports Center (OSC). The facility is located at 16500 Condit Road and is easily accessible from Highway 101.

It is the City's objective to enter into a mutually beneficial agreement with an organization that demonstrates the ability to:

1. Operate the OSC without city subsidy.
2. Balance community access and regional use.
3. Ensure a diverse mix of field use by sport type.

Background

The City has invested approximately \$16 million in acquiring the property and constructing two synthetic turf fields with lights and bleachers, concession/restroom building, and improved parking for 325 vehicles. The OSC was developed to accommodate local youth non-profit athletic organizations (ie. soccer, football, lacrosse, field hockey, rugby), youth and adult regional tournaments, sports camps, high school games/practices, and other special events.

Presently, the city maintains and operates the two synthetic turf fields, concessions, parking lot and restrooms. The facility has "limited access" because paid reservations are required to use the facility. Through a lease with the City (currently month-to-month), the California Youth Soccer Association (CYSA) is responsible for scheduling and maintaining the nine grass fields. CYSA also has priority scheduling privileges for the synthetic turf fields on weekends, but the City is responsible for scheduling and maintaining these amenities. The 23 acres of grass fields do not have an in-ground irrigation system and are watered with large water cannons owned by CYSA.

To assist with your response, attached is an aerial photo of the facility with use statistics and current rates. The City recognizes that a wide array of revenue sources may be necessary to ensure financial viability and understands that on-site advertising, concessions, parking fees, among other strategies may be proposed.

Proposal Content and Submittal Requirements

Applicants submitting a proposal should provide one master and five (5) unbound copies of the following information no later than 4:00 p.m. on Friday, March 19, 2010 to:

City of Morgan Hill, Attention: Steve Rymer, 17555 Peak Avenue, Morgan Hill, CA 95037.

In order to ensure that the City has a thorough understanding of your proposal, please include the following information in addition to other information you believe is pertinent.

- 1) **General Information**
 - a. Cover letter including your name, your organization, and a description of your organizational or corporate structure.
 - b. Information regarding your organization's qualifications, experience, and capacity to operate the OSC.

RECREATION AND COMMUNITY SERVICES DEPARTMENT

408-779-7271

FAX: 408-779-3117

WWW.MORGANHILL.CA.GOV



CITY OF MORGAN HILL

2) **Business Plan**

- a. Provide a detailed narrative description of your proposed plan.
- b. Provide a business plan with the following information:
 - i. Management structure
 - ii. Community access and regional use philosophy
 - iii. Market strategy
 - iv. Risk management plan
 - v. Revenue sources and pricing system
 - vi. Itemized expenses
 - vii. 3 year revenue/expense pro-forma

Proposal Selection Schedule

Selected proposals may be invited to an interview by a City selection committee. The selection committee will make a recommendation to the City Council based on the interview and evaluation of the submitted materials.

The following is the tentative schedule:

Proposals Released:	February 19, 2010
Proposals Due:	March 19, 2010
Review/Interview Process:	March 20-31, 2010
City Council Selects Operator:	April/May 2010
Transition Period (if necessary):	June/July 2010

Other Information

- The City reserves the right to reject any and all submittals.
- The City is not responsible for any costs incurred by applicants in the preparation of a response to this RFP.
- Applicants should be aware that the City, as a public entity, cannot guarantee the confidentiality of information contained in the RFP submittal. While the City will attempt to maintain confidentiality of submitted materials, applicants may choose not to submit some information requested in the RFP. If such an instance occurs, the affected applicants should note for the reviewers the specific information purposely withheld and indicate that it will be provided to the City if granted an interview.

Thank you for considering this RFP. For further information, questions, or to arrange for a site visit, please contact:

Steve Rymer
 City of Morgan Hill
 17555 Peak Avenue
 Morgan Hill, CA 95037
 (408) 779-7271
Steve.rymer@morganhill.ca.gov

RECREATION AND COMMUNITY SERVICES DEPARTMENT

408-779-7271

FAX: 408-779-3117

WWW.MORGANHILL.CA.GOV



CITY OF MORGAN HILL

Outdoor Sports Center

RATES and USESynthetic Turf Fields Rates – City Responsibility

Customer	Rate
Resident, non-profit	\$10/hour
Resident	\$21/hour
Non-resident, non-profit	\$42/hour
Non-resident	\$42/hour
Commercial	\$84/hour
Field Lights	\$8/hour
Parking Lot	\$500/day

Synthetic Turf Fields 2009 Combined Use – City Responsibility

2009	Hours	Days (730 available)
TOTAL ALL CUSTOMERS	3760	608

Primary Customers	Type	Primary Days	Hours	Days
CYSA	Non-resident, non-profit	Weekends	1150	113
Orchard Valley Youth Soccer	Resident, non-profit	Weekdays	1550	332
Pop Warner Football	Resident, non-profit	Weekends	190	17
Charter School	Resident, non-profit	Weekdays	50	29
Morgan Hill Unified School District	Resident, non-profit	Weekdays	300	121
City of Morgan Hill	Owner	Weekdays	270	57

Grass Fields – CYSA Responsibility

Customer	Rate
CYSA Member	\$300/day/field

Note: Grass field schedules may be available at www.cysanorth.org

RECREATION AND COMMUNITY SERVICES DEPARTMENT

408-779-7271

FAX: 408-779-3117

WWW.MORGANHILL.CA.GOV



CITY OF MORGAN HILL

Grass Fields

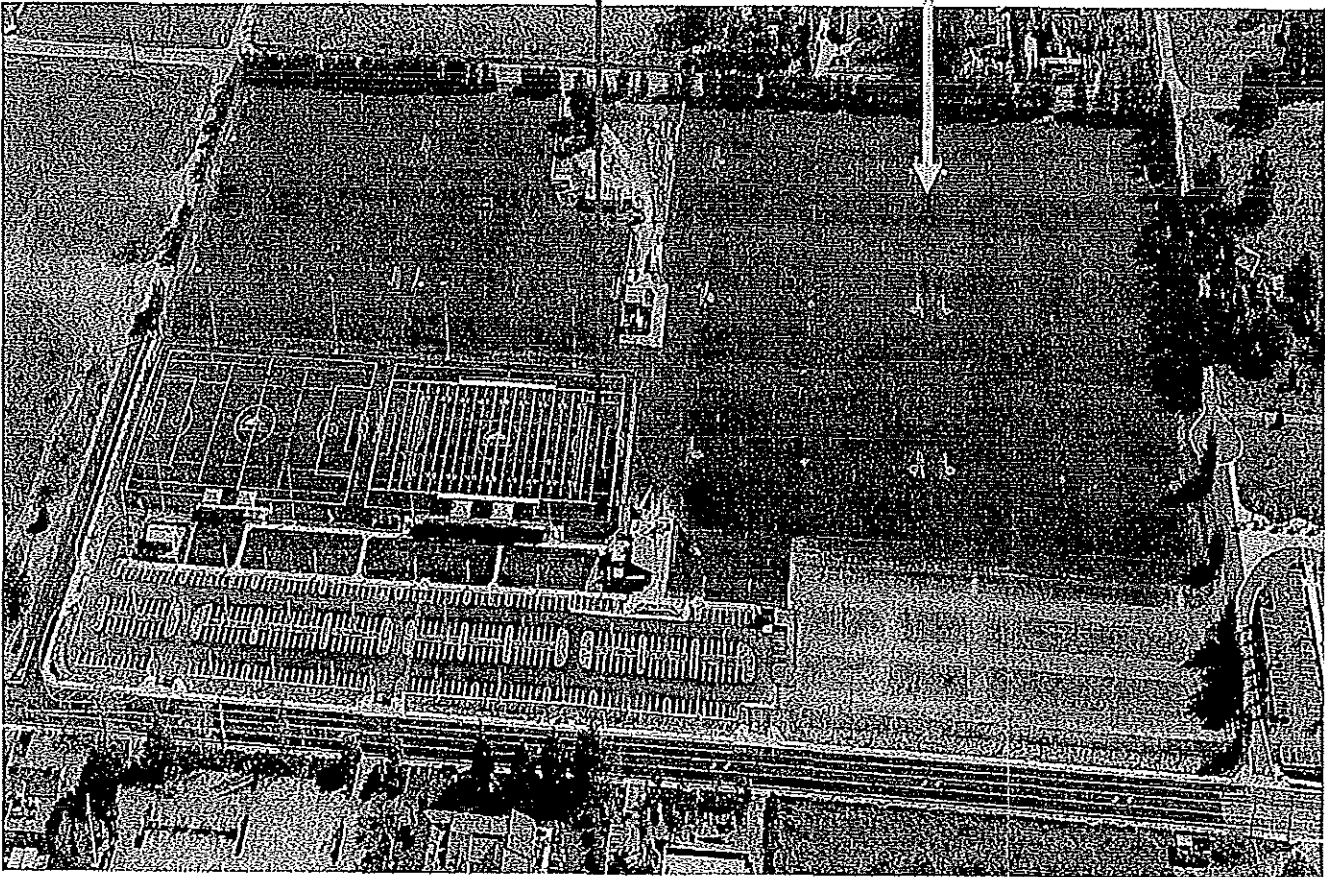
- 9 fields
- 23 +/- acres
- Watered by above ground water cannon system
- No field lights

Synthetic Turf Fields

- 2 fields
- Field lights
- Bleachers with seating for 600 and 200
- PA system
- Electronic scoreboards

Other

- Improved parking for 325 vehicles
- Unimproved parking for 200 +/-
- Restrooms
- Concession stand
- Tournament/meeting room



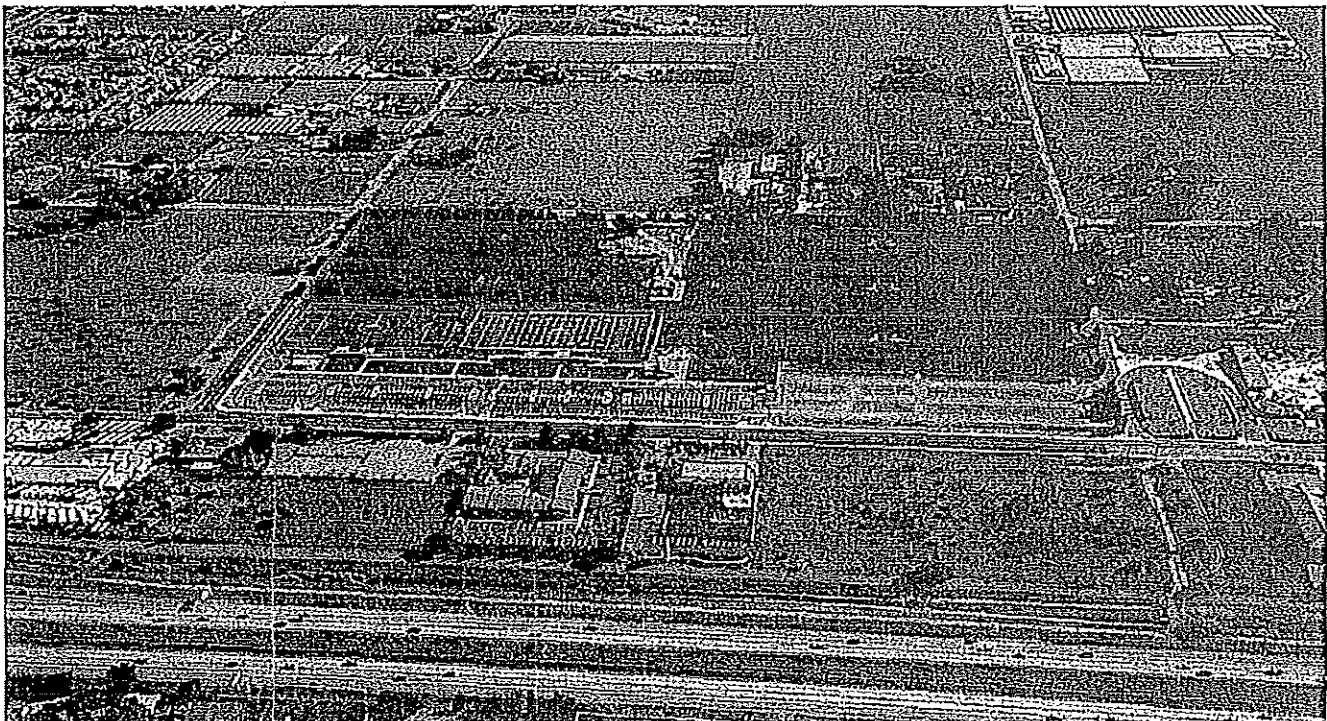


RECREATION AND COMMUNITY SERVICES DEPARTMENT

408-779-7271

FAX: 408-779-3117

WWW.MORGANHILL.CA.GOV



Attachment: Exhibit A to Attachment 1 - MHYSA Agreement through Amendment 4 (1698 : Morgan Hill Youth Sports Alliance Concessionaire

EXHIBIT C



Morgan Hill Youth Sports Alliance, Inc.

Proposal for

Operation of the Outdoor Sports Complex





Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Executive Summary

The City of Morgan Hill has requested a proposal from the Morgan Hill Youth Sports Alliance, Inc. (MHYSA) to operate and manage the Morgan Hill Outdoor Sports Complex (Complex) at 16500 Condit Road in Morgan Hill. Their three priorities are:

- Operate at no cost to the city
- Demonstrate balance of local and regional usage
- Ensure diverse mix of use by sports type

Meeting these priorities is part of a larger plan that MHYSA has for the facility. Regarding the first priority, however, our plan is to not only operate the Complex at no cost to the city, but to transform it into a direct revenue source for the City of Morgan Hill, while bringing incremental revenue to merchants and businesses.

To balance local and regional use, we will meet local sports group needs, as well as develop a comprehensive regional marketing plan to bring out-of-town tournaments, events and games to the facility. We will create a community-based team to operate the Complex to ensure the success of this priority.

Ensuring a diverse use of the facility requires acknowledging which sports we are looking for. In its current format, the Complex only accommodates rectangular sports users. MHYSA plans to bring in a more diverse group of users, but initially will accommodate only those that play on a rectangular field.

The best method to achieve these goals is to build a sustainable revenue source from field rentals, along with a complete set of services that will provide everything that a tournament host or event company will want.

The Morgan Hill Youth Sports Alliance is a California 501c4 non-profit organization, committed to increasing the opportunity and experience of children in the Morgan Hill Area who participate or want to participate in sports. Sports facilities development and operation are one way we achieve this. To manage the Complex, MHYSA will move to 501c3 status and install additional board members.

MHYSA believes we are ideal to operate and manage the Complex. We can organize community resources to offer our city the full benefit of its investment. Direct revenue streams to the city, grass field access for community organizations, and an integrated community-based organization representing local interests are the first steps.

As a non-profit organization, we will ensure remaining funds go back into the community in the form of financial assistance, program development and community support. No other proponents can offer the full measure of benefit to the City of Morgan Hill.

The transition for the current operation to the MHYSA will require a property inspection, process and/or equipment handoffs from CYSA and city staff, as well as meeting with each of the existing permit holders as of July 1, 2010.



Page 1



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Operate at no Cost to the City

Our objective is to do more than operate without city subsidy. Our objective is to provide a growing revenue stream directly to the city from operating the Complex. The exact trend is outlined in our pro forma and extends over the first three years. A quick summary is as follows:

- \$50,000 revenue to the City of Morgan Hill in the first year paid in quarterly segments.
- Move to a percentage of gross revenue plan by Year 3
- Jointly develop a 5 year plan with city staff for capital equipment replacement and improvements for the Complex.

First year payments should come in a sliding scale to allow for the absorption of existing field rental permits over the first six months of operation. We assume all revenue received for the first six months of rentals would be paid to MHYSA—either by the city or registered field users. The quarterly payments to the city by MHYSA would be made on the 10th day of the month, following the quarter in the amounts of:

- \$5,000 first quarter
- \$5,000 second quarter
- \$15,000 third quarter
- \$25,000 fourth quarter

The second year would have a mixture of percentage of gross revenue with fixed minimum payments by quarter. Total payment for the year will be a minimum of \$60,000 with a potential of up to \$75,000. In the third year, we will move completely into a percentage of gross revenue that will be determined after the first full year of operations.

Per contract terms, MHYSA will immediately assume responsibility for all operational costs:

- Grass field maintenance and repair
- Corporation yard maintenance and operation
- Turf field maintenance and repair
- Parking lot shrubbery and grass maintenance
- Janitorial maintenance of concession building, front parking lot, turf and grass fields
- Equipment maintenance and repair
- Field scheduling and inquiries
- Security
- Insurance
- Utilities (Gas, Electricity, Water and Trash)



Morgan Hill Youth Sports Alliance



Page 2



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Demonstrate a balance of local and regional use

Past expectations for achieving a balance of local and regional use have been portrayed as 60% local and 40% field usage, but it is much more complex than this. Looking at the field usage needs for local and regional sports organizations shows us that regional groups have shown little or no interest in week-day use and both groups covet the quality game times that weekends provide. The true achievement in meeting goals will be offering all groups the best mix of use for their mutual needs. Adhering strictly to the 60/40 split means virtually all weekend hours will need to go to regional groups. This means that the benefit of the \$17 million capital investment made by the community is used by people who don't live here. Our approach will be to meet the overall 60/40 goal, while giving the community full benefit of their investment.

The cornerstones of our proposal to achieve this objective are:

- Create a Home Field Program for local sports leagues
- Change the scheduling to allow for simultaneous use of the facility by multiple organizations
- Develop aggressive marketing and sales programs directed to both local and regional users with the goal to increase both week-day and weekend use.

The approach to achieve this objective is to understand local needs first. MHYSA would reach agreement with local sports leagues, clubs and schools to give them primary access to the facility. Primary access does not, however, mean exclusive access. They will need to work with MHYSA to assure appropriate availability for regional users.

The Complex will be their home field. Home Field means that they store their equipment at the facility, as well as hold their meetings there. They will operate the snack bar and parking concessions during their events to help raise revenue for their program. They will pay the going rental rates, but their fees will be offset by in-kind labor support for operational needs of the facility such as:

- Field striping
- Concession stand shifts (Outside their league's operation of the Complex)
- Parking lot shifts (Outside their league's operation of the Complex)
- Field clean up
- Parking lot clean up
- In-kind trade from members in the landscaping, electrical and construction trades

The second part of our strategy is to move away from the current practice of using the entire Complex for a single organization or event. This will entail negotiating with Home Field groups, as well as CYSA as a priority customer to schedule games so that not every field is required for their rentals. This will allow for the use of the facility by multiple organizations at the same time and will help balance local and regional use. Our regional and local use target ratio is 60% local and 40% regional on a field—not facility basis. This practice will continue with future facility users as well.



Morgan Hill Youth Sports Alliance

Page 3



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Ensure diverse mix of use by sports type

To achieve this objective, MHYSA will reach out to local and regional sports organizations, including:

- Soccer (Youth and Adult)
- Tackle Football (Youth)
- Flag Football (Youth and Adult)
- Corporate leagues (Any sport/Adult)
- Field Hockey
- Lacrosse
- Rugby

Community groups, clubs and schools will be invited to participate in the Home Field program, thus giving them top priority. Conflict would be resolved using a priority season system that allows each league to designate a Primary Season. An example of how this would look is:

<u>Sport</u>	<u>Primary Season</u>
Football	Fall
Soccer	Spring
Flag Football	Winter

Leagues would be given top priority during their primary season and lower priority during other parts of the year. Another determining factor will be if the time requested is to be used for games, practices or fundraising events. Scheduling processes need to be capable of managing multiple considerations when achieving this objective.

Participating sports could be expanded in the future to include cricket and disc golf if facility development provides the space for the equipment needed to run these sports.

Development of additional facilities would be directed toward outdoor—not indoor sports. Creating and operating a recreational indoor sport facility would lead to competition with the Centennial Recreation Center and other privately operated businesses already in the community and would be counter-productive to the goals of the organization and community.

Outdoor sports development would need to be done in conjunction with city planning and business development. The city strategy is to build a separate facility for diamond sports instead of completing Phase 2 and 3 of the plan for the Complex. The plans for development of the Southeast Quadrant of Morgan Hill would need to be considered as part of any additional development at the Complex.

Working with the city and MHUSD to achieve this goal city-wide would be the most logical way to ensure use of all city sports facilities to support this objective. The Complex would be an integral part of this approach and MHYSA would participate in the planning.



Page 4



Morgan Hill Youth Sports Alliance

Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Business Plan - Table of Contents

Page

a.	Detailed Narrative	6
b.	Business Plan Components	
i.	Management structure	12
ii.	Community access and regional use philosophy	13
iii.	Market Strategy	15
iv.	Risk Management	17
v.	Revenue Sources and Pricing System	19
vi.	Itemized Expenses	22
vii.	Three Year Pro Forma	23
viii.	Conclusion	24
ix.	Attachments	
	Attachment A: MHYSA Board of Directors	25
	Attachment B: MH PW Raider' Requirements	27
	Attachment C: MHYSA Organization Charts	28



Morgan Hill Youth Sports Alliance

Page 5





Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

a. Provide a detailed narrative description of your proposed plan.

Our proposal is to transform the Complex from a simple field rental revenue source into a facility that the city of Morgan Hill realizes full value for. We plan to do this by:

1. Forming a professional community-based team, paid workers and volunteers to operate the facility
2. Integrating community sports organizations into operation of the Complex.
3. Increasing community pride and participation in the success of the Complex
4. Developing a sustainable revenue stream by attracting premier regional sports field users to complement increased local use.

In its current operation, both stakeholders—City of Morgan Hill and CYSA—run their operations in a “Status quo” mode; meaning as a simple field or plot of grass asset as opposed to the dynamic community asset it can be. The Complex should be the sports focal point in our city and our region.

Having a local company as opposed to one not residing in Morgan Hill operate the Complex will ensure that the revenue and income realized by the presence of the Complex will be retained in Morgan Hill, rather than going to organizations and businesses outside our community.

The plan calls for operating the Complex as an independent business unit using an annual revenue model versus one that is just rental revenue for field use, parking lot or snack bar concession services. Here are the four major elements to MHYSA’s plan to achieve these goals:

1. Form a professional community-based team comprised of local community, business and sports leaders. This will be accomplished by expanding the current MHYSA Board of Directors from its current level of three up to potentially seven to bring in Morgan Hill professionals with experience in:

- Sports Marketing and Sales
- Event Planning and Management
- Business Finance and Investment
- Facility Operations and Management

This board would provide direction to the management team of the Complex, with each having a different role:

- Facility Maintenance
- Facility Scheduling
- Facility Operations
- Promotion and Sales



Page 6



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Facility Maintenance: We will manage the different local contractors providing facility maintenance, landscape, janitorial, repair and field maintenance services. These contractors will be all Morgan Hill businesses. Some portion of this labor will be offset by volunteers from local sports leagues provided through the Home Field Program.

Facility Scheduling: We would process all field applications and manage changes as they occur. MHYSA would like to have user access and an ID to the city's CLASS Field Reservation system so field rentals of the Complex can be seamlessly incorporated into the overall city field management process. With that capability, the Field Scheduler for the Complex would enter field and facility rental reservations in the same manner as done today, responding to inquiries and availability, as well as coordinating usage with operations.

Facility Operations: We would coordinate all activities from field usage to field maintenance, rotation and access. Snack Bar and Parking Lot concession would be another part of our responsibilities, as well as coordination of security and vendors providing retail services.

Promotion and Sales: We would have three major objectives:

- Maximize usage of available field hours by bringing in a diverse mix of sport leagues, camps, tournaments and events to complement expanded local use. Current field usage is roughly 40% of available hours. This number can be doubled by a comprehensive scheduling policy and program that matches available time slots with specific users. Allowing more than one organization to use the facility at a time is critical to achieving this goal. Gaining access to the grass fields will also enable local leagues to consolidate their practices and games into one facility. This will drive week-day use.
- Conduct an aggressive advertising, sponsorship and field naming campaign to fill the available signage space at the facility. The facility venue as an advertising tool is an untapped opportunity. Given the high rate of foot traffic through the Complex on an annual basis, this can be a valuable commodity for local, regional and national companies to get their messages out to the sporting community. Facility names rights for tournaments, even the facility itself, banners and signs on fences and at the fields, announcements made during games, and ads in event programs are all tools for driving advertising revenue.
- Work closely with community businesses to develop promotion packages for organizations holding events at the Complex. Despite all the tournaments currently held at the Complex, Morgan Hill businesses see only a limited benefit from them. The hotels and businesses along the 101 corridor realize some revenues, but remaining city businesses probably do not. Promotional packages can be developed with downtown merchants, businesses north and south along Monterey Road, as well as local wineries and restaurants. City facilities such as the Aquatic Center could be partners in weekend specials to bring in additional revenue to city programs. Programs, fliers and brochures can be



Page 7



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

distributed during events at the Complex, helping Morgan Hill businesses get their messages out.

The key point to our approach is that it will be a **community-based focus** that helps Morgan Hill residents realize full benefit from the city money invested in the Complex—not just from field rentals and a few hotel nights. Potentially keeping most, if not all of the money in town, also benefits the city in terms of tax revenue.

2. Integrate community sports organizations into operations of the Complex. This will make it more of a local asset than it is today. An important part of integrating community organizations into operations of the Complex will be to honor the pricing and reservation commitments made for the first half of the first year by city staff prior to MHYSA operation.

Besides the obvious move to open grass fields to local sports organizations during the week, the key benefit to integrating community sports organizations into operation of the Complex is community pride-of-ownership. Clearly, operations would need to be controlled by MYHSA with an eye on profitability. Making the Complex the “Home of the Morgan Hill Raiders”, “Home of Orchard Valley Youth Soccer League”, or “Home of the Morgan Hill Maverick Lacrosse Club” creates a sense of community pride that simple field rentals cannot do.

The basis for this approach will be our **Home Field Program**. Home Field Program organizations will be able to meet their field and operational needs, while working through a cooperative process that saves them time and money. We have developed a test case of this program with the Pop Warner Raiders. It includes a sample of Pop Warner’s needs and an outline of the services they will receive as part of the Home Field Program. The overview of their needs is shown in Attachment A. They have committed to paying \$11,000 per year as an annual charge. Their membership in the Home Field program will give them the ability to:

- Conduct all practices and home games at the Complex
- Hold board and coaches meetings and team parties, as well as weigh-ins and walk-in registrations at the Complex
- Store all their equipment at the Complex
- Operate a snack bar and parking concessions to raise revenue for their operations
- Use barter or in-kind system to lower actual dollar amount paid for usage of the Complex
- Participate in Advisory Council to MHYSA leadership

Though this amount is higher than their existing field costs, the ability to trade labor for dollars along with additional fundraising opportunities will save them program money on an annual basis. Using this process with each organization, our objectives will be to



Morgan Hill Youth Sports Alliance

Page 8



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

provide leagues with an increased value for their investment and also to reduce their annual costs while doing so.

The second part of our community integration will be through our Advisory Council. The MHYSA Advisory Council will be run by a President who will have one of the expanded seats on the proposed expanded MHYSA Board. That vote, as voted on by the Advisory Council, will enable the local sports organizations to have input into the development and implementation of MHYSA Board policies and processes.

The final element of community integration will be to reach out to local sports-oriented businesses through sponsorships to bring revenue to operations of the Complex and increased messaging to businesses. Train-For-Life, Little Gym, Champions Gymnastics Academy and sports medicine practitioners are just a sample of the organizations that will benefit by supporting the Complex. More about these relationships is detailed in our Business Plan.

3. Create community pride in the Complex and involve the community in its success. Doing so will develop a strong operating team. All employees and contractors will be from Morgan Hill. They will not only be professionals in their work, but will have a vested interest in how they perform the job since their friends, neighbors and possibly families use the facility. With a community-based organization operating the Complex, management will be familiar with local business needs, attend city council and commission meetings, participate in local initiatives, and probably even know many of the people going through the facility.

All of this will take the Complex to the next level. For example, in the current facility, we have two half stadiums and neither meets our community needs. Morgan Hill residents would welcome the plan to install grandstands on the east side of the two turf fields. That installation, together with reorganizing the soccer fields so that we still have ten fields, will enable us to hold the annual EL Toro Bowl football game between Sobrato and Live Oak High Schools at the Complex without any impact to soccer field availability.

Additional opportunities to bring capital improvements to the facility include:

- Adding irrigation to the grass field section
- Moving the corporate yard to a more central location with a smaller footprint
- Adding playgrounds, volleyball pits and larger picnic facilities
- Providing multiple access points through the fence to the sports fields
- Adding a media tower to the turf fields

As these capital improvements take place, the overall value of the Complex increases. With that, potential revenue potential and support to local organizations is improved. The city will gain in reputation not only as a regional destination, but as a desirable community to live in. Positioned appropriately, these two elements can be used to bring more business into the city, thus providing a positive effect on city revenues.



Morgan Hill Youth Sports Alliance

Page 9



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

The final component to community integration would be to understand and support the city's 2030 General Plan. In the near term, the Complex will support city revenue objectives by generating income to the city directly with lease revenues and indirectly through tax revenues. Managed properly, it could bring support for long-term city goals such as the development of the Southeast Quadrant. In this way, the operator of the Complex can contribute to the city's future not only in the short term, but in the long term as well. This makes the selection of an operator committed to local issues more critical.

4. Develop sustainable revenue sources. This objective will drive business strategy and operations. Our programs will require sustainable revenue to survive. Our first step is to ensure profitability in 2010. A challenge to this will be honoring commitments made by the city for field reservations starting July 1, 2010 and going through December 31, 2010. A new pricing structure will go in effect on July 1st, but previous committed rate and dates will be honored. MHYSA expects that it will receive payment for all field use during this period from the field users or the City of Morgan Hill.

Sustainable revenue must come from more than just field rentals. Our plan calls for an evolution from simple field use to a community-based operation running a "Destination" for sports enthusiasts around the region, state and country. We see the transition taking no more than three years. As the transition takes place, the contribution each revenue source makes evolves into a more sustainable whole. Here are our projections for revenue percentage by type over the first three years:

Revenue Type	2010/11	2011/12	2012/13
Field Rental Fees	39%	41%	26%
Parking Concession	29%	26%	15%
Snack Bar Concession	24%	22%	12%
Advertising	1%	2%	9%
Sponsorship	1%	3%	18%
Camps and Clinics	2%	3%	18%
Grants	4%	3%	2%

With Field Rental revenue playing such a large part in the first two years, we have studied the historical turf field usage data provided by the city to understand usage by revenue and sports type. This report shows that the primary users of the turf fields are CYSA, OVYSL, Pop Warner and local schools, along with a couple of other sports leagues and clubs. CYSA has the majority of the weekend hours and OVYSL has the majority of the week day hours. Together, they represent 72% of the current turf field usage. Current turf field usage by all groups was approximately 58% of available hours.

We plan to retain these users at these levels at a minimum so this revenue remains consistent from last year. This will be the first priority. With the financial jumpstart from the first six months of rentals, MHYSA will be able to begin building additional revenue



Page 10



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

sources during the first half of 2010/11. In the second half of 2010/11, we will begin soliciting advertising, sponsor and service revenue sources. This will begin to bring the operation to more profitable levels.

Another important component to field use revenue is opening up the grass fields to local use during the week. Our plan is to open the grass fields for weekly use effective July 1, 2010. Field rental rates will be established to support 2010/11 financial objectives.

Opening the grass fields during the week will not only increase revenue to the Complex, but will support the diverse mixed use objective and Home Field Program as well. The ten grass fields on site will allow local leagues to consolidate their team practices into a single facility. Additional customers such as adult soccer can be found to use the fields once the Home Field Program members' requirements are met. We are reaching out to MHUSD and other local organizations looking for week day field space.

A third major element to our field user revenue component is to implement a Market Pricing Policy. Current rates around the area and regional for facilities like the Complex are:

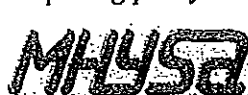
Field Type	MH Rate	Market Rate	% Increase	Source
Turf Field	\$10 or \$42/hr	\$60/hr	500/20%	CSJ Sports Field Study
Grass Field	\$5 or \$6/hr	\$25/hr	400/350%	CSJ Sports Field Study

Please note that a resident/non-resident rate structure will need to be maintained. For planning purposes, we will use a 50% discount rate for residents.

Bringing the field rental price in-line over the next three years will not only increase revenue, but profitability as well. It must be done gradually, however, to allow current customers to develop strategies to pay for the higher price. MHYSA will look for ways to help them.

Additional revenue sources will be developed over the first three years. A big first year component will be parking and snack bar concessions. Parking alone can provide almost \$250K in revenue. Some revenue will be offset by a parking pass system that we will implement for Home Field members. Years 2 and 3 involve bringing our advertising and sponsorship programs online, reaching full stride in Year 3 when those revenues reach \$600k. This is the year the payments to Morgan Hill become a percentage of gross revenue as opposed to flat rate or a mix of the two. Additional plans included running camps and clinics, selling advertising at games and tournaments and bringing in championship tournaments.

The final component is one that only a non-profit can bring—namely grants and donations. As a non-profit, MHYSA can apply for and receive grants from regional and national philanthropic organizations. MHYSA has identified 40 potential local, regional, national and corporate grant sources. A complete list is included in the revenue sources and pricing policy section of our business plan. Examples of each type include:



Morgan Hill Youth Sports Alliance

Page 11





Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

- Local
 - Morgan Hill Community Foundation
- Regional
 - Bay Area Hall Of Fame – Youth Sports Grants
- National
 - National Alliance for Youth Sports
- Corporate
 - General Mills Foundation
 - Professional sports franchises
 - San Francisco 49ers Foundation

b. Provide a business plan with the following information

i. Management structure

Morgan Hill Youth Sports Alliance is currently run by a three member board of directors. This will be increased to create additional leadership for operation of the Complex. The roles of the new members will be defined and appropriate community leaders found to fulfill these roles.

The board of directors will manage and run the business with separate and distinct responsibilities. Their roles will reflect areas of responsibilities:

- President/Executive Director
- Vice-President/Secretary
- Director of Finance
- Director of Marketing and Fundraising
- Director of Business Development
- Advisory Council President

The Advisory Council consisting of members of various local sports organizations, city departments and MHUSD staff will provide input as to best practices and communicate community needs to the board. This council reviews policies and activities of the board, develops joint programs with MHYSA leadership, and provides feedback on programs and services.

MHYSA will have two distinct independent operations if awarded the contract for management and operation of the Complex. Both will report to the President/Executive Director. The first and primary operational group will be the Outdoor Sports Complex Operation and Management team. The second team will handle the continued operation of the South Valley Flag Football League and creation of the South Valley BMX/Skate Club. The board itself will continue running financial aid and cooperative programs for local sports leagues and will work together with the Advisory Council.



Page 12



Morgan Hill Youth Sports Alliance

Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Within the Management team of the Complex, responsibilities will be handled by a Site Director, Facilities Manager and Service Manager. General duties include, but are not limited to:

Site Director

- Business development of the Complex
- Operational Performance to Budget
- Manage all personnel
- Field User Contracts
- Home Field Program
- Long term rentals (CYSA)
- Site Development
- Interact with MHYSA Board of Directors
- Report to the MHYSA President/Executive Director

Facilities Manager

- Operations – Customer facility usage
- Locks and Security
- Janitorial Contractor Management
- Field Maintenance Contractor Management

Services Manager

- Manage field schedule
- Process Field reservations
- Run Concessions
- Reporting and administration

ii. Community access and regional use philosophy

Community access and regional use need not conflict. With ten grass fields and two turf fields, there is plenty of room for all groups. The scheduling approach will need to change. With the flexibility that lights provide, there are plenty of hours available to meet everyone's needs—straight-forward tasks for an organization with good resource utilization management skills.

Community use will primarily take place during the week. Depending on the number of daylight hours, grass fields can be used for practice, while turf fields are used for afternoon and evening games. Regional use will be more targeted towards weekends when families and teams can travel. Regional activities can be easily accommodated, while allowing local use during the same time. Putting together destination packages with local hotels, stores and restaurants will enhance the tournament event experience and help direct spending by out-of-town consumers, thus complementing and enabling partnerships that will develop a thriving community.



Page 13



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

The mixed use field marking strategy employed on the turf fields can be expanded to the grass fields. Tournament hosts will work with MHYSA staff to determine the optional number of fields needed for their events. With the extended day provided by field lights, organizations will have the flexibility of scheduling that allows them to use fewer fields during community use and to expand into the available space when local leagues finish.

Using the "simultaneous multiple user model" ensures a diverse sports mix, while maintaining a good balance between regional and local users. The new challenge becomes a field balancing process, instead of a facility balancing process. There is more flexibility toward meeting everyone's needs, while generating sustainable revenue growth.

With that in mind, a sample of what a typical week of field usage might look like is below:

Field	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	PW	PW	PW	PW	PREP	OVYSL	PW
2	PW	PW	PW	PW	PREP	OVYSL	CYSA
3	OVYSL	OVYSL	OVYSL	OVYSL	PREP	OVYSL	CYSA
4	OVYSL	OVYSL	OVYSL	OVYSL	PREP	OVYSL	CYSA
5	OVYSL	OVYSL	OVYSL	OVYSL	PREP	CYSA	CYSA
6	MHUSD	MHUSD	MHUSD	MHUSD	PREP	CYSA	CYSA
7	MHUSD	MHUSD	MHUSD	MHUSD	PREP	CYSA	CYSA
8	OVYSL	OVYSL	OVYSL	OVYSL	PREP	CYSA	CYSA
9	OVYSL	OVYSL	OVYSL	OVYSL	PREP	CYSA	CYSA
10	MHM	MHM	MHM	MHM	PREP	CYSA	CYSA
11 (TF)	MIXED	MIXED	CMH	CMH	LO/AS	CYSA	PW
12 (TS)	OVYSL	OVYSL	OVYSL	OVYSL	LO/AS	CYSA	CYSA

Legend: PW = Pop Warner Raiders, OVYSL = Orchard Valley Youth Soccer League, MHUSD = High school teams, Charter School of Morgan Hill, Oakwood, MHM = Morgan Hill Mavericks Lacrosse Club, CMH = City of Morgan Hill, MIXED = Corporate leagues, local groups, city programs, LO/AS = Live Oak and Ann Sobrato

Please note that this chart is for demonstration purposes and shows only one user per field when in fact all fields will probably have more than one user throughout the course of any given day. With lights, the (TF) Turf Football and (TS) Turf Soccer fields can be used for longer hours. Actual schedules will display time slots throughout the day and the number of hours for each group. There will be hours set aside each day for maintenance and repair as well.



Page 14



Morgan Hill Youth Sports Alliance

Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

iii. Market Strategy

The Market Strategy is to utilize the facility and community resources to develop service offerings for a variety of sports organizations. The market consists of drastically different types of customers:

- Field and facility users
- Sports-related businesses
- Camps and clinics
- National championship events
- Corporate advertisers
- Sponsorship and naming

As such, separate strategies are needed for each customer type. Field and/or Facility Users are the primary market for the organization. Their use of the facility brings value to the other two target markets.

The key values of this primary target market are:

- Price/value
- Flexibility of service offerings
- Easy of use

This market can be broken into the following segments:

- Community Sports Leagues
- Local Schools
- Local Competitions and Tournaments
- Regional Leagues and Tournaments
- Special interest groups such as seniors and adult leagues, youth and travel teams
- National Tournament Tours
- Event Companies – Car Shows, Festivals

Each group has specific needs that can be addressed through service offerings with packages that include the base rental fee plus options such as:

- Field Equipment Storage
- Field Lights
- Parking
- Concession Stand
- Sport Specific Equipment Rental
- Referee/Director tents
- Photo/Video Services



Morgan Hill Youth Sports Alliance

Page 15



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Another way to further refine our strategy is to put each of the groups in time slots that match customer needs with the capacity of the Complex:

Weekday opportunity:

- Before 11am
- 11am to 1pm
- 1pm to 3pm
- 3pm to 6pm
- 6pm-8pm
- 8pm-10pm

Weekend opportunity (In specific time and field slots to meet their needs):

- 8am to 6pm
- 6pm to 10pm

By matching program components such as time of use, services and sports type to target markets and developing specific plans for each one, a comprehensive marketing package can be created to sell our services both locally and regionally. Coupling service offerings with the facility/field rental opens the way to attracting non-traditional customers to the Complex. Examples of how this approach will reach potential customers are:

- Establish the Complex Turf Stadium as a premier "Big Game" field
- Promote facility for corporate sports league use at lunch and after 8pm
- Provide snack bar services to all tournaments and non-Home Field leagues
- Identify Senior leagues for pre-11am weekday use
- Promote packages that include hotel, restaurant, tourist services such as Aquatic Center discounts to national sports tours

All of this makes the Complex the "Destination" facility it was designed to be. During the year, local companies reserve it to hold corporate events, national tours for regional and national championship tournament and event companies to host charity events. As a destination, the Complex is packaged with other attractions around the area such as wineries, parks and lakes to bring more tourist business into the community.

The "Destination" marketing strategy necessitates a vigorous program to ensure community access. This is why the Home Field Program has a major strategic importance. By ensuring access protection for local sports leagues, it can also ensure their participation by allowing them to use labor and in-kind services to reduce their annual program costs. Our strategy is dependent on a willingness to share for the greater good. Organizations that do not participate fully will be assigned to the general access pool.



Morgan Hill Youth Sports Alliance

Page 16



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

With field use revenue flowing, other components of our market strategy can be brought to bear:

- Sponsorship
- Naming Rights
- Advertising
- Regional/National Events Schedule
- Rental of Facility for pro Training Camps

iv. Risk Management

Risk comes in four ways to the Complex operations:

- City
- Financial
- Customer
- Assets

City

In the relationship between the City of Morgan Hill and MHYSA as a General Contractor/Operator of the Complex, each party has to ensure their organization is protected. As a contractor to the City of Morgan Hill, MHYSA will need to meet City of Morgan Hill contractor guidelines and regulations, provide the city with general liability insurance, as well as demonstrate compliance with state laws and regulations with Workman's Compensation, Health and Environmental statutes. MHYSA will comply with all city requirements for background and tuberculosis testing.

MHYSA will need to ensure that all users of the facility are properly insured with the city and MHYSA named as an additional insured. Users will also have to comply with all city, state and national regulations and laws when using the Complex.

Both parties will have to ensure compliance to the terms and conditions of the contract. In terms of risk, the city is only at risk if MHYSA fails to successfully operate the Complex. Terms will need to be included in the contract to provide adequate audit and contract termination controls to minimize each party's risk.

Financial

This risk comes primarily in terms of revenue achievement and cost management. Upon award of the contract, MHYSA would move to obtain community financial support for the cost of the first year of operations. These funds, coupled with the pre-existing field reservation revenue, will provide start-up funding that will enable MHYSA to bring the second half of the first year revenue in as targeted.



Morgan Hill Youth Sports Alliance

Page 17



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Using the initial investment as a starting point, the operation of the Complex should maintain a favorable revenue pipeline throughout its fiscal plan. Response measures if the revenue pipeline began to empty would include modifying field use policies and rates, participating in community fundraising, as well as applying for national and corporate grants.

Cost management will be supported primarily by good business practices on the part of the staff of the Complex. Setting an accurate budget and operating to plan help keep operational costs under control. Asset management and care represent the remaining majority of cost management. If there is a need to reduce costs, the service contract for janitorial and field maintenance may be reviewed. Staff level may need to be reduced and business processes analyzed. A final option, of course, would be to discuss renegotiating contract terms with the City of Morgan Hill.

Customer

Customer damage to property or personal injury risk is primarily handled through the use of liability insurance, damage waivers and rental deposits. Customer interaction with the major assets of the Complex can be monitored to insure that possible damages are avoided. Staffing will need to be adequate to ensure customer behavior is appropriate.

The intangible risk is one of customer satisfaction. Meeting or exceeding customer expectations is the best way to maintain satisfaction. Benchmarking other facilities, finding and adopting best-of-breed practices and position pricing competitively should be sufficient to ensure the Complex remains competitive in its market. The community involvement in operations of the Complex provides an excellent base to operate from.

Assets

The major assets of the Complex are its turf and grass fields, fixtures and buildings. Fixtures include goals and nets, lights, fencing, grandstands, scoreboard, security gates and tables. Buildings include the main concession/restrooms, equipment sheds and storage sheds.

After hours security will come in the form of an alarm company and inspection visits by MHYSA staff.

Capital reserves will need to be established between the city and MHYSA for the turf fields, fixtures and buildings. Grass fields generally stay in operating shape if usage is monitored and field quality levels are maintained. This typically involves good field care practices, field use rotation and a "rain out" policy. "Rain out" premiums can also be utilized in the case of customer cancellation clauses as might be the case in scheduling a national tournament or event. Insurance may need to be considered for disaster mitigation and recovery.



Page 18



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

v. Revenue Sources and Pricing System

Revenue Sources

Our revenue sources come from field use rentals, service offerings such as parking and snack bar concessions, advertising, sponsorship, national and regional events, professional training camps and grants. Given the short start-up cycle, the first two quarters of operation will be limited by field rentals committed to by the city of Morgan Hill prior to MHYSA operations and the first year to building up usage. Years 2 and 3 will see the introduction of the sponsorship, advertising and events revenue sources. Grants will take at least 18 months to bring online due to their long processing times.

- **Field Use Revenue (Including lights)**
- **Parking Concessions**
 - Resident Pass for all Home Field Program
 - \$5 tournament fees
 - Free access for practices and casual users
- **Snack Bar Concessions**
 - Revenue share with Home Field Programs – Home Field partner operates concession as a fundraiser with minor share to MHYSA to cover administrative expense.
 - Tournament hosting – Operate snack bar to sell food and drink to tournament participants and guests
 - Vendor machine contract for casual users
- **Sponsorship**
 - Title Sponsorship (Seasonal)
 - Field Sponsorship (Yearly)
 - Concessions Sponsor – Example: Gatorade
 - Per Event/Day Sponsorship
- **Naming Rights**
 - Scoreboard
 - Field
 - Parking Area
 - Stadium/Complex
 - Major Events
 - Seasonal Schedules





Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

- **Advertising**
 - Banner and Signage Packages
 - Radio Commercials
 - Game Day Commercials (Played during games)
 - Banners and Signage Packages
 - Title Sponsors per Event per day
- **Regional and National Events**
 - National/Regional Training Camps hosted in Our Sports Corridor
 - National/Regional competitions held in our venue
- **Rental of Facility to Professional Training Camps**
 - Professional Soccer
 - Professional Football (Multiple Divisions)
- **Grants**
MHYSA's initial grant research has identified the following existing grant opportunities which will be engaged upon award of the contract:
 - President's Council on Physical Fitness
 - US Department of Education – various programs
 - US Department of State "Sports United" Grants
 - California Department of Education Grants
 - California After School Network
 - National Association for Sport and Physical Education -Carol M. White Physical Education Program
 - National Alliance for Youth Sports – "Start Smart" Sports Development Programs
 - After School Alliance/MetLife
 - Gilroy Grant Foundation
 - Morgan Hill Community Foundation
 - Olympic Club Foundation – City Fields Program
 - Change Makers – Team up for Youth
 - Liberty Mutual
 - Earthquakes
 - Finish Line Youth Foundation
 - SF Giants Community Fund
 - Warriors Foundation
 - 49ers Foundations
 - NFL Players Foundation
 - BAYS Foundation – Bay Area Youth Lacrosse Grants
 - Bay Area Hall of Fame – Youth Sports Grants
 - Motorola Foundation
 - General Mills Foundation "Champions for Healthy Kids"



Page 20



Morgan Hill Youth Sports Alliance

Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

- Annenberg Foundation Youth Organization Funding
- Albertson's In the Community
- Herbalife "Improving the Lives of Children Grant"
- Office Depot "Helping Kids and Schools Grants"
- Liberty Mutual responsible Sports Program
- Tony Hawk Foundation
- The Christopher and Dana Reeve Foundation "Quality of Life Grants" Program
- Bird's Eye Food "Health, Education and Youth grant"
- WAL*MART Corporate Donations & Sponsorships
- Sports Authority Corporate Donations & Sponsorships
- Target Community Grants
- Nike Product Donations
- United States Soccer Foundations
- US Youth Soccer Grants
- Soccer Across America
- Women Win Foundation
- Gatorade's "GoGirlGo! Ambassador Awards"

Pricing System

Field Rentals

Field rental rates will need to be increased, but in a gradual way to allow existing customers to adapt their operations to the increased price. The plan is to honor the rate and field use commitments made for July 1st to December 31st, 2010. Rates will increase July 1st for all new reservations. Agreements will be made with existing users to prepare their organizations for new rates in the 2011 calendar years. Rates will continue to be adjusted gradually until they are inline with market rates. Local organizations will be intimately involved in the development of rate pricing.

Proposed rental rate schedule:

Hourly Rates	6 Months			Base Year 1 & 2			Year 3 & 4		
User Type	Turf	Lights	Grass	Turf	Lights	Grass	Turf	Lights	Grass
Local NP	\$10	\$8	\$5	\$20	\$8	\$12	\$20	\$12	\$12
Resident	\$21	\$8	\$6	\$30	\$8	\$25	\$30	\$12	\$25
Visitor NP	\$42	\$8	\$5	\$42	\$8	\$30	\$50	\$12	\$30
Visitor	\$42	\$8	\$6	\$60	\$8	\$45	\$60	\$12	\$45
Corporate	\$84	\$8	\$30	\$84	\$8	\$60	\$92	\$12	\$60

This schedule brings the field rates of the Complex inline with marketing pricing by Year 3. Rates will change as market rates change. Annual studies will be conducted to ensure fair value.



Page 21



Morgan Hill Youth Sports Alliance

Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Sponsorship Levels

Levels will be set at local, regional, state and national levels. Naming rights will carry the higher amounts.

Advertising

Advertising rates will be set based on media, labor and frequency.

Regional and National Events

Regional and national events will be based at tournament or corporate field rental rates, but coupled with service offerings into packages designed to meet each event's needs.

Rental of Facility to Professional Training Camps

Rental rates will be developed based on market rates for similar facilities. Service packages will augment the field rental fees.

vi. Itemized Expenses

Operations Expenses	
Facility Lease	\$50,000
Facility Revenue Sharing	\$0
Utilities	\$41,174
Water and Sewer (CofM)	11,211.43
Pacific Gas and Electric	21,059.00
Janitorial	\$5,000
Communications (Verizon cell and internet access)	\$1,360
Bay Area Alarm	\$1,544
Repairs & Maintenance	\$173,463
Electrical	\$122
Plumbing and gas	\$122
Equipment repair (movable - eg (soccer goals and nets))	\$122
Infrastructure repair (immovable (eg (fences))	\$122
Security and Locks (Fences and Gates)	\$200
Sign and Facility Directions	\$500
Turf Field Sanitation and Rubber Replacement	
Audio System and Scoreboard	\$100
Field Maintenance (mowing and watering)	\$172,000
Pest Control	\$175
Event preparations and clean up	\$244,201
Open/close, Client support	\$300
Signage	\$250
Parking Concession Operations	\$109,792
Snack Bar Concession Operations	\$133,659
City Liaison	
Inspections	\$270.00
Insurance	\$6,500
General Liability	\$5,000
Workman's Compensation	\$1,500
Staff	\$153,000
Exempt Salaries	\$100,000
Tax Burden	\$30,000
Benefits (33% burden rate)	\$33,000
TAXES	\$0
G&A	\$30,500
TOTAL EXPENSE	\$699,208



Morgan Hill Youth Sports Alliance

Page 22





Morgan Hill Youth Sports Alliance

Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

vii. Three Year Pro Forma

OSC Three Year Pro Forma			
	Year 1 7/1/2010 to 6/30/2011	Year 2 7/1/2011 to 6/30/2012	Year 3 7/1/2012 to 6/30/2013
Revenue sources			
Field Rentals	\$327,112	\$399,734	\$424,070
Concessions (Snack Bar, Parking, etc.)	\$453,457	\$453,457	\$453,457
Camps, Clinics and Events	\$14,000	\$25,000	\$300,000
Advertising Program	\$8,000	\$18,000	\$150,000
Naming Rights (Complex, Each Field, etc)	\$0	\$0	\$0
Sponsorship	\$5,000	\$30,000	\$300,000
Grants and donations	\$38,000	\$27,000	\$27,000
Gross Revenue	\$843,569	\$951,190	\$1,654,526
Operations Expenses			
Facility Lease	\$50,000	\$60,000	\$0
Facility Revenue Sharing	\$0	\$0	\$82,726
Utilities	\$41,174	\$43,088	\$46,037
Repair & Maintenance	\$173,463	\$173,073	\$175,584
Event preparations and clean up	\$244,201	\$250,894	\$261,621
Reservation services (non payroll)	\$0	\$0	\$0
Member management (non payroll)	\$0	\$0	\$0
City Liaison	\$0	\$0	\$0
Inspections	\$270	\$270	\$270
Service Operation Expenses	\$6,500	\$6,575	\$6,654
Staff	\$153,000	\$160,660	\$168,683
TAXES	\$0	\$0	\$0
G&A	\$30,600	\$32,130	\$33,737
Net Expense	\$699,208	\$726,680	\$775,311
Capital Needs			
Replacement and Additions	\$26,680	\$30,608	\$83,608
CYSA Transition	\$41,000	\$4,000	\$0
Capital Needs	\$20,000	\$40,000	\$80,000
Improvements	\$0	\$0	\$65,000
TOTAL Capital	\$87,680	\$74,608	\$208,608
Operational Variance	\$156,681	\$149,902	\$670,607



Morgan Hill Youth Sports Alliance



Page 23



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

viii. Conclusion

The City of Morgan Hill needs the best partner possible to build the Complex into the facility that was envisioned years ago when it was developed. MHYSA is the best partner for the following reasons:

- We are a talented and committed Morgan Hill team of professionals dedicated to serving the city and residents of Morgan Hill
- We are supported by community leaders and organizations
- We will build a sustainable revenue flow for the City of Morgan Hill
- Our operations of the Complex will keep the revenue earned in the community serving local children
- We have a comprehensive plan for facility management and operation
- Our vision for the Complex fits best within the 2030 Morgan Hill General Plan

We have much to do to be operational by July 1, 2010. In the next 90 days, we will:

- Add four directors to our Board of Directors
- Prepare the necessary documents to move MHYSA to 501c3 non-profit status
- Qualify and select local landscape and janitorial contractors
- Gain commitment from local sports organizations to the Home Field Program
- Develop a 180-day plan to manage the rental transfer to MHYSA
- Develop a grass field renovation plan
- Secure long-term rental agreement with CYSA
- Develop a transition plan with the City of Morgan Hill and CYSA
- Develop a co-marketing plan with local hotels and retail merchants

Bringing the Complex back under community control is the best option for the City of Morgan Hill and its residents. The city needs an operator committed to our community who truly appreciates what a special place Morgan Hill is to live. Candidates from outside of our community do not understand the Community Value of the Complex. The financial and community effort put into the creation of the Complex deserves no less than our best. MHYSA is the optimal choice.

We thank the City of Morgan Hill staff and City Council for the opportunity to respond to this RFP. We understand this proposal to non-binding and understand that a contract will need to be negotiated and signed before operations can begin.

We look forward to working the City of Morgan Hill staff and City Council to bring the Outdoor Sports Complex back to community.



Morgan Hill Youth Sports Alliance

Page 24





Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

ix. Attachments

Attachment A

Morgan Hill Youth Sports Alliance, Inc. Board of Directors

Jeff Dixon, President

Jeff is a lifetime entrepreneur and long-time community service contributor with 35 years of professional experience in sports, high-tech and telecommunications industries.

Jeff's professional experience includes 14 years as a league owner and operator of adult and youth flag football leagues. He has hosted tournaments along with many community events and fundraisers. He consulted to the NFL FLAG and USA Football on rule sets and training, coordinated all officials for the NFL FLAG Regional Tournament Tour and managed the officials at the NFL FLAG 2008 National Championship Tournament.

Jeff previously spent 17 years at Rolm Corporation/IBM/Siemens. As their Northern California Materials Manager, he created and managed a 5 site distribution network and managed \$10 million in inventory. As the Western Regional Materials Manager, he was responsible for all materials related operations west of the Rockies. He was the creator and national program manager of the Siemens MAC Challenge, a sales incentive program that generated over \$92 million in incremental installed base sales.

As a community contributor, Jeff has participated in many community organizations:

- San Jose Mayor's Advisory Council on the Metcalf Energy Center
- City of San Jose's Sports Field Study
- Morgan Hill's Outdoor Sports Complex Advisory Committee
- California Amateur Athletic Association, Inc. – Founding President
- Morgan Hill Independence Day, Inc. – Currently Vice President
- Morgan Hill Gymnastics Parents' Club - Founding president
- Morgan Hill Aquatics Center Foundation – Event Director
- Leadership Morgan Hill Class of 2009
- Volunteer Morgan Hill – Currently Director of Operations

Jeff, along with his wife and daughter, enjoy the close knit and friendly community of Morgan Hill.

Dave Payne, Vice President

Dave is a veteran of the high-tech industry, with over 25 years of experience leading teams in the creation, development and operation of advanced systems, networks, and high tech startups. He runs a technology consulting and corporate management practice from his offices in Morgan Hill, where he has lived the past decade with his wife and four children.



Page 25



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Dave's customers range from the US Government (Defense, NASA, National Labs, Justice, and Homeland Security) to International clients (UN, Lockheed, and numerous Silicon Valley concerns). His practice focuses on high tech startups in consumer electronics, communications, security, RFID, as well as advanced space system design and integration. He has been a CEO/COO at multiple startups, and has been an executive director at such firms as Northrop Grumman, Lockheed Martin, Boeing, OPNET Technologies, and Bill Gates' Teledesic Corporation.

Dave is a graduate of UCLA with a Bachelor of Science in System Engineering and Economics. He and Christine have lived in Morgan Hill since the 90s raising their four children and enjoying the urban/rural/coastal mashup that is the South Valley. Dave enjoys home remodeling and jacuzzi maintenance, playing jazz piano, free lance web development, and coaching youth football, basketball, and soccer.

Rui Azevedo, Secretary/Treasurer

A recent arrival in Morgan Hill, Rui Azevedo was born and raised in Santa Clara, California. He attended Archbishop Mitty High School and then went on to graduate from Santa Clara University in 1994 with a Bachelor of Arts in Accounting.

He has worked in the accounting field in positions as the Vice President of Baytech Credit Union and Controller of Signals Wireless Communications. He has spent the past two years as the Director of Accounting for the Sisters of Mercy of the Americas in Burlingame. Rui has worked for other nonprofit credit unions and religious orders with a focus on mergers.

Rui has assisted amateur sports organizations providing guidance in the areas of financial management and accounting practices.

He is excited to move to Morgan Hill and contribute to his community. With his background in amateur sports and accounting expertise, Rui is looking forward to making a positive contribution to his new community.



Page 26



Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Attachment B

Morgan Hill Pop Warner Raiders Requirements

Example Home Field Program: MHPW

Morgan Hill Pop Warner Raiders

ACCESSIBILITY

Storage Facility Area - requires full access 24/7 365 calendar days

PRACTICE AREA - 4 Total fields duration of season July - Dec 1

JULY-AUGUST (5 Weekdays Monday-Friday) 45 calendar days

SEPTEMBER - DECEMBER (5 Weekdays Monday-Friday) 82 calendar days

6 Football Teams = Approx. 200 football players

(25 kids Tiny Mite 5-7 yrs old) (35 kids each MIA, JP, PW, JM, M, 7-15 yrs old)

3 Football Practice Fields ~ 50 sq yards per team

6 Cheer Teams = Approx. 100 cheerleaders

(10 girls Tiny Mite 5-7 yrs old) (20 girls per squad each MIA, JP, PW, JM, M, 7-15 yrs old)

~1 Football field sized Practice area (need not be a dedicated playing field but must be level no hazards)

Note: Duration of outdoor practice for Cheer approximately 1.5 months (August + 1/2 September, Cheer moves indoors)

PHYSICAL ASSETS - Reserved vehicle accessible space 50'X60' total footprint

(1) 40'X8' Tractor Trailer - Container with wooden steps

(2) 40'X8' Construction Container

(2) 20'X8' Construction Container

(1) 16'X6' 6 man blocking sled

(2) 2-man blocking sleds

(1) 26'X7' Trap Chute wheeled (large)

(1) small flatbed trailer (single axle)

(1) 24'X40' Equipment filling area (included in total above)

PARKING

Parking for 300 families/kids & 80-100 volunteers - mitigates after August 31st to drop off & pick up of football players with cheer moving indoors mid-September

CONCESSIONS

Agreement to allow MHPW to maintain a concession operation on the practice fields during the course of the season.

Possible rental of City Owned concession trailers as viable alternative to a hard structure.

Additional possible rental of Concession Building at front of complex for season.

TURF FIELDS

Access to lighted Turf Fields minimum one weekday per week July-August 6-9pm

Saturday or Sunday Day (one day only) use of both North & South late August 21st or 22nd

Jamboree Host - August 29th Sunday Day (one day only) use of both North & South turf fields + Concession Bldg

Weekdays Monday through Friday (Football Field only) October 18th-22nd, 25th-29th & November 1st-5th 6-9pm with lights

SCHEDULING

8 Saturdays (one day only) use of both North & South turf fields + Concession Bldg September-October

October 30 & 31st Round 1 Playoffs

Both Days use of both North & South turf fields + Concession Bldg



Morgan Hill Youth Sports Alliance

Page 27



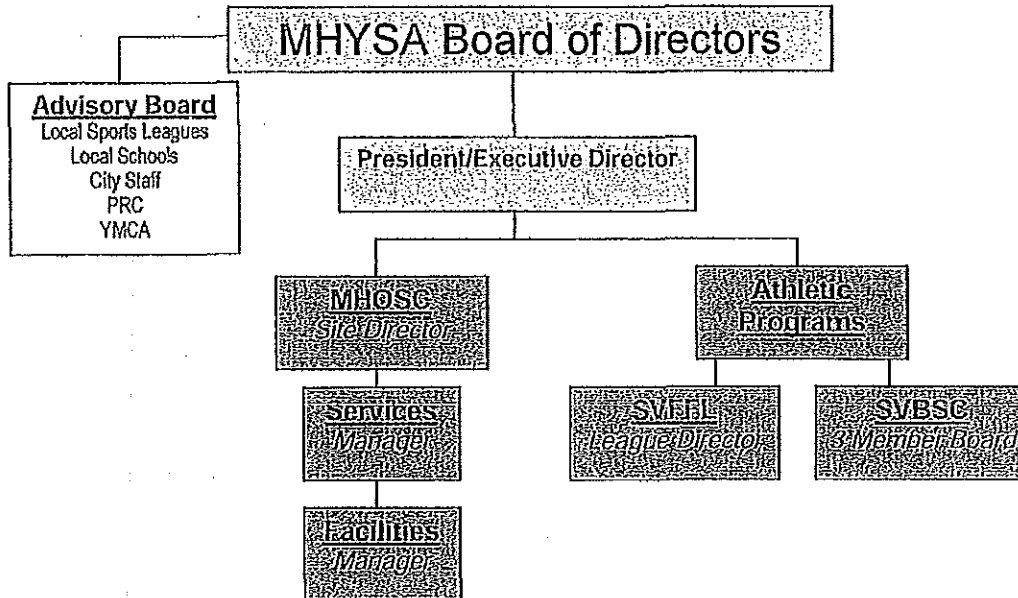


Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

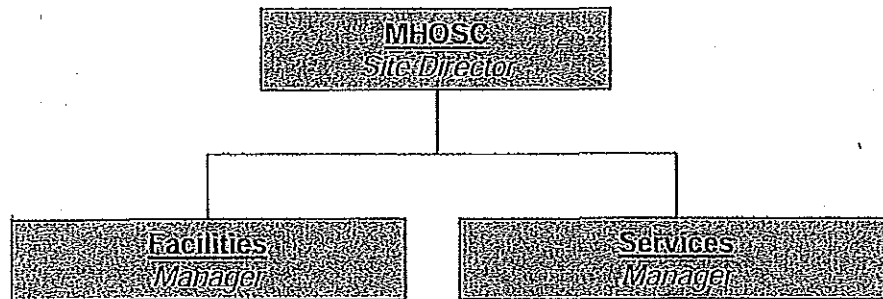
March 19, 2010

Attachment C

MHYSA Organization Chart



Outdoor Sports Complex Operational Team



- | | |
|----------------------|---------------------|
| ◦ Operations | ◦ Manages All Sales |
| ◦ Locks and Security | ◦ Runs Ad Program |
| ◦ Janitorial | ◦ Schedules Fields |
| ◦ Field Maintenance | ◦ Run Concessions |



Morgan Hill Youth Sports Alliance

Page 28



EXHIBIT D



1. Please explain your strategy to satisfy the City's OSC objectives to balance community access and regional use, as well as to ensure a diverse mix of field use.

Balancing community access and regional use first involves understanding the dynamics. Regional organizations have little or no interest in renting the fields during the week and critical interest on the weekends. Community groups would like to have weekday and weekend use is also a high priority. MHYSA's target balance is roughly 60% local and 40% regional.

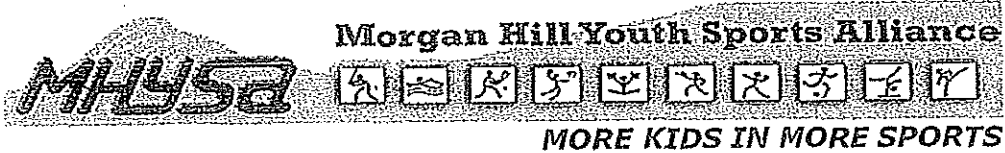
MHYSA will use several methodologies to balance local access and regional use. The first will be to open the grass fields to local organizations Monday through Friday. Local organizations include OVYSL, Pop Warner, MHUSD teams and adult leagues. Additional users could come in the form of the YMCA programs and seniors. These organizations would be able to rent the fields on an hourly basis.

The second element of our approach will be to work with regional organizations to develop scheduling strategies that allow regional events (Tournaments) to take place at the same time there are local games (Leagues) going on at the facility. All users will have an opportunity to request hours on the OSC fields. The key will be balancing the ability to meet customer needs with maximizing the use of available hours. Tournaments and leagues both require a certain amount of field hours. The OSC has a fixed number of fields. The solution lies in determining how fields must be allocated to fulfill the individual need. The existence of two lighted fields allows for greater flexibility as games can be played there in the evening.

This approach also will provide the ability to ensure a diverse mix of field use. The facility has 12 fields and can be scheduled as such. MHYSA plans to use portable soccer goals on all fields which allows for fields to be use for different sports, possibly within the same day. As with the City of Campbell, grass fields will be marked in different colors as the OSC turf fields are today to allow for varied sports groups to play on the grass fields. Another step will be to reach out to non-traditional sports such as cricket and emerging sports such as disc golf to understand their fields needs and develop strategies to bring them into the facility in currently vacated times.

It is important to note that only rectangular sports field users can be accommodated at this time. These sports are soccer, football, rugby, lacrosse, flag football and field hockey. An additional consideration is there are leagues for both youths and adults.

Despite this fact MHYSA plans to work with diamond sports leagues such as Pony Baseball, SPIRIT and PRIDE in the near term to enhance their field access. The OSC is just one sports facility in the Morgan Hill Area. Others exist in city parks and schools as well in South San Jose and Gilroy. By bringing OVYSL and the Raiders to the OSC for all practices and games, these fields open up to allow greater access to diamond sports organizations. In the long term MHYSA will collaborate with the City of Morgan Hill and the SCCHS committee in developing permanent solutions.



Flexible scheduling strategies are the key to achieving these goals. As an example, a three game minimum/single elimination tournament for 30 teams whose games are scheduled in 2 hour time slots requires a total of 118 field hours. Assuming that set up hours can be accommodated as part of the scheduling the choices, there several ways to fulfill the 118 hours requested. Two examples are:

Total Hours	Total Fields	Sat. Hrs	Hrs/Field	Sun. Hrs	Hrs/Field
118	10	60	6	58	5.8
118	6 (Sa)/12 (Su)	60	10	58	<5

Successfully combined, these elements create an environment that would allow for a Saturday scheduling with diverse users that balance local and regional use:

Time	Field 1-6	Field 7	Field 8	Field 9	Field 10	Field 11	Field 12
8:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
9:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
10:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
11:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
12:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
1:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
2:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
3:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
4:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
5:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
6:00pm	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN
7:00pm	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN
8:00pm	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN

2. How do you plan to implement your proposed rates?

Existing and traditional users will be brought into the new rates on a scheduled and pre-arranged basis. New users will pay the new rate immediately. There are two considerations driving this strategy. The first is the reservations already on record with the City of Morgan Hill for the first six months on the turf fields. Those reservations will be honored at the existing rates. In addition, those parties will be given the opportunity to pay the existing rates for the grass fields even though there currently are no reservations placed for their use. Finally, based on the organizations' needs for the second half of the year and first half usage, rates may remain fixed until fiscal 2011/12.



MORE KIDS IN MORE SPORTS

A second consideration is the Home Field Program. Home Field Program members will have an opportunity to negotiate fund raising opportunities and in-kind labor exchange to reduce the impact of the rate increase. Rate discussions will require total transparency in terms of needs and the impact of the rate increase so that a collaborative method can be used to ensure that all parties' needs are fairly met.

3. Please explain your priority use system and implementation plan.

The main considerations for setting priorities will be the local/regional balance strategies, providing preferred access to Home Field Program members and retaining or acquiring regional partners. Additional considerations are giving priority to youth organizations, supporting local non-profits and providing access for casual users

The historical use of a priority system has been intended to provide the fairest approach to meeting competing field needs. Its failing comes from its reactive as opposed to proactive approach in meeting customer needs. MHYSA has a plan to ensure customer satisfaction by:

- Setting annual usage needs for all use traditional and existing users
- Employing a flexible scheduling strategy
- Working in an open and collaborative way with all users
- Providing an online tools for field scheduling and reservations

4. Do you currently have agreements or memorandum of understanding conditioned on your receipt of the contract with the City with organizations interested in reserving the OSC fields? If so, for which fields, turf or grass, for how many hours, and at what hourly rates? Please provide copies.

The opportunity to have access to the Morgan Hill Outdoor Sports Center has produced a frenzy of interest that grows every day. MHYSA remains committed to retaining CYSA and bringing OVYSL into the alliance which affects our opportunities with other organizations. If they choose not to participate; MHYSA has received letters of interest from the following organizations that are interested in replacing their field usage and site management operations:

- Upper V. Management Group, Inc
- Nor Cal Soccer
- Mustang Soccer
- ZFootball National 4-on-4 Flag Football Tournament Tour
- MHUSD

All of these organizations have indicated sincere interested in operating one or more events at the OSC. Specific hours of usage have not been discussed. The rates will be at Year 1 and 2 levels. MHUSD will probably join forces with MHYSA as a Home Field Program member.

Upper V. Management Group has proposed a more comprehensive partnership where they support MHYSA in an advisory or consultancy capacity, provide technical expertise and help facilitate sponsorship.



In addition we have received a letter of interest from the Morgan Hill Sister City Committee for hosting an international tournament on the site.

Most importantly however is the opportunity for future growth beyond we already have. For example, despite the extensive use of the turf fields by CYSA and OVYSL, these two fields remain largely unused during week days and throughout the summer months. Working with MHUSD and other local schools provides an opportunity to increase week day usage between 3pm to 6pm as well as between the hours of 9am to 3pm for special events. Specific hours have not been discussed.

In addition to the organizations listed above we are currently in preliminary discussion with:

- NFL Players Associations (Camps and clinics)
- U.S. Club Soccer
- NFL FLAG Football Tournament Tours
- USA Football

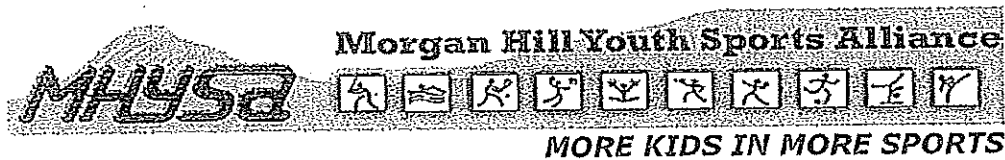
5. Do you have a contingency plan if your proposal assumptions do not materialize (for example, if CYSA or other existing customers elect not to reserve the OSC)?

Our contingency plans are two-fold. The first is if CYSA and OVYSL pulls out of their current 2010/11 reservations and the second is if they choose not to reserve the fields.

Current indications are that OVYSL and CYSA intend to vacate the OSC once a decision is made to move the OSC to another operator. This represents 371 hours for CYSA and 600 hours for OVYSL on the turf fields. MHYSA has not confirmed their plans, but will immediately begin booking alternative permits to ensure that the revenue stream remains uninterrupted in case these rumors are confirmed. We expect that we have all CYSA and OVYSL turf hours replaced and the grass fields booked for the first six months of FY2010/11 by the end of April. If CYSA and OVYSL choose to keep their tentative field reservations, but not renew in January 2011 then MHYSA will begin booking the second half of the year instead.

A second part of our contingency planning involves establishing a line of credit with community banks such as Pinnacle, Heritage and South Valley National Bank. We are in the process of working with all three banks to set our line of credit with one or possibly all of these banks. This line of credit will ensure that MHYSA can manage the ebb and flow of day-to-day financial management.

6. Please discuss your local economic development strategy and steps you have taken to move this forward.



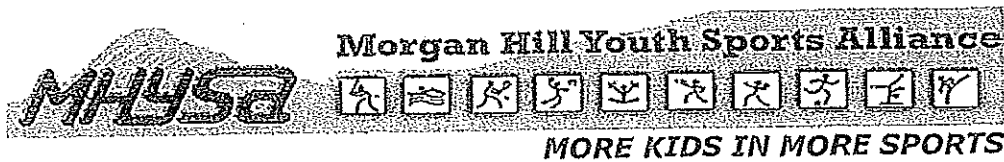
MORE KIDS IN MORE SPORTS

We have shared our proposal with Morgan Hill Downtown Association, the Morgan Hill Chamber of Commerce, local community leaders such as Roger Knopf of Leadership Morgan Hill and Morgan Hill Rotary Club, Jeff Roth of South Valley National Bank, former Morgan Hill Mayor Dennis Kennedy, Anthony Goulart owner of Associated Concrete and Steven Stratton of Steven M. Stratton Insurance and Financial Services. These community leaders have contributed to and support the MHYSA proposal.

In addition we have shared our plans with local hotel association leaders David Dworkin and Keith Gapol as well as local business owners Rich and Rosie Bergin (Rosy's At The Beach), Debra Creighton (Huntington Station formerly Glory Days) and Troy Carson (Morgan Hill Bowl). While public support for our proposal varies among these parties, all have indicated a willingness to work with and/or support MHYSA should MHYSA obtain the OSC management contract.

Our economic development strategy is three fold:

- Work with community business leaders and associations to develop a comprehensive plan leveraging the value of the Outdoor Sports Center to drive economic development. These plans will involve at a minimum:
 - Working with Community Development to produce an information packet describing the vibrancy of our residential and business community due to the local control of and access to the OSC and other recreational facilities, our cooperative and enjoyable sports environment and the multitude of entertainment options Morgan Hill enjoys. This message will help Community Development facilitate residential and commercial growth.
 - Developing a comprehensive strategy with the Morgan Hill Chamber of Commerce and the Morgan Hill Downtown Association to leverage the OSC when promoting Morgan Hill retailers to other communities, event planners, tournament organizers and national organizations.
- Develop co-marketing strategies with the aforementioned businesses along with other retail merchants, restaurants, wineries and recreational oriented businesses, associations and youth organizations that direct tournament and event attendees to the downtown, northeast and southern districts. These efforts will at a minimum include:
 - On site, web site and social media advertising
 - Information collateral on all local retailers
 - Promotions and special offers for tournament attendees
 - Hotel packages that combines hotel, retail, restaurant and winery offers that direct tournament attendees towards local businesses as PART of their planning and attendance of their event.
- Continue to work with MHYSA members to create and execute mutually beneficially fundraising efforts.



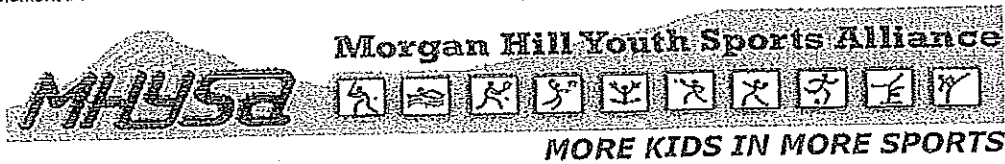
MORE KIDS IN MORE SPORTS

7. Do you plan to make any improvements to the grass fields? If so, what are they and how do you plan to fund the improvements as of the date you assume responsibility for the OSC?
- While the grass fields are functional now, they clearly have been allowed to deteriorate over the past few years. MHYSA will develop a renovation plan that will improve the conditions of the entire facility. The first step will be a facility evaluation prior to the beginning of MHYSA management. The next steps will be through a negotiated approach agreed to by the City of Morgan Hill and MHYSA which will encompass:
 - Bringing the fields back to a superior condition
 - Ensuring continued warranty support for the turf fields
 - Defining a capital replacement strategy
 - Defining a capital improvement plan
 - Developing a fund raising strategy to support the facility plans
 - Our plan to handle the immediate grass field renovations will primarily through donations and community support. George Chiala has indicated interest in donating compost, Aaron Gill of Grass Farms volunteered to act as a grass consultant and Volunteer Morgan Hill will serve as a conduit for attracting volunteers. Upper V. Management has offered logistical and possibly financial support. Incremental costs will be absorbed as renovations take place.
8. How do you propose to fund the start-up of your operation as of the date you assume responsibility for the OSC?

Start up funding is the primary challenge MHYSA faces. This means start up operations will need to be creatively and conservatively managed. MHYSA plans to negotiate their lease, vendor and employee contracts along with site improvements and capital equipment purchases in a manner that defers most payments to later in the fiscal year. The uncertainty of the status of CYSA and OVYSL means that the MHYSA will have to move quickly to obtain reservations from Nor Cal Soccer, U.S. Club and other organizations to reserve and pay for fields. This requires cancelling the early reservations from these two organizations, identifying the now available hours to prospective users then booking the new reservations and collecting the rental fees. The remaining users will then be contacted to understand their payment status and time frames.

The only non-negotiable payables that MHYSA will incur will be for the water, electricity and insurance. MHYSA has the financial resources to pay these services for the first six months without income

We are mainly encouraged by the breadth and depth of interest our proposal has generated. It would be inappropriate to discuss our competitive and partnership strategies at this time. It suffices to say that there are many, many organizations willing to partner with and support MHYSA in the operation of the OSC.



9. What start-up capital do you have in your bank account?

We have immediately available financial resources of \$110,000 that is comprised of \$10,000 in an SVNB account and start up investment of up to \$100,000 from local investors. The investment funds will be moved once the amount needed is defined.

In addition, the following "pros/cons" matrix will be provided to the PRC for your organization. The PRC would also like to see a written response to these.

Organization	Pros	Cons	MHYSA Response
<u>MHYSA</u> (recommended)	- Well thought out, comprehensive business plan - Community based field use philosophy - Diverse facility use plan - Economic development goal - In-depth background research - Diverse revenue generation strategy	- No experience operating a public, recreation facility - Liberal three year pro-forma - Business start up based on volunteer leadership - Suggested increasing field rates	

Con: No experience operating a public, recreation facility

The addition of Upper V to our team mitigates this risk, and builds on the community approach. The coalition of MHYSA, NorCal Soccer, Earthquakes, Grass Farm to name a few members promises to be an exciting proposition.

Con: Liberal three year pro-forma

The math is solid, the assumptions conservative and our projections based on national industry standards

Con: Business start up based on volunteer leadership

MHYSA Directors were selected for 3 year terms based on professional qualifications, personal commitment and lack of encumbrance or potential conflict of interest through their leadership roles in similar or associated organizations.

Con: Suggested increasing field rates

Increasing rates are appropriate. We will offset impact to local organizations through the Home Field Program. Regional organizations will have the opportunity to pass cost on.

EXHIBIT E



May 6, 2010

City Council Questions
MHYSA Response

1. What are the City's risks associated with your proposal to operate and maintain the Outdoor Sports Center? What are your plans to manage the risk?

The risks for the city fall into two key categories: financial and facilities management. In terms of financial risk, the two main risks are:

- 1) CYSA decides to withdraw use of the facilities
- 2) MHYSA projections are overly optimistic

The MHYSA proposal and pro forma stands as submitted almost 60 days ago. In order to address both of these potential risks, we have provided an additional pro forma business plan, (See attached). While we are confident in our initial projections, along with the industry data and assumptions that underlie them, we have taken steps to mitigate any City concerns or risk by providing this highly conservative "worst case" scenario, which demonstrates that even under the worst circumstances, MHYSA is will be able to maintain a solid financial position.

In this scenario, CYSA abruptly ends any use of the facilities, reducing revenue dramatically and removing all their equipment. We have already demonstrated there is interest from many organizations to acquire CYSA's time and making up that lost revenue, however, it is inherently impossible for them to make that commitment (or us to accept it) until a contract is awarded. So for the purposes of this worst case scenario we have made the assumption that not only has CYSA ended use of the facilities, but also made the highly unlikely assumption that MHYSA is unable to replace any of it within the first year. As you can see in the pro forma, because many of the costs of operation are variable, not only does revenue decrease dramatically, but our expenses decrease as well. This would take our first year position from a positive variance of \$56,881 to just under break even amount of -\$24,998, but given the combination of our Bank LOC and private availability of funds, our financial position would remain sound and not put the City in risk whatsoever.

The second concern would be that our revenue projections are overly aggressive. It is worth noting here that both our expense and revenue projections are highly detailed and based on known industry standards and costs. The single area which is not as easily predictable is sponsorship, but even our initial projections did not reflect significant income from this area until year



MORE KIDS IN MORE SPORTS

three. As you can see in the attached "worst case" pro forma, while our positive variance is significantly reduced, we run no risk of negative cash flow due to lack of sponsorship funds.

Thus -- the City can be assured that even if CYSA leaves and MHYSA significantly under-performs our sponsorship projections, we remain financially strong and sound.

Another area of risk to the City is that the fields and facilities are not maintained adequately. As we have identified and contacted alternative field user groups if CYSA pulls out, we have also made initial preparations with local landscapers, sports turf and grass maintenance professionals from Sports Turf Management Association (STMA) and the California Landscaping Contractors Association (CLCA). These consultants have offered their expertise pro bono to assist with the development of an annual maintenance program. Local landscape companies will receive a detail statement of work they can bid on. There currently three companies who have provided preliminary estimates. These estimates are reflected in our pro forma.

2. Please explain the economic impact your proposal will have on the Morgan Hill community from July 1, 2010 through June 30, 2011. Include number of weekend dates that regional events will be held and include estimated number of fields used, teams, and spectators.

Scenario 1: CYSA stays and no additional users are found – We expect the CYSA response to accurately define the impact and defer to their data. Not having access to their actual data, we have estimated their volume to at least be equivalent to the Nor Cal/Mustang even though declined comparatively declined 25% in recent years. Nor Cal/CYSA data available upon request.

- Total Weekend Dates - 30
- Number of Fields - 360
- Teams -- 1,427
- Spectators -- 45,795

In the event that CYSA stays, there are additional events identified which provide incremental revenue opportunities. These events are:

- Nor Cal Soccer Play Date on August 22nd
- Mustang Soccer MLS Academy September 3rd through 6th
- CVSL Magic Cup Tournaments on July 31st/August 1st and August 28th/29th (Currently identified as a CYSA event, they would stay.)



These events improve the local economic impact realized by MHYSA's operation by allowing non-CYSA organizations to use the OSC. The indicators are:

- Total Weekend Dates - 7
- Number of Fields - 84
- Teams - 256
- Spectators - 10,123

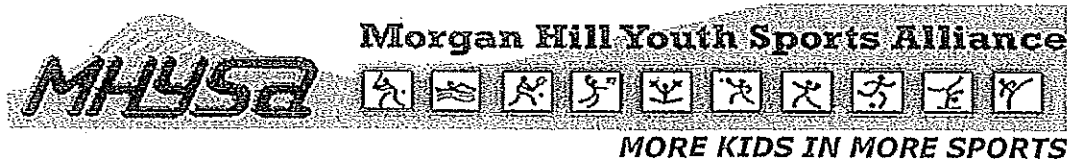
Scenario 2: CYSA pulls out leaving a gap in the first six months usage and requiring replacement users be found for the second six month of 2010/11. In addition to the non-CYSA events listed above, there are requests for Nor Cal State Cup events, MLS events and other national tours that can replace historical CYSA usage.

- Total Weekend Dates - 34
- Number of Fields - 408
- Teams - 1,567
- Spectators - 48,795

The final favorable economic impact comes from MHYSA's co-marketing and collaboration strategies. Co-marketing with local associations, businesses and hotels will have a net multiplier effect on revenue realized. Our collaboration strategy will allow business partners to reduce costs, build business-to-business networks and create synergies between community sports organization.

3. How does your proposal enhance community access to the entire complex? For the period July 1, 2010 through June 30, 2011, please differentiate between the number of hours Morgan Hill teams will have access to:

- a. **Synthetic turf fields on weekdays and proposed rate** (Local Rate=\$10/hr)
There will be no change to current policies or rates and minimal impact on Morgan Hill teams' usage. The process will utilize the collaborative approach recently adopted by the city parks and recreation staff. This will ensure an appropriate balance of access for all community groups. We expect an overall increase in facility access and utilization local teams.
- b. **Synthetic turf fields on weekends and proposed rate** (Local Rate=\$10/hr)
Use best scheduling practices to increase local leagues access to facility while meeting regional customers' requirements.



c. **Grass fields on weekdays and proposed rate** (Local Rate=\$12/hr)

As previously stated, we will open grass fields to meet local needs during the week. We do not expect the need to be great enough to use every field every day. Furthermore, daily use will be primarily during the 3pm to sunset hours. Still, these fields should adequate to meet local teams' needs.

d. **Grass fields on weekends and proposed rate** (Local Rate=\$12/hr)

The MHYSA proposed hourly rate will open field availability to local leagues. Regional operators will release fields earlier if not charged a daily rate. This approach will lead to a culture shift in the way these tournaments are scheduled. Additional opportunity can be introduced if local teams pursue a similar collaborative approach when scheduling the fields when regional users are not.

Costs concerns under the new rate will be mitigated though the Home Field Program. The initial arrangement with Pop Warner Raiders gives them significant savings in the first year over their current field rental expense. Orchard Valley Youth Soccer League (OVYSL) has indicated their costs are approximately \$60,000 annually. MHYSA will work with OVYSL to reduce their annual costs while moving them off the sub par fields they play on today.

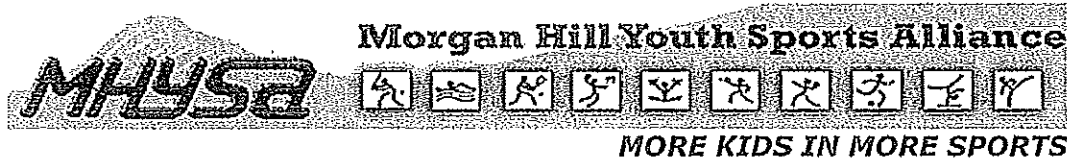
The Home Field Program also will allow alliance members to develop fundraising and cost reduction strategies providing further assistance to local teams.

4. **How do you respond to the Council's request that CYSA and MHYSA work together? Please summarize your interactions subsequent to the Council meeting of May 19, if you have a specific proposal, please provide the details below and forward to the other organization when you submit your responses to the City?**

Our verbal proposal to CYSA on April 26th is contained in the following outline. We will formally send CYSA this information in the next 24 hours.

Proposal for working relationship between CYSA and MHYSA

1. Looking for long term arrangement
2. CYSA North and affiliates retain priority status among regional users
3. Rates and permits honored for July 1st to December 31st, 2010
4. CYSA North and affiliates reserve OSC directly with MHYSA
5. MHYSA interested in rent back arrangement for on site equipment



Summary of communication (Email thread copies available upon request)

March 8th Jeff asks Dave Mann if CYSA would work with winner of proposal if CYSA not chosen. Answer was affirmative.

April 6th Dave Payne emails Jack Salvamini to open dialogue on CYSA/OVYSL/MHYSA partnership.

April 15th Rodney Robinson contacts Jeff Dixon to discuss options for working together. Main topic was MHYSA proposal.

April 22nd Dave Payne calls Dave Mann. No Response
Dave Payne and Rodney Robinson exchange emails regarding CYSA District 2 using OSC. Dave Mann provides final reply that CYSA District 2 will not commit until contract is signed with city and MHYSA. No further contact with Robinson

April 23rd Kathi Killion and Jeff Dixon schedule Monday meeting between CYSA staff and MHYSA.

April 26th CYSA (Dave, Kathi and Margaret) and MHYSA (Jeff, Rui) meeting in San Jose. Meeting results emailed to Steve R. Proposal topics shown below discussed. Dave Mann commits to provide field dates by the following week.

May 3rd CYSA (Dave and Margaret) and MHYSA (Jeff) meet with Steve Rymer to find common ground. CYSA reiterates position of waiting on contract. MHYSA shares priorities.

May 7th Proposal outline sent to Dave Mann by Jeff Dixon

5. Please clearly explain your Board of Directors' structure, including the number of directors, how directors are elected/appointed, and any local presence on the Board.

Our Board of Directors consists entirely of unpaid volunteers that meet our three key criteria:

- 1)
- 2) Morgan Hill citizens and community members with the best interests of our community at heart
- 3) Passionate supporters of youth sports
- 4) Specialized expertise in relevant fields (management, marketing, finance, etc)



Our Board has been expanded to seven members fulfilling three year terms in the following organizational positions. Each Board Candidate is voted on/approved by the existing Board of Directors:

1. President/Executive Director:
2. Vice President
3. Secretary/Treasurer
4. Marketing and Sales Director
5. Business Development Director
6. Community Advocacy Director
7. Advisory Council* President

*In addition to our governing Board of Directors, we have established an Advisory Council comprised of representatives of local youth sports organizations to ensure broad representation. The President of the Advisory Council is one of the seven voting members of our Board of Directors.

Board candidates must be endorsed by Advisory Council and will be selected by Board. Board members cannot have conflict of interest with OSC users or MHSYA members.



Attachment A Worst Case Scenario Pro Forma

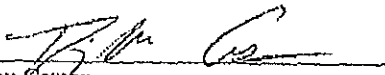
OSC Semi-annual Pro Forma		First 6 mos	Last 6 mos
		7/1/2010 to 12/31/2010	1/1/2011 to 6/30/2011
Revenue sources			
Field Rentals	\$109,595	\$167,851	
Concessions (Snack Bar, Parking, etc.)	\$56,791	\$273,211	
Camps, Clinics and Events	\$12,500	\$1,500	
Advertising Program	\$3,700	\$4,300	
Naming Rights (Complex, Each Field, etc)	\$0	\$0	
Sponsorship	\$0	\$5,000	
Grants and donations	\$0	\$0	
Gross Revenue	\$182,586	\$451,862	
Operations Expenses			
Facility Lease	\$10,000	\$40,000	
Facility Revenue Sharing	\$0	\$0	
Utilities	\$20,582	\$20,590	
Repair & Maintenance	\$86,988	\$86,475	
Event preparations and clean up	\$26,576	\$86,366	
Reservation services (non payroll)	\$0	\$0	
Member management (non payroll)	\$0	\$0	
City-Liaison	\$0	\$0	
Inspections	\$270	\$0	
Service Operation Expenses	\$5,625	\$750	
Staff	\$25,035	\$59,125	
TAXES	\$0	\$0	
G&A	\$5,007	\$11,825	
Net Expense	\$180,083	\$305,131	
Capital Needs			
Replacement and Additions	\$0	\$0	
CYSA Transition	\$27,500	\$0	
Capital Needs	\$0	\$0	
Improvements	\$0	\$0	
TOTAL Capital	\$27,500	\$0	
Operational Variance	-\$24,998	\$146,731	

Morgan Hill Youth Sports Alliance

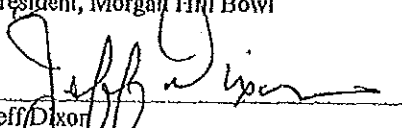
MORE KIDS IN MORE SPORTS
LINE OF CREDIT AGREEMENT

This LINE OF CREDIT AGREEMENT is made as of the 23rd day of June, 2010 (The "Line Of Credit Agreement" by and among Morgan Hill Youth Sports Alliance, Inc., corporation (MHYSA) and Troy Carson, individual (CARSON). A LINE OF CREDIT is hereby established in the amount of one hundred thousand dollars (\$100,000) for the benefit of MHYSA for the purpose of managing Outdoor Sports Center (OSC) Cash Flow during start up operations through fiscal year 2010/11.

1. CARSON hereby agrees to establish \$100,000 line of credit for access by MHYSA available for 1 year from July 1, 2010 until June 30, 2011.
2. MHYSA agrees to pay an annual interest rate of 6% on the total amount withdrawn and provide a 68"x68" advertising space at the front grass field entrance at no charge for one year.
3. MHYSA will request the funds through a Letter of Request stating the dollar amount required.
4. CARSON will provide funds requested within 48 hours of receiving the Letter of Request in the form of check or money order.
5. Interest is applied to withdrawn amount upon delivery of funds upon issuance and delivery of the check or money order to an MHYSA representative.
6. Amounts can be withdrawn as follows:
 - First Draw \$10,000
 - Minimum Draw \$5,000
7. MHYSA agrees to pay back all borrowed funds with interest immediately if OSC contract is concluded before June 30, 2011.
8. MHYSA may pay CARSON part or all of funds loaned at any time during the contract period.
9. Interest shall be calculated for the period of time the monies were held.
10. Total payment is due on July 1, 2011 for all withdrawals and interest.
11. In the event MHYSA becomes unable to pay back CARSON, Jeff Dixon will assume the AGREEMENT becoming responsible all existing debt and interest.


 Troy Carson
 President, Morgan Hill Bowl

Date: 6/28/10


 Jeff Dixon
 President, Morgan Hill Youth Sports Alliance, Inc.

Date: 6/28/10

MORGAN HILL OUTDOOR SPORTS CENTER
A DIVISION OF
MORGAN HILL YOUTH SPORTS ALLIANCE, INC.

Financial Statements

June 30, 2017

MORGAN HILL OUTDOOR SPORTS CENTER**Table of Contents**

	<u>Page</u>
Financial Statements:	
Independent Auditors' Report	1
Statement of Assets, Liabilities, and Net Assets- Modified Cash Basis	3
Statement of Support, Revenues, and Expenses- Modified Cash Basis	4
Statement of Cash Flows- Modified Cash Basis	5
Notes to the Financial Statements	6-9

Financial Information



INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of
Morgan Hill Youth Sports Alliance, Inc.

We have audited the accompanying financial statements of the Morgan Hill Outside Sports Center, a Division of Morgan Hill Youth Sports Alliance, Inc. (the Division), which comprise the statement of assets, liabilities and net assets-modified cash basis as of June 30, 2017, and the related statements of support, revenues, and expenses-modified cash basis and cash flows-modified cash basis for the fiscal year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting as described in Note 1; this includes determining that the modified cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Morgan Hill Outdoor Sports Complex, a Division of the Morgan Hill Youth Sports Alliance, Inc. as of June 30, 2017, and the changes in its net assets and its cash flows for the fiscal year then ended in accordance with the modified cash basis of accounting described in Note 1.

Basis of Accounting

We draw attention to Note 1 of the financial statements, which describes the basis of accounting. The financial statements are prepared on the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Emphasis-of-Matter Regarding Going Concern

The accompanying financial statements have been prepared assuming that the Division will continue as a going concern. As discussed in Note 11 to the financial statements, the Division has the continuing need for financing and a net deficiency in cash that raise substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters also are described in Note 11. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to this matter.

Moss, Remy & Hartshorn LLP

Santa Maria, California
February 21, 2018

MORGAN HILL OUTDOOR SPORTS CENTER

Statement of Assets, Liabilities, and Net Assets- Modified Cash Basis

June 30, 2017

Assets

Utilities Deposit	\$ 3,751
Fixed Assets, net of accumulated depreciation	54,176
Total assets	<u>\$ 57,927</u>

Liabilities and net assets**Liabilities**

Bank Overdraft	\$ 21,734
Line of Credit	99,750
Capital Lease- OVYSL	6,400
Loan Payable- Parent company	55,348
Loan Payable- Jeff Dixon	5,400
Total liabilities	<u>188,632</u>

Net assets

Unrestricted	(130,705)
Total net assets	<u>(130,705)</u>

Total liabilities and net assets	<u>\$ 57,927</u>
----------------------------------	------------------

The accompanying notes are an integral part of these financial statements

MORGAN HILL OUTDOOR SPORTS CENTER

Statement of Support, Revenues, and Expenses- Modified Cash Basis
Fiscal Year Ended June 30, 2017

Revenues and Other Support

Program Revenues:

Field Rentals	\$ 357,334
Concessions	60,780
Hotel Commissions	2,415
Parking	112,452
Services	34,793
Event Revenue	9,938
Tournament Team Fees	80,581

Total program revenue	<u>658,293</u>
-----------------------	----------------

Other Revenues

Interest	6
Miscellaneous	14,042

Total other revenue	<u>14,048</u>
---------------------	---------------

Total revenue and other support	<u>672,341</u>
---------------------------------	----------------

Expenses:

Alarm	5,062
Administrative	680
Bank fees	885
Consulting	2,184
Contractors	20,880
Depreciation	2,655
Equipment rental	14,714
Event expense	441
Event expense- Equipment rental	365
Facility lease	55,893
Field maintenance	133,597
Insurance	20,052
Interest	3,147
Janitorial	13,965
License and permits	3,150
Marketing	1,360
Miscellaneous	9,304
Noncapitalized equipment	195
Office supplies	2,663
Parking security	3,009
Payroll taxes	45,714
Property taxes	690
Professional services	6,257
Refunds	8,551
Repairs and maintenance	20,377
Salaries	223,698
Travel and entertainment	449
Utilities	86,367

Total expenses	<u>686,304</u>
----------------	----------------

Decrease in unrestricted net assets	(13,963)
-------------------------------------	----------

Net assets at beginning of fiscal year	<u>(116,742)</u>
--	------------------

Net assets at end of fiscal year	<u><u>\$ (130,705)</u></u>
----------------------------------	----------------------------

The accompanying notes are an integral part of these financial statements

MORGAN HILL OUTDOOR SPORTS CENTER

Statement of Cash Flow- Modified Cash Basis

Fiscal Year Ended June 30, 2017

Cash flows from operating activities:

Decrease in net assets	\$ (13,963)
------------------------	-------------

Adjustments to reconcile decrease in net assets
to net cash (used) by operating activities:

Depreciation	2,655
--------------	-------

Net cash used by operating activities	<u>(11,308)</u>
---------------------------------------	-----------------

Cash flows from financing activities:

Loan Payable- Parent company proceeds	17,000
---------------------------------------	--------

Loan Payable- Jeff Dixon proceeds	5,400
-----------------------------------	-------

Lease Payable- Principal payment	(3,200)
----------------------------------	---------

Proceeds from Capital lease	9,600
-----------------------------	-------

Fixed asset acquisition	(9,600)
-------------------------	---------

Note Payable- Principal payment	<u>(4,843)</u>
---------------------------------	----------------

Net cash provided by financing activities	<u>14,357</u>
---	---------------

Net increase in cash and cash equivalents	3,049
---	-------

Cash and cash equivalents at beginning of fiscal year	<u>(24,783)</u>
---	-----------------

Cash and cash equivalents at end of fiscal year	<u><u>\$ (21,734)</u></u>
---	---------------------------

The accompanying notes are an integral part of these financial statements.

MORGAN HILL OUTDOOR SPORTS CENTER

Notes to the Financial Statements

June 30, 2017

Note 1 - Significant Accounting Policies

The following is a summary of significant accounting policies followed in the preparation of these financial statements.

Nature of operations

The Morgan Hill Outdoor Sports Center was founded in 1994. The Division was created on July 1, 2010, when Morgan Hill Youth Sports Alliance Inc. was awarded the contract to manage the facilities. The Morgan Hill Outdoor Sports Center provides children of the City of Morgan Hill fields for recreational sports and events. The Division also provides facilities for various tournaments and events which supports tourism of the City of Morgan Hill.

Basis of accounting

The Division prepares its financial statements on the basis of cash receipts and disbursements, except that property and equipment is capitalized and depreciated over its useful life, and long term debt i.e line of credit, loans payables and note payables are recorded. The modified cash basis of accounting differs from accounting principles generally accepted in the United States of America in that certain assets, such as prepaid expenses and receivables, and certain liabilities, such as accounts payable, accrued expenses, and deferred revenue are not recorded.

Basis of presentation

Net assets, revenues, gains, and losses are classified based on the existence or absence of donor-imposed restrictions as follows:

Unrestricted net assets - Net assets that are not subject to donor-imposed stipulations.

Temporarily restricted net assets - Net assets subject to donor-imposed stipulations that can be fulfilled by actions of the Division, pursuant to those stipulations or that expire by the passage of time.

Permanently restricted net assets - Net assets subject to donor-imposed stipulations that they be maintained permanently by the Division. Generally, the donors of such assets permit the Division to use all or part of the income earned on the assets.

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America includes the use of estimates that affect the financial statements. Accordingly, actual results could differ from those estimates.

Tax status

The organization was exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and from state franchise tax under the State of California Revenue and Taxation Code Section 23701f.

Uncertainty in income taxes

Effective July 1, 2011, Morgan Hill Outdoor Sports Center implemented the new accounting requirements associated with uncertainty in income taxes using the provisions of Financial Accounting Standards Board (FASB) ASC 740, Income Taxes. Using that guidance, tax positions initially need to be recognized in the financial statements when it is more-likely-than not the positions will be sustained upon examination by the tax authorities. It also provides guidance for derecognition, reclassification, interest and penalties, accounting in interim periods, disclosure and transition.

As of June 30, 2017, Morgan Hill Outdoor Sports Center had no uncertain tax positions that qualify for either recognition or disclosure in the financial statements.

MORGAN HILL OUTDOOR SPORTS CENTER

Notes to the Financial Statements

June 30, 2017

Note 1 - Significant Accounting Policies (continued)**Cash**

All short-term investments with original maturities of three months or less are considered to be cash equivalents.

Fixed assets

Purchases of fixed assets costing \$1,000 or more are capitalized. Donated fixed assets valued at \$1,000 or more are capitalized, and recorded at fair value at the time of receipt. Expenditures for major renewals and betterments that extend the useful lives of property and equipment are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred. The cost and accumulated depreciation of property sold or retired is removed from the related asset and accumulated depreciation accounts, and any resulting gain or loss is recorded in the fiscal year of disposal. Depreciation is calculated utilizing the straight-line method over the estimated useful lives of the assets, that range from three to seven years for furnishings, equipment, and a vehicle.

Revenue recognition

Revenues are recognized in the period they are received.

Note 2 - Cash

All cash was covered by depository insurance, and consisted of the following at June 30, 2017.

Pinnacle Bank checking account	\$ (21,737)
Pinnacle Bank savings account	3
Total cash in bank	<u>\$ (21,734)</u>

Note 3 - Fixed Assets

Fixed Assets activity consisted of the following at June 30, 2017:

	Beginning			Ending
Fixed assets activity 2017:	Balance	Additions	Disposals	Balance
Equipment and furnishings	\$ 51,712	\$ 9,600	\$ -	\$ 61,312
Less: Accumulated depreciation	4,481	2,655		7,136
Net fixed assets	<u>\$ 47,231</u>	<u>\$ 6,945</u>	<u>\$ -</u>	<u>\$ 54,176</u>

Note 4 - Line of Credit

Morgan Hill Outside Sports Center has a \$100,000 line of credit with Pinnacle Bank, dated June 26, 2017, with interest calculated at 3.35% at inception and adjusted to the current index rate of the bank and maturing on June 22, 2019. There was an outstanding balance on the line of credit at June 30, 2017 of \$99,750. The line of credit is secured by the assets of Board President Jeff Dixon.

MORGAN HILL OUTDOOR SPORTS CENTER

Notes to the Financial Statements

June 30, 2017

Note 5 - Loan Payable- Parent company

In the fiscal year ending June 30, 2015, Morgan Hill Youth Sports Alliance, Inc. provided Morgan Hill Outdoor Sports Center with a short term, no interest loan in the amount of \$40,000 to help the division with cash flow and operations. In the fiscal year ending June 30, 2016, an additional loan of \$27,000 was provided. In the fiscal year ending June 30, 2017, an additional loan of \$17,000 was provided. The balance remaining as of June 30, 2017 was \$55,348.

Note 6 - Note Payable

On January 31, 2014, the Division entered into a long term note payable of \$51,712 with Orchard Valley Youth Soccer League for the acquisition of water cannons. Monthly payments of principal plus interest of 0.75% total \$2,969. On October 1, 2014, the note was adjusted to extend the payment schedule to June 30, 2016 and lower monthly payments of principle with no interest to \$1,614. On June 1, 2016, Orchard Valley Youth Soccer League agreed to a one month extension for the repayment to July 31, 2016. Note payable was fully paid in July 2016.

Note 7 - Loan Payable- Jeff Dixon

In the fiscal year ending June 30, 2017, Board President Jeff Dixon provided Morgan Hill Outdoor Sports Center with a short term no interest loan, in the amount of \$5,400 to help the Division with cash flow and operations. The balance remaining as of June 30, 2017 was \$5,400. The balance was repaid in November 2017.

Note 8 - Capital Lease

On July 15, 2016, the Division entered into a capital lease agreement with Orchard Valley Youth Soccer League. The lease was for the acquisition of a water reel. The amount of the lease is \$9,600 with no interest. \$800 quarterly lease payments are due commencing on September 1, 2017. Future minimum lease payments are as follows:

Fiscal Year Ended	Principal	Interest	Total
2018	\$ 3,200	\$ -	\$ 3,200
2019	3,200		3,200
Total	<u>\$ 6,400</u>	<u>\$ -</u>	<u>\$ 6,400</u>

Note 9 - Related Party Transactions

Morgan Hill Outdoor Sports Center was given a loan by its parent company, Morgan Hill Youth Sports Alliance, Inc. See Note 5 for details. On September 30, 2014, Chris Gerrity, Vice President of Pinnacle Bank was elected to the Morgan Hill Youth Sports Alliance, Inc. Board of Directors. All banking for Morgan Hill Outdoor Sports Center in the fiscal year ending June 30, 2017 was done at Pinnacle Bank. The Division was also given a loan by its Board President Jeff Dixon. See Note 7 for details.

MORGAN HILL OUTDOOR SPORTS CENTER
Notes to the Financial Statements
June 30, 2017

Note 10 - Subsequent Events

Subsequent events have been evaluated through February 21, 2018, which is the date the financial statements were available to be issued. Events occurring after that date have not been evaluated to determine whether a change in the financials statements would be required.

Note 11 - Financial Condition

The accompanying financial statements have been prepared assuming that the Division will continue as as a going concern. The Division has a continuing need for financing to fund operations and recurring bank overdraft liabilities. Also the Division had a bank overdraft liability of \$21,734 at June 30, 2017.

Management has made the following changes for the fiscal year ending June 30, 2018:

1. Reduced payroll by \$84,000.
2. Contracted with an outside sales representative to book tournaments.
3. Brought volunteer staff onboard for facility repairs.
4. Moved to a contract/job shop staffing model.
5. Increased parking fees.
6. Modified field rental rate structure.



March 25, 2018

Chris Ghione
Community Services Director
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA. 95037

Good afternoon Chris,

I am writing you to ask for consideration in the matter of the quarterly payments Morgan Hill Youth Sports Alliance, Inc. (MHYSA) is obligated to make under the terms of our Outdoor Sports Center (OSC) contract.

As you know, MHYSA is currently two payments overdue for 2016-17 for a total of \$22,500. In addition, we are scheduled to pay \$130K through June 30, 2019

As we have discussed, this situation is entirely due to the loss of tournament revenue in the past two years with little or no notice from the clients. The causes for these losses are mainly the competitive pressure brought to bear when Twin Creeks Sports fields were converted to all weather, all sports fields in 2015-16, the conversion to smaller fields by USYS in 2016 and the discontinuation of six annual tournaments. The net negative revenue impact from losing these tournaments has been over \$180K. Through strenuous cost management we have managed to overcome these losses and are on the road to financial recovery, but it will take time.

With the entrance of a new operator MHYSA will no longer be the OSC concessionaire after June 30, 2019. MHYSA will still be carrying significant debt at the end of nine years of dedicated management of the OSC, debt that will be solely MHYSA's responsibility despite our contribution to the City of Morgan Hill's sports tourism financial success under our management of the OSC.

Since the beginning of our OSC contract MHYSA has made 24 payments of \$16,250 each quarter, every year, on time and in full for a total of \$390K. As MHYSA has been impacted by loss of revenue, we have continued payments with only two late payments until now. During this period, MHYSA hosted over 240 tournaments, concerts, festivals, carnivals and circuses while bringing the OSC, and Morgan Hill onto the national sports tourism scene at no cost to the City of Morgan Hill, in fact while eliminating the \$100K previously spent annually by the City of Morgan Hill.



We respectfully request the City Council to consider foregoing any remaining monies owed to the city of Morgan Hill.

We understand the City of Morgan Hill is under no obligation to assist MHYSA in its fiscal management. The proposed plan will enable MHYSA to move to or close to a breakeven financial position by the end of the contract period while continuing to focus on facility upkeep and improvements.

We thank city staff and officials for their time and consideration.

Sincerely,

Jeff Dixon
President



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 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 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:

At the March 7, 2018 City Council meeting, Council was asked to consider Item #20 entitled "Appropriate Funds for High Speed Rail Agreement." This item was moved to the April 4, 2018 Council meeting.

On March 9, 2018, CHSRA released a Draft 2018 Business Plan (attached) which proposes to have rail ready, electrified infrastructure for the San Francisco to Gilroy segment by 2027. The 2018 Draft Business Plan (Plan) identifies the *new* Silicon Valley to Central Valley Line to be from San Francisco to Bakersfield. However, due to funding constraints, the Plan suggests a phased approach, which would construct and have interim operations of the Central Valley and the San Francisco to Gilroy segments first, with the connection through Pacheco Pass and extensions to Merced at a later phase as funding becomes available. Another key element of the Plan is the proposed electrification and sharing of the UPRR tracks from south San Jose to Gilroy. Staff is coordinating with CHSRA to prepare a project update and thorough review of the Draft 2018 Business Plan at the April 18th meeting.

Background on Agreements

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.

Below is a 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.

The City has spent approximately \$108,000 with the three technical contracts, of which only a portion of \$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 as an obligation of the City's Long-Range Planning Fund.

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 charged to 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. Budget Scorecard
3. 20 Supplement 1
4. 20 Supplement 2
5. 2018 Draft Business Plan (web link)

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 4th day of April 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 April 4, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution High Speed Rail (1685 : 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>

AGENDA DATE: 03/07/18

SUPPLEMENT # 1

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@newsvmmedia.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)

Copyright © 2018, Los Angeles Times

Posted by: MichaelT Packard <eyeswideopen.engineer@gmail.com>

[Reply via web post](#)

• [Reply to sender](#)

• [Reply to group](#)

• [Start a New Topic](#)

• [Messages in this topic \(2\)](#)



[Have you tried the highest rated email app?](#)

With 4.5 stars in iTunes, the Yahoo Mail app is the highest rated email app on the market. What are you waiting for? Now you can access all your inboxes (Gmail, Outlook, AOL and more) in one place. Never delete an email again with 1000GB of free cloud storage.

THE TRANSPORT POLICY DISCUSSION GROUP

Sponsored by The Public Purpose

<http://www.publicpurpose.com>
[VISIT YOUR GROUP](#)

Yahoo! Groups

• [Privacy](#) • [Unsubscribe](#) • [Terms of Use](#)

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@yahoogroups.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.

Attachment: 20 Supplement 2 (1685 : High Speed Rail Consultant Agreements)

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 like 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

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.



On Sun, Mar 4, 2018 at 11:19 PM, 'C. P. Zilliacus' CPZ@OS2BBS.COM [transport-policy] <transport-policy@yahoogroups.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](#)

[Copyright © 2018, Los Angeles Times](#)

Posted by: "Thomas A. Rubin" <tarubin@earthlink.net>

[Reply via web
post](#)

• [Reply to
sender](#)

• [Reply to
group](#)

• [Start a New
Topic](#)

• [Messages in this topic
\(5\)](#)



[Have you tried the highest rated email app?](#)

With 4.5 stars in iTunes, the Yahoo Mail app is the highest rated email app on the market. What are you waiting for? Now you can access all your inboxes (Gmail, Outlook, AOL and more) in one place. Never delete an email again with 1000GB of free cloud storage.

THE TRANSPORT POLICY DISCUSSION GROUP

Sponsored by The Public Purpose

<http://www.publicpurpose.com>
[VISIT YOUR GROUP](#)

Yahoo! Groups

• [Privacy](#) • [Unsubscribe](#) • [Terms of Use](#)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Carlos Guerrero, Sergeant
APPROVED BY: City Manager

FRANCHISE TOW AGREEMENTS

RECOMMENDATION(S)

1. Approve Tow Program Agreements with California Tow and Salvage and Community Tow; and
2. Authorize the City Manager to execute the Agreements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Regional Initiatives

POLICY CONSIDERATION:

Should the City attempt to recover the cost for providing services when allowable under current law?

REPORT NARRATIVE:

In 2009, Council approved implementation of the Franchise Tow Program (Program) designed to recover costs associated with police generated tows for the removal and impound of vehicles. The City executed Franchise Tow Agreements to tow, impound, and release vehicles as authorized by 22850.5 of the California Vehicle Code. Per the Franchise Agreements, tow companies were required to pay the City 20 percent of the revenue received from police ordered tows. This included revenue from tow fees, storage fees, and proceeds from vehicle lien sales when applicable. Revenue received from the tow companies was intended to offset City costs related to vehicle tows. The Police Department administered the program and was responsible for tracking all tows, monitoring revenues received, conducting audits of the tow companies, and holding regular meetings with the tow companies.

In 2011, City Staff, in partnership with the tow companies, conducted an evaluation of the Program and determined the Program administration was labor intensive and cumbersome in that it kept the officer(s) who supervised the program away from patrol and key duties. Council approved a modification to the Program which moved from a percentage of revenue received to a flat franchise tow fee per police ordered vehicle tow of \$97. The revised program has significantly reduced the time required to administer the program. The existing program has set a consistent rate for the tow

companies for each tow and storage of vehicles as well as requiring background checks of tow drivers and a fee structure that ensures 100 percent cost recovery.

The City currently contracts with two tow companies: Community Tow and California Tow and Salvage. After a recent review of the program, staff learned that the current allowable charges for towing and storing of vehicles is lower than those of our neighboring jurisdictions, including the Santa Clara County Sheriff's Department and the California Highway Patrol. City Staff, in partnership with the tow companies, are recommending an increase in the tow fee charge by the towing companies from \$180 per hour to \$225 per hour, as well as an increase in the storage fee from \$60 per day to \$100 per day, to maintain consistency throughout the region. In addition, City Staff is recommending an increase in the franchise tow fee from \$97 per police ordered vehicle tow to \$128 per police ordered vehicle tow to ensure 100% cost recovery.

Besides the franchise tow fee, the City also charges the vehicle owners \$165 per vehicle to release the vehicles. In FY 2016-17, the City received approximately \$50,000 in vehicle release fees from vehicle owners. Based on the attached fee analysis (Attachment A), the difference between the program cost and estimated vehicle release revenue is approximately \$78,000 or \$128 per vehicle towed to bridge the program costs and release fee monies.

The primary changes to the proposed contract allow the tow companies to increase their rates for towing and storage and increase the per vehicle franchise fee. Staff and the tow companies wish to enter into a new Agreements for two years, at which time the program will be reevaluated to ensure all Council directed program goals are being met. The Agreements sets forth consistent rates for both tow companies as well as requires background checks of tow drivers and a maintains a fee structure that provides 100 percent cost recovery.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the tow Agreements between the City and California Tow and Salvage and Community Tow.

ALTERNATIVE ACTIONS:

Should the Council not approve these Agreements, the City would not maximize the cost recovery for this program. The absence of these Agreements precludes the tow companies from having to pay the franchise tow fee. Additionally, having these Agreements in place guarantees a tow response within thirty minutes which is necessary to clear traffic collisions, continue the flow of traffic and maintain safety of the roadway.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2009, the City approved implementation of the Franchise Tow Program to recover costs associated with police generated tows. The Agreements called for tow companies to pay the City 20 percent of the revenue received from police related tows.

In 2011, because management of the tow program was overly labor intensive, the program was modified to a flat fee of \$97, instead of the 20 percent share, per police tow.

FISCAL AND RESOURCE IMPACT:

These Agreements are projected to generate additional franchise tow fee revenue of approximately \$19,000 per year.

CEQA (California Environmental Quality Act):

Not a Project. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Tow Program Numbers
2. Tow Agreement signed by Dick's Towing
3. Tow Agreement signed by California Tow

Position	Time Spent Per Hour	Hourly Rate	Total Cost Per Hour
Sergeant	0.05	\$ 163.49	\$ 8.17
Officer	1.00	\$ 133.21	\$ 133.21
Dispatch	0.25	\$ 93.64	\$ 23.41
Records	0.50	\$ 82.88	\$ 41.44
Total			\$ 206.23

Total number of vehicles towed in the last 3 years: 2645 Average number of tows per year: 882 per year

Total number of tow forms completed in the last 3 years: 1835 Average number of tows completed with a 180 form: 612 per year

Actual Revenue	2015	2016	2017	Average	
Franchise tow revenue of \$97/tow	\$ 48,148.00	\$ 67,425.00	\$ 62,468.00	\$ 59,347.00	612 Average number of tows per year
Stored Vehicle Release revenue of \$165/vehicle	\$ 33,660.00	\$ 59,693.00	\$ 50,820.00	\$ 48,057.67	291 Average number of stored vehicle releases per year

Total City cost per tow per hour	\$ 206
Average number of tows per year	612
Estimated total cost of the franchise tow program/year	\$ 126,177

Cost per vehicle release fee	\$ 165
Average number of vehicle release fees collected per year over the past three years	291
Total vehicle release revenue received /year	\$ 48,058

Difference between the program cost and vehicle release revenue received on average per year	\$ 78,119
--	-----------

Franchise tow revenue required to ensure 100 percent cost recovery	\$ 128
--	--------

FRANCHISE AND SERVICE AGREEMENT FOR VEHICLE TOW, STORAGE AND RELEASE SERVICES

This Franchise and Service Agreement ("Agreement") is effective as of _____, 2018 ("Effective Date") between the City of Morgan Hill ("CITY"), and Dick's Automotive Transport dba Community Towing ("OPERATOR").

R E C I T A L S

1. CITY requires services for the towing, storage and release of vehicles impounded pursuant to the California Vehicle Code ("Program") in the exercise of its police powers as necessary or appropriate for the general welfare of its citizens.

2. Chapter 5.52 (Tow Car Services) of the Morgan Hill Municipal Code ("Ordinance") provides for the operation of a rotational tow program for Police-Generated Tows under the Program with tow car services that enter into franchise agreements with the CITY.

3. OPERATOR is a tow car service and desires to offer vehicle storage services, including storage facilities and vehicle release or lien sale services under the Program.

4. Under California Vehicle Code Section 22850.5, the City may recover administration and other costs in the staffing, administration, and operation of the Program.

5. The Ordinances authorizes franchise agreements for Police-Generated Tows, as defined in Section 3 of this Agreement, pursuant to the authority of California Vehicle Code 12110.

6. On _____, the City Council of the CITY directed the City Manager to execute new agreements to modify the Previous Agreement and to continue the tow program with the OPERATOR.

7. This service will be provided on a rotating basis with other similarly qualified OPERATORS who have been granted franchises by CITY.

8. In consideration of OPERATOR'S promise to be available to provide the services as set forth herein, and abide by the terms of this Agreement; the CITY agrees to allow OPERATOR to provide vehicle storage services under the Program and grants OPERATOR a franchise to perform Police-Generated Tows within the City of Morgan Hill.

9. The parties have negotiated the terms pursuant to which OPERATOR will provide such services and have herein reduced such terms to writing.

TOW SERVICE AGREEMENT

NOW, THEREFORE, CITY and OPERATOR, in consideration of the mutual promises set forth herein, hereby agree as follows:

1. **Effectiveness of Agreement.** Subject to Operator's full performance of its obligations under the Previous Agreement, this Agreement shall commence on the Effective Date and shall terminate on June 30, 2020, unless terminated sooner by CITY in accordance with the terms of this Agreement.
2. **Exclusivity of Agreement.** CITY agrees to limit tow car services for the Program and franchises to perform Police-Generated Tows to the two (2) named OPERATORS below:
 - California Tow & Salvage, Inc.
 - Community Towing

CITY'S agreement in this paragraph is conditioned upon compliance of both OPERATORS with the terms of this Agreement and is subject to the limitation of Section 22.1.

3. **Scope of Service.** The services to be performed by OPERATOR shall be:

3.1 **Police-Generated Tows.** OPERATOR shall be responsible for responding to any tow requested by the City of Morgan Hill Police Department in the course of official police activities for which a California Highway Patrol Form 180 is issued. Such requests include, but are not limited to, the tow of a vehicle that is subject to impound under the Program, driven by a driver who is arrested, detained, incapacitated or physically unable to drive the vehicle, involved in a traffic collision or accident, or abandoned and subject to towing under the Vehicle Code or Morgan Hill Municipal Code ("Police-Generated Tows").

3.2 **Vehicle Storage Services.** OPERATOR shall be responsible for the provision of vehicle storage services; including storage facilities, releasing vehicles and personal property from stored vehicles, and conducting lien sale services under the Program.

3.3 **Limitations.** Except for owners of vehicles subject to a Mandatory Tow, owners of vehicles subject to a Police-Generated Tow may choose to use and negotiate the services of a tow operator or storage provider other than the operators listed in Section 2 of this Agreement. "Mandatory Tow" shall mean a tow of a vehicle that is subject to impound or storage under the Program, driven by a driver who is arrested, or detained, or abandoned and subject to towing under any applicable law.

4. **Rotation Tow Program: Conditions and Regulations.** The CITY shall maintain a list of all OPERATORS in the Rotation Tow Program as defined in Morgan Hill Municipal Code Section 5.52.010(B) ("List"). The List will govern which OPERATOR will respond to dispatches for police-generated tows, and the order of dispatch.

4.1. Hours of Operation. OPERATOR agrees to provide tow service on a twenty-four (24) hour basis, seven (7) days per week, including holidays, without extra charge.

4.2. Requirements. OPERATOR is responsible for providing prompt service, removal of any vehicle regardless of age or condition, and clearing an accident scene as further described in Section 6.10.

4.3. City Sole Dispatcher. Only the CITY shall dispatch an OPERATOR to provide services covered by this Agreement.

4.4. Notice of Unavailability. OPERATOR shall inform the Morgan Hill Police Department Communications Center ("Communication Center") of any temporary unavailability due to staffing or equipment limitations. OPERATOR will be skipped in the call rotation until OPERATOR informs the Communications Center of their renewed availability.

4.5. Refusal or Failure to Respond. OPERATOR shall accept any and all requests for service unless OPERATOR has informed the Communications Center of its unavailability. An OPERATOR who refuses/fails to respond (including circumstances described in Section 6.2) shall be suspended from the List for twenty-four (24) hours. An OPERATOR that repeatedly (more than 3 times) fails to respond in any thirty (30) day period shall be suspended for one (1) month from the List and subject to possible termination of this Agreement at the discretion of the CITY.

4.6. List Rotation. A call to an OPERATOR shall constitute one turn on the List and the OPERATOR shall then be moved to the bottom of the list. Telephone answering services of OPERATOR are deemed agents of OPERATOR and are required to comply with all provisions of this Agreement.

The CITY shall call the next OPERATOR on the List when an OPERATOR:

- fails to answer the phone
- is unable to provide a service
- is unable to respond
- is canceled due to excessive response time or refuses to provide service or respond.

4.7. Storage Space. An OPERATOR unable to provide storage space in response to a call will be suspended from the List for twenty-four (24) hours or until storage space is made available, whichever is greater.

4.8. Cancelled Calls. When the CITY determines that the OPERATOR dispatched is not needed or the call is canceled by the CITY or the vehicle's registered owner or agent prior to the OPERATOR taking possession of the vehicle, there shall be no charge and the OPERATOR shall be placed back at the top of the List.

4.8.1. Pursuant to California Civil Code Section 3068.1(a), possession is deemed to arise when the vehicle is removed and is in transit or vehicle recovery operations or load salvage operations have begun.

4.9. Cancelled Rate. If OPERATOR has taken possession of the vehicle and service is canceled by the vehicle's owner or agent, charges shall not exceed one half of the regular towing charge for the actual time expended on the call.

4.10. Multiple OPERATORS. If two or more OPERATORS are required at the same incident, CITY, through its Police Department designee, shall have the discretion to assign OPERATORS to the vehicles to be towed.

4.11. Police Direction. CITY, through its Police Department designee, may direct an OPERATOR to move vehicles to help clear a roadway or for lifesaving operations. OPERATORS shall provide the requested assistance at no charge.

4.12. Specific Request. Nothing in this Agreement shall prohibit CITY, through its Police Department designee, from requesting the next OPERATOR on the List when the necessary resources to clear a hazard are not available from the OPERATOR currently at the top of the List. If no OPERATORS on the List have the resources to respond to an incident, CITY may dispatch a tow company outside of the List rotation to respond to that incident.

4.13. Collection of Payment. The OPERATOR shall be responsible for the collection of payment of any charge for services rendered. Requests for payments shall be made to the owner of the vehicle or other lawful claimant, and no cost or expense or any part thereof shall be charged against the CITY.

5. Tow Drivers: Rules and Regulations. All tow truck drivers employed by OPERATOR ("Driver(s)") shall attend and successfully pass, a certified tow truck driver training course meeting the requirements of the California Highway Patrol. The CITY may waive this requirement for a period of up to six months in instances where a company has no Drivers who have completed a certified tow truck driver-training course and the lack of training is due to a loss of trained employees. OPERATOR shall ensure that Drivers responding to calls have completed a certified tow truck drivers training

course and are qualified and competent employees of OPERATOR. Drivers shall be at least 18 years old and possess the following minimum Class Driver's License:

- Class A Tow Truck - Valid Class C (3) license or A (1) license with valid medical certificate.
- Class B/C/D Tow Truck - Valid Class A (1) license with valid medical certificate, endorsed to allow operation of special vehicle configurations and/or special cargoes.

5.1. List of Drivers. The OPERATOR shall maintain a current list of Drivers and provide the list to the CITY.

5.1.1 OPERATOR shall notify the CITY within seven (7) days of any hiring of new Drivers or termination of current Drivers.

5.1.2 The OPERATOR shall provide a copy of the certified tow truck drivers training certificate to the CITY within thirty (30) days of any hiring of new Drivers or termination of current Drivers.

5.2. Required Driver Information. The OPERATOR, shall as a minimum, maintain the following information for each Driver: Full Name, Date of Birth, California Driver License Number, Copy of valid medical certificate, Job Title/Description, Current Home Address, Current Home Phone Number, Types of trucks the Driver is trained and instructed to operate, and a copy of the tow truck driver training course certificate.

5.3. EPN Program. All Drivers shall be enrolled in the Employer Pull Notice Program (EPN) with the Department of Motor Vehicles. The OPERATOR shall provide a copy of the current EPN Program report, or in the case of a newly hired Driver, proof of enrollment in the EPN Program.

- Upon the addition of new Drivers, OPERATOR will be granted a maximum of 30 days to enroll Drivers in the Pull Notice Program.
- Pull Notices shall be kept on file, signed, and dated by OPERATOR.

5.4. Background Checks. All Drivers will be fingerprinted as part of the background check process. Drivers will not be eligible to drive for the CITY until the fingerprinting has been completed and proof has been provided to the CITY. Drivers may operate in a "trainee" status with a certified driver pending the return of the results of the fingerprint check. Drivers found to have convictions for any of the violations specified in Vehicle Code Section 13377(a) shall not be permitted to drive a tow truck for an OPERATOR while providing services pursuant to this Agreement.

5.5. Uniforms. Drivers of OPERATOR shall wear an identifiable uniform displaying both the OPERATOR and Driver's name. All Drivers shall wear the federally mandated traffic safety vests or reflectorized uniform shirts.

5.6. Identification Badges. Drivers shall carry an identification badge at all times which displays a photograph of the Driver and signature. The identification badge shall be presented upon demand to the person(s) for whom the services are offered or any Police Officer.

5.6. Personal Appearance. Drivers shall represent a professional image. An unacceptable representation would include: unbathed, excessively dirty/torn uniform, excessive or offensive body art or piercings.

5.7. Demeanor and Conduct. While providing services for CITY, the OPERATOR or Driver shall refrain from any acts of misconduct including, but not limited to any of the following behavior:

- Rude or discourteous
- Lack of Service, selective service or refusal to provide service which the Operator is capable of performing.
- Any act of sexual harassment or sexual impropriety.
- Unsafe driving practices.
- Exhibiting any objective symptoms of alcohol or drug use.
- Appearing at the scene of a CITY rotation tow call with the odor of an alcoholic beverage emitting from his/her breath. The Driver shall submit to a preliminary alcohol screening test upon demand of the CITY if an odor of an alcoholic beverage is detected.

5.8 Violations. Any violations of the Driver rules and regulation shall result in a one (1) week suspension of OPERATOR from the List. Any safety related violation shall be governed by Section 23, with penalty up to and including termination of this Agreement.

6. Response To Calls.

6.1. Response Time. The OPERATOR shall respond to calls twenty-four (24) hours a day, seven (7) days a week, within the response time of twenty (20) minutes during the Operator's office business hours (which shall be at least from 8a.m. to 5p.m. seven (7) days a week), and of thirty (30) minutes during all other times. At the time of notification the OPERATOR will advise the Communication Center when the OPERATOR is unable either to respond or to meet the response time.

6.1.1 The maximum response time may be adjusted based on a variety of factors, including location. Such adjustments are in the sole discretion of CITY, through its Police Department designee.

6.2. Inability to Respond. If, after accepting the call, the OPERATOR is unable to respond or will be delayed in responding, the OPERATOR shall immediately notify the Communications Center.

6.3. Response Requirements. An appropriately licensed Driver shall respond with a properly equipped tow truck of the class required to tow the vehicle and be in possession of the appropriate license and endorsements.

6.4. Failure to Respond. A failure to adequately respond to calls, and/or repeated (more than 3 times) failures to meet the response time requirements in any thirty (30) day period, shall result in a one (1) month suspension from the List and possible termination of this Agreement at the discretion of the CITY.

6.5. Notice of Scheduled Unavailability. When an OPERATOR will be temporarily unavailable to provide services due to a pre-planned or scheduled activity, the OPERATOR shall notify the CITY at least 24 hours prior to the date that services will be unavailable, noting the times and dates of the unavailability.

6.6. Appropriate Personnel. Only Drivers and equipment requested shall respond to a CITY rotation tow call, no other persons shall accompany Driver.

6.7. Requests for Assistance. There may be times when the OPERATOR assigned the initial call may require additional assistance. The OPERATOR may make a request for additional assistance to the Morgan Hill Police Officer managing the scene. Dispatch of assistance will be determined by the List.

6.8. CITY Assistance. When an OPERATOR who was not called to a scene comes upon a collision scene where a vehicle or vehicles are blocking a roadway, a Morgan Hill Police Officer may request OPERATOR'S assistance in clearing the roadway. In such a case, the OPERATOR may be requested to move the vehicle to a safe location, and leave it. There shall be no charge for this assistance. The assistance provided shall not change the OPERATOR'S place in the List rotation.

6.9. Disputes. If the OPERATOR questions or disputes the List rotation, the OPERATOR shall not contact the Communications Center. All questions and disputes shall be referred in writing to the Field Operations Captain ("Captain") during business hours, Monday through Friday, excluding holidays.

6.10. Scene Cleanup. It shall be the responsibility of the Driver to remove or clean from the scene of the collision any non-hazardous liquid, glass, or debris from the scene excluding flammable substances. Failure to do so will result in a request for the Driver to return to the scene to complete the clean-up. Repeated complaints (more than 3 times) that the OPERATOR'S Drivers have failed to comply with this section shall result in a one (1) month suspension of OPERATOR

from the List and possible termination of this agreement at the discretion of the CITY.

7. Tow Truck Requirements

7.1. Adequate Vehicles. OPERATOR must provide an adequate number of tow trucks dedicated to servicing the towing needs of the CITY.

7.2. Vehicle Equipment and Maintenance. OPERATOR shall equip and maintain tow trucks covered under this Agreement in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the conditions of this Agreement, and in a manner consistent with industry standards and practices.

7.3. Proof of Inspection. OPERATOR has, and shall maintain, proof that all service vehicles have been inspected by and meet California Highway Patrol standards.

7.4. Violations. A violation of the Gross Vehicle Weight Rating ("GVWR") and safe loading requirements of a tow truck shall result in the immediate suspension of OPERATOR from the List. The suspension shall remain in effect until CITY has conducted an inspection and concluded that OPERATOR is in compliance. Such violations may include exceeding the tow truck's GVWR, any axle weight rating, maximum tire weight ratings, or not maintaining fifty (50) percent of the tow truck's unladen front axle weight on the front axle when towing.

8. Rates. Rates charged under the Program and for all Police-Generated Tows shall be reasonable, valid and not in excess of those rates established by the CITY as follows:

- Maximum charge for automobiles of **Two Hundred Twenty-Five Dollars** (\$225.00) per hour per CITY Police-Generated Tow (inclusive of any drop, hourly or other rates)
- Maximum charge for a motorhome or camping trailer of **Three Hundred Dollars** (\$300.00) per hour per CITY Police-Generated Tow (inclusive of any drop, hourly or other rates)
- Maximum charge for automobiles of **One Hundred Dollars** (\$100.00) per day for storage under the Program
- Maximum charge for a motorhome or camping trailer of **Two Hundred Dollars** (\$200.00) per day for storage under the Program
- In the event a motorhome or camping trailer is not picked up from the tow yard within thirty (30) days, the City will pay an **Eight Hundred Dollar** (\$800.00) disposal fee to the tow company per motorhome or camping trailer
- Lien fees shall not exceed the limits of the California Vehicle Code
- After hour gate fees are set at a maximum of **One Hundred Twelve and 50/100 Dollars** (\$112.50)

- No other charges are permitted without prior authorization of CITY.

8.1. Over Charges. Any OPERATOR who charges rates above the maximum rates shall be suspended from the List for seventy-two (72) hours and shall refund any amounts received in excess of the maximum rates.

8.2. Rates Kept in Vehicle. The approved schedule of rates shall be kept in OPERATOR'S vehicle and presented upon demand to the person(s) for whom the services are being provided, or their agents.

8.3. Extraordinary Circumstances. "Extraordinary Circumstances" shall encompass the following situations: 1) a tow response requiring towing a heavy vehicle requiring use of a tow truck with a 25,000 pound or greater GVWR chassis, 2) retrieval of a vehicle that is completely off of the roadway, or 3) where the Captain issues a written certification of Extraordinary Circumstances. In only these Extraordinary Circumstances may OPERATOR deviate from the maximum charges specified in this section and charge an hourly rate of no more than \$225 for the duration of the call. Revenues derived from any Extraordinary Circumstances tows shall be subject to payment to City pursuant to Section 11.

9. **Impound Storage Fees**. The maximum charge for automobiles is One Hundred Dollars (\$100.00) per day and the maximum charge for a motorhome or camping trailer is Two Hundred Dollars (\$200.00) per day for storage of police directed impounds under the Program. The charge applies to all police directed impounds, including but not limited to, the following violations of the California Vehicle Code:

- Section 14602.6 - unlicensed Drivers
- Section 14602.7 - vehicles used in flight from a police officer
- Section 14602.8 - certain repeat offenses of DUI
- Section 23103(a) & (b) - reckless driving
- Section 23109(a) - vehicles used in speed contests
- Section 23109(c) - exhibition of speed

9.1. Posting of Fees. Pursuant to Civil Code Section 3070, the OPERATOR shall display in plain view at all cashiers' stations a sign disclosing all storage fees and charges in force, including the maximum storage rate.

9.2. Less than 24 Hours. Pursuant to Civil Code Section 3068.1(a), owners of vehicles stored twenty-four (24) hours or less shall be charged no more than one day of storage.

9.3. Portions of Day. Pursuant to Civil Code Section 3068.1(a), if the vehicle is released from storage after twenty-four (24) hours, charges may be allowed on a full, calendar-day basis for each day of storage, or portion thereof.

10. Compliance with Municipal Code. OPERATOR acknowledges that the services to be performed under this Agreement are a municipal affair and subject to the provisions of Morgan Hill Municipal Code Chapter 5.52, which is incorporated herein by reference as though fully set forth herein. OPERATOR agrees to and shall abide by all requirements of Chapter 5.52 as the same may be amended from time to time.

11. Franchise and Administrative Fees. OPERATOR shall pay to CITY the following franchise and administrative fees:

11.1. Per Tow Franchise Fee. OPERATORS shall pay to the CITY One Hundred Twenty-Eight Dollars (\$128.00) per vehicle tow performed by OPERATOR pursuant to this Agreement, including all Police-Generated Tows ("Per Tow Fee").

11.2. Impound Program. Should the 30 day holds specified in Section 9 be held unconstitutional by a court of competent jurisdiction, CITY and OPERATOR shall negotiate in good faith new terms.

12. Franchise and Administrative Fees Payment.

12.1. Time of Payment. On or before the fifteenth (15th) day of each month, OPERATOR shall pay to CITY the Per Tow Fees for vehicle tows for the preceding month.

12.2. Supporting Documentation. The Tow Fee Payment shall be accompanied by an accounting in sufficient detail to fully document how the Per Tow Fees due were calculated. OPERATOR agrees to supply any additional supporting documentation requested by CITY. The required documentation and retention schedule is detailed in Section 19.

12.3. Late Fee. Failure to remit the Per Tow Fees to CITY when due shall result in the imposition of a late fee of five-percent (5%) per month until paid. If the Operator fails to pay the fee for more than (90) ninety days after the due date, the City shall have the option to suspend OPERATOR from the List until the fee is paid or, in the CITY'S discretion, to terminate this Agreement.

12.4. OPERATOR shall pay all required franchise and administrative fees to:

City of Morgan Hill Police Department
16200 Vineyard Blvd.
Morgan Hill, CA. 95037
Attn. Patti Yinger

13. Storage Facility. The OPERATOR shall maintain a storage facility ("facility") located within five (5) miles of the City limits of Morgan Hill. The facility shall have an office and be staffed during business hours (8:00 a.m. to 5:00 p.m. Monday through Friday). Facility employees shall be trained to conduct business transactions related to

towing, storage and release of vehicles and property. All payments, releases and other transactions related to vehicles towed and stored under this Agreement shall be conducted at the facility where the subject vehicle is stored. All storage facilities of OPERATOR shall offer the same payment options, regardless of location. Any change in the location of the facility shall have the prior written approval of the CITY.

13.1. Responsibility for Vehicles. OPERATOR shall be solely responsible for the safe storage of vehicles and all personal property inside stored vehicles.

13.2. Security. The OPERATOR shall provide security for vehicles and property at the facility. The OPERATOR is responsible for the care, custody, and control of any property contained in towed or stored vehicles. Either a fenced or a closed area for storage shall be used. The area shall be sufficiently secure to discourage trespassers and have sufficient lighting so as to make visible any person(s) within the area during the nighttime. NO WAIVER, HOLD HARMLESS AGREEMENT, OR OTHER SIMILAR RELEASE AND/OR INDEMNIFICATION AGREEMENT SHALL BE REQUIRED BY OPERATOR AS A CONDITION TO THE RELEASE OF A VEHICLE TOWED TO AND STORED AT THE STORAGE FACILITY.

13.3. Storage Space. The OPERATOR'S facility shall have adequate storage space to accommodate vehicles stored under this Agreement.

13.4. Protective Storage of Vehicles. Vehicles with open windows, roofs (excluding vehicles with major damages from collisions), shall be stored inside to protect the interior of the vehicles from adverse weather conditions. If there is no inside storage available, the vehicle shall be covered with a tarp.

13.5. Shared Facilities. Facilities shared by OPERATORS or other business establishments not owned by the OPERATOR shall be physically separated and secured from each other.

13.6. Business Hours and Signage. For the purpose of this Agreement, normal business hours shall not be less than 8 a.m. to 5 p.m., Monday through Friday, except for state recognized holidays. OPERATOR'S facility shall have a sign clearly visible from the street and illuminated at night that identifies it to the public as a towing storage facility and posts OPERATOR'S business hours.

13.6.1 OPERATOR shall display a telephone number in plain view on the sign which, upon calling, will result in a response within thirty (30) minutes for after hours release of a vehicle.

13.6.2 OPERATOR shall not display any sign or engage in any advertising indicating an official or unofficial connection with CITY.

14. Release of Personal Property. Pursuant to California Vehicle Code Section 22851(b), the OPERATOR shall release personal property from the vehicle to the

vehicle's owner or their agent upon demand. No property shall be released to anyone other than the registered owner without written, signed authorization from the registered owner. No fee shall be charged for the release of personal property during normal business hours.

14.1. After Hour Fee. The maximum charge for a non-business hour's release of personal property shall be **One Hundred Twelve and 50/100 Dollars** (\$112.50), or less, in accordance with the Vehicle Code.

14.2. Written Release. At no time will any property be released or removed from a vehicle seized and ordered held by a peace officer without the proper written release from the Morgan Hill Police Department.

14.3. Receipt. A receipt shall be provided for the removed property, with a copy placed in the stored vehicle. This procedure shall also apply to the removal of property by OPERATOR to a secured area within the facility.

15. Release of Vehicles. OPERATOR shall release impounded or stored vehicles provided that OPERATOR: (a) receives all applicable fees due it from the registered owner or owner's authorized agent and (b) only upon written authorization from the Morgan Hill Police Department.

15.1. After Hour Release. An employee of OPERATOR shall be available to release stored vehicles within sixty (60) minutes after notification on a twenty-four (24) hour basis, seven (7) days per week, including holidays.

15.2. Titled Signed Over. In the event the registered owner of an impounded vehicle signs over the title of the vehicle to the OPERATOR in lieu of towing and storage fees, the OPERATOR shall keep the vehicle in impound for the remainder of the impound period. At the end of the impound period the OPERATOR will be required to obtain a "no fee" release from the CITY in order to take full custody of the vehicle.

16. Insurance Requirements. OPERATOR 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 OPERATOR, 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. Any deductibles or self-insured retentions must be declared to and approved 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.** OPERATOR further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to OPERATOR, at any time as deemed necessary to protect the interests of the CITY.

16.1. Insurance Types and Amounts.

- 16.1.1 Commercial General Liability (CGL). OPERATOR 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 OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 16.1.2 Garagekeepers: OPERATOR shall maintain Garagekeepers insurance covering all owned and non-owned automobiles, including automobile parts and equipment, in OPERATOR'S care, custody or control against claims and liabilities for damage, theft, or loss in the minimum amount of: (i) one hundred thousand dollars (\$100,000.00) or (ii) the maximum amount of such insurance available to OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Such insurance shall be primary over any other insurance.
- 16.1.3 Automobile Liability. OPERATOR shall maintain Automobile Liability covering all owned, non-owned and hired automobiles 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 OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 16.1.4 Workers' Compensation Insurance and Employer's Liability. OPERATOR 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 OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If OPERATOR is self-insured, OPERATOR shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

16.2.1 **General Liability.**

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

16.2.1.2 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,

16.2.1.3 insurance shall be primary non-contributing.

16.2.2 **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.

16.3 **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.

16.4 **Certificates.** OPERATOR 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 OPERATOR'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

17. Defense and Indemnification.

17.1. Defense and Indemnification. The OPERATOR agrees to indemnify and hold harmless the CITY, its officers, agents and employees ("INDEMNITEES") from any and all liability, including defense costs, attorneys' fees, and all other fees incidental to the defense, loss, or damage the CITY may suffer as a result of any and all suits, claims, demands, costs, or judgments against the CITY arising from the acts or failure to act of the OPERATOR, its officers, employees and/or agents resulting from OPERATOR's implementation and performance of this Agreement ("CLAIM").

17.2. Independent Counsel. CITY reserves the right to select legal counsel and control the defense of any CLAIMS which come within OPERATOR'S obligation to indemnify, defend and hold harmless the INDEMNITEES.

17.3. 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 OPERATOR.

18. Inspections.

18.1. Tow Trucks. CITY shall have the right to inspect all tow trucks annually. At the written request of the OPERATOR, the CITY will inspect a tow truck within seven (7) calendar days of the request unless urgent attention is warranted. The CITY, through its Police Department designee, may conduct additional inspections without notice to the OPERATOR during business hours. The OPERATOR shall use only tow trucks that have been inspected and approved by the CITY.

18.2. Storage Facility. The City may inspect OPERATOR'S storage facility at any time during normal business hours without notice. The purpose of such inspections is to ensure that the OPERATOR is providing a reasonably safe and clean facility in which vehicles are stored and where contact with the public occurs. The CITY may determine what is reasonably safe and clean. Failure to maintain the facility at a minimum level of cleanliness or failure to provide a safe environment shall result in a seventy-two (72) hour suspension from the List.

19. Business Records.

19.1. Service Records. OPERATOR shall maintain records, including but not limited to invoices, pertaining to all services provided pursuant to the Agreement for a period of at least three (3) years. The records shall be maintained at the OPERATOR'S place of business. Police-Generated Tow records shall include a

description of each vehicle towed, nature of service performed, beginning and end time of call, location of call, itemized cost of towing and storage, the tow truck driver's name, and truck used. OPERATOR shall retain records on all impounds under the Program, including vehicle descriptions, length of vehicle impound, and final disposition of impounded vehicles. OPERATOR shall maintain these records, and any other records requested by CITY, with sufficient detail to fully document how the quarterly franchise and administrative fees are calculated.

19.2. Other Required Records. OPERATOR shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, federal, state and local licensing, and other records, relating to the Operator's lawful performance of this Agreement.

19.3. Inspection of Records. CITY may inspect all OPERATOR records set forth in Sections 19.1 and 19.2 with at least three (3) day notice during OPERATOR'S regular business hours. Failure of OPERATOR to comply with this requirement will result in suspension of OPERATOR from the List for two (2) weeks.

19.4. Copies of Records. OPERATOR shall permit CITY to make copies of business records at OPERATOR'S place of business, or to remove business records for the purposes of reproduction, at OPERATOR'S option. CITY shall provide a receipt for any original records removed from OPERATOR'S place of business.

20. Sale/Transfer of OPERATOR. The sale and/or transfer of a majority interest in OPERATOR shall immediately terminate this Agreement unless otherwise agreed in writing by the CITY. The individual or entity that acquires the interest must apply for a new franchise and service agreement as the new entity.

21. Compliance with Law. The OPERATOR 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. OPERATOR 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.

21.1. Convictions. Any felony conviction of an owner of OPERATOR for stolen or embezzled vehicles, fraud related to the towing business, or stolen property shall be cause for termination of the Agreement.

22. Suspension. CITY may suspend OPERATOR from this Agreement, precluding it from being included on the Rotation Tow Program List, for any violation of this Agreement. The suspension shall last for the term listed in this Agreement for specified violations. For unspecified violations, CITY may suspend OPERATOR for the amount of

time, in its discretion, CITY deems necessary to bring about proper compliance with the terms of this Agreement. CITY shall have the right to control the timing of suspensions to ensure adequate service levels.

22.1 Reserved Rights. Notwithstanding any other provisions of this Agreement, should suspensions or terminations lead to a situation in which less than three (3) OPERATORS are on the List, CITY reserves the right to contract with other parties in order to maintain no more than four (4) operators to provide services under this Agreement.

23. Termination Upon Default. This Agreement may be terminated prior to the expiration of the term of this Agreement as follows:

23.1. Event of Default. Each of the following shall constitute an Event of Default ("Event of Default") hereunder:

23.1.1. Material Breach. Failure to perform any material obligation under this Agreement.

23.1.2. Repeated Pattern of Breaches. A pattern of breaches over time such that in combination, they constitute a significant failure by OPERATOR to perform its obligations.

23.1.3. Misrepresentation or False Warranty. Any representation, disclosure, assurance or warranty made to CITY by OPERATOR in connection with, or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement, or that is a condition to the effectiveness of the Agreement, that proves to be false or misleading in any material respect as of the time the representation, disclosure, assurance, or warranty.

23.1.4. OPERATOR Debt. OPERATOR files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of, or taking of possession by, a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to OPERATOR or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of OPERATOR or a part of OPERATOR'S operating assets or any substantial part of OPERATOR'S property, or shall make any general assignment for the benefit of OPERATOR'S creditors, or shall become insolvent and unable to pay its debts generally as they become due.

23.1.5. Court Order or Decree. Any court having jurisdiction enters a decree or order for relief in respect of OPERATOR, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now

or hereafter in effect, or OPERATOR shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of OPERATOR or for any part of OPERATOR'S operating equipment or assets, or order the winding up or liquidation of the affairs of OPERATOR.

23.1.6. Cessation of Services. OPERATOR ceases to provide services as required under this Agreement for a period of five (5) consecutive days or more, for any reason within the control of OPERATOR. In the event of a labor dispute, strike or slow down the period shall be seven (7) consecutive days.

23.1.7. Failure to Meet Payment or Reporting Requirements. OPERATOR fails to make any payment of any sum owed to CITY required under this Agreement and/or refuses to provide CITY with required information, reports, and/or records in a timely manner as provided for in the Agreement.

23.1.8. Assignment. OPERATOR assigns or attempts to assign this Agreement without CITY approval.

23.2. Termination. Unless otherwise provided for in this Agreement, CITY shall have the right to terminate this Agreement upon an Event of Default by giving a written notice of default and termination to the OPERATOR. In the Event of Default set forth in subsections 23.1.1 to 23.1.3, OPERATOR shall have thirty (30) days from the date of the notice to correct any default or failure to perform. In the Event of Default set forth in subsections 23.1.4 to 23.1.7, OPERATOR shall have five (5) days from the date of the notice to correct any default or failure to perform. The decision as to whether or not there exists a default or failure to perform, or whether OPERATOR has satisfactorily corrected any default or failure to perform shall be solely that of CITY. The Agreement shall be terminated at the end of the applicable period to correct without further notice or action of the CITY unless the CITY determines and notifies the OPERATOR in writing that the default or failure to perform has been corrected.

23.3 Waiver. A waiver by CITY of any breach or default by OPERATOR shall not be deemed to be waiver of any other breach or default by OPERATOR, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance by CITY of any damages or other money paid by OPERATOR hereunder shall not be deemed to be a waiver by CITY of any preexisting or concurrent breach or default by OPERATOR.

23.4 Appeal. OPERATOR has the right to appeal any suspension or termination of this agreement or any administrative decision affecting this

agreement. OPERATOR shall use the appellate procedure set forth in Chapter 1.20 of the Morgan Hill Municipal Code. The department head referenced in Section 1.20.020 shall be the Chief of Police.

24. 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 OPERATOR is as follows:

Dick's Automotive Transport, Inc., dba Community Towing
16360 Monterey Road, Unit 230
Morgan Hill, CA 95037

Address of CITY is as follows:

Chief of Police	with a copy to:
City of Morgan Hill	City Clerk
16200 Vineyard Boulevard	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

25. Independent Contractor. OPERATOR is an independent contractor and not an agent or employee of CITY.

26. Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and OPERATOR.

27. 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.

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

29. Conflict of Interest and Reporting. OPERATOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

30. Licenses, Permits, and Fees. OPERATOR shall obtain a City of Morgan Hill Business License, all permits, and licenses as may be required by this Agreement.

31. Time of Essence. Time is of the essence in the performance of this Agreement.

32. Limitations Upon Subcontracting and Assignment. Neither this Agreement nor any portion shall be assigned by OPERATOR, without prior written consent of CITY.

33. **Governing Law and Venue.** 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 Santa Clara County Superior Court.

34. **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.

35. **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.

[Signatures on Next Page]

36. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute 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:

Dick's Automotive Transport, Inc., dba
Community Towing

City Attorney

By: **RON SGARLATO**

Donald A. Larkin
Print Name

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

Date: _____

Date: **3/26/18**

By:

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

Date: _____

FRANCHISE AND SERVICE AGREEMENT FOR VEHICLE TOW, STORAGE AND RELEASE SERVICES

This Franchise and Service Agreement ("Agreement") is effective as of _____, 2018 ("Effective Date") between the City of Morgan Hill ("CITY"), and California Tow & Salvage, Inc., ("OPERATOR").

R E C I T A L S

1. CITY requires services for the towing, storage and release of vehicles impounded pursuant to the California Vehicle Code ("Program") in the exercise of its police powers as necessary or appropriate for the general welfare of its citizens.
2. Chapter 5.52 (Tow Car Services) of the Morgan Hill Municipal Code ("Ordinance") provides for the operation of a rotational tow program for Police-Generated Tows under the Program with tow car services that enter into franchise agreements with the CITY.
3. OPERATOR is a tow car service and desires to offer vehicle storage services, including storage facilities and vehicle release or lien sale services under the Program.
4. Under California Vehicle Code Section 22850.5, the City may recover administration and other costs in the staffing, administration, and operation of the Program.
5. The Ordinances authorizes franchise agreements for Police-Generated Tows, as defined in Section 3 of this Agreement, pursuant to the authority of California Vehicle Code 12110.
6. On _____, the City Council of the CITY directed the City Manager to execute new agreements to modify the Previous Agreement and to continue the tow program with the OPERATOR.
7. This service will be provided on a rotating basis with other similarly qualified OPERATORS who have been granted franchises by CITY.
8. In consideration of OPERATOR'S promise to be available to provide the services as set forth herein, and abide by the terms of this Agreement; the CITY agrees to allow OPERATOR to provide vehicle storage services under the Program and grants OPERATOR a franchise to perform Police-Generated Tows within the City of Morgan Hill.
9. The parties have negotiated the terms pursuant to which OPERATOR will provide such services and have herein reduced such terms to writing.

TOW SERVICE AGREEMENT

NOW, THEREFORE, CITY and OPERATOR, in consideration of the mutual promises set forth herein, hereby agree as follows:

1. **Effectiveness of Agreement.** Subject to Operator's full performance of its obligations under the Previous Agreement, this Agreement shall commence on the Effective Date and shall terminate on June 30, 2020, unless terminated sooner by CITY in accordance with the terms of this Agreement.
2. **Exclusivity of Agreement.** CITY agrees to limit tow car services for the Program and franchises to perform Police-Generated Tows to the two (2) named OPERATORS below:
 - California Tow & Salvage, Inc.
 - Community Towing

CITY'S agreement in this paragraph is conditioned upon compliance of both OPERATORS with the terms of this Agreement and is subject to the limitation of Section 22.1.

3. **Scope of Service.** The services to be performed by OPERATOR shall be:

3.1 **Police-Generated Tows.** OPERATOR shall be responsible for responding to any tow requested by the City of Morgan Hill Police Department in the course of official police activities for which a California Highway Patrol Form 180 is issued. Such requests include, but are not limited to, the tow of a vehicle that is subject to impound under the Program, driven by a driver who is arrested, detained, incapacitated or physically unable to drive the vehicle, involved in a traffic collision or accident, or abandoned and subject to towing under the Vehicle Code or Morgan Hill Municipal Code ("Police-Generated Tows").

3.2 **Vehicle Storage Services.** OPERATOR shall be responsible for the provision of vehicle storage services; including storage facilities, releasing vehicles and personal property from stored vehicles, and conducting lien sale services under the Program.

3.3 **Limitations.** Except for owners of vehicles subject to a Mandatory Tow, owners of vehicles subject to a Police-Generated Tow may choose to use and negotiate the services of a tow operator or storage provider other than the operators listed in Section 2 of this Agreement. "Mandatory Tow" shall mean a tow of a vehicle that is subject to impound or storage under the Program, driven by a driver who is arrested, or detained, or abandoned and subject to towing under any applicable law.

4. **Rotation Tow Program: Conditions and Regulations.** The CITY shall maintain a list of all OPERATORS in the Rotation Tow Program as defined in Morgan Hill Municipal Code Section 5.52.010(B) ("List"). The List will govern which OPERATOR will respond to dispatches for police-generated tows, and the order of dispatch.

4.1. Hours of Operation. OPERATOR agrees to provide tow service on a twenty-four (24) hour basis, seven (7) days per week, including holidays, without extra charge.

4.2. Requirements. OPERATOR is responsible for providing prompt service, removal of any vehicle regardless of age or condition, and clearing an accident scene as further described in Section 6.10.

4.3. City Sole Dispatcher. Only the CITY shall dispatch an OPERATOR to provide services covered by this Agreement.

4.4. Notice of Unavailability. OPERATOR shall inform the Morgan Hill Police Department Communications Center ("Communication Center") of any temporary unavailability due to staffing or equipment limitations. OPERATOR will be skipped in the call rotation until OPERATOR informs the Communications Center of their renewed availability.

4.5. Refusal or Failure to Respond. OPERATOR shall accept any and all requests for service unless OPERATOR has informed the Communications Center of its unavailability. An OPERATOR who refuses/fails to respond (including circumstances described in Section 6.2) shall be suspended from the List for twenty-four (24) hours. An OPERATOR that repeatedly (more than 3 times) fails to respond in any thirty (30) day period shall be suspended for one (1) month from the List and subject to possible termination of this Agreement at the discretion of the CITY.

4.6. List Rotation. A call to an OPERATOR shall constitute one turn on the List and the OPERATOR shall then be moved to the bottom of the list. Telephone answering services of OPERATOR are deemed agents of OPERATOR and are required to comply with all provisions of this Agreement.

The CITY shall call the next OPERATOR on the List when an OPERATOR:

- fails to answer the phone
- is unable to provide a service
- is unable to respond
- is canceled due to excessive response time or refuses to provide service or respond.

4.7. Storage Space. An OPERATOR unable to provide storage space in response to a call will be suspended from the List for twenty-four (24) hours or until storage space is made available, whichever is greater.

4.8. Cancelled Calls. When the CITY determines that the OPERATOR dispatched is not needed or the call is canceled by the CITY or the vehicle's registered owner or agent prior to the OPERATOR taking possession of the vehicle, there shall be no charge and the OPERATOR shall be placed back at the top of the List.

4.8.1. Pursuant to California Civil Code Section 3068.1(a), possession is deemed to arise when the vehicle is removed and is in transit or vehicle recovery operations or load salvage operations have begun.

4.9. Cancelled Rate. If OPERATOR has taken possession of the vehicle and service is canceled by the vehicle's owner or agent, charges shall not exceed one half of the regular towing charge for the actual time expended on the call.

4.10. Multiple OPERATORS. If two or more OPERATORS are required at the same incident, CITY, through its Police Department designee, shall have the discretion to assign OPERATORS to the vehicles to be towed.

4.11. Police Direction. CITY, through its Police Department designee, may direct an OPERATOR to move vehicles to help clear a roadway or for lifesaving operations. OPERATORS shall provide the requested assistance at no charge.

4.12. Specific Request. Nothing in this Agreement shall prohibit CITY, through its Police Department designee, from requesting the next OPERATOR on the List when the necessary resources to clear a hazard are not available from the OPERATOR currently at the top of the List. If no OPERATORS on the List have the resources to respond to an incident, CITY may dispatch a tow company outside of the List rotation to respond to that incident.

4.13. Collection of Payment. The OPERATOR shall be responsible for the collection of payment of any charge for services rendered. Requests for payments shall be made to the owner of the vehicle or other lawful claimant, and no cost or expense or any part thereof shall be charged against the CITY.

5. Tow Drivers: Rules and Regulations. All tow truck drivers employed by OPERATOR ("Driver(s)") shall attend and successfully pass, a certified tow truck driver training course meeting the requirements of the California Highway Patrol. The CITY may waive this requirement for a period of up to six months in instances where a company has no Drivers who have completed a certified tow truck driver-training course and the lack of training is due to a loss of trained employees. OPERATOR shall ensure that Drivers responding to calls have completed a certified tow truck drivers training

course and are qualified and competent employees of OPERATOR. Drivers shall be at least 18 years old and possess the following minimum Class Driver's License:

- Class A Tow Truck - Valid Class C (3) license or A (1) license with valid medical certificate.
- Class B/C/D Tow Truck - Valid Class A (1) license with valid medical certificate, endorsed to allow operation of special vehicle configurations and/or special cargoes.

5.1. List of Drivers. The OPERATOR shall maintain a current list of Drivers and provide the list to the CITY.

5.1.1 OPERATOR shall notify the CITY within seven (7) days of any hiring of new Drivers or termination of current Drivers.

5.1.2 The OPERATOR shall provide a copy of the certified tow truck drivers training certificate to the CITY within thirty (30) days of any hiring of new Drivers or termination of current Drivers.

5.2. Required Driver Information. The OPERATOR, shall as a minimum, maintain the following information for each Driver: Full Name, Date of Birth, California Driver License Number, Copy of valid medical certificate, Job Title/Description, Current Home Address, Current Home Phone Number, Types of trucks the Driver is trained and instructed to operate, and a copy of the tow truck driver training course certificate.

5.3. EPN Program. All Drivers shall be enrolled in the Employer Pull Notice Program (EPN) with the Department of Motor Vehicles. The OPERATOR shall provide a copy of the current EPN Program report, or in the case of a newly hired Driver, proof of enrollment in the EPN Program.

- Upon the addition of new Drivers, OPERATOR will be granted a maximum of 30 days to enroll Drivers in the Pull Notice Program.
- Pull Notices shall be kept on file, signed, and dated by OPERATOR.

5.4. Background Checks. All Drivers will be fingerprinted as part of the background check process. Drivers will not be eligible to drive for the CITY until the fingerprinting has been completed and proof has been provided to the CITY. Drivers may operate in a "trainee" status with a certified driver pending the return of the results of the fingerprint check. Drivers found to have convictions for any of the violations specified in Vehicle Code Section 13377(a) shall not be permitted to drive a tow truck for an OPERATOR while providing services pursuant to this Agreement.

5.5. Uniforms. Drivers of OPERATOR shall wear an identifiable uniform displaying both the OPERATOR and Driver's name. All Drivers shall wear the federally mandated traffic safety vests or reflectorized uniform shirts.

5.6. Identification Badges. Drivers shall carry an identification badge at all times which displays a photograph of the Driver and signature. The identification badge shall be presented upon demand to the person(s) for whom the services are offered or any Police Officer.

5.6. Personal Appearance. Drivers shall represent a professional image. An unacceptable representation would include: unbathed, excessively dirty/torn uniform, excessive or offensive body art or piercings.

5.7. Demeanor and Conduct. While providing services for CITY, the OPERATOR or Driver shall refrain from any acts of misconduct including, but not limited to any of the following behavior:

- Rude or discourteous
- Lack of Service, selective service or refusal to provide service which the Operator is capable of performing.
- Any act of sexual harassment or sexual impropriety.
- Unsafe driving practices.
- Exhibiting any objective symptoms of alcohol or drug use.
- Appearing at the scene of a CITY rotation tow call with the odor of an alcoholic beverage emitting from his/her breath. The Driver shall submit to a preliminary alcohol screening test upon demand of the CITY if an odor of an alcoholic beverage is detected.

5.8 Violations. Any violations of the Driver rules and regulation shall result in a one (1) week suspension of OPERATOR from the List. Any safety related violation shall be governed by Section 23, with penalty up to and including termination of this Agreement.

6. Response To Calls.

6.1. Response Time. The OPERATOR shall respond to calls twenty-four (24) hours a day, seven (7) days a week, within the response time of twenty (20) minutes during the Operator's office business hours (which shall be at least from 8a.m. to 5p.m. seven (7) days a week), and of thirty (30) minutes during all other times. At the time of notification the OPERATOR will advise the Communication Center when the OPERATOR is unable either to respond or to meet the response time.

6.1.1 The maximum response time may be adjusted based on a variety of factors, including location. Such adjustments are in the sole discretion of CITY, through its Police Department designee.

6.2. Inability to Respond. If, after accepting the call, the OPERATOR is unable to respond or will be delayed in responding, the OPERATOR shall immediately notify the Communications Center.

6.3. Response Requirements. An appropriately licensed Driver shall respond with a properly equipped tow truck of the class required to tow the vehicle and be in possession of the appropriate license and endorsements.

6.4. Failure to Respond. A failure to adequately respond to calls, and/or repeated (more than 3 times) failures to meet the response time requirements in any thirty (30) day period, shall result in a one (1) month suspension from the List and possible termination of this Agreement at the discretion of the CITY.

6.5. Notice of Scheduled Unavailability. When an OPERATOR will be temporarily unavailable to provide services due to a pre-planned or scheduled activity, the OPERATOR shall notify the CITY at least 24 hours prior to the date that services will be unavailable, noting the times and dates of the unavailability.

6.6. Appropriate Personnel. Only Drivers and equipment requested shall respond to a CITY rotation tow call, no other persons shall accompany Driver.

6.7. Requests for Assistance. There may be times when the OPERATOR assigned the initial call may require additional assistance. The OPERATOR may make a request for additional assistance to the Morgan Hill Police Officer managing the scene. Dispatch of assistance will be determined by the List.

6.8. CITY Assistance. When an OPERATOR who was not called to a scene comes upon a collision scene where a vehicle or vehicles are blocking a roadway, a Morgan Hill Police Officer may request OPERATOR'S assistance in clearing the roadway. In such a case, the OPERATOR may be requested to move the vehicle to a safe location, and leave it. There shall be no charge for this assistance. The assistance provided shall not change the OPERATOR'S place in the List rotation.

6.9. Disputes. If the OPERATOR questions or disputes the List rotation, the OPERATOR shall not contact the Communications Center. All questions and disputes shall be referred in writing to the Field Operations Captain ("Captain") during business hours, Monday through Friday, excluding holidays.

6.10. Scene Cleanup. It shall be the responsibility of the Driver to remove or clean from the scene of the collision any non-hazardous liquid, glass, or debris from the scene excluding flammable substances. Failure to do so will result in a request for the Driver to return to the scene to complete the clean-up. Repeated complaints (more than 3 times) that the OPERATOR'S Drivers have failed to comply with this section shall result in a one (1) month suspension of OPERATOR

from the List and possible termination of this agreement at the discretion of the CITY.

7. Tow Truck Requirements

7.1. Adequate Vehicles. OPERATOR must provide an adequate number of tow trucks dedicated to servicing the towing needs of the CITY.

7.2. Vehicle Equipment and Maintenance. OPERATOR shall equip and maintain tow trucks covered under this Agreement in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the conditions of this Agreement, and in a manner consistent with industry standards and practices.

7.3. Proof of Inspection. OPERATOR has, and shall maintain, proof that all service vehicles have been inspected by and meet California Highway Patrol standards.

7.4. Violations. A violation of the Gross Vehicle Weight Rating ("GVWR") and safe loading requirements of a tow truck shall result in the immediate suspension of OPERATOR from the List. The suspension shall remain in effect until CITY has conducted an inspection and concluded that OPERATOR is in compliance. Such violations may include exceeding the tow truck's GVWR, any axle weight rating, maximum tire weight ratings, or not maintaining fifty (50) percent of the tow truck's unladen front axle weight on the front axle when towing.

8. Rates. Rates charged under the Program and for all Police-Generated Tows shall be reasonable, valid and not in excess of those rates established by the CITY as follows:

- Maximum charge for automobiles of **Two Hundred Twenty-Five Dollars (\$225.00)** per hour per CITY Police-Generated Tow (inclusive of any drop, hourly or other rates)
- Maximum charge for automobiles of **One Hundred Dollars (\$100.00)** per day for storage under the Program
- Lien fees shall not exceed the limits of the California Vehicle Code
- After hour gate fees are set at a maximum of **One Hundred Twelve and 50/100 Dollars (\$112.50)**
- No other charges are permitted without prior authorization of CITY.

8.1. Over Charges. Any OPERATOR who charges rates above the maximum rates shall be suspended from the List for seventy-two (72) hours and shall refund any amounts received in excess of the maximum rates.

8.2. Rates Kept in Vehicle. The approved schedule of rates shall be kept in OPERATOR'S vehicle and presented upon demand to the person(s) for whom the services are being provided, or their agents.

8.3 Extraordinary Circumstances. "Extraordinary Circumstances" shall encompass the following situations: 1) a tow response requiring towing a heavy vehicle requiring use of a tow truck with a 25,000 pound or greater GVWR chassis, 2) retrieval of a vehicle that is completely off of the roadway, or 3) where the Captain issues a written certification of Extraordinary Circumstances. In only these Extraordinary Circumstances may OPERATOR deviate from the maximum charges specified in this section and charge an hourly rate of no more than \$225 for the duration of the call. Revenues derived from any Extraordinary Circumstances tows shall be subject to payment to City pursuant to Section 11.

9. Impound Storage Fees. The maximum charge for automobiles is One Hundred Dollars (\$100.00) per day for storage of police directed impounds under the Program. The charge applies to all police directed impounds, including but not limited to, the following violations of the California Vehicle Code:

- Section 14602.6 - unlicensed Drivers
- Section 14602.7 - vehicles used in flight from a police officer
- Section 14602.8 - certain repeat offenses of DUI
- Section 23103(a) & (b) - reckless driving
- Section 23109(a) - vehicles used in speed contests
- Section 23109(c) - exhibition of speed

9.1. Posting of Fees. Pursuant to Civil Code Section 3070, the OPERATOR shall display in plain view at all cashiers' stations a sign disclosing all storage fees and charges in force, including the maximum storage rate.

9.2. Less than 24 Hours. Pursuant to Civil Code Section 3068.1(a), owners of vehicles stored twenty-four (24) hours or less shall be charged no more than one day of storage.

9.3. Portions of Day. Pursuant to Civil Code Section 3068.1(a), if the vehicle is released from storage after twenty-four (24) hours, charges may be allowed on a full, calendar-day basis for each day of storage, or portion thereof.

10. Compliance with Municipal Code. OPERATOR acknowledges that the services to be performed under this Agreement are a municipal affair and subject to the provisions of Morgan Hill Municipal Code Chapter 5.52, which is incorporated herein by reference as though fully set forth herein. OPERATOR agrees to and shall abide by all requirements of Chapter 5.52 as the same may be amended from time to time.

11. Franchise and Administrative Fees. OPERATOR shall pay to CITY the following franchise and administrative fees:

11.1. Per Tow Franchise Fee. OPERATORS shall pay to the CITY One Hundred Twenty-Eight Dollars (\$128.00) per vehicle tow performed by OPERATOR pursuant to this Agreement, including all Police-Generated Tows ("Per Tow Fee").

11.2 Impound Program. Should the 30 day holds specified in Section 9 be held unconstitutional by a court of competent jurisdiction, CITY and OPERATOR shall negotiate in good faith new terms.

12. Franchise and Administrative Fees Payment.

12.1. Time of Payment. On or before the fifteenth (15th) day of each month, OPERATOR shall pay to CITY the Per Tow Fees for vehicle tows for the preceding month.

12.2 Supporting Documentation. The Tow Fee Payment shall be accompanied by an accounting in sufficient detail to fully document how the Per Tow Fees due were calculated. OPERATOR agrees to supply any additional supporting documentation requested by CITY. The required documentation and retention schedule is detailed in Section 19.

12.3. Late Fee. Failure to remit the Per Tow Fees to CITY when due shall result in the imposition of a late fee of five-percent (5%) per month until paid. If the Operator fails to pay the fee for more than (90) ninety days after the due date, the City shall have the option to suspend OPERATOR from the List until the fee is paid or, in the CITY'S discretion, to terminate this Agreement.

12.4. OPERATOR shall pay all required franchise and administrative fees to:

City of Morgan Hill Police Department
16200 Vineyard Blvd.
Morgan Hill, CA. 95037
Attn. Patti Yinger

13. Storage Facility. The OPERATOR shall maintain a storage facility ("facility") located within five (5) miles of the City limits of Morgan Hill. The facility shall have an office and be staffed during business hours (8:00 a.m. to 5:00 p.m. Monday through Friday). Facility employees shall be trained to conduct business transactions related to towing, storage and release of vehicles and property. All payments, releases and other transactions related to vehicles towed and stored under this Agreement shall be conducted at the facility where the subject vehicle is stored. All storage facilities of OPERATOR shall offer the same payment options, regardless of location. Any change in the location of the facility shall have the prior written approval of the CITY.

13.1. Responsibility for Vehicles. OPERATOR shall be solely responsible for the safe storage of vehicles and all personal property inside stored vehicles.

13.2. Security. The OPERATOR shall provide security for vehicles and property at the facility. The OPERATOR is responsible for the care, custody, and control of any property contained in towed or stored vehicles. Either a fenced or a closed area for storage shall be used. The area shall be sufficiently secure to discourage trespassers and have sufficient lighting so as to make visible any person(s) within the area during the nighttime. NO WAIVER, HOLD HARMLESS AGREEMENT, OR OTHER SIMILAR RELEASE AND/OR INDEMNIFICATION AGREEMENT SHALL BE REQUIRED BY OPERATOR AS A CONDITION TO THE RELEASE OF A VEHICLE TOWED TO AND STORED AT THE STORAGE FACILITY.

13.3. Storage Space. The OPERATOR'S facility shall have adequate storage space to accommodate vehicles stored under this Agreement.

13.4. Protective Storage of Vehicles. Vehicles with open windows, roofs (excluding vehicles with major damages from collisions), shall be stored inside to protect the interior of the vehicles from adverse weather conditions. If there is no inside storage available, the vehicle shall be covered with a tarp.

13.5. Shared Facilities. Facilities shared by OPERATORS or other business establishments not owned by the OPERATOR shall be physically separated and secured from each other.

13.6. Business Hours and Signage. For the purpose of this Agreement, normal business hours shall not be less than 8 a.m. to 5 p.m., Monday through Friday, except for state recognized holidays. OPERATOR'S facility shall have a sign clearly visible from the street and illuminated at night that identifies it to the public as a towing storage facility and posts OPERATOR'S business hours.

13.6.1 OPERATOR shall display a telephone number in plain view on the sign which, upon calling, will result in a response within thirty (30) minutes for after hours release of a vehicle.

13.6.2 OPERATOR shall not display any sign or engage in any advertising indicating an official or unofficial connection with CITY.

14. Release of Personal Property. Pursuant to California Vehicle Code Section 22851(b), the OPERATOR shall release personal property from the vehicle to the vehicle's owner or their agent upon demand. No property shall be released to anyone other than the registered owner without written, signed authorization from the registered owner. No fee shall be charged for the release of personal property during normal business hours.

14.1. After Hour Fee. The maximum charge for a non-business hour's release of personal property shall be **One Hundred Twelve and 50/100 Dollars** (\$112.50), or less, in accordance with the Vehicle Code.

14.2. Written Release. At no time will any property be released or removed from a vehicle seized and ordered held by a peace officer without the proper written release from the Morgan Hill Police Department.

14.3. Receipt. A receipt shall be provided for the removed property, with a copy placed in the stored vehicle. This procedure shall also apply to the removal of property by OPERATOR to a secured area within the facility.

15. Release of Vehicles. OPERATOR shall release impounded or stored vehicles provided that OPERATOR: (a) receives all applicable fees due it from the registered owner or owner's authorized agent and (b) only upon written authorization from the Morgan Hill Police Department.

15.1. After Hour Release. An employee of OPERATOR shall be available to release stored vehicles within sixty (60) minutes after notification on a twenty-four (24) hour basis, seven (7) days per week, including holidays.

15.2. Titled Signed Over. In the event the registered owner of an impounded vehicle signs over the title of the vehicle to the OPERATOR in lieu of towing and storage fees, the OPERATOR shall keep the vehicle in impound for the remainder of the impound period. At the end of the impound period the OPERATOR will be required to obtain a "no fee" release from the CITY in order to take full custody of the vehicle.

16. Insurance Requirements. OPERATOR 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 OPERATOR, 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. Any deductibles or self-insured retentions must be declared to and approved 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.** OPERATOR further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to OPERATOR, at any time as deemed necessary to protect the interests of the CITY.

16.1. **Insurance Types and Amounts.**

16.1.1 **Commercial General Liability (CGL).** OPERATOR 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 OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

16.1.2 **Garagekeepers:** OPERATOR shall maintain Garagekeepers insurance covering all owned and non-owned automobiles, including automobile parts and equipment, in OPERATOR'S care, custody or control against claims and liabilities for damage, theft, or loss in the minimum amount of: (i) one hundred thousand dollars (\$100,000.00) or (ii) the maximum amount of such insurance available to OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Such insurance shall be primary over any other insurance.

16.1.3 **Automobile Liability.** OPERATOR shall maintain Automobile Liability covering all owned, non-owned and hired automobiles 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 OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

16.1.4 **Workers' Compensation Insurance and Employer's Liability.** OPERATOR 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 OPERATOR under OPERATOR'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If OPERATOR is self-insured, OPERATOR shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

16.2.1 **General Liability.**

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

16.2.1.2 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,

16.2.1.3 insurance shall be primary non-contributing.

16.2.2 **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.

16.3 **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.

16.4 **Certificates.** OPERATOR 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 OPERATOR'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

17. Defense and Indemnification.

17.1. Defense and Indemnification. The OPERATOR agrees to indemnify and hold harmless the CITY, its officers, agents and employees ("INDEMNITEES") from any and all liability, including defense costs, attorneys' fees, and all other fees incidental to the defense, loss, or damage the CITY may suffer as a result of any and all suits, claims, demands, costs, or judgments against the CITY arising from the acts or failure to act of the OPERATOR, its officers, employees and/or agents resulting from OPERATOR's implementation and performance of this Agreement ("CLAIM").

17.2. Independent Counsel. CITY reserves the right to select legal counsel and control the defense of any CLAIMS which come within OPERATOR'S obligation to indemnify, defend and hold harmless the INDEMNITEES.

17.3. 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 OPERATOR.

18. Inspections.

18.1. Tow Trucks. CITY shall have the right to inspect all tow trucks annually. At the written request of the OPERATOR, the CITY will inspect a tow truck within seven (7) calendar days of the request unless urgent attention is warranted. The CITY, through its Police Department designee, may conduct additional inspections without notice to the OPERATOR during business hours. The OPERATOR shall use only tow trucks that have been inspected and approved by the CITY.

18.2. Storage Facility. The City may inspect OPERATOR'S storage facility at any time during normal business hours without notice. The purpose of such inspections is to ensure that the OPERATOR is providing a reasonably safe and clean facility in which vehicles are stored and where contact with the public occurs. The CITY may determine what is reasonably safe and clean. Failure to maintain the facility at a minimum level of cleanliness or failure to provide a safe environment shall result in a seventy-two (72) hour suspension from the List.

19. Business Records.

19.1. Service Records. OPERATOR shall maintain records, including but not limited to invoices, pertaining to all services provided pursuant to the Agreement for a period of at least three (3) years. The records shall be maintained at the OPERATOR'S place of business. Police-Generated Tow records shall include a

description of each vehicle towed, nature of service performed, beginning and end time of call, location of call, itemized cost of towing and storage, the tow truck driver's name, and truck used. OPERATOR shall retain records on all impounds under the Program, including vehicle descriptions, length of vehicle impound, and final disposition of impounded vehicles. OPERATOR shall maintain these records, and any other records requested by CITY, with sufficient detail to fully document how the quarterly franchise and administrative fees are calculated.

19.2. Other Required Records. OPERATOR shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, federal, state and local licensing, and other records, relating to the Operator's lawful performance of this Agreement.

19.3. Inspection of Records. CITY may inspect all OPERATOR records set forth in Sections 19.1 and 19.2 with at least three (3) day notice during OPERATOR'S regular business hours. Failure of OPERATOR to comply with this requirement will result in suspension of OPERATOR from the List for two (2) weeks.

19.4. Copies of Records. OPERATOR shall permit CITY to make copies of business records at OPERATOR'S place of business, or to remove business records for the purposes of reproduction, at OPERATOR'S option. CITY shall provide a receipt for any original records removed from OPERATOR'S place of business.

20. **Sale/Transfer of OPERATOR.** The sale and/or transfer of a majority interest in OPERATOR shall immediately terminate this Agreement unless otherwise agreed in writing by the CITY. The individual or entity that acquires the interest must apply for a new franchise and service agreement as the new entity.

21. **Compliance with Law.** The OPERATOR 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. OPERATOR 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.

21.1. Convictions. Any felony conviction of an owner of OPERATOR for stolen or embezzled vehicles, fraud related to the towing business, or stolen property shall be cause for termination of the Agreement.

22. **Suspension.** CITY may suspend OPERATOR from this Agreement, precluding it from being included on the Rotation Tow Program List, for any violation of this Agreement. The suspension shall last for the term listed in this Agreement for specified violations. For unspecified violations, CITY may suspend OPERATOR for the amount of

time, in its discretion, CITY deems necessary to bring about proper compliance with the terms of this Agreement. CITY shall have the right to control the timing of suspensions to ensure adequate service levels.

22.1 Reserved Rights. Notwithstanding any other provisions of this Agreement, should suspensions or terminations lead to a situation in which less than three (3) OPERATORS are on the List, CITY reserves the right to contract with other parties in order to maintain no more than four (4) operators to provide services under this Agreement.

23. Termination Upon Default. This Agreement may be terminated prior to the expiration of the term of this Agreement as follows:

23.1. Event of Default. Each of the following shall constitute an Event of Default ("Event of Default") hereunder:

23.1.1. Material Breach. Failure to perform any material obligation under this Agreement.

23.1.2. Repeated Pattern of Breaches. A pattern of breaches over time such that in combination, they constitute a significant failure by OPERATOR to perform its obligations.

23.1.3. Misrepresentation or False Warranty. Any representation, disclosure, assurance or warranty made to CITY by OPERATOR in connection with, or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement, or that is a condition to the effectiveness of the Agreement, that proves to be false or misleading in any material respect as of the time the representation, disclosure, assurance, or warranty.

23.1.4. OPERATOR Debt. OPERATOR files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of, or taking of possession by, a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to OPERATOR or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of OPERATOR or a part of OPERATOR'S operating assets or any substantial part of OPERATOR'S property, or shall make any general assignment for the benefit of OPERATOR'S creditors, or shall become insolvent and unable to pay its debts generally as they become due.

23.1.5. Court Order or Decree. Any court having jurisdiction enters a decree or order for relief in respect of OPERATOR, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now

or hereafter in effect, or OPERATOR shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of OPERATOR or for any part of OPERATOR'S operating equipment or assets, or order the winding up or liquidation of the affairs of OPERATOR.

23.1.6. Cessation of Services. OPERATOR ceases to provide services as required under this Agreement for a period of five (5) consecutive days or more, for any reason within the control of OPERATOR. In the event of a labor dispute, strike or slow down the period shall be seven (7) consecutive days.

23.1.7. Failure to Meet Payment or Reporting Requirements. OPERATOR fails to make any payment of any sum owed to CITY required under this Agreement and/or refuses to provide CITY with required information, reports, and/or records in a timely manner as provided for in the Agreement.

23.1.8. Assignment. OPERATOR assigns or attempts to assign this Agreement without CITY approval.

23.2. Termination. Unless otherwise provided for in this Agreement, CITY shall have the right to terminate this Agreement upon an Event of Default by giving a written notice of default and termination to the OPERATOR. In the Event of Default set forth in subsections 23.1.1 to 23.1.3, OPERATOR shall have thirty (30) days from the date of the notice to correct any default or failure to perform. In the Event of Default set forth in subsections 23.1.4 to 23.1.7, OPERATOR shall have five (5) days from the date of the notice to correct any default or failure to perform. The decision as to whether or not there exists a default or failure to perform, or whether OPERATOR has satisfactorily corrected any default or failure to perform shall be solely that of CITY. The Agreement shall be terminated at the end of the applicable period to correct without further notice or action of the CITY unless the CITY determines and notifies the OPERATOR in writing that the default or failure to perform has been corrected.

23.3 Waiver. A waiver by CITY of any breach or default by OPERATOR shall not be deemed to be waiver of any other breach or default by OPERATOR, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance by CITY of any damages or other money paid by OPERATOR hereunder shall not be deemed to be a waiver by CITY of any preexisting or concurrent breach or default by OPERATOR.

23.4 Appeal. OPERATOR has the right to appeal any suspension or termination of this agreement or any administrative decision affecting this

agreement. OPERATOR shall use the appellate procedure set forth in Chapter 1.20 of the Morgan Hill Municipal Code. The department head referenced in Section 1.20.020 shall be the Chief of Police.

24. 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 OPERATOR is as follows:

California Tow & Salvage, Inc.
18960 N. Monterey Road
Morgan Hill, CA 95037

Address of CITY is as follows:

Chief of Police	with a copy to:
City of Morgan Hill	City Clerk
16200 Vineyard Boulevard	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

25. Independent Contractor. OPERATOR is an independent contractor and not an agent or employee of CITY.

26. Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and OPERATOR.

27. 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.

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

29. Conflict of Interest and Reporting. OPERATOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

30. Licenses, Permits, and Fees. OPERATOR shall obtain a City of Morgan Hill Business License, all permits, and licenses as may be required by this Agreement.

31. Time of Essence. Time is of the essence in the performance of this Agreement.

32. Limitations Upon Subcontracting and Assignment. Neither this Agreement nor any portion shall be assigned by OPERATOR, without prior written consent of CITY.

33. **Governing Law and Venue.** 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 Santa Clara County Superior Court.

34. **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.

35. **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.

[Signatures on Next Page]

36. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute 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:

California Tow & Salvage, Inc.

City Attorney

By: Wm. B. Miner Jr.

Donald A. Larkin
Print Name

William B. Miner, Jr.
Print Name and Title of Signer.
If Corporate: Chairman, President
or Vice President

Date: _____

Date: 3/22/18

By: Leslie A. Miner
Leslie A. Miner

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

Date: 3/22/18

Attachment: Tow Agreement signed by California Tow (1665 : Franchise Tow Agreement)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

ACQUISITION OF THE 17760 MCLAUGHLIN COURT BELOW MARKET RATE (BMR) HOME BY THE CITY HOUSING FUND

RECOMMENDATION(S)

Adopt resolution:

1. Authorizing Acquisition of the Moderate, Below Market Rate (BMR) Home located at 17760 McLaughlin Court, Morgan Hill, CA 95037 to re-sell to an income-eligible buyer, preserving the unit within the City's affordable housing inventory and extending the affordability covenants; and
2. Approving an amendment to the City's Fiscal Year 2017-18 budget, appropriating \$564,043 from the Housing Fund (255) for expenses associated with the acquisition and rehabilitation of the home located at 17760 McLaughlin Court.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Regional Initiatives

POLICY CONSIDERATIONS:

The City's primary options are as follows:

1. Allow the Owners to sell the Property at an unrestricted, "market rate" price; whereby the City's Housing Fund will receive "Residual Public Equity", if any, or
2. Purchase the Property for the maximum resale price of Five Hundred Twenty-One Thousand Dollars (\$521,000) and preserve the Below Market Rate (BMR) ownership opportunity (total estimate of \$564,043 with rehabilitation and title and escrow fees).

REPORT NARRATIVE:

Staff requests authority to purchase a 4-bedroom, moderate income affordable home that is currently available as a moderate resale BMR to preserve the home and resell it as a moderate-income home with deed restrictions. The existing owners purchased 17760 McLaughlin Court with a Resale, Refinance & Option to Purchase Agreement by and between the Owners and South County Housing Corporation. Through an assignment of interest, the City of Morgan Hill is the assignee of the rights, duties, and

obligations held by the former South County Housing Corporation under the Restriction Agreement. The Restriction Agreement is valid for a term of forty-five years.

On or about October 2017, the Owners initiated the resale process and on November 1, 2017, Owners signed a 4-month Listing Agreement with HouseKeys Services Corporation, a subsidiary real estate brokerage of HouseKeys, to resell the Property to an income eligible and Qualified Purchaser. The listing agreement to procure a Qualified Purchaser was entered on February 18, 2018 valid through June 30, 2018. HouseKeys has shown the Property to several interested purchasers but has not yet been able to find an eligible buyer.

Some difficulties with the sale have occurred due to an incident in the sale neighborhood. A series of explosions occurred at a neighboring property, 17661 McLaughlin Court, prompting a search of the residence by local police and the Santa Clara County bomb squad. Police discovered a home laboratory used to produce explosives, containing chemicals and other incendiary devices which resulted in the arrest of the homeowner for possession of “bomb-making material or explosive ingredients” and evacuation of the neighborhood while the bomb squad completed its search of the residence. This unusual event is a material fact that requires disclosure to any potential buyer of the Property. While the bomb making material was not found within the BMR unit itself, it was found at the home next door and could be a factor that influences a prospective purchaser’s decision to buy the Property; thus, possibly requiring a little more time to find a buyer and resulting in additional incurred holding costs.

The Owners are anxious to sell and to preserve the affordability, but under the current resale restrictions the City has a limited time to sell or purchase the house. If the property is not sold or required within the specified time, the current owners can sell the property at market rate. HouseKeys would normally purchase the house on the City’s behalf, rehabilitate the unit and resell to a new eligible purchaser. However, due to the required disclosure of the recent police action, the holding period and associated costs for the Property are expected to cause a delay in the sale of the property to a qualified purchaser. HouseKeys is not able to tie up funds for an extended period if the home cannot be immediately resold. The City Council is being requested to step in and purchase the Property through the Housing program. The availability of a four-bedroom, affordable home is highly prized and given the affordability crisis there is no doubt that an eligible buyer will be found. The benefit of using the City’s Housing Program to purchase the house is maintaining a fairly new, 4-bedroom moderate income unit in the portfolio and creating an opportunity to extend the affordability to another family for an additional 45 years. This would be a temporary expenditure of the Housing Fund. Once the house is resold, proceeds will replenish the Housing Fund.

Section 11 of the Restriction Agreement provides that “where the City elects not to exercise its option to purchase, Owners may sell the Property at an unrestricted price where the Owner has made a good faith effort to sell the Property to a Qualified Purchaser but cannot sell the Home to a Qualified Purchaser.”

The maximum restricted resale price, is calculated as Five Hundred Twenty-One Thousand Dollars (\$521,000). The fair market value of the property in November 2017 was estimated at approximately Seven Hundred Ten Thousand Dollars (\$710,000). (This estimate may be impacted by recent neighborhood events.)

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended action.

ALTERNATIVE ACTIONS:

The Council may choose to not purchase the BMR home; thus, allowing it to convert to market rate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None

FISCAL AND RESOURCE IMPACT:

The owners of 17760 McLaughlin Court are anxious to sell their Property and, consistent with program guidelines have made a good faith effort to locate a Qualified Purchaser through HouseKeys. Unfortunately, no buyer has been identified to date and the recent events adjacent to the Property likely will hinder a quick resale in Program. HouseKeys is unable to commit to a “preservation purchase” on this Property due to concerns over the recent events in the neighborhood. The Housing Team is recommending that the City Council authorize the use of Housing Funds 255 to acquire the property for \$521,000, and authorize an additional \$43,043 for rehabilitation work, title and escrow fees, for a total of \$564,043. This is a temporary expenditure of the Housing Fund requiring an amendment to the adopted budget (see attached budget scorecard). Once the house is resold, proceeds will replenish the Housing Fund.

CEQA (California Environmental Quality Act):

Categorical Exemption: This action is exempt under CEQA Guideline 15326, action to implement housing assistance through acquisition of housing units.

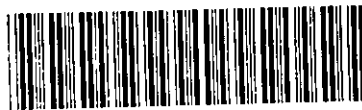
LINKS/ATTACHMENTS:

1. BMR Resale Restrictions McLaughlin
2. McLaughlin Acquisition Resolution
3. budget scorecard

Recording Requested By
First American #4331-754611-012

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

South County Housing Corporation
9015 Murray Avenue, Suite 100
Gilroy, CA 95020
Attention: Executive Director



Fees	118.00
Taxes	
Copies	
AMT PAID	118.00

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
First American Title Company

RDE # 006
3/30/2006
8:00 AM

**NOTICE TO SELLERS, PURCHASERS, LENDERS, TITLE COMPANIES:
THE RECORDED RESTRICTIONS ON THIS PROPERTY REGULATE
AND LIMIT ITS VALUE AND USE FOR FORTY-FIVE (45) YEARS**

The property subject to this Restriction, Refinance and Option to Purchase Agreement (Restrictions) is not a "Market Rate Home". The formula for determining its value is regulated by this Agreement, and failure to comply with these Restrictions is a violation of these restrictions. Affected parties include, but are not limited to, the property Owner, the potential purchaser, lenders, title companies and related businesses and individuals

Providing a sales price level that will continue to be within reach of households not exceeding moderate income was made possible due to financing programs made available by the original non profit project developer, South County Housing. The purpose of the following Resale, Restriction and Option to Purchase Agreement ("Agreement") is to ensure that these homes will be maintained in good condition and will remain affordable for forty-five years to future purchasing households who do not exceed moderate-income.

Please read these Restrictions carefully before selling, purchasing, making a loan secured by the property or insuring the title of the property. If you have any questions, contact South County Housing.

Summary: Resale, Refinance and Option to Purchase Agreement

IMPORTANT NOTICE TO BUYER: You are about to purchase a home that is being made affordable to you. Making the home affordable to low and moderate-income households, such as yours was made possible with the assistance of public and charitable funds. The purpose of the following Resale, Refinance and Option to Purchase Agreement ("Agreement") is to ensure that homes like yours will be maintained in good condition and remain affordable to future low-income and moderate income home buyers.

The restrictions in this Agreement:

1) Limit the price at which you can sell your home. In other words, if you sell your home, then your profit (equity) will be determined and limited by the controlled "Resale Price" not the market value of comparable homes.

a. The "Resale Price" will be determined by a process described in this Agreement and is different from market value of similar homes that are not restricted by this Agreement.

b. The requirement to transfer ownership at no more than the "Resale Price" remains regardless of whether you pay off any or all of the loans you may have on your home and regardless of who owns it or how many times it is transferred to other owners.

c. The mandatory resale price will be much lower than what your home would sell for if it sold without the limitations contained in this document.

2) Limit your ability to refinance first mortgage loan(s) and borrow against your home.

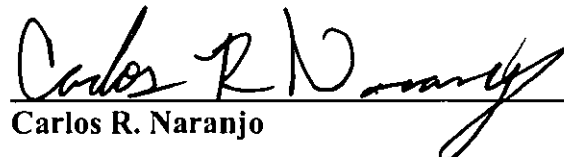
3) Limit your ability to rent out your home.

4) Require you to maintain your home.

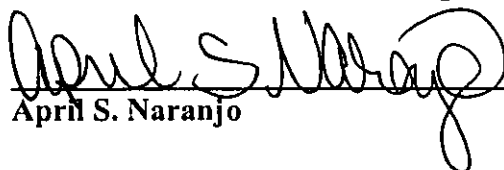
Finally, by signing this Agreement you are giving South County Housing Corporation (the "Corporation") an Option to purchase your home and transfer it to others at the "Resale Price". The purpose of the Option is to facilitate transfer of the home to a qualified low-income or moderate - income buyer. This means that if you decide to sell your home, and the Corporation wants to buy it, you must sell your home to the Corporation and to no one else.

Please read this entire Agreement carefully and ask questions as needed before signing it to be sure you thoroughly understand the restrictions and your obligations.

ACKNOWLEDGMENT UNDER PENALTY OF PERJURY: I/We certify, under penalty of perjury that: (1) I/We have read and had explained to me/us the entire Resale, Refinance and Option to Purchase Agreement prior to signing; and, (2) I/We have had sufficient time to consult my financial, legal or other advisers concerning its contents and terms, and have consulted such advisers to the extent I/We had any uncertainty about its meaning; and, (3) I/We understand and agree to all the terms of the Resale, Refinance and Option to Purchase Agreement and signify that understanding by my/our signature below.


Carlos R. Naranjo

3-23-06
Date


April S. Naranjo

3/23/06
Date

RESALE, REFINANCE AND OPTION TO PURCHASE AGREEMENT

PREAMBLE

This Resale, Refinance and Option to Purchase Agreement (the "Agreement") is entered into as of this 14th day of March, 2006, by and between the South County Housing Corporation, a California nonprofit public benefit corporation and Carlos R. Naranjo and April S. Naranjo (the "Owner").

Recitals below refer to and utilize certain capitalized terms which are defined in Section 1 of this Agreement. The Parties intend to refer to those definitions in conjunction with the use of capitalized terms in these Recitals and throughout this Agreement.

RECITALS

1. The Home, as described in **Attachment 1** is a part of the Morgan Station Development;
2. The Corporation has made it possible for the Owner Qualified Purchaser to purchase a home in the Morgan Station Development at a price that is less than the market value of the home.
3. The Corporation desires to protect its substantial investment and provide for continued long term availability of the Home to low- and moderate-income households for the purpose of home owner occupancy, through resale and refinance controls, through owner occupancy requirements, and through a provision of an Option to Purchase the Home.
4. The Corporation desires to ensure that the long term physical condition and structural integrity of the Home is maintained, through the covenants and restrictions contained in this Agreement that address the long term maintenance of the Home.
5. The Owner has qualified for purchase of the Home with the Owner's combined household income at or below eighty percent (80 %) of median income and both the purchase price and the monthly housing cost have been determined by the Corporation to be at a level that is affordable to low or moderate income home buyers.
6. The Home is being purchased by the Owner with full knowledge of the requirements of this Agreement.
7. This agreement and the accompanying note ("Promissory Note") is secured by a deed of trust recorded against the Home ("Deed of Trust"). This Agreement and the Deed of Trust shall be subordinate to the lien of the Senior Lender Deed of Trust.

Owner acknowledges the public and charitable purpose of the Agreement. Owner further acknowledges that Owner could not purchase this home without assistance from the Corporation in the form of a reduced purchase price. Owner therefore agrees to purchase the Home pursuant

to the requirements of this Agreement and agrees to execute and comply with this Agreement in consideration for being given the opportunity to purchase the Home at a reduced price. Owner agrees that if Owner wishes to sell this Home in the future the Owner has granted to the Corporation or the Corporation's assignee the Option to Purchase the Home at the affordable resale price set by this Agreement.

SECTION 1. DEFINITIONS

The following terms are specially defined for this Agreement:

Affordable Rent shall mean monthly rent that does not exceed the lesser of: (i) one-twelfth of thirty percent (30%) of eighty percent (80%) of Area Median Income (for a household size of 4) (if the Owner is Low Income Household at time of purchase) or one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income (for a household size of 4) (if the Owner is a Moderate Income Household at time of purchase) or (ii) the Owner's monthly cost of principal and interest on the Senior Lender Loan and property insurance and property taxes associated with Property.

Agreement shall mean this Resale, Refinance and Option to Purchase Agreement.

Area Median Income shall mean the yearly median income adjusted for a household size in Santa Clara County, as established by HUD and as updated annually and periodically published by the State of California Department of Housing And Community Development (HCD). As of the date of this Agreement, Area Median Income for a household size of 4 is One Hundred Five Thousand Five Hundred Dollars (\$105,500).

Assignee shall mean the person or persons, governmental agency or nonprofit organization that is assigned the right to purchase the Home by the Corporation.

Buyer – see Qualified Purchaser

City shall mean the City of Morgan Hill, a municipal corporation

Corporation shall mean South County Housing Corporation, a California nonprofit public benefit corporation.

Deed of Trust shall mean the deed of trust which secures this Agreement and the Promissory Note, and which is to be executed by the Owner in favor of the Corporation and recorded at the time of purchase against the title of the Home in the Recorder's Office of the County of Santa Clara, California.

Down payment shall have the meaning set forth in Section 2.

Effective Date shall mean the date of execution of this Agreement.

Eligible Capital Improvement shall mean a single capital improvement made by Owner to the Home which (i) has a depreciated value in excess of one percent (1%) of the Original

Purchase Price shown in Section 2 of this Agreement, (ii) is verified by the Owner as an improvement made since owner acquisition of the Home, (iii) which has a useful life of greater than five (5) years, (iv) which was made with all required building and other governmental approvals, and (vi) was approved by the Corporation prior to improvement being completed.

Escrow shall mean an escrow established with a title company for the purpose of providing title insurance and transferring the title of the property from the Owner to the Corporation or the Assignee.

Excess Rents shall mean those rents paid to the Owner by a lessee that are over and above the Affordable Rent.

Final Sales Price shall mean the Preliminary Sales Price of the Home plus the depreciated value of any Eligible Capital Improvements made by the Owner and less the cost of Repairs (not corrected or performed by Owner), pursuant to Section 8 of this Agreement.

Home shall mean the real property described in **Attachment 1** consisting of one unit in the Morgan Station Development.

Inheriting Owner shall mean the child, sibling or parent of the Owner who shall succeed the Owner's interest and obligations under this Agreement, the Promissory Note and Deed of Trust.

Low Income Household shall mean a household whose annual income does not exceed eighty percent (80%) of Area Median Income.

Market Value shall mean the value of local homes on the open real estate market, and which are similar in size, location and other factors to the Home described in **Attachment 1**, but which are not restricted by the terms of this Agreement.

Moderate Income Household shall mean a household whose annual income is above eighty percent (80%) and no more than one hundred ten percent (110%) of Area Median Income

Notice of Intent to Exercise Option shall mean the written notice from the Corporation to Owner in the form as attached to this Agreement as **Attachment 7** of the Corporation's intent to exercise the Option to Purchase the Home. The Notice of Intent to Exercise Option shall be delivered in accordance with Section 22.

Notice of Resale Price shall mean the written notice from the Corporation to the Owner, in the form as attached to this Agreement as **Attachment 5**, of the Resale Price determination by the Corporation pursuant to Section 8 of this Agreement. The Notice of Resale Price shall be delivered in accordance with Section 22.

Notice to Sell to Qualified Purchaser shall mean the written notice from the Corporation to the Owner in the form attached to this Agreement as **Attachment 8**, of the requirement that the Owner must make a good faith effort to sell the Home to a Qualified Purchaser in accordance with Section 7.

Option to Purchase (also "Option") shall mean the Option to Purchase the Home pursuant to Section 6 of this Agreement.

Original Purchase Price shall mean the price being paid for the Home by the person or persons executing this Agreement, more particularly described in Section 2.

Other Deed of Trust shall mean any deed of trust recorded against title to the Home that is recorded after the Deed of Trust and that is junior in lien priority to the Deed of Trust.

Other Transfer shall mean a transfer (i) to an existing spouse or domestic partner who is also an obligor under the Promissory Note; (ii) by a Owner to a spouse or domestic partner where the spouse or domestic partner either inherits the Home from the Owner or becomes the co-owner of the Home; (iii) between spouses as part of a marriage dissolution proceeding; (iv) by the Owner into an inter vivos trust in which the Owner is the beneficiary; (v) by recordation of an Other Deed of Trust.

Owner shall mean the person or persons so named in the preamble of this Agreement.

Parties shall mean the parties to this Agreement, the Owner and the Corporation

Preliminary Sales Price shall mean the greater of (i) Original Purchase Price increased or decreased by the percentage increase or decrease in Area Median Income (for a household size of 4) for Santa Clara County from the date of the Owner's purchase of the Home until the date that the Corporation received the Request for Resale Price or (ii) the Original Purchase Price increased by an annual ten percent (10%) non-compounded interest on the Owner's original down payment amount as set forth in Section 2 below.

Promissory Note shall mean the promissory note executed by the Owner in favor of the Corporation evidencing the Owner's obligation to pay Residual Public Equity.

Proposed Purchaser shall have the meaning set forth in Section 7.

Qualified Purchaser shall mean a household (i) who has been selected or approved by the Corporation to purchase the Home (ii) who has been verified by the Corporation to meet the definition of "Low Income Household" or "Moderate Income Household" as defined elsewhere in the Agreement (iii) no member of which has had an ownership interest in residential real estate at any time during the three (3) years prior to the date of this Agreement (iv) who will occupy the Home as their principal residence and (v) who will agree to execute a new promissory note, deed of trust and resale, refinance and option to purchase in forms provided by the Corporation

Refinance shall mean the act of obtaining any new loan and discharging any Senior Lender Loan, in whole or in part, with the proceeds from such new loan.

Repairs shall mean those items the Corporation wants replaced, repaired or otherwise corrected or deferred maintenance on the Home that the Corporation wants repaired, and the Corporation's estimate of the costs of the items, for the purpose of selling the Home. Repairs may include, but are not limited to, cleaning, painting, replacing worn carpeting, making

necessary structural, mechanical, electrical and plumbing repairs and repairing or replacing built-in appliances.

Request for Refinance shall mean the written notice from the Owner to the Corporation in the form attached to this Agreement as **Attachment 9**, requesting approval of a Refinance. The Owner shall deliver the Request for Refinance in accordance with Section 22 of this Agreement.

Request for Resale Price shall mean the written notice from the Owner to the Corporation in the form as attached to this Agreement as **Attachment 3**, and delivered in accordance with Section 22 of this Agreement, evidencing the Owner's desire to obtain a Resale Price from the Corporation.

Request for Exercise of Option shall mean the Owner's written notice, in the form as attached to this Agreement as **Attachment 6** and delivered in accordance with Section 22, evidencing the Owner's desire to have the Corporation exercise its Option to Purchase the Home.

Repayment Transfer shall mean any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest of more than two (2) months in any twelve (12) month period, or an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title. A Repayment Transfer shall not include an Other Transfer.

Resale Price shall mean the price for which the Corporation determines the Home can be sold, pursuant to the process described in Section 8 of this Agreement. The Resale Price shall be the Market Value or the Final Sales Price, whichever is less.

Residual Public Equity shall mean the accrued equity enumerated by the difference between the Resale Price and the Market Value of the Home which is necessary to keep the Home affordable to Low Income Households or Moderate Income Households. The recapture of Residual Public Equity allows the Corporation to retain the charitable and public purposes of their initial investment in the Home and reinvest proceeds for other affordable housing projects

Response Notice shall mean the notice sent to Owner upon the Corporation's receipt of the Request for Resale Price in the form attached to this Agreement as **Attachment 3**. The Corporation shall deliver the Response Notice in accordance with Section 22 of this Agreement. The form of Response Notice is attached to this Agreement as **Attachment 4**.

Senior Lender shall mean any lender of a Senior Lender Loan. There may be more than one Senior Lender.

Senior Lender Deed of Trust shall mean a deed of trust that shall secure a Senior Lender Loan and that shall be recorded against the Home senior to and prior to the Deed of Trust. There may be more than one Senior Lender Deed of Trust.

Senior Lender Loan shall mean the first mortgage or any other purchase money loan that is secured by a Senior Deed of Trust.

Term shall mean the term of this Agreement as defined in Section 2.

SECTION 2. DESCRIPTION OF PROPERTY; TERM OF AGREEMENT

This Agreement concerns the real property commonly known as 17760 McLaughlin Court, Morgan Hill, California, APN: 726-24-040, which is more fully described in **Attachment 1** of this Agreement (the "Home").

The Term of this Agreement shall start as of the Effective Date and shall expire on the earliest of: (i) forty-five (45) years after the date of this Agreement or (ii) the date the Owner makes a Repayment Transfer of the Home in compliance with the terms of this Agreement.

The Original Purchase Price for the Home is Four Hundred and Forty-six Thousand, Five Hundred and Forty-Three Dollars (\$446,543) and the down payment amount, exclusive of closing costs, paid by the Owner upon purchase is Fourteen Thousand and Eight Hundred Dollars (\$14,800.00) ("Down payment").

SECTION 3. OWNER CERTIFICATIONS

The Owner certifies that:

The financial and other information previously provided by Owner to the Corporation in order to qualify as a Qualified Purchaser is true and correct as of the Effective Date.

Owner does not own any other residential property as of the Effective Date.

Owner will occupy the Home as the Owner's principal place of residence.

Owner has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions of this Agreement and agrees that this Agreement is controlling as to the rights and obligations between and among Owner, the Corporation and their respective successors.

The Owner agrees to fully cooperate with the Corporation in promptly providing information requested by the Corporation to assist in monitoring the Owner's cooperation with this Agreement. Owner agrees to cooperate with the annual certification of Owner's occupancy of the Home and will provide a copy of the Owner's hazard insurance policy to the Corporation annually.

Throughout the Term of this Agreement, Owner shall be in default in the event that any of the above certifications made by Owner are not or are no longer true or correct.

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

SECTION 4. OWNER OCCUPANCY; LEASING

Owner shall occupy and use the Home only for residential purpose in accordance with all applicable laws and regulations. Owner shall occupy the Home as Owner's principal place of residence. Owner shall be considered as occupying the Home if Owner is living in the Home for at least ten (10) months out of each calendar year. On or before July 1 of each calendar year, the Owner shall provide an annual written certification to the Corporation in the form shown as **Attachment 2**, that the Owner is occupying the Home as his or her principal place of residence.

Any rental or lease of the Home in violation of this Agreement is prohibited, and shall be a default under this Agreement and the Deed of Trust.

The Owner further agrees that, in the event the Owner leases the Home to a third party in violation of this Section 4, any Excess Rents shall be due and payable to the Corporation immediately upon receipt of such proceeds by the Owner. Any Excess Rents shall be considered a recourse debt of the Owner to the Corporation, as evidenced by the Promissory Note, which the Corporation may collect by legal action against the Owner and/or by foreclosure under the Deed of Trust.

SECTION 5. RESTRICTIONS ON RESALE OR TRANSFER OF HOME

A. Transfers of the Home must comply with the terms and provisions of this Agreement.

Owner shall provide the Corporation with written notice of an Other Transfer no later than thirty (30) days before the Other Transfer occurs except where the Other Transfer is by inheritance after death of the Owner in which event notice shall be provided within thirty (30) days following the event of transfer.

In the event of an Other Transfer, Owner shall continue to occupy the Home as his or her principal place of residence except if the Other Transfer is between spouses as part of a marriage dissolution proceeding or by inheritance from Owner to owner's spouse or domestic partner. If the Other Transfer is between spouses as part of a marriage dissolution proceeding or the spouse or domestic partner of the Owner inherits the Home from the Owner, the transferee shall owner-occupy the Home and assume Owner's obligations under the Promissory Note and Deed of Trust and this Agreement. In order to evidence the assumption of the Owner's obligations under the Promissory Note, Deed of Trust and the Agreement, the Corporation may require the transferee to execute a new note evidencing the Corporation Loan and a new deed of trust, and a new Resale, Refinance and Option to Purchase Agreement, and/or an assumption agreement.

B. Inheritance. In the event a transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate, the trustee of Owner's trust or the person inheriting the Home shall provide written notice to the Corporation of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(1) If the person inheriting the Home ("Inheriting Owner") is the child, sibling or parent of the Owner, the Inheriting Owner shall succeed to the Owner's interest and obligations under this Agreement, the Promissory Note and the Deed of Trust, new documents shall be executed between the Inheriting Owner and the Corporation and recorded against the Home. The new resale restrictions agreement and option to purchase between Inheriting Owner and Corporation shall have a forty-five (45) year term that shall commence upon the recordation of such new agreement.

(2) If the person inheriting the Home is not an Inheriting Owner ("Non-Relative Inheriting Owner"), the Non-Relative Inheriting Owner shall provide the Corporation with income and other information, to be verified by the Corporation, so that the Corporation may determine if the Non-Relative Inheriting Owner qualifies as a Qualified Purchaser. If the Non-Relative Inheriting Owner fails to provide required documentation, he or she shall be deemed not to qualify as a Qualified Purchaser. If the Non-Relative Inheriting Owner qualifies as a Qualified Purchaser, he or she shall succeed to the Owner's interest and obligations under this Agreement, the Promissory Note, and the Deed of Trust, new documents shall be executed between the Non-Relative Inheriting Owner and the Corporation and recorded against the Home. The new resale restriction agreement and option to purchase between Non-Relative Inheriting Owner and Corporation shall have a forty-five (45) year term that shall commence upon the recordation of such new agreement. If the Non-Relative Inheriting Owner fails to qualify as a Qualified Purchaser, the Corporation shall have the right to exercise its Option pursuant to Section 6. The Non-Relative Inheriting Owner shall cooperate with the Corporation exercising its Option to Purchase and completing the process as outlined in the Sales Process described in the following Sections 7, 8 and 9.

(3) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section shall constitute a Default under this Agreement and the Corporation may then exercise any of the remedies set forth in Section 15 below, including, without limitation, exercise of the Option upon Default set forth in Section 16.

SECTION 6. CORPORATION HAS OPTION TO PURCHASE

Owner grants to the Corporation or its Assignee an Option to Purchase the Home, at the Resale Price (as calculated in the manner set forth in Section 8 of this Agreement) under the terms of this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home. Owner further agrees that the Corporation or its Assignee shall have the right to exercise the Option to Purchase and purchase the Home upon the occurrence of the following events:

A. Receipt by the Corporation of "Request for Exercise of Purchase Option" or a second "Request for Exercise of Purchase Option" which is a request from Owner that the Corporation or Assignee purchase the Home (in accordance with Section 7).

B. The Corporation's declaration of an uncured default of this Agreement in accordance with Section 15 of this Agreement.

C. The Corporation's receipt of a notice of default on a Senior Lender Loan or Other Loan.

D. If upon the death of the Owner, the Home is inherited by a Non-Relative Inheriting Owner who is not a Qualified Purchaser.

E. When the Corporation learns of a pending or actual sale or conveyance of the Home by Owner and Owner has not previously provided the Corporation with a Request for Exercise of Option Notice as required pursuant to Section 7.

The Corporation agrees that it shall only exercise the Option to Purchase for the purposes of retaining the Home as affordable housing in furtherance of the Corporation's charitable purpose and affordable housing requirements. In addition, the Home may only be resold by the Corporation as an affordable housing unit for the purposes set forth in the preceding sentence.

SECTION 7. INITIATING THE SALE PROCESS

Owner Requests Resale Price. If the Owner intends to make a Repayment Transfer, the Owner shall, as soon as possible, notify the Corporation in writing by sending to the Corporation the Request for Resale Price attached to this Agreement as **Attachment 3** and made a part of this Agreement. The Owner shall provide all of the information identified in **Attachment 3** and pay a Two Hundred Dollar (\$200) fee for the Corporation's administrative costs. The Owner shall send the Request for Resale Price to the Corporation in accordance with Section 22 of this Agreement. The Owner acknowledges and understands that the sales process pursuant to this Agreement may take six (6) months.

Corporation Response Notice. Within ten (10) days after the date that the Corporation receives the Request for Resale Price, the Corporation shall notify the Owner that the Corporation is making a determination as to the Resale Price and requesting an appointment to inspect the Home by sending a Response Notice to the Owner. The form of Response Notice is attached to this Agreement as **Attachment 4**. The Corporation shall send the Response Notice in accordance with Section 22 of this Agreement.

Second Request for Resale Price. In the event Owner does not receive a Response Notice from the Corporation within the ten (10) day period specified above, the Owner shall deliver a second copy of the Request for Resale Price to the Corporation in accordance with Section 22 of this Agreement. The time frame in which the Corporation may deliver the Resale Price to Owner shall be extended until ten (10) days after the date that the Corporation has received a second Request for Resale Price.

Broker Services. The Owner may not wish to contract with a real estate broker to list and sell the Home on the open marketplace as the services of a listing broker to procure a market purchaser or buyer will not be required in the event the Corporation exercises the Option to Purchase the Home.

Corporation Inspect Home. During the period of the Corporation's determination of the Resale Price, the Owner shall cooperate in providing access to the Home, in providing

information and other assistance as needed. If, after inspection of the Home by the Corporation, the Corporation determines that the Home has damage or deferred maintenance, then the Corporation shall provide Owner with a list of necessary Repairs. Owner shall complete the Repairs in a manner consistent with area trade standards, and acceptable to the Corporation prior to the Corporation establishing the Resale Price (and the time in which the Corporation must provide the Resale Price shall be extended accordingly), unless the Corporation and Owner mutually agree to an alternative arrangement to pay for cost of Repairs, including deducting the costs of Repairs from the Final Sales Price as provided for in Section 8.

Corporation Provides Resale Price. Within thirty (30) days after the date the Corporation has received Request for Resale Price (or the second Request for Resale Price, if applicable); the Corporation shall determine the Resale Price pursuant to Section 8 of this Agreement. The form of Notice of Resale Price is attached to this Agreement as **Attachment 5**. The Corporation shall deliver the notice of Resale Price to Owner in accordance with Section 22 of this Agreement.

The thirty (30) day period within which the Corporation calculates the Resale Price shall be extended if the Owner fails to cooperate in a timely manner, to provide access to the Home, to make Repairs required by the Corporation, or to provide needed information to calculate the Resale Price of the Home. The Resale Price shall be valid for ninety (90) days from the date of the Corporation's Notice of the Resale Price to Owner. (In the event the Corporation or City exercise or assign the Option, the Resale Price provided pursuant to this Section shall not expire.) If the Resale Price determination has expired, then the Corporation, at its discretion, may require a new Resale Price calculation.

Owner Requests Corporation to Exercise Option to Purchase. Upon receipt of the Corporation's calculation and determination of Resale Price, if the Owner decides to sell the Home, then the Owner shall notify the Corporation of the Owner's decision to sell the Home at the Resale Price by forwarding to the Corporation, a Request for Exercise of Option, attached to this Agreement as **Attachment 6**, and made a part of this Agreement. The Owner shall deliver the Request for Exercise of Option in accordance with Section 22 of this Agreement.

Corporation Notifies Owner of Its Intent to Exercise Option. The Corporation shall, within thirty (30) days after the date that the Corporation has received the Request for Exercise of Option, notify Owner of its intent to exercise the Purchase Option, by sending to the Owner, in accordance with Section 22 of this Agreement, a Notice Of Intent to Exercise Option, attached to this Agreement as **Attachment 7**, and made a part of this Agreement. In the event Owner does not receive the Notice of Intent to Exercise Option (or a Notice to Sell to Qualified Purchaser) from the Corporation within said thirty (30) day period, the Owner shall deliver a second copy of the Request for Exercise of Option to the Corporation in accordance with Section 22 of this Agreement and the Corporation shall have thirty (30) days from the date that the Corporation has received such second Request for Exercise of Option to deliver the Notice of Intent to Exercise Option attached to this Agreement as **Attachment 7**.

Not more than one hundred twenty (120) days shall elapse between the date the Request for Exercise of Option or the second Request for Exercise of Option (if applicable), is received by the Corporation and the completion of the purchase of the Home for the Resale Price. The one hundred twenty (120) day time period within which the Corporation, or Assignee must

complete the purchase shall be extended if the Owner fails to cooperate in providing access to the Home, to provide information needed to sell the Home or to perform tasks necessary to complete the sale in a timely manner. The Corporation will notify the Owner, in accordance with Section 22 of this Agreement in the event of such delays, and shall provide the Owner with the extended date anticipated for completion of the sale.

Corporation Requires Owner to Sell to Qualified Purchaser. In the event the Corporation does not exercise or assign its Option, the Corporation shall notify the Owner that Owner must make a good faith effort to sell the Home to a Qualified Purchaser for the Resale Price by sending to Owner a Notice to Sell to Qualified Purchaser attached to this Agreement as **Attachment 8**. Upon receipt of such notice, the Owner shall proceed to sell the Home to a Qualified Purchaser at a price not to exceed the Resale Price, as set forth in Section 8 and pursuant to the procedure set forth below. In this event, the Notice to Sell to Qualified Purchaser shall include the following information: (1) the maximum qualifying income for a Qualified Purchaser; (2) the certifications required of a Qualified Purchaser; (3) the Resale Price the Owner may receive for the Home, calculated by the Corporation pursuant to Section 8 below.

In the event the Corporation provides a Notice to Sell to Qualified Purchaser to the Owner, the Owner may proceed to sell the Home in compliance with the following requirements:

Marketing. The Owner shall use bona fide good faith efforts to sell the Home to a Qualified Purchaser, including listing the Home on the Multiple Listing Service, keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Qualified Purchaser requirements, including income qualifications and the Corporation's form of disclosure statement summarizing the terms of the resale, refinance and option to purchase agreement. A proposed purchaser ("Proposed Purchaser") who the Owner believes will qualify as a Qualified Purchaser shall be referred to the Corporation for an eligibility determination.

Final Sales Price. The purchase price for the sale of the Home by the Owner to the Qualified Purchaser shall not exceed the Resale Price calculated by the Corporation pursuant to Section 8 below, as set forth in the Notice to Sell to Qualified Purchaser. The closing costs paid by the Qualified Purchaser shall not exceed reasonable customary buyer's closing costs in the County of Santa Clara and shall be consistent with the Sales Costs provision in Section 9.

Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the Corporation:

(a) The name, address and telephone number in writing of the Proposed Purchaser.

(b) A signed income eligibility form to be provided by the Corporation with the Owner a Notice to Sell to Qualified Purchaser completed by the Proposed Purchaser and including any supporting documentation requested by the Corporation as part of the income eligibility form. The financial information shall be used by the Corporation to determine the income eligibility of the Proposed Purchaser.

(c) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(d) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the Corporation that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the Corporation. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the Corporation. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the Corporation, the Corporation shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the Corporation harmless and reimburse the Corporation's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(e) An executed buyer's Resale, Refinance and Option to Purchase Agreement, Note and Deed of Trust to the Corporation from the Proposed Purchaser in forms provided by the Corporation. The Corporation's approval of the proposed sale shall be conditioned on the recordation of the new deed of trust and Resale Agreement upon closing.

(f) The name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer.

(g) The name of any first lender providing financing for the proposed purchase, including the name of the loan officer, the lender's address and phone number and e-mail address.

(h) Upon the close of the proposed sale, certified copies of the recorded Corporation deed of trust, the note and buyer's resale, refinance and option to purchase agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the Corporation may reasonably request.

SECTION 8. DETERMINING THE RESALE PRICE

Whenever the Owner sends a Notice of Request for Resale Price, the following shall occur:

Inspection of Home. Pursuant to Section 7 of this Agreement, Owner shall provide the Corporation, and/or its agents, access to the Home to do a full and complete inspection of the Home to determine the depreciated value of any Eligible Capital Improvements, the cost of Repairs needed, and the general condition of the Home.

Determining Preliminary Sales Price. The Corporation shall determine the Preliminary Sales Price using this formula: the Preliminary Sales Price means the Original Purchase Price increased by the **greater** of the (a) percentage of increase in the Area Median Income from the date of the original purchase of the Home by the Owner to the date of receipt by the Corporation of the Owner's Request for Resale Price or (b) an amount equal to a ten percent (10%) non compounded annual interest on the Downpayment made by the Owner at the time of purchase as determined from the date of purchase to the date of the Owner's Request for Resale Price. The resulting figure shall be the Preliminary Sales Price.

Determining Final Sales Price. The Corporation shall evaluate any receipts, provided by the Owner, of any Eligible Capital Improvements. The Corporation shall also evaluate the cost of any Repairs.

The Corporation shall determine the depreciated value for Eligible Capital Improvements made to the Home in light of the depreciated value of such improvements in an equivalent market priced home. The Corporation shall add the depreciated value of all Eligible Capital Improvements to the Preliminary Sales Price and subtract the cost of the Repairs. The maximum allowable depreciated value of all Eligible Capital Improvements made to the Home shall not exceed ten percent (10%) of the Original Purchase Price.

The result of the Preliminary Sales Price plus the allowable depreciated value of the Eligible Capital Improvements calculated in the manner described above minus the cost of any Repairs shall be the Final Sales Price.

Resale Price. The Corporation will determine whether or not the Market Value, as defined in Section 1, of similar homes not restricted by an agreement similar to this Agreement, is lower than the Final Sales Price. The Resale Price shall be the Final Sales Price or the Market Value, whichever is less.

Owner Dispute of Value of Eligible Capital Improvements, Repairs or Market Value. In the event Owner disputes the Corporation's estimate of the depreciated value of the Eligible Capital Improvements, the cost of Repairs, or the Market Value of the Home, Owner shall have the right, at Owner's sole expense, to obtain an estimate of the disputed amount from an independent residential appraiser who is on a list of appraisers established by the Corporation. To the extent possible, any determination of the Market Value of the Home shall be based upon the sales prices of similar homes not restricted by an agreement similar to this Agreement. In addition, any appraisal shall specifically state the depreciated market value of the Eligible Capital Improvements and the cost of Repairs. Thereafter, if an agreement cannot be reached between the parties, the appraiser shall determine the depreciated market value of the Eligible Capital Improvements, the cost of Repairs or the Market Value of the Home, as applicable. The Corporation and the Owner can agree on the value of the Eligible Capital Improvements without the benefit of an appraisal, in which case the adjustment shall be in accordance with the Corporation and the Owner's agreed upon adjustment..

SECTION 9. COMPLETING THE SALE

Escrow. In the event the Corporation exercises its Option, the Corporation, and/or Assignee shall prepare escrow instructions with conditions or contingencies of the type and nature commonly included within residential purchase escrows. The escrow instructions shall include, but not be limited to, financing contingencies, inspection rights, and preliminary title report approvals. In addition, if the Assignee is a Qualified Purchaser, the escrow instructions shall require the purchaser to execute a new Resale, Refinance and Option to Purchase Agreement for the benefit to the Corporation prior to close of escrow.

Sale Costs. Owner agrees that the following normal and reasonable costs are associated with the sale and purchase of the Home and that the following parties will be responsible for the listed expenses. Owner agrees that, to limit liability and provide timely professional services, a California state licensed real estate broker, or a California state licensed real estate agent working for a California state licensed broker must be utilized and paid for solely by the Owner for sales transactions involving the Owner and Qualified Purchaser, except for those in which the Corporation is actually taking title to the Home.

Owner:

- Real estate commissions for representing the Owner only (required)
- Standard owner's policy of title insurance issued to Corporation or Assignee
- Repairs to the home as required by Corporation or the inspection reports
- One year warranty coverage for such fixtures such as appliances included in the home that have expired warranty and are not covered under SB800 or Title 7 law
- Pro rata share of owners Home Owners Association Fees and property taxes
- Attorney/Advisory Fees (if necessary)
- Fifty percent (50%) each of the title and escrow fee
- Fifty percent (50%) of the Corporation's administrative fee

Qualified Purchaser:

- Housing Inspection Report if required by Lender or Corporation
- Real estate appraisal costs
- Lender fees and costs to incurred for loan approval
- Fee for Homeowners Association legal document preparation and report on condition of the common area
- Pro rata share of purchaser Home Owners Association Fees and property taxes
- Attorney/Advisory Fees including real estate consultation fee if Purchaser chooses to use such services
- Fifty percent (50%) each of the title and escrow fee
- Fifty percent (50%) of the Corporation's administrative fee

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

SECTION 10. PAYMENT TO CORPORATION OF RESIDUAL PUBLIC EQUITY

If the Owner makes a Repayment Transfer, the Owner shall pay the Residual Public Equity to the Corporation. This amount shall be a debt of the Owner to the Corporation, further evidenced by the Promissory Note, and secured by the Deed of Trust. The Owner acknowledges that the Corporation shall have no obligation to cause reconveyance of this Agreement or of the Deed of Trust unless Owner complied with this Agreement and until the Residual Public Equity is paid to the Corporation. The Owner and the Corporation acknowledge that the formula for calculation of the amount of Residual Public Equity due from the Owner to the Corporation is intended to cause the Owner to receive the same net sales proceeds from sale of the Home at an unrestricted price to a market purchaser as the Owner would receive from sale of the Home to the Corporation or Assignee for the Resale Price.

SECTION 11. FAILURE OF CORPORATION OR ASSIGNEE TO COMPLETE PURCHASE

If the Corporation declines to exercise or assign the Option to Purchase, and the Owner has made a good faith effort to sell the Home to a Qualified Purchaser pursuant to Section 7 but cannot sell the Home to a Qualified Purchaser, then the Home can be sold by the Owner at an unrestricted sale price. Upon close of escrow related to the sale of the Home at an unrestricted sale price, title to the Home shall be transferred free and clear of the covenants, restrictions and terms of this Agreement and the Option to Purchase granted to the Corporation. Upon request by Owner and receipt by the Corporation of the Residual Public Equity, the Corporation shall deliver a full release of this Agreement to escrow for recordation. The new purchaser of the Home and any subsequent transferee may thereafter sell the Home without regard to this Agreement or the option granted to the Corporation.

If the Home is sold as described above, then Owner shall receive only that amount that the Owner would have received if the Home had been sold under this Agreement at the Resale Price. The excess proceeds, if any, from the sale of the Home at an unrestricted sales price shall be due and payable to the Corporation as Residual Public Equity. The Residual Public Equity, as defined in Section 1, is enumerated by the difference between the Resale Price and the Market Value of the Home and is accrued as the public and charitable investment necessary to keep the Home affordable to Low Income Households and Moderate Income Households. The recapture of Residual Public Equity allows the Corporation to retain the charitable and public purpose of their initial investment in the Home and reinvest proceeds for other affordable housing projects.

SECTION 12. REFINANCING THE HOME

The Corporation must approve of all Refinances. In the event the Owner desires to Refinance, the Owner shall comply with the provisions of this Section 12 and shall provide all of the information identified in **Attachment 9** and pay a Two Hundred Dollar (\$200) fee for the Corporation's administrative costs

A Refinance shall only be approved by the Corporation if the amount of the proposed new loan does not cause the principal and interest payments to be made by the Owner on all

outstanding debt secured against the Home to increase, is a thirty (30) year fixed rate loan (or an adjusted loan with a rate that is fixed for the first three (3) years of the new loan term and then converts to a fixed rate loan in the following years, cannot be more than ninety five percent (95%) of the Resale Price as provided by the Corporation, including lender and title fees, if being financed, and is from an institutional lender approved by the Corporation. Mortgages which utilize stated income and/or include negative amortization are prohibited. The current underwriting guidelines for the Corporation's loan approval of the refinance will be sent to the lender for its review and compliance. An underwriter's written approval from the lender must be submitted to the Corporation for review prior to approval.

Cash out. Owner may not take "cash out" from the refinancing proceeds unless approved by the Corporation.

Owner Requests Refinance. At least ninety (90) days before the Owner intends to Refinance, the Owner shall notify the Corporation in writing by sending to the Corporation, in accordance with Section 22 of this Agreement, the Request for Refinance attached to this Agreement as **Attachment 9** and made a part of this Agreement. The Owner shall provide the Corporation all of the information identified in **Attachment 9**, and include all documents required by **Attachment 9**, including the loan documents that the Owner intends to execute in connection with the Refinance.

Corporation Responds to Request for Refinance. Within forty-five (45) days of the date that Corporation received the Request for Refinance, the Corporation shall determine if the Owner's proposed terms of Refinance satisfy the Refinance requirements imposed by this Agreement. In the event the Corporation approves the terms of the Refinance, this Agreement and the Deed of Trust shall be subordinated to the new loan resulting from the approved Refinance.

The forty-five (45) day time period within which the Corporation must make a determination regarding the Refinance, shall be extended if the Owner or lender for the refinance fails to cooperate in providing information needed determine the terms of the Refinance. The Corporation will notify the Owner, in accordance with Section 22 of this Agreement in the event of such delays, and shall provide the Owner with the extended date anticipated for determination regarding the approval or disapproval of the Refinance.

SECTION 13. OTHER LOANS SECURED BY THE HOME

In the event Owner desires to obtain any additional loan that does not comply with Section 12 which is secured by an Other Deed of Trust, Owner shall notify the Corporation in writing of such intent. Owner shall also provide a copy of this Agreement to the proposed lender of the funds. The notice to the Corporation shall include the outstanding principal balance of the Senior Lender Loan (or Loans), and the name, address and phone number of the lender making the additional loan. At any time the Owner enters into a new loan secured against the Home, including junior mortgages, consolidation loans or equity lines of credit, the Owner shall cause to be recorded in the Official Records in Santa Clara County against title to the Home, a request for notice of default under such loan to be delivered to the Corporation.

SECTION 14. MAINTENANCE AND CARE OBLIGATIONS

The Home. The Owner:

Agrees to maintain the Home in good, saleable condition at all times.

Agrees to keep the Owner's garage organized, well maintained and free of any obstacles that could prevent parking of two vehicles in the garage. Owner agrees to regularly park owned vehicles in the Owner's garage.

Agrees to park only vehicles legally owned by the Owner or the Owner's immediate family members living in the Home on the property.

Agrees to keep the exterior of the Home free from trash, inoperable automobiles, stored personal items and any such other items commonly considered to detract from the value of the Home, and to contribute to a general neighborhood nuisance.

Agrees to maintain a standard all risks property insurance policy equal to the replacement value of the Home (adjusted every five (5) years by appraisal) naming the Corporation, and its employees, agents, officers, board members as additional insureds. Additional insurance requirements maybe set forth in the Deed of Trust.

Agrees to, annually, on July 1 of each year certify in writing to the Corporation and the City that (i) the Owner occupies the Home as the Owner's principal place of residence as required by Section 4 and (ii) that the Home is in good repair by sending in the form attached to this Agreement as **Attachment 2**.

SECTION 15. DEFAULTS AND REMEDIES UNDER THIS AGREEMENT

The Owner has agreed to comply with all the provisions of this Agreement and with the provisions of the documents regulating the Owner's Senior Lender Loan.

Upon the Corporation's discovery (i) that the Owner has made a misrepresentation to obtain the benefits of purchase of the Home in connection with its obligations under this Agreement; (ii) Owner's failure to comply with this Agreement; (iii) Owner's failure to comply with the provisions of or default under the Senior Lender Loan, or other lien; (iv) recordation of a lien not otherwise permitted by the Agreement or (v) commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy status, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, in which the Owner is the debtor, Corporation may notify the Owner pursuant to Section 22 of this Agreement, specifying the action needed by the Owner to establish compliance with this Agreement. Owner may provide a remedy acceptable to the Corporation, thereby avoiding a default. However, there shall be no right to cure on the part of the Owner if a failure to comply with this Agreement recurs within a three (3) year period in a substantially similar manner. If the Owner fails to remedy the issue to the satisfaction of the Corporation within thirty (30) days from the date the Corporation's notice

was received by Owner or within such additional time as the Corporation determines is necessary to cure the default, then the Corporation may declare a default of this Agreement.

Upon declaration of a default of this Agreement:

A. The Corporation may exercise its Option to Purchase as specified in Section 16 of this Agreement.

B. Corporation may apply to a court of competent jurisdiction for relief at law or equity as may be appropriate.

C. The Corporation may apply to a court for an injunction prohibiting a proposed Repayment Transfer or Other Transfer in violation of this Agreement or for a declaration that the Repayment Transfer or Other Transfer in violation of this Agreement is void.

D. The Corporation may declare a default under the Promissory Note and pursue all remedies under the Promissory Note.

E. The Corporation may declare a default under the Deed of Trust and pursue all remedies under the Deed of Trust.

F. The Corporation may declare the amount owed under the Promissory Note immediately due and payable including any Excess Rents or Residual Public Equity and may, invoke the power of sale under the Deed of Trust.

Upon declaration of default of this Agreement, the Corporation shall notify the Senior Lender, at the address provided by the Senior Lender to the Corporation in accordance with Section 22 of this Agreement. The notice to Senior Lender and Owner shall indicate that the Corporation may exercise its Option to Purchase the Home as specified in Section 6 and in accordance with Sections 15 and 16 of this Agreement.

SECTION 16. OPTION UPON DEFAULT

As specified in Section 15 and the Option provided to the Corporation in Section 6, the Owner grants to the Corporation the option to purchase the Home following written notice by the Corporation to the Owner of the declaration of a default by the Corporation under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home.

The Corporation shall have thirty (30) days after a Default is declared by the Corporation to notify the Owner and the Senior Lender of its decision to exercise its option to purchase under this Section 16. Not later than ninety (90) days after the notice is given by the Corporation to the Owner of the Corporation's intent to exercise its option under this Section 16, the Corporation or the Assignee shall purchase the Home for the Resale Price calculated in the manner set forth in Section 8.

SECTION 17. SENIOR LOAN DEFAULT

A request for notice of default or sale under any Senior Lender Deed of Trust shall be recorded by the Corporation in the Office of the Recorder of Santa Clara County for the benefit of the Corporation. The Corporation may declare a Default under this Agreement upon receipt of any notice given to the Corporation pursuant to Civil Code Section 2924b, and the Corporation may exercise its rights as provided in Sections 15 and 16.

Owner shall provide to the Corporation in the manner set forth in Section 22, notice of any default of Owner under a Senior Lender Deed of Trust or Other Deed of Trust. Notice shall be delivered to the Corporation by the Owner within three (3) days of Owner's receipt of notice of the default from the Senior Lender or holder of the Other Deed of Trust.

In the event of default and foreclosure, the Corporation shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the Corporation to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the Corporation fails to file the request for notice of default, the Corporation's right to purchase the Home shall commence from the date of notice of default it given by the Corporation to Owner.

SECTION 18. SENIOR LENDER ASSURANCES

Regardless of any other provision in this Agreement, this Agreement shall not diminish or affect the rights of the Senior Lender under the Senior Lender Deed of Trust or any subsequent Senior Lender deeds of trust hereafter recorded against the Property in compliance with Section 12 of this Agreement.

The provisions of this Agreement and the Deed of Trust shall be subordinate to the lien of the Senior Lender Deed of Trust and shall not impair the rights of the Senior Lender, or such lender's assignee or successor in interest, to exercise its remedies under the Senior Lender Deed of Trust in the event of default under the Senior Lender Deed of Trust by the Owner. Such remedies under the Senior Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such Senior Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the Deed of Trust shall automatically terminate upon such acquisition of title, only if either a notice of default was recorded under the applicable Senior Lender Deed of Trust, or, if no notice of default was recorded (i) the Corporation has been given written notice of default under such Senior Lender Deed of Trust (which requirement shall be satisfied by notice of default required by California Civil Code Section 2924) and (ii) the Corporation shall not have cured the default within the period provided by law.

This Agreement shall not diminish or affect the rights of the Corporation under the Deed of Trust; and this Agreement shall not diminish or affect the rights of the California Housing Finance Agency, HUD or the Veterans Administration ("VA") under the Senior Lender Deed of Trust or any subsequent Senior Lender deeds of trust hereafter recorded against the Home in compliance with Section 12 above.

SECTION 19. DISTRIBUTION OF CONDEMNATION, INSURANCE AND FORECLOSURE PROCEEDS

The Corporation shall be named as additional insured or loss payee on the fire and casualty insurance policy issued to Owner insuring loss to the Corporation.

In the event the Home is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the improvements on the Home or, in the event of condemnation, or in the event of a judicial foreclosure, a trustee's deed upon a non judicial foreclosure, a deed in lieu of foreclosure or any other involuntary Repayment Transfer to the holder of a secured interest in the Home (collectively "Foreclosure"), if proceeds thereof are distributed to Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of the Home shall be distributed as follows:

Owner shall receive only that amount that the Owner would have received if the Home had been sold under this Agreement at the Resale Price had the Corporation exercised its Option to Purchase the Home on the date of the Foreclosure, destruction or condemnation valuation date. Owner shall receive one hundred percent (100%) of the proceeds attributed to the Home's contents.

The Owner shall pay or cause to be paid excess proceeds, if any, from insurance proceeds, condemnation award or the judicial or non-judicial foreclosure or deed in lieu of foreclosure on the Home to the Corporation as Residual Public Equity. The Residual Public Equity, as defined in Section 1, is described as the difference between the Resale Price and the Market Value of the Home. The recapture of Residual Public Equity allows the Corporation to keep the Home affordable to Low Income Households and to retain the public purpose of its initial investment in the Home and to reinvest the proceeds in other affordable housing projects.

SECTION 20. COVENANTS RUN WITH THE LAND

Owner hereby declares its express intent that the provisions of this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Home. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Home or any interest therein, as the case may be shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties have actual knowledge of this Agreement.

All covenants and restrictions contained herein, without regard to technical classification or designation, shall be binding upon Owner for the benefit of the Corporation and this Agreement shall run in favor of such parties in perpetuity during which this Agreement shall be

in force and effect, without regard to whether the Corporation has an interest in the land to which this Agreement relates.

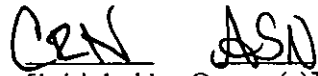
SECTION 21. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that

A. Owner hereby subjects the Home to certain restrictions, and limits the price for which Owner may sell the Home and the persons to whom Owner may sell the Home. The resale price limitations, and other provisions contained in this Agreement, restrict the full benefits of owning the Home. Owner may not enjoy the same economic or other benefits from owning the Home that Owner would enjoy if this Agreement did not exist.

B. Absent the provisions of this Agreement, the Home could not be made available to Owner at an affordable price.

C. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section 21, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Home throughout the term of this Agreement.


[initialed by Owner(s)]

SECTION 22. GENERAL PROVISIONS

Notices. All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt, by personal delivery with delivery receipt and shall be deemed to be effective as of the date received, the date the notice was returned as undeliverable, or the date delivery was refused as indicated on the return receipt or delivery receipt as follows:

To Owner:

17760 McLaughlin Court
Morgan Hill, California 95023

To the Corporation:

If by express or personal delivery:

South County Housing Corporation
9015 Murray Avenue, Suite 100
Gilroy, California 95020
Attn: Loan Packaging and Services Department

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

If by mail:

South County Housing Corporation
P. O. Box 1977
Gilroy, California 95021
Attn: Loan Packaging and Services Department

The parties may subsequently change addresses by providing written notice of the change in address to the other party in accordance with this section.

Information and Entry by Corporation. The Owner shall provide any information reasonably requested by the Corporation in connection with the Home. The Owner hereby grants to the Corporation and its duly authorized representatives the right to enter the Home at reasonable times and in a reasonable manner for purposes of inspecting the Home to determine compliance with this Agreement.

Non Discrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

No Liability of the Corporation. In no event shall the Corporation become in any way liable or obligated to Owner or any successor-in-interest to Owner by reason of its Option to Purchase under this Agreement, nor shall the Corporation be in any way obligated or liable to Owner or any successor-in-interest to Owner for any failure to exercise its Option to Purchase.

Indemnification. Nothing in this Agreement shall be construed by the Corporation, or by Owner or by any third party to create the relationship of principal and agent, or of partnership, joint venture or association with the Corporation and Owner and Owner. Owner agrees to indemnify, defend, and hold harmless the Corporation, its board members, officers, agents, and employees agents and employees from any and all claims, demands, liability, costs, and expenses of whatever nature, including but not limited to, court costs, damages and counsel fees accruing or resulting to any and all contractors, subcontractors, material providers, laborers, and any other person, firm, or corporation furnishing or supplying work in connection with this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Owner in the performance of this Agreement or default under this Agreement. The indemnity provisions set forth in this Section shall survive the termination of this Agreement.

Controlling Law. The terms of this Agreement shall be interpreted under the laws of the State of California.

Waiver. No waiver by the Corporation of the right to exercise the Option to Purchase the Home or of any breach by Owner of any covenant, restriction or condition herein contained shall be effective unless such waiver is in writing signed by the Corporation and delivered to the

Owner. The waiver by the Corporation of any such breach or breaches, or the failure by the Corporation to exercise any right or remedy with respect to any such breach or breaches, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or bar any right or remedy of the Corporation with respect to any such subsequent breach.

Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Amendment. The parties agree that this instrument, the Promissory Note and the Deed of Trust contain all of the provisions of the Agreement between the parties hereto. No alteration or variation of the terms of this Agreement shall be valid unless made in writing in the form of an amendment and signed by the parties hereto. No oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

Interpretation of Agreement. This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

Exhibits and Attachments. Any exhibits and attachments referred to in this Agreement are incorporated in this Agreement by such reference.

Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

Assignment by Corporation. The Corporation may assign their rights to under this Agreement to any person upon consent from each other and upon notice to the Borrower. The Corporation may assign their rights under this Agreement without the Borrower's consent. The Corporation may not transfer or assign this Agreement to a profit-making entity without first obtaining approval of the Senior Lender Loans lender(s).

Third Party Beneficiary. The City of Morgan Hill approved the development of the Home pursuant to Title 18 of the Morgan Hill Municipal Code and is requiring the affordability restrictions included in this Agreement. The Owner and the Corporation agree that the City is the intended third party beneficiary to this Agreement and the City shall have the right to enforce the terms and conditions of this Agreement by invoking any of the remedies set forth in Section 15 of this Agreement. Other than the City, there are no other third party beneficiaries to this Agreement.

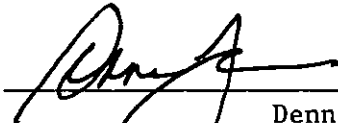
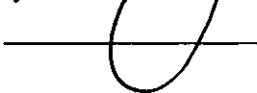
The City of Morgan Hill shall not be liable to Owner, Corporation or any successor-in-interest to Owner or Corporation by reason of its third party beneficiary status under this Agreement and the Owner agrees to indemnify, defend, and hold harmless the City, its councilmembers, officers, agents, and employees from any and all claims, demands, liability, costs, and expenses of whatever nature related to this Agreement. The indemnity provisions set forth in this Section shall survive the termination of this Agreement.

[SIGNATURES ON THE NEXT PAGE]

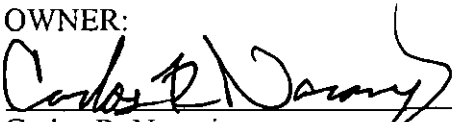
IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

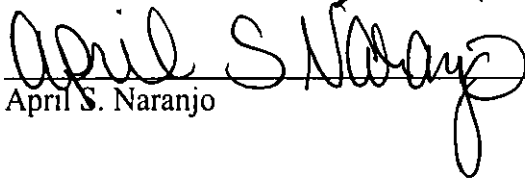
CORPORATION:

SOUTH COUNTY HOUSING CORPORATION,
a California nonprofit public benefit corporation

By: 
Dennis Lalor
Its: 
Executive Director

OWNER:


Carlos R. Naranjo

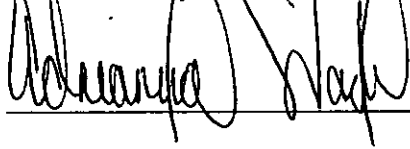

April S. Naranjo

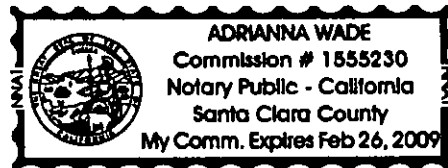
Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

STATE OF CALIFORNIA)
) ss
 COUNTY OF SANTA CLARA)

On MARCH 14, 2006, before me, ADRIANNA WADE, Notary Public
 personally appeared DENNIS LALOR,
~~personally known to me (or 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.

WITNESS my hand and official seal.

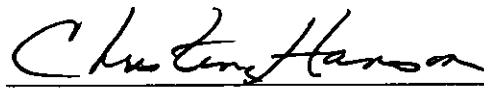


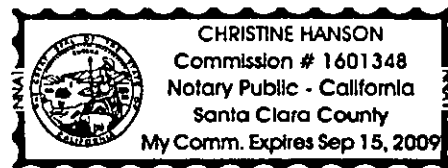


STATE OF CALIFORNIA)
) ss
 COUNTY OF SANTA CLARA)

On MARCH 23, 2006, before me, CHRISTINE HANSON, Notary Public
 personally appeared CARLOS R. NARANJO : APRIL S. NARANJO,
~~personally known to me (or 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.

WITNESS my hand and official seal.


 CHRISTINE HANSON



Attachment 1
(property description)

Order Number: **4331-754611-012**
Page Number: 5

LEGAL DESCRIPTION

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Lot 12 as shown on the Map of Tract 9585 (The "Map"), which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 21, 2004 in Book 779 of Maps, at pages 33 through 37, inclusive

RESERVING THEREFROM a non-exclusive P.S.D.E. (Private Storm Drain Easement) for the benefit of the owners of Lots 3, 13 and 14 as shown on the Map and as defined in the Declaration of Covenants Conditions and Restrictions of Morgan Station (The "Declaration") of Tract 9585 recorded August 4, 2005 as Document No. 18508282 in the Official Records, Santa Clara County.

PARCEL TWO:

A non-exclusive P.S.D.E. (Private Storm Drain Easement) appurtenant to Parcel One above, over a portion of Lot 10 and 11 as shown on the Map and as defined in the Declaration.

MORGAN STATION

APN: 726-24-040

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

ATTACHMENT 2
Owner Occupancy and Maintenance Certification

Date: _____

To: If by express or personal delivery:

South County Housing Corporation
 9015 Murray Avenue, Suite 100
 Gilroy, California 95020
 Attention: Loan Packaging and Services Department

If by mail:

South County Housing Corporation
 P. O. Box 1977
 Gilroy, California 95021
 Attn: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: Morgan Station Development
 Owner Occupancy Certification

Home located at:

 (Street address)

 (City, State, Zip Code)

 (Home telephone no.)

 (Work telephone no.)

By signature below, I/we _____ [insert name or names of Owner] hereby certify to South County Housing Corporation under penalty of perjury that I/we occupy the home located at _____ [insert address] (the "Home") as my/our principal place of residence and that I/we have occupied the Home for _____ [insert number] months of the calendar year _____ [insert previous calendar year]. Attached to this letter is a copy of _____ [insert utility bill or driver's license] showing my place of residence and a copy of current homeowner's insurance policy.

I/we also certify the Home is in good repair and saleable condition and that I/we are continuing to meet the conditions of Section 14 of the Resale, Refinance and Option to Purchase Agreement.

This Owner Occupancy and Repair Certification are signed on _____, 20____, under penalty of perjury.

ATTACHMENT 3**Request for Resale Price**

Date: _____

To: If by express or personal delivery:

South County Housing Corporation
 9015 Murray Avenue, Suite 100
 Gilroy, California 95020
 Attention: Loan Packaging and Services Department

If by mail:

South County Housing Corporation
 P. O. Box 1077
 Gilroy, California 95021
 Attn: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

RE: Morgan Station Development
 Request for Resale Price

Home located at: _____

(Street address) _____

(City, State, Zip Code) _____

(Home telephone no.) _____

(Work telephone no.) _____

Date of Purchase _____

Purchase Price paid by me/us ("Original Purchase Price): _____

Original Down payment Amount at time of purchase: _____

NOTE: Down payment does not include closing costs expenses

Date I intend to vacate the Home: _____

List of improvements I have made to the Home:

_____ (attach copy of receipt)

_____ (attach copy of receipt)

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

To Whom It May Concern:

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") recorded against our Home, I/we ("Owner") of the above referenced Home, provide this request to South County Housing Corporation (the "Corporation") for a determination of the Resale Price for our Home.

I/We understand that, in order for the Corporation to determine the Resale Price, and in accord with the terms and conditions of the Agreement, we must provide the Corporation or its agents reasonable access to the Home to do a full and complete inspection of the Home to determine the value of any Eligible Capital Improvements, the cost of Repairs (in the event I intend to perform the Repairs), and the condition of the Home.

Enclosed is a copy of the HUD-1 Settlement Statement or equivalent documents from the close of escrow of my purchase of the Home and copies of receipts from any improvements I have made to the Home.

Enclosed is a Two Hundred Dollar (\$200) check or money order made out to South County Housing for the Corporation's administrative costs.

Sincerely,

Owner Signature

Print Name

Owner Signature

Print Name

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

ATTACHMENT 4**Response Notice**

To: _____

 Morgan Hill, CA _____
 Attention: _____

From: South County Housing Corporation
 9015 Murray Avenue, Suite 100
 Gilroy, California 95020
 Attention: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: Morgan Station Development
 Resale, Refinance and Option to Purchase Agreement
 Response Notice

Home located at: _____
 (Street address)

 (City, State, Zip Code)

 (Home telephone no.)

 (Work telephone no.)

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") recorded against your Home (as referenced above) the Corporation is in the process of determining the Resale Price of your Home. Please call the Corporation at _____ to schedule an inspection to verify capital improvements and the saleable condition of your home .

Sincerely,

 Homebuyer Program Manager

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

ATTACHMENT 5**Notice of Resale Price**

Date: _____

To: _____

Gilroy, CA _____

Attention: _____

From: South County Housing Corporation
P. O. Box 1077
Gilroy, California 95021
Attention: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: Morgan Station Development
Resale, Refinance and Option to Purchase Agreement
Notice of Resale Price

Home located at: _____

(Street address) _____

(City, State, Zip Code) _____

(Home telephone no.) _____

(Work telephone no.) _____

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") recorded against your Home, referenced above, the Corporation has determined the current Resale Price for your Home is _____ Dollars (\$).

The determination of the Resale Price is only valid for ninety (90) days from the date of this notice.

If you desire to sell your Home, you must complete and return the attached "Request For Exercise of Option" form to the Corporation within ninety (90) days of receipt of this notice. Delivery of the notice must be by certified mail, return receipt requested or express delivery service with a delivery receipt. Please call the Corporation at _____ if you have any questions.

Sincerely,

ATTACHMENT 6
Request For Exercise of Option

To: If by express or personal delivery:

South County Housing Corporation
 9015 Murray Avenue, Suite 100
 Gilroy, California 95020
 Attention: Loan Packaging and Services Department

If by mail:

South County Housing Corporation
 P. O. Box 1077
 Gilroy, California 95021
 Attn: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: Morgan Station Development

Resale, Refinance and Option to Purchase Agreement
 Request for Exercise of Option

For Home located at: _____
 (Street address)

 (City, State, Zip Code)

 (Home telephone no.)

 (Work telephone no.)

To Whom It May Concern:

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") executed by us upon purchase of our Home, at the above referenced address, I/we ("Owner") of the above noted Home, accept the Resale Price of our Home and provide notice of our request that the Corporation or the Assignee exercise its Purchase Option. We understand under the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") recorded against the title of the Home, that the Corporation or the Assignee has one hundred twenty (120) days to purchase the Home.

We also understand under the terms and conditions of the Agreement recorded against the title of the Home that we must cooperate with the Corporation to provide access to the Home in a timely manner, and to provide and participate in other activities normal and necessary to complete the transfer process. We will direct all interested parties to this transaction to contact the Corporation staff at _____ for a full explanation of the income, asset and other

ATTACHMENT 7
Notice of Intent to Exercise Option

Date: _____

To: Owner

From: South County Housing Corporation
P. O. Box 1077
Gilroy, California 95021
Attention: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: Morgan Station Development
Resale, Refinance and Option to Purchase Agreement
Notice of Intent to Exercise Option

RE: Home located at:

(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

To Whom It May Concern:

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") executed upon purchase of the Home, at the above referenced address, South County Housing Corporation (the "Corporation"), [acknowledges receipt of a Request for Exercise of Option from the Owner of the Home referenced above, and provides this notice of the Corporation's intent to exercise its Option to Purchase the Home or to assign the Home to another qualified purchaser.

Sincerely,

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

ATTACHMENT 8

Notice to Sell to Qualified Purchaser

Date: _____

To: Owner

From: South County Housing Corporation
 P. O. Box 1077
 Gilroy, California 95021
 Attention: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: Morgan Station Development
 Resale, Refinance and Option to Purchase Agreement
 Owner Notice to Sell to Qualified Purchaser

RE: Home located at:

(Street address)_____
(City, State, Zip Code)_____
(Home telephone no.)_____
(Work telephone no.)

To Whom It May Concern:

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") executed upon purchase of the Home, at the above referenced address, South County Housing Corporation (the "Corporation"), acknowledges receipt of a Request for Exercise of Option from the Owner of the Home referenced above, and requests that you sell the Home pursuant to Section 7 of the Resale Agreement to a Qualified Purchaser. Pursuant to Section 7 of the Resale Agreement, you are required to make a good faith effort to sell your Home to Qualified Purchaser for the Resale Price.

The maximum qualifying income for a Qualified Purchaser is _____.

The certifications required of a Qualified Purchaser are enclosed with this letter.

The Resale Price for which you may sell you Home to a Qualified Purchaser is _____.

Please contact the Corporation at _____ if you have any questions.

Attachment 9**Request for Refinance Restricted Price**

Date: _____

To: If by express or personal delivery:

South County Housing Corporation
 9015 Murray Avenue, Suite 100
 Gilroy, California 95020
 Attention: Loan Packaging and Services Department

If by mail:

South County Housing Corporation
 P. O. Box 1077
 Gilroy, California 95021
 Attention: Loan Packaging and Services Department

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

RE: Morgan Station Development
 Request for Refinance Amount

Home located at: _____

(Street address) _____

(City, State, Zip Code) _____

(Home telephone no.) _____

(Work telephone no(s).) _____

Date of Purchase: _____

Purchase Price paid by me/us ("Original Purchase Price): _____

Amount of outstanding principal balance of senior loan: _____
 (Include a copy of your most recent mortgage statement that shows balance due)

Amount of loan that will refinance existing loans: _____

Proposed Interest Rate of loan that will refinance existing loans: _____

Anticipated closing date of Refinance: _____

Name, contact information of lender and loan agent _____

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

Name and Phone Number for Corporation to contact to schedule inspection:

_____ (name)

_____ (work phone number)

_____ (home phone number)

To Whom It May Concern:

In accordance with the terms and conditions of the Resale, Refinance and Option to Purchase Agreement (the "Agreement") recorded against our Home, I/we ("Owner") of the above referenced Home, provide this request to South County Housing for 1) a determination of the Resale Price for our Home and 2) to approve our request to refinance the senior mortgages that have been recorded against our Home. Copies of the loan documents that will be used in connection with the refinance and the HUD-1 Settlement Statement from the close of escrow of our purchase of the home are attached here for your reference.

Enclosed is a Two Hundred Dollar (\$200) check or money order made out to South County Housing for the Corporation's administrative costs.

I/we (Owner) acknowledge that there may be an additional administrative fee due to the Corporation that will be collected upon close of escrow.

Sincerely,

Owner Signature

Print Name

Owner Signature

Print Name

Attachments: Loan Documents

Attachment: BMR Resale Restrictions McLaughlin (1694 : Below Market Rate Acquisition, McLaughlin)

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 HOUSING FUND (FUND NO. 255) TO APPROPRIATE \$564,043 THEREFORE

WHEREAS, the subject of this Resolution is set forth in detail in that certain City Council Staff Report entitled "Acquisition of the 17760 McLaughlin Court Below Market Rate (BMR) Home by the City Housing Fund" submitted for City Council consideration at its meeting of April 4th, 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 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 4th day of April 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 April 4, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: McLaughlin Acquisition Resolution (1694 : Below Market Rate Acquisition, McLaughlin)

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

033

FUND:

DEPARTMENT:

OBJECT:

255	Housing Successor Agency
7220	
86100	ACQUISITION EXPENSE

AGENDA DATE:

AGENDA ITEM TITLE:

04/04/18
Property Acquisition 17760 McLaughlin Court

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	5,369,994	1,285,374	1,945,760	4,709,608
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	564,043	(564,043)
RESULT OF RECOMMENDED ACTION	<u>5,369,994</u>	<u>1,285,374</u>	<u>2,509,803</u>	<u>4,145,565</u>

Attachment: budget scorecard (1694 : Below Market Rate Acquisition, McLaughlin)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 4, 2018

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

UNCODIFIED ORDINANCE REAUTHORIZING CHAPTER 5.21 - STATE VIDEO FRANCHISES OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

1. Waive the first reading of the Ordinance; and
2. Introduce Ordinance reaffirming and reauthorizing Chapter 5.21 – State Video Franchises of the Morgan Hill Municipal Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to adopt an ordinance reaffirming the City's regulations on holders of State Video Franchises.

In response to the State's passing of the Digital Infrastructure and Video Competition Act (DIVCA) of 2006, the City adopted an ordinance establishing Chapter 5.21 – State Video Franchises in 2008 establishing baseline regulations and fees relating to the services provided by State Video Franchise holders. A main component of DIVCA was that local cable television franchising was ended and all cable franchises are now issued by the State.

Spectrum (Charter) received a new franchise from the State in 2017. As the franchise holder serving the majority of the community, they informed the City that they believe that the City needed to reauthorize Chapter 5.21 in order for Spectrum to continue collecting and remitting fees for the support of public educational and governmental (PEG) access services under their new franchise. Although staff did not believe that reauthorization was necessary to continue the collection of the 1% PEG fees under DIVCA, we recommended the adoption of an urgency ordinance out of an abundance of caution. The Council adopted the urgency ordinance in December.

Now that the "urgent" situation has been addressed, staff recommends that the Council adopt the attached regular ordinance in order to ensure that PEG fees continue to be collected and remitted to the City.

COMMUNITY ENGAGEMENT: Inform

Cable television bills include a line item for the fees collected.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the urgency ordinance reauthorizing Chapter 5.21 on December 20, 2017. The original ordinance was adopted on October 15, 2008.

FISCAL AND RESOURCE IMPACT:

The adoption of the ordinance will not impact the City's adopted budget as the adopted budget anticipates PEG support revenues of approximately \$54,000 that the City already receives. Regulating franchised video providers is an activity included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

As the adoption of this ordinance affirms a governmental funding mechanism and will not have any physical impacts on the environment, it is not a project subject to CEQA per the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Reauthorized DIVCA Ordinance April 2018

ORDINANCE NO. _____

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORGAN HILL REAUTHORIZING
CHAPTER 5.21 - STATE VIDEO FRANCHISES OF THE
MORGAN HILL MUNICIPAL CODE ESTABLISHING
FRANCHISE FEES, PEG FEES, AND CUSTOMER SERVICE
PENALTIES FOR STATE VIDEO FRANCHISE HOLDERS
PROVIDING VIDEO SERVICE WITHIN THE CITY OF
MORGAN HILL**

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 (Pub. Util. Code § 5800 *et seq.*, “DIVCA”) went into effect on January 1, 2007;

WHEREAS, on March 5, 2007, the California Public Utilities Commission released its Final Decision on the Commission's rulemaking to implement DIVCA, which determined that the State of California is the “sole franchising authority” for new video service providers within the City of Morgan Hill (“City”);

WHEREAS, pursuant to DIVCA, certain rights and responsibilities must be established by local ordinance before they may become effective and enforceable against state video franchise holders;

WHEREAS, DIVCA requires that local entities, although not franchising authorities are nonetheless responsible for the administration and implementation of certain provisions of DIVCA;

WHEREAS, The City adopted an ordinance on October 15, 2008 establishing Chapter 5.21 – State Video Franchises which established the City’s regulatory framework for holders of State Video Franchises;

WHEREAS, since the establishment of Chapter 5.21, the City has received a franchise fee of 5% of gross revenues and a PEG support fee of 1% of gross revenues from holders of State Video Franchises; and

WHEREAS, the City Council adopted an Urgency Ordinance reauthorizing Chapter 5.21 on December 20, 2017.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN
AS FOLLOWS:**

SECTION 1. Chapter 5.21 – State Video Franchises of the Morgan Hill Municipal Code is hereby reaffirmed and reauthorized.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4TH DAY OF APRIL 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 XXXX

⌘ 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. xxxx, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 18th day of April 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Reauthorized DIVCA Ordinance April 2018 (1689 : Cable Regulation Ordinance)

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 ENERGY SERVICES AGREEMENT WITH CARBON LIGHTHOUSE FOR ENERGY EFFICIENCY 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 “Energy Services Agreement with Carbon Lighthouse” submitted for City Council consideration at its meeting of April 4, 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, all activities resulting from this resolution will be minor alterations of existing facilities and are categorically exempt from the California Environmental Quality Act of 1970 (CEQA) per Section 15301 (Existing Facilities) of the CEQA Guidelines~~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 anticipated cost to the City for the conservation services provided under the agreement will be less than the anticipated marginal cost of energy that will be consumed by the facility if the City does not enter into the energy services agreement; and
- b. That the Energy Services Agreement with Carbon Lighthouse for the energy efficiency services attached hereto as Exhibit A and incorporated herein by this reference (the “Agreement”) is hereby approved subject to modification approved by the City Attorney; and
- c. 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 attached hereto as Exhibit A; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed eighty-two thousand one hundred Dollars (\$82,100).

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 4th day of April 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 April 4, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Item # 14

AGENDA DATE: 04/04/18
SUPPLEMENT # 1

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: FW: A downtown story
Date: Monday, April 02, 2018 1:06:04 PM
Importance: High

Supplement for item 14.

CITY OF MORGAN HILL

MICHELLE BIGELOW, CMC
Council Services and Records Manager/Deputy City Clerk

17575 Peak Avenue, Morgan Hill, California, USA 95037
d 408.310.4678 o 408.779.7259
e michelle.bigelow@morganhill.ca.gov | www.morganhill.ca.gov
Facebook | Twitter

-----Original Message-----

From: Irma Torrez
Sent: Monday, April 2, 2018 1:05 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: A downtown story
Importance: High

Hi Christina and Michelle,
I am not sure if you and/or the City Council received a copy of this is an e-mail in support of Booksmart (item 14 on the 4-4-18 Council Agenda). Thank you.

-----Original Message-----

From: Mauricio Quijano <mqtv@garlic.com>
Sent: Wednesday, March 21, 2018 12:23 PM
To: Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Subject: A downtown story

Dear Mrs. Torrez,

I am a Morgan Hill resident and my family has lived in Morgan Hill for over 10 years. One of the reasons we moved to Morgan Hill (and built our home here), was a unique feeling of small town. We loved the downtown area with their small and unique shops, and in particular, Booksmart, our favorite store -and no doubt- sealing for us the deal to move here with our small children.

My children grew up with Booksmart. We have been loyal customers of this store for many years. Every birthday present was a reason to go to Booksmart to get a book, a toy, a craft, build a memory.

I know what you're thinking: times have changed, and so the shops that your parents and grandparents grew up with. Nevertheless, when you're old and have fresh memories of your childhood, I am positive you may have had good memories of the ice cream store that you used to go to when you were a kid, or the toy store, or the bookstore where you grew up. Yes, times have changed but it is places like Booksmart, where communities live and thrive. It is in these unique year-round settings where our children discover a window to the world, where you meet your friends, have a cup of coffee, chat, relate to each other in a safe and friendly environment. This is a place that defines a community, this is a place that defines the Morgan Hill I love.

I strongly urge the city council to extend a loan to this store (to pay its debt that was in part caused by your decision

-as city council- to renovate downtown) and make every effort to keep Booksmart with us. It is my wish that when you go to bed at night, and read stories to your children (or grandchildren), you have in your heart a fresh memory of what it was like to live in a safe environment, to go to a fun place of discovery as when you were a kid, the same way your parents did, perhaps the same way your grandparents did. Wouldn't it be nice to do your best to preserve this memory for your children and grandchildren? I think that's a cause worth fighting for. You have that power, you have that vote to make. Please consider answering with your heart, not with your wallet. I know deep inside, our fondest memories are stored in our heart.

Respectfully,

Mauricio Quijano, Morgan Hill Resident
14215 Sycamore Drive
Morgan Hill, CA 95037

Mauricio Quijano
TV Network Director & Producer
+ 1 510-917-8242
mqtv@garlic.com



Monterey Corridor Market Analysis & Implementation Options

City of Morgan Hill
City Council Meeting | April 4, 2018



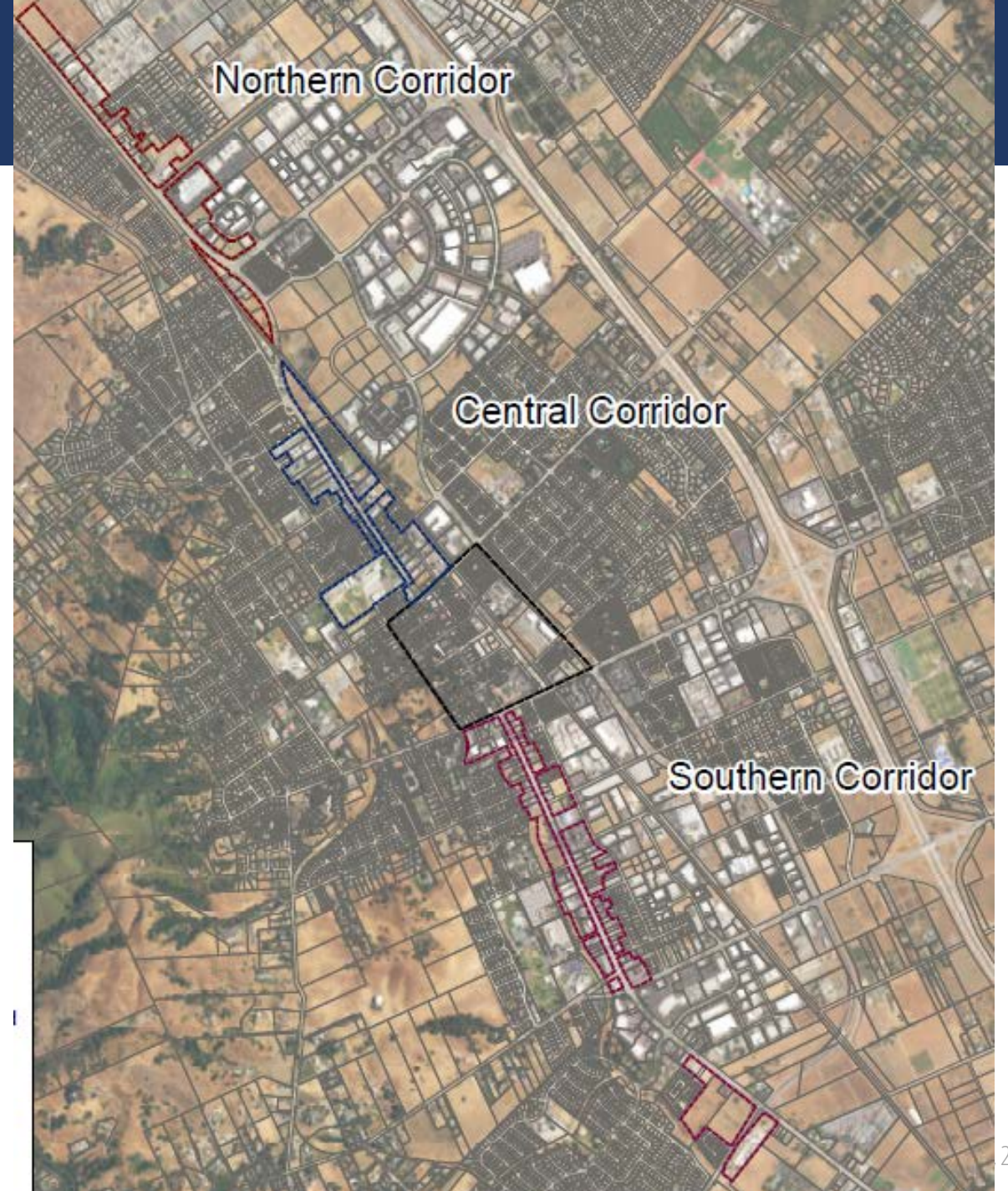
Background

General Plan Update (2016)

- Mixed Use Flex Designation
- Transform Monterey Corridor
 - Vibrant, walkable mixed-use

Targeted, Flexible, Economically Grounded Planning Approach

- Land Use Inventory
- Market Analysis
- Zoning Recommendations



Purpose

Market Analysis & Implementation Memo

- High-level assessment of economic/market conditions
- Develop market-based regulatory options

3 DEMOGRAPHIC & SOCIO-ECONOMIC DATA

This section assesses Morgan Hill's demographic and socio-economic characteristics relative to larger regions (i.e., Santa Clara County and California). The comparative context allows an understanding of Morgan Hill's unique attributes and potential opportunities or competitive advantages that may affect the City's economic performance over time. It may also provide insight as to whether existing trends in Morgan Hill may continue or adjust to larger geographic trends.

3.1 POPULATIONS & HOUSEHOLDS

Trends in population and household growth can convey important information about demand for various land use types, potential consumer spending, and the need for services. Morgan Hill has, and is expected to continue to, experience stable population and household growth. On average, Morgan Hill's population grew 1.7% per year between 2000 and 2015 (24.2%) and is forecast to grow 1.9% on average per year from 2015 to 2035 (37.3%).

TABLE 3-1 POPULATION

Area	Population (2000-2035)			
	2000	2015	2035	Growth Rate 2000-2035
Morgan Hill	19,336	17,882	42,331	26.2%
San Jose	1,682,080	1,781,642	1,903,209	11.1%
California	33,871,446	37,253,958	38,971,880	14.9%

Source: U.S. Department of Commerce, Bureau of Economic Analysis, GDP-1, California Department of Finance, February 2015; City of Morgan Hill, Department of Planning and Development

The total number of households forecast for Morgan Hill in 2035 is 18,082, which is an average 1.8% increase per year from 2015 to 2035 or 238 additional households each year. This represents a slight increase from the 2000 to 2015 period, which was a 1.5% annual increase. The County's projected growth rate from 2015 to 2035, which is higher than the County's projected growth rate from 2015 to 2035. These growth projections reflect the constraints of the City's Regional Development Control System (RDACS), which limits the number of residential lots available in each year's RDACS competition to 215.

OPTIONS

The following options have been formulated for the City's review and discussion. As recommended in the Market Analysis Report, a zoning approach that can effectively respond to fluctuating market conditions and strategically focus commercial space is desirable. The Implementation Options Table provides a summary of the options, including pros and cons of each option.

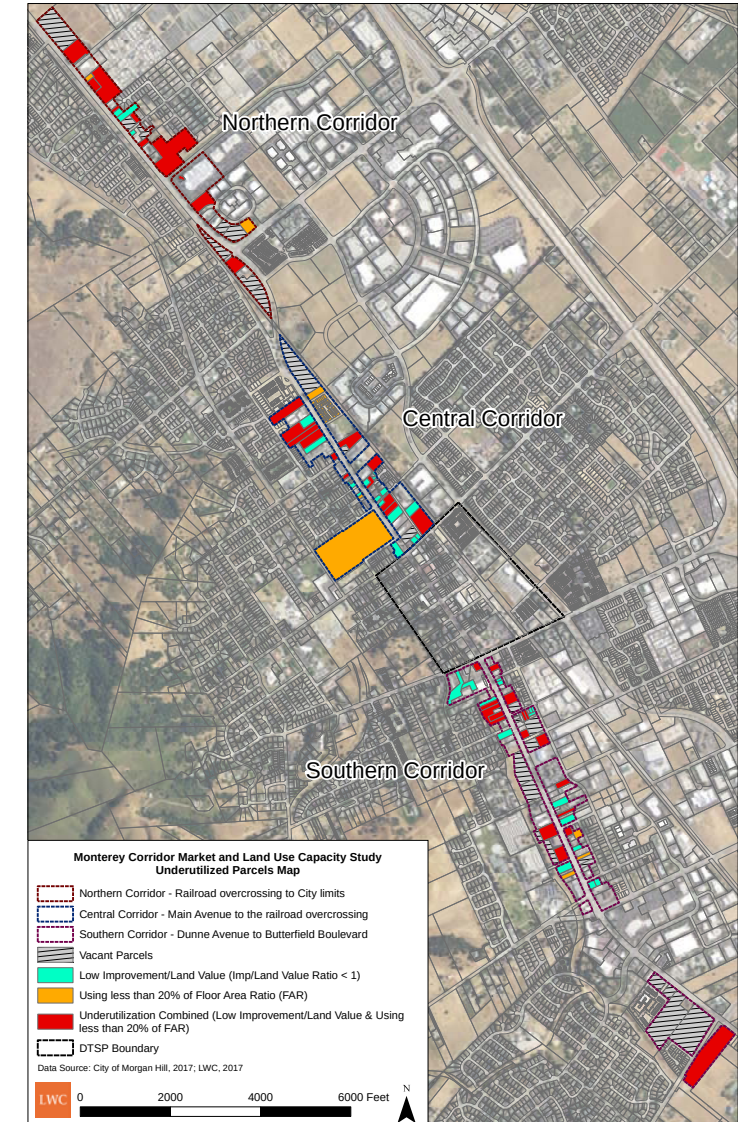
1. FORM-BASED CODE (FBC) FOR THE STUDY AREA

Option 1 offers the most amount of change to the City's Zoning Code (Code). It includes integrating new chapters and sections of form-based zones and standards into the City's existing conventional Zoning Code. A form-based code (FBC) is an approach to zoning that prioritizes the placement and relationship of buildings relative to each other and to the public right-of-way (i.e., the form of a community) over the conventional regulation of use¹. FBCs typically rely on the extensive use of illustrations, photographs, and tables in addition to supplemental text, which makes them easier to use and apply than most conventional codes. FBCs are most effective at regulating the placement of buildings, building frontages (i.e., facades), building types, and in establishing streetscape standards than a conventional code, and for enabling by-right mixed-use development. If a FBC approach is implemented, a hybrid code for the City (i.e., it includes the City's existing conventional zoning code with the FBC integrated within it) would be created, which will allow for greater predictability in the built form of development and less rigid regulation of use in the Corridor. Additionally, the form-based zones and standards will be responsive to the contextual form of the Monterey Corridor by focusing commercial form and use in strategically located nodes or corridor segments. Option 1 may be implemented in either of the following ways.

1.1 COMPREHENSIVE FBC

Option 1.1 would integrate a comprehensive FBC into the City's existing Code. The FBC could be based on the principle of the transect in which standards are developed based on the character of places. Transects transition from rural to urban along a scale of increasing intensity, making form-based standards appropriate in many

¹ All indications of the "Code" refer to the soon-to-be adopted City of Morgan Hill Zoning Code.
² For additional information on FBCs and a comprehensive definition and how they have been applied across the U.S., see www.formbasedcode.org. An example FBC is the City of Los Angeles' Development Code <http://www.southcoastdesign.com/CA/LA/devcode>.



Key Demographic Market Influencers

Population

- 1.9% growth per year

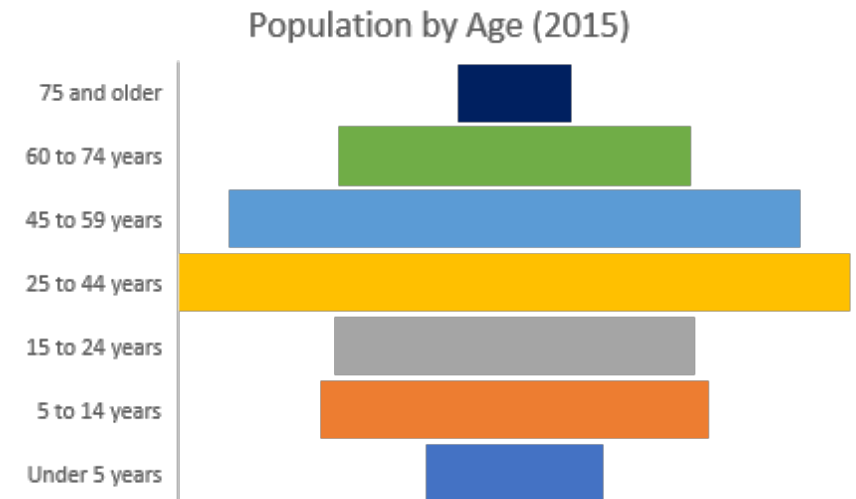
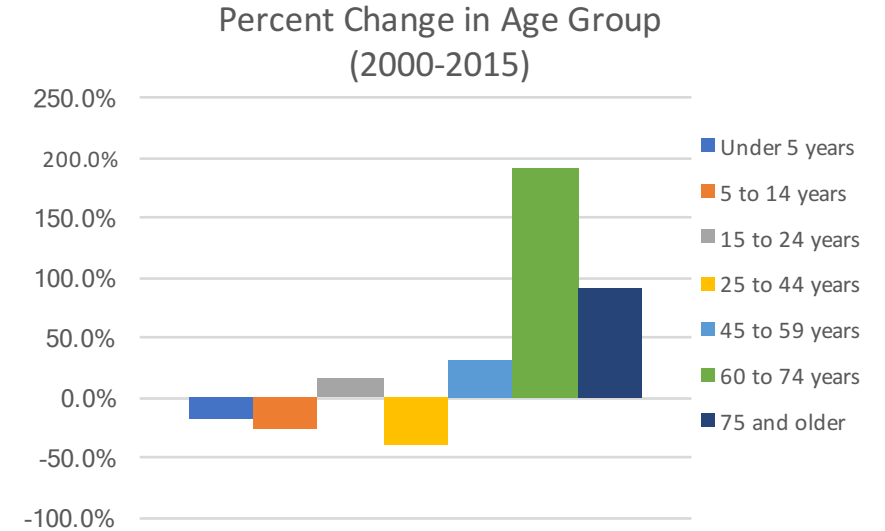
Jobs

- 2% growth per year

Household Income

- \$96,051 in 2015 - On par with County, but growing more slowly

Age



Market Analysis

Key Findings - Retail

- Current retail market stable, but...
- Net sales tax capture
- Sales tax leakage in all economic categories except transportation
- Highest leakage for restaurants and apparel stores



Market Analysis

Key Findings

- Office

- Cool/stable office market

- Residential

- Residential is most highly favored



Market Analysis

Key Findings - Capacity

- 600,000 – 1.5 million sf of physical capacity
- 215,000 sf theoretical commercial market demand*
- 385,000 – 1.3 million sf of physical capacity for non-commercial uses

* *Based on a relatively stable future market*



Market Analysis

Conclusions

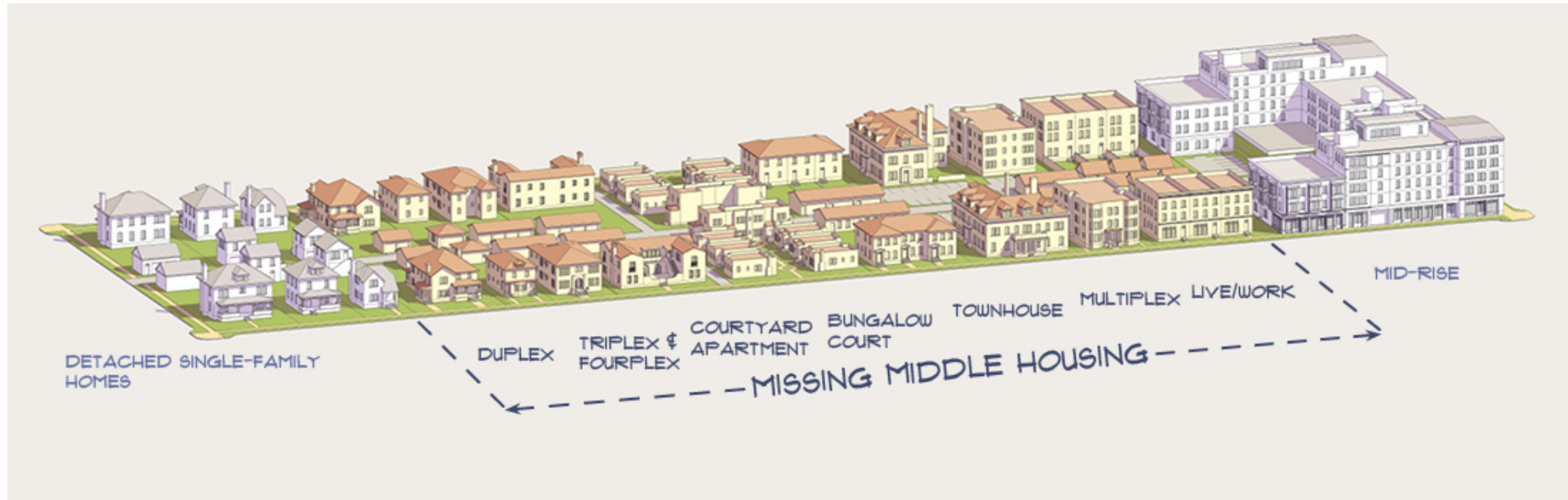
- Zone for fluctuating market conditions
- Strategically locate commercial
 - Additional analysis for retail viability and siting
- Standards for revitalization
 - Parking
 - Building frontage standards
 - High-quality public space



Market Analysis

Conclusions (cont.)

- Allow “Missing Middle” housing
- Streamline projects supporting mixed-use
- Encourage temporary uses and events



Opticos Design, Inc.

Implementation Options

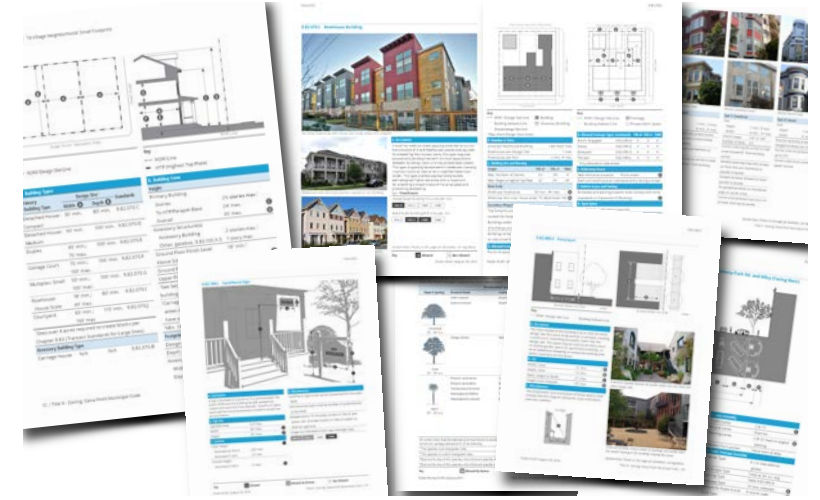
Introduction

1. Form-Based Code (FBC)
 - 1.1 Comprehensive FBC
 - 1.2 Scaled-Down FBC
2. Conventional Code Updates
3. Specific Plan
4. Guidelines for “Block-Level Master Plans”
5. Streetscape Improvements Plan & Façade Incentive Program

Implementation Options

1. Form-Based Code (FBC)

- Prioritize relationship of buildings and public realm
- Regulate building placement, frontages, open space, and streets
- Responsive to context



Charrette Summary: Land Development Code Rewrite | Flagstaff, AZ
Opticos Design, Inc. & Lisa Wise Consulting

A.9

Implementation Options

1.1 Comprehensive FBC

- New form-based zones
- Form-based standards
- Building, frontage, open space, and street types
- Design charrette (interactive multi-day workshop)

1.2 Scaled-Down FBC

- May include new zones
- Form-focused conventional standards
- Frontage types



Implementation Options

2. Conventional Code Updates

- Revise standards applicable to the Corridor
- Revise uses for flexibility/modernization

3. Specific Plan

- Establish a vision; goals, policies, and programs
- Substantial community engagement
- Includes zoning standards

1111.030 Allowed Land Uses and Permit Requirements

- A. Land uses must comply with the allowed uses of the base zone, except as specifically modified, waived, or augmented by an overlay zone in Chapter 1117 (Overlay Zones).
- B. The land uses allowed by this Code in the non-transect commercial zones are listed in Table 1111.030.A (Non-Transect Commercial Zones Allowed Uses) below, together with the type of planning permit required for each use. Each land use listed in Table 1111.030.A (Non-Transect Commercial Zones Allowed Uses) is defined in Chapter 1181 (Definitions of Uses).
- C. **Establishment of an Allowable Use**
- Any one or more land uses allowed in Table 1111.030.A (Non-Transect Commercial Zones Allowed Uses) may be established on any lot within the zone, subject to the planning permit requirement listed in the Table, and in compliance with all applicable requirements of this Code.
 - Where a project on a single lot includes two or more of the land uses listed in the Table, the overall project will be subject to the highest permit level required by the Table for any individual use.
 - A land use that is not listed in Table 1111.030.A and is determined by the Director to not be included in the definition listed in Chapter 1181 (Definitions of Uses), is not allowed, unless the Director finds that the proposed use is similar to, compatible with, and will not involve a greater intensity than a listed use and such use is consistent with the purposes of the zone, the Community Plan, and any applicable City plan.

Table 1111.030.A (Non-Transect Commercial Zones Allowed Uses)

Land Use Type	Permit Required by Zone						Specific Use Standards
	NC	SC	OC	U	MEC-L	MEC-H	
Agriculture and Animal Uses							
Community Garden	P	P	P	P	P	P	Section 121.060
Kennel	CUP	CUP	-	-	-	-	
Veterinary Clinics and Hospitals	CUP	CUP	CUP	CUP	CUP	CUP	Section 121.060
Civic, Recreation, and Community Assembly Uses							
Cemetery	CUP	CUP	CUP	CUP	CUP	CUP	
Child Day-care Center	CUP	CUP	CUP	CUP	CUP	CUP	
College or University	-	CUP	CUP	CUP	CUP	CUP	
Community Assembly	CUP	CUP	CUP	CUP	CUP	CUP	
Entertainment - Indoor	CUP	CUP	CUP	CUP	CUP	CUP	
Entertainment - Outdoor	CUP	CUP	CUP	CUP	CUP	CUP	
Family Day-care Center	P	P	P	P	P	P	
Indoor Recreation	CUP	CUP	CUP	CUP	CUP	CUP	
Library and Museum	P	P	P	P	P	P	
Park and Outdoor Recreation	P	P	P	P	P	P	
Public Emergency Services	P	P	P	P	P	P	
Public Service Facility	CUP	CUP	CUP	CUP	CUP	CUP	
School - Public and Private	CUP	CUP	CUP	CUP	CUP	CUP	
Vocational/Technical School	-	CUP	CUP	CUP	CUP	CUP	

1111-2 | City of Westerville Zoning Code

2.2.2 Vision

The Ashland District will become a transit-oriented district and the center of activity within the Ashland and Cherryland communities, offering places to live, shop, work, and play that are easily accessible by foot, bike, car, or transit. As envisioned, the District will contain a mix of uses including office space, community gathering places, and retail. Design and development regulations will promote pedestrian scale frontages that encourage residents and visitors to stop and walk along E. 14th Street. Safe pedestrian and bicycle networks will better connect the District with adjacent neighborhoods, parks and BART. Building upon existing improvements and recent development such as the Tiburcio Vasquez Health Clinic and Ashland REACH Youth Center, the Ashland District will be well known by residents as a fun, safe destination for families that fosters a sense of community and pride.

Streetscapes will be improved to incorporate new lighting, benches, signage, wayfinding elements, and trees to make the District a safer, more inviting place to visit. High-density, mixed-use development will feature

attractive ground floor uses that front the street to promote revitalization and increase pedestrian activity. Pathways that bisect long lots will allow better pedestrian and bicycle access to adjacent residential uses and throughout the District. A public plaza at Ashland Avenue and E. 14th Street will further foster outdoor active uses.

The District will allow taller buildings, up to four stories, and built to the street, to support increased retail and office development. Policies and standards for on-street and on-site parking will support businesses and increase development feasibility. A public parking garage funded through parking in-lieu fees will further increase parking capacity in the District. Residential uses will be allowed above or behind commercial space, to promote street activity during all times of day and to increase the consumer base for local businesses. New retail will generate high volumes of customer traffic that will enable the District to become a commercial anchor that supports local businesses.



ACBD Ashland District Vision for Redevelopment of Intersection of 162nd Ave. and E. 14th St.



Example of Attractive Streetscape



Example of Buildings Creating a Street Wall and Providing Public Gathering Space Along E. 14th St. between 162nd Ave. and 163rd Ave.



Example of Building Type and Height envisioned for the Ashland District

Implementation Options

4. Guidelines for “Block-Level Master Plans”

- Required by the General Plan
- Conceptual plan
- Difficult to ensure form/character consistency

5. Streetscape Improvement Plan & Façade Incentive Program

- Street and façade improvements prioritized
- Less likely to achieve desired change



Implementation Options

Option	Effectiveness	Timeframe	Cost
1.1 Comprehensive FBC	● ● ● ● ●	10-18 months	\$\$\$\$
1.2 Scaled-Down FBC	● ● ● ●	8-12 months	\$\$\$
2. Conventional Code Updates	● ● ●	6-10 months	\$\$
3. Specific Plan	● ● ● ● ●	18-24 months	\$\$\$\$\$
4. Guidelines for “Block-Level Master Plans”	● ●	4-6 months	\$
5. Streetscape Improvement Plan & Façade Incentive Program	●	TBD	TBD

Planning Commission Recommendation

BLOCK LEVEL MASTER PLAN (SHORT-TERM)

- City-led effort with developer/property owner buy-in
- Work towards long-term goal of a specific plan and form-based code

SPECIFIC PLAN (LONG-TERM)

- Develop vision, goals, policies, and implementation measures
- Includes a form-based code
- CEQA clearance for future projects
- Community buy-in

Note: Limitations of RDCS applies to development in the Mixed Use Flex designation

Discussion



Morgan Hill City Council Meeting – April 4, 2018

Outdoor Sports Center Operator Selection

Agenda Item: 16



RFP Basic Outcomes



1. Balance community access with regional use
2. Operate the OSC without any city subsidy
3. Maintain the facility at an exceptional level
4. Provide sustainable, fiscally responsible, and transparent operations
5. Ensure a diverse mix of field use by sport type

RFP Basic Outcomes



6. Coordinate and manage event parking plans
7. Operations that integrate with:
 - o City facilities, including the adjacent Morgan Hill Dennis Kennedy Aquatics Center
 - o Local businesses and hotel operators
 - o The future planned Destination Management Organization

RFP Additional Desired Outcomes



1. Propose innovative facility use approaches and improvements
2. Development of a funding mechanism for future planned maintenance and replacement
3. Open public (non-organized) use hours at the facility

RFP Additional Desired Outcomes



September 8, 2017	Request for Letters of Interest Opens
October 2017	Tours and Informational Meetings
November 17, 2017	Letters of Interest Due
Early December 2017	Interviews with LOI Submitters
January 17, 2018	Review of LOIs by City Council
January 18, 2018	Invitation for Proposals Sent
February 16, 2018	Proposals Due
Late February 2018	Interviews on Proposals
March 20, 2018	Recommendations by the PRC
April 4, 2018	Review by City Council
April- May 2018	Agreement(s) negotiated by City Staff
June 2018	Agreement(s) to City Council for Approval

Letter of Interest Responses



Potential Operators of the OSC

1. San Jose Soccer Complex Foundation
2. Sports Facilities Management
3. Morgan Hill Youth Sports Alliance
4. MC Elite

Letter of Interest Responses



Potential Operators of the OSC

1. NewCo - Full Proposal Received

New name for partnership:

- a) San Jose Soccer Complex Foundation
- b) CYSA District 2
- c) Orchard Valley Youth Soccer

2. Sports Facilities Management

No Proposal Received

PRC Recommendation



Direct staff to negotiate an agreement with NewCo for operation of the Outdoor Sports Center.

Commissioner comments on agreement:

- A clear process on managing perceived bias
- Accounting for “internal customer fees”
- A minimum income to the City
- A joint management approach, which involves the City as a “partner”
- Consult with the current operator management on agreement points

Recommended Council Action



1. Direct staff to negotiate an agreement with NewCo for operation of the Outdoor Sports Center; and
2. Provide direction on any additional agreement considerations the Council may have, in addition to those already established in the guiding principles and outcomes outlined in the Request for Proposals.

Questions?

