



Special - 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 18, 2018 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(6:00 pm Closed Session/ 7:00 pm Regular Meeting)

Closed sessions are not open to the public. Students should attend the 7:00 pm Regular City Council meeting.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

SPECIAL MEETING

6:00 pm

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

CLOSED SESSION ANNOUNCEMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATOR:

Authority:	Pursuant to Government Code Section 54957.6
City Negotiators	Christina Turner City Manager; Cindy Murphy Assistant City Manager for Administrative Services; Michelle Katsuyoshi Human Resources Director
Employee Organization:	Morgan Hill Police Officers Association Employees Covered under Management Resolution #17-042 AFSCME Local 101 Morgan Hill Community Service Officers Association

RECONVENE

REGULAR MEETING

7:00 pm

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

RECOGNITIONS

Recognizing Lori Paul for her service on the Library, Culture, and Arts Commission and Bill Haskell for his service on the Parks and Recreation Commission

PRESENTATIONS

YAC PRESENTATION ASSET #9 SERVICE TO OTHERS

PROCLAMATIONS

Proclaiming April 12 - 19, 2018

as

Days of Remembrance of Victims of the Holocaust

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. AWARD SERVICE AGREEMENT FOR DESIGN PROFESSIONALS TO CSG CONSULTANTS FOR UTILITY INFRASTRUCTURE PROGRAM MANAGEMENT SERVICES

Recommendation:

1. Award Service Agreement for Design Professionals to CSG Consultants to provide Utility Infrastructure Program Management Services for a not to exceed amount of \$520,000; and
2. Authorize the City Manager to execute and administer a Service Agreement for Design Professionals with CSG Consultants for Utility Infrastructure Program Management.

2. AWARD CONTRACT FOR 2018 INFLOW AND INFILTRATION PROJECT

Recommendation:

1. Approve 2018 Inflow and Infiltration Project plans and specifications;
2. Award contract to Pacific Underground Construction for the 2018 Inflow and Infiltration Project in the amount of \$691,850;
3. Authorize expenditure of construction contingency funds not to exceed \$69,185; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction.

3. APPROVE PURCHASE OF TWO 2018 FORD UTILITY TRUCKS & EQUIPMENT

Recommendation:

1. Approve purchase of two utility trucks in the amount of \$189,919.97;
2. Adopt resolution amending the Fiscal Year 2017/18 Budget by appropriating \$25,000 from the Sewer Fund (640) and \$25,000 from the Water Fund (650) as transfers to the Equipment Replacement Fund (790) and appropriating the total \$50,000 for the purchase of two 2018 Ford Utility Trucks and Equipment; and
3. Authorize City Manager to approve purchase order in the amount of \$189,919.97 with National Auto Fleet Group.

4. FIRST AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve First Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project for a total not to exceed contract amount of \$494,733; and
2. Authorize the City Manager to execute and administer a First Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for the Hale Avenue Extension Project.

5. FEBRUARY 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

6. RESOLUTION ADDING A PROPERTY ASSESSED CLEAN ENERGY PROVIDER

Recommendation:

Adopt resolution joining the California Enterprise Development Authority (CEDA) as an Associate Member and authorizing CEDA, through Dividend Finance, LLC, to offer their program and levy assessments within the City of Morgan Hill.

7. APPROVE RESOLUTION SUPPORTING PROPOSITION 69 ON THE JUNE 2018 BALLOT TO PRESERVE TRANSPORTATION FUNDING, OPPOSING EFFORTS TO REPEAL THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SB1), AND JOINING THE COALITION TO PROTECT LOCAL TRANSPORTATION IMPROVEMENTS

Recommendation:

Adopt resolution supporting Proposition 69 and opposing the repeal of the "Road Repair and Accountability Act" (SB 1), and join the Coalition to Protect Local Transportation Improvements.

8. ADOPT RESOLUTION APPROVING FY2018-19 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

Recommendation:

Adopt resolution approving a list of street rehabilitation projects funded by SB 1: The Road Repair and Accountability Act.

9. ADOPTION OF AN UNCODIFIED ORDINANCE 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

Recommendation:

Waive the reading, adopt Ordinance No. 2273, New Series, and declare that the title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

10. APPROVE THE APRIL 4, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

11. LEADERSHIP MORGAN HILL PUBLIC ART PROPOSAL

Recommendation:

Approve the Leadership Morgan Hill Class of 2018 class project proposal for the coordination of utility box art installation.

Estimated Time: 10 Minutes

12. PROVIDE COMMENTS AND DIRECTION REGARDING HIGH SPEED RAIL BUSINESS PLAN

Recommendation:

1. Receive update on High Speed Rail's 2018 Business Draft Plan (Draft Plan); and
2. Direct the City Manager to prepare formal comments regarding the Draft Plan on behalf of the City of Morgan Hill.

Estimated Time: 30 Minutes

13. CANNABIS AND TRANSIENT OCCUPANCY TAX COMMUNITY SURVEY RESULTS

Recommendation:

1. Receive report on Cannabis and Transient Occupancy Tax (TOT) Survey administered by Godbe Research; and
2. Discuss next steps.

Estimated Time: 30 Minutes

14. APPROVE AGREEMENT GRANTING EXCLUSIVE RIGHT TO NEGOTIATE THE REDEVELOPMENT OF HALE LUMBER SITE IN CONJUNCTION WITH VACATION OF 0.29 ACRES OF DEPOT STREET AND REALIGNMENT OF DEPOT STREET TO CHURCH STREET AND EAST DUNNE AVENUE INTERSECTION.

Recommendation:

Approve negotiations with Latala Homes, LLC and property owner to explore a residential development proposal that would require vacating approximately 0.29 acres of Depot Street, requiring a re-alignment of Depot Street to Church Street.

Estimated Time: 30 Minutes

15. ADOPTION OF RESOLUTIONS AND APPROVAL OF AGREEMENTS SUPPORTING THE PURCHASE OF AN AGRICULTURAL CONSERVATION EASEMENT ON FOUNTAIN OAKS RANCH

Recommendation:

1. Adopt resolution approving and supporting the purchase of an agricultural conservation easement (Easement) by the Santa Clara Valley Open Space Authority (Authority) on Fountain Oaks Ranch;
2. Adopt resolution amending the Adopted Fiscal Year 2017-2018 Budget to appropriate \$2,000,000 from the City's Agriculture and Open Space Preservation Fund (Fund 306) for the City's contribution to the Easement purchase;
3. Authorize the City Manager to execute a Funding Agreement with the Authority and Santa Clara County (County) requiring the contribution of up to \$3,000,000 of City funds for the purchase of the Easement subject to further negotiation and the review and approval of the City Attorney; and
4. Authorize the City Manager to execute an agreement or memorandum of understanding with the State of California, Authority, and County apportioning the mitigation credits associated with the Easement proportionally among the parties funding the purchase of the Easement subject to further negotiation and the review and approval of the City Attorney.

Estimated Time: 15 Minutes

PUBLIC HEARING

16. PUBLIC HEARING AND BALLOT TABULATION FOR SANDALWOOD SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

Estimated Time: 10 Minutes

17. ZA2017-0007, DA2017-0003: E. DUNNE-KYONO (FORMERLY E. DUNNE MANA) - ZONING AMENDMENT AND DEVELOPMENT AGREEMENT FOR A 32 LOT SUBDIVISION, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-02-014 LOCATED AT 505 E. DUNNE AVENUE

Recommendation:

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

Estimated Time: 15 Minutes

OTHER BUSINESS

18. 2018 INFRASTRUCTURE UPDATE REPORT

Recommendation:

Receive the updated 2018 Report on City Infrastructure.

Estimated Time: 20 Minutes

19. FIRE RESOURCES REPORT

Recommendation:

Accept report on Fire resources and update on Public Safety Master Plan recommendations.

Estimated Time: 20 Minutes

20. ADOPT ORDINANCE TO 1) UPDATE ENFORCEMENT PROVISIONS OF THE MUNICIPAL CODE, 2) AMEND PROVISIONS REGARDING ANIMAL NUISANCES, AND 3) CLEAN UP VARIOUS TYPOGRAPHICAL AND OTHER ERRORS IN THE CODE

Recommendation:

1. Waive the first and second reading of the Ordinance to update code enforcement; and
2. Introduce the Ordinance.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

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.

April Developmental Asset

Asset #9

Service to Others

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

HOW WE SERVE OTHERS IN MORGAN HILL

In addition to the Youth Action Council (YAC), teens can get involved in their school clubs and activities:

- Key Club and Interact in local high schools
- Help out at local organizations & centers
- Spend time with senior citizens
- Interact with animals at animal shelters
- Donate blood to local health clinics
- Volunteer at large city events
 - Senior Citizens Ball
 - Taste of Morgan Hill



THE MORGAN HILL YOUTH ACTION COUNCIL PRESENTS:
13TH ANNUAL SENIOR CITIZENS BALL FUNDRAISER

Prom:
A Night Under the Stars

TICKETS:
\$25 PER PERSON
SALES BEGIN ON
WED, JANUARY 31ST, 2018
ONLY AVAILABLE AT
THE CENTENNIAL
RECREATION CENTER (CRC)
171 W EDMUNDSON AVE:
8AM-3PM SENIOR CENTER
(MON-FRI)
3PM-CLOSE CRC WELCOME
DESK (MON-SUN)

ENTERTAINMENT:
FABULOUS FLAPPERS
GOLDEN OLDIES LINE DANCERS
SOUTH BAY SWING BAND
YAC MEMBERS

DATE:
SATURDAY,
MARCH 24TH, 2018
5:00 - 9:30PM

EVENT LOCATION:
COMMUNITY & CULTURAL CENTER
17000 MONTEREY ROAD
MORGAN HILL, CA

CATERING:
MAMA MIA'S ITALIAN
MEDITERRANEAN CUISINE

SEATS RESERVED UPON
A FIRST COME, FIRST
SERVE BASIS

NO ALCOHOL PERMITTED

MORE INFORMATION
AVAILABLE AT
408.782.2128

April Complementary Asset

Asset #33

Interpersonal Competence

Young person has empathy, sensitivity,
and friendship skills.

HOW IT RELATES TO SERVICE TO OTHERS

- Ø Making connections with those in your community
- Ø Gaining social skills & creating networks
- Ø Feeling compassion towards the people serve
- Ø Practicing patience and problem solving





Communication: YAC PRESENTATION ASSET #9 SERVICE TO OTHERS (PRESENTATIONS)



HAVE YOU EVER HAD A
MEANINGFUL SERVICE
EXPERIENCE?



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

AWARD SERVICE AGREEMENT FOR DESIGN PROFESSIONALS TO CSG CONSULTANTS FOR UTILITY INFRASTRUCTURE PROGRAM MANAGEMENT SERVICES

RECOMMENDATION(S)

1. Award Service Agreement for Design Professionals to CSG Consultants to provide Utility Infrastructure Program Management Services for a not to exceed amount of \$520,000; and
2. Authorize the City Manager to execute and administer a Service Agreement for Design Professionals with CSG Consultants for Utility Infrastructure Program Management.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture

2018 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan
Water System Master Plan

REPORT NARRATIVE:

In April 2014, City Council approved the issuance of \$13M in water revenue bonds to fund new capital improvement water related projects. In June 2015, \$8M in sewer revenue bonds were also issued for new sewer related capital improvement projects. The services of CSG Consultants have been utilized to assist staff with the completion the water and sewer bond related projects

The existing contract with CSG Consultants expires on May 1, 2018. Therefore, staff is recommending a new one-year consulting services contract with CSG Consultants. The new contract will allow CSG to complete the remaining water and sewer bond projects that are currently in progress. The use of CSG's services is consistent with the Council's long-term labor policy which calls for the use of consultants to augment staff for specific short-term spikes in workload.

Therefore, staff recommends that City Council approve the new consulting services contract with CSG Consultants with a not-to-exceed amount of \$520,000. The costs for project planning, design, inspection, and project management were planned for and are

included in the budget for the water and sewer bond related projects. Staff will continually evaluate the consultant's progress and effectiveness in delivering projects. CSG's services will only be used as needed.

COMMUNITY ENGAGEMENT: Inform

The bond issuances and original consultant agreement and subsequent amendments were approved by the City Council at public meetings. Staff continues to update the community regarding the water and sewer bond projects through Nextdoor and the City's webpage.

ALTERNATIVE ACTIONS:

The City Council could decide not to move forward with awarding a contract to CSG Consultants and instead direct staff to solicit proposals from other qualified firms; however, this may not result in a lower price and will impact the completion of the remaining water and sewer bonded projects.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On April 2, 2014, City Council approved the issuance of \$13M in water revenue bonds to fund new capital improvement water related projects.
- On November 5, 2014, City Council awarded a consultant agreement with CSG Consultants for a not to exceed amount of \$313,430.
- On June 3, 2015, City Council approved the issuance of \$8M in sewer revenue bonds for new wastewater projects.
- On June 3, 2015, City Council approved a first amendment to agreement with CSG Consultants for an additional \$639,085, for a total amount of \$952,515.
- On June 15, 2016, City Council approved a second amendment to agreement with CSG Consultants for an additional \$131,083, for a total amount of \$1,083,598.
- On September 21, 2016, City Council approved a third amendment to agreement with CSG Consultants for an additional \$300,000, for a total amount of \$1,383,598 with services through June 1, 2017.
- April 5, 2017, City Council approved a consultant agreement with CSG Consultants for \$729,600 for Utility Infrastructure Program Management Services.

FISCAL AND RESOURCE IMPACT:

The total not-to-exceed cost for this Service Agreement for Design Professionals is \$520,000 and would cover Utility Program Management Services through April 30, 2019. The cost for this agreement is budgeted in the adopted Capital Improvement Program (CIP) Budget and will be charged to the individual water and sewer bond funded projects. The contract amount will be split between the Water Funds 651 and 653 (\$78,000) and Wastewater Funds 641 and 643 (\$442,000).

CEQA (California Environmental Quality Act):

Not a Project

This professional service agreement and the service performed thereunder are not a project as defined in Section 15378 of CEQA Guidelines. The environmental impacts of individual CIP projects are analyzed at the time of project approval.

LINKS/ATTACHMENTS:

1. CSG Consultant Agreement 2018

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS CSG Consultants, Inc.

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

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until April 30, 2019 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to provide Program Management Services for Utility Infrastructure as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$520,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Five Hundred Twenty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1. above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. **Insurance Types and Amounts.**

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

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

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella"

policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. Compliance with Law.

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

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

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

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

CSG Consultants, Inc.
Hatem Ahmend, P.E.
550 Pilgram Drive
Foster City, CA 94404

Address of CITY is as follows:

Development Services Center	with a copy to:
David Gittleson, P.E.	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. **Maintenance of Records.**

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

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

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

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

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

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

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

20. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CSG Consultants, Inc.

 City Attorney

By: _____

 Donald A. Larkin

CYRUS KIANPOUR, PRESIDENT

 Print Name

 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: _____

04-04-18

By: _____

Charles D Rider, sec

 Print Name and Title of Signer.

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

Date: _____

7/5/18

**EXHIBIT A
SCOPE OF SERVICES**



550 Pilgrim Drive
Foster City, CA 94404
phone 650.522.2500
fax 650.522.2599

www.csgegr.com

April 5, 2017

Scott Creer, PE
Deputy Director for Public Works
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA, 95037

RE: Project Scope of Work and Fee Proposal for Utility Infrastructure Program Management

Dear Mr. Creer:

CSG Consultants, Inc. (CSG) is pleased to present this scope of work and fee proposal to the City of Morgan Hill (City) for the Utility Infrastructure Program Management contract (Project). Per your request, we have enclosed the scope of work and fee proposal to assist with managing the City's water and wastewater bond projects from May 1, 2018 through April 30, 2019, for a duration of 12 months. The total fee also includes \$83,200 for modeling work performed by CSG's sub-consultant, Tony Akel.

Utility Infrastructure Contract Fee	
TASK	TOTAL
Water Project Management	\$78,000
Wastewater Project Management	\$442,000
TOTAL	\$520,000

The proposed scope of work is attached herein and will include the following list of utility projects. These projects are the current and potential projects that CSG will assist the City in managing and are the basis of the fee proposal.

Water Projects:

- East Dunne Booster Station Rehabilitation (Scoping)
- East Dunne Hillside Water Reservoir (EIR Process)
- Hillside Tank Booster Station (Scoping)
- Holiday Lakes Water Main Repairs (Scoping)

Wastewater Projects:

- East Dunne Avenue and Tennant Avenue Sewer Main Rehabilitation
- 25 1st Street Sewer Main Replacement
- 2018 Inflow and Infiltration Project
- Monterey Road: Sewer Vault Lining Project at Llagas Creek
- 2017 Sewer Main Upgrades
 - Crest Lane: "Trouble Spot"
 - La Mar Drive: "Trouble Spot"
 - Lindo Lane: "Trouble Spot" Lift Station "F": 12" Force Main
 - Wright Avenue: "Trouble Spot"
 - Monterey Ave (Ciolino-Spring): "Trouble Spot"



Potential Future Wastewater Projects (may be added under separate scope of work):

- Harding Avenue: Between Highland Avenue & Fitzgerald Road
- Future Inflow and Infiltration Projects
- Del Monte Sub-Trunk
- Downtown: Pipeline Realignment
- Harding Ave.: Between Fitzgerald Road to Day Road
- Monterey Road & W. Dunne: New LS – Downtown Alignment
- San Pedro: Between Butterfield & Railroad

The Program Manager, **Kevin O'Connell, PE**, is anticipated to provide onsite services to the City for the duration of this assignment and will be assisted by CSG staff as requested by the City.

If you have any questions or require additional information, please contact me at hatem@csgengr.com or (650) 522-2511, or Kevin O'Connell at kevino@csgengr.com or (650) 576-0407.

Sincerely,

Hatem Ahmed, PE, PMP
Vice President, CSG Consultants, Inc.

Cc: David Gittleson, Associate Engineer, City of Morgan Hill

Enclosures: Detailed Fee Proposal for Utility Infrastructure Program Management
2018 CSG Engineering Hourly Rates

Attachment: CSG Consultant Agreement 2018 (1676 : Award Service Agreement to CSG Consultants)

DETAILED FEE PROPOSAL TO THE

City of Morgan Hill

FOR

Utility Infrastructure Program Management Services

PREPARED BY

CSG Consultants, Inc.

Contract Period: May 1, 2018 through April 30, 2019

Program Management Services - Utility Infrastructure			
	Base Rate	Total Hours	CSG Fee
Principal Engineer/Program Manager	\$210	2,080	\$436,800
CSG Program Management Services:		2,080	\$436,800

Resource Allocation				
Program	Allocation	Akel Fee	CSG Fee	Total Fee
I. Water Project Management	15%	\$12,480	\$65,520	\$78,000
II. Wastewater Project Management	85%	\$70,720	\$371,280	\$442,000
Project Management Services - Wastewater & Water System Totals:		\$83,200	\$436,800	\$520,000

Project Management Services Summary	
I. Water Project Management	\$78,000
II. Wastewater Project Management	\$442,000
Utility Infrastructure Contract Fee (I+ II):	\$520,000

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Attachment: CSG Consultant Agreement 2018 (1676 : Award Service Agreement to CSG Consultants)



2018 Engineering Division Hourly Rates

CSG services are billed on a time-and-materials basis according to our Standard Rates, shown below.

Professional Engineering Services	Hourly Rate
Administrative Assistant	\$70
Analyst	\$120
Engineering Designer	\$130
Construction Inspector	\$135
Senior Analyst	\$145
Assistant Resident Engineer	\$160
Assistant Engineer	\$140
Associate Engineer	\$160
Senior Construction Inspector	\$150
Senior Engineer	\$185
Resident Engineer	\$190
Structure Representative	\$190
Senior Structural Engineer	\$200
Senior Project Manager	\$200
Principal Engineer	\$210
Senior Principal Engineer	\$230
Two-Person Survey Crew	\$310

All hourly rates include overhead costs such as salaries, benefits, Workers Compensation Insurance, travel and office expenses. Subconsultants are billed at cost plus 10%. On each anniversary of the contract start date, CSG will initiate a rate increase based on change in CPI-W for the applicable region.

5/18/17

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The work will be on an as-needed basis for a one year term, ending on April 30, 2019.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

AWARD CONTRACT FOR 2018 INFLOW AND INFILTRATION PROJECT

RECOMMENDATION(S)

1. Approve 2018 Inflow and Infiltration Project plans and specifications;
2. Award contract to Pacific Underground Construction for the 2018 Inflow and Infiltration Project in the amount of \$691,850;
3. Authorize expenditure of construction contingency funds not to exceed \$69,185; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

The City's current Sewer Master Plan identifies numerous locations where sewer mains need to be repaired to prevent groundwater and storm water from entering into the City's sewer system. The 2018 Inflow and Infiltration (I & I) Project will repair sewer mains at approximately 10 locations where the City experiences high levels of I & I into the sewer system. These locations include: five in the vicinity of the Llagas Road/Hale Avenue intersection, four within the Holiday Lakes neighborhood, and one in the Jackson Oaks neighborhood. As part of the project, 19 sewer manholes will also be sealed to prevent groundwater intrusion. The scope of work includes; cleaning, pipe bursting, pipe lining rehabilitating manholes, and documenting pipe condition via video.

The bid opening for the project was held on March 29, 2018 and one bid was received from Pacific Underground Construction in the amount \$691,850. The receipt of one bid reflects the busy construction environment. Pacific Underground Construction's bid amount is 13% less than the engineer's estimate of \$800,000. Pacific Underground Construction is an experienced contractor of this type of work and has performed work for the City on previous projects. Thus, staff recommends award of the contract to Pacific Underground Construction in the amount of \$691,850. The project is scheduled to begin in May 2018 and be completed in August 2018.

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

COMMUNITY ENGAGEMENT: Inform

The 2018 Inflow and Infiltration Project is located within residential neighborhoods. 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 and request the project be re-bid in hopes of obtaining competitive bids which may result in a lower bid amount. This however would delay the much-needed sewer repair work and may not result in a lower amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On April 19, 2017, City Council approved staff implementation of projects to repair leaking sewer manholes, and sewer pipes and maximize flow in the existing sewer trunk line on Highland Avenue.
- On October 18, 2017 the City adopted the 2017 Sewer Master Plan.

FISCAL AND RESOURCE IMPACT:

The total authorization for this project would be \$761,035, which includes a 10% contingency of \$69,185. The project is sufficiently funded in the Fiscal Year 2017-18 Capital Improvement Program (CIP) budget under CIP Project 302000 Sanitary Sewer Rehabilitation, utilizing Sewer CIP Funds (643) from sewer bond proceeds.

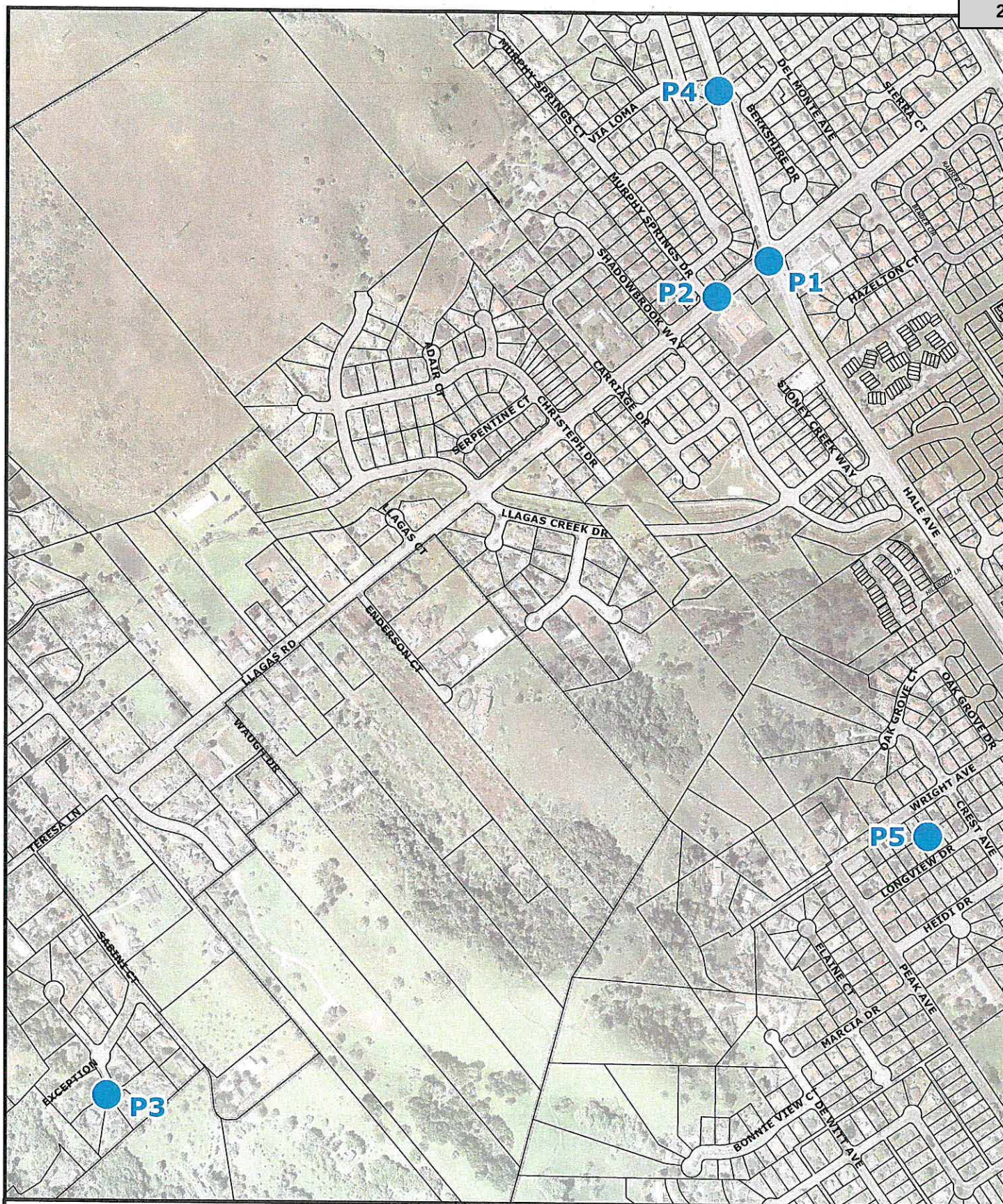
CEQA (California Environmental Quality Act):

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 Maps
2. Inflow & Infiltration Plans and Specs (weblink)



CITY OF MORGAN HILL

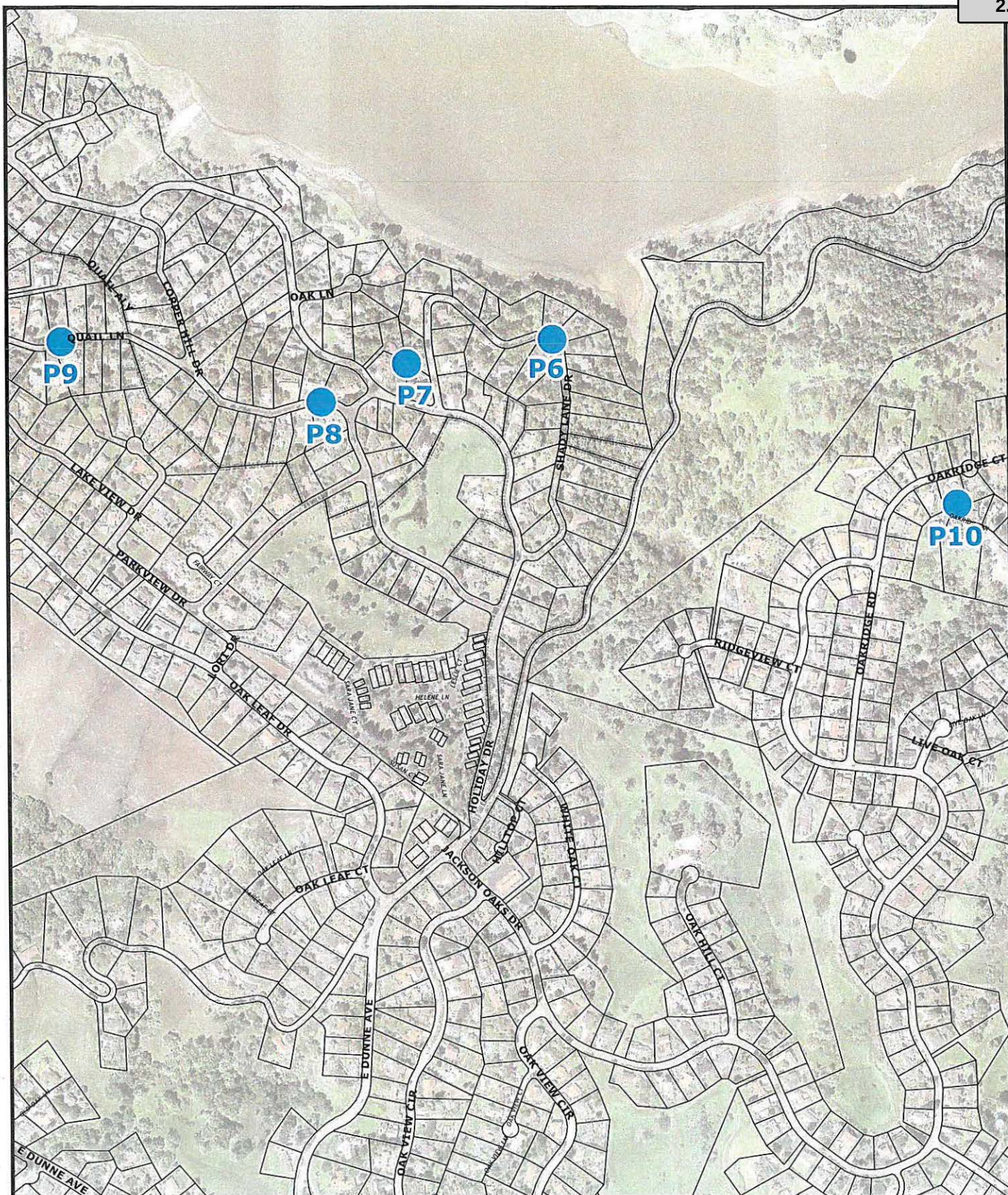
Department of Public Works
Engineering and Utilities Division

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**SITE MAP
LOCATIONS P1 thru P5
2018 INFLOW AND
INFILTRATION PROJECT**



0 270 540 1,080 1,620 2,160
Feet



CITY OF MORGAN HILL

**Department of Public Works
Engineering and Utilities Division**

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**SITE MAP
LOCATIONS P6 thru P10
2018 INFLOW AND
INFILTRATION PROJECT**



0 270 540 1,080 1,620 2,160
Feet

Attachment: Project Location Maps (1715 : Award Inflow and Infiltration Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Inga Alonzo, Management Analyst
APPROVED BY: City Manager

APPROVE PURCHASE OF TWO 2018 FORD UTILITY TRUCKS & EQUIPMENT

RECOMMENDATION(S)

1. Approve purchase of two utility trucks in the amount of \$189,919.97;
2. Adopt resolution amending the Fiscal Year 2017/18 Budget by appropriating \$25,000 from the Sewer Fund (640) and \$25,000 from the Water Fund (650) as transfers to the Equipment Replacement Fund (790) and appropriating the total \$50,000 for the purchase of two 2018 Ford Utility Trucks and Equipment; and
3. Authorize City Manager to approve purchase order in the amount of \$189,919.97 with National Auto Fleet Group.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan
Water System Master Plan

REPORT NARRATIVE:

The Engineering and Utilities Department is proposing to purchase two 2018 Ford F-450 SuperCab trucks equipped with a utility service body, crane, and other equipment. One truck is for the Sewer Division and one is for the Water Division. These vehicles will be replacing two 11-year-old vehicles in the current fleet which originally had a scheduled service life of 7 years for replacement.

Staff proposes to purchase these two replacement vehicles under a cooperative purchasing arrangement. Section 3.04.180 of the Morgan Hill Municipal Code allows the purchasing officer the authority to join with other public jurisdictions in cooperative purchasing plans or programs, including, but not limited to California Communities Purchasing Program (CCPP), the California Department of General Services (CADGS), the California Multiple Award Schedule (CMAS), the National Association of Counties (NACo), National Joint Powers Alliance (NJPA), or similar arrangements or plans, as determined by the purchasing officer to be in the City's best interest.

Staff prepared detailed specifications for the two vehicles based on the City's needs. The new vehicles are equipped with auto cranes, air compressors, and safety equipment for work at lift and pump stations as well as valve exercising. These vehicles

require bigger chassis to support the equipment. Staff requested quotes from NJPA cooperative contract #081716-NAF with National Auto Fleet Group. The City is a member of the NJPA purchasing cooperative and has previously purchased from its contracts.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommendation to purchase the vehicles for the Engineering and Utilities Department.

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The vehicle replacement purchases are included in the City Council adopted Fiscal Year 2017-2018 budget under the Equipment Replacement Program (Fund 790) with a total amount of \$140,000 for both vehicles. The purchase price for the two vehicles of \$189,919.97 is approximately \$50,000 greater than the current budget. Staff recommends that the difference come from transfers of \$25,000 each from the Water Fund (650) and Sewer Fund (640) reserves. The cost of the replacement vehicles was under estimated when the replacement schedule was originally established. There are adequate funds for these appropriations.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. 2018 Utility Truck Quotes
2. Resolution for Budget Adjustment
3. Budget Scorecards for Purchase of Utility Vehicles



National Auto Fleet Group

A Division of Chevrolet of Watsonville

490 Auto Center Drive, Watsonville, CA 95076
(855) 289-6572 • (855) BUY-NJPA • (831) 480-8497 Fax
Fleet@NationalAutoFleetGroup.com

3.a

02/27/2018

Inga Alonzo

City of Morgan Hill

17575 Peak Ave

Morgan Hill, 95037

Quote ID#5877 -NC Revised
Order Cut-Off Date 03/02/18

Dear Inga Alonzo,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.
One (1) New/Unused (2018 Ford Super Duty F-450 DRW (X4G) XL 2WD SuperCab 168" WB 60" CA with Scelzi V-V Crown Service Body, and Equipment) delivered to your department yard, each for

	(1) One Unit
NJPA Contract Price	\$ 39,704.12
Scelzi Service Body V-V & Equip	\$ 47,405.00
Tax (9.00%)	\$ 7,839.82
CA Tire Fee	\$ 10.50
Total	\$ 94,959.44

-per your attached specifications:

This vehicle(s) is available under the **National Joint Powers Alliance (NJPA) Vehicle Contract Number 120716**. Please reference this Contract Number on all Purchase Orders to National Auto Fleet Group.

Payment terms are Net 30 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper

National Fleet Manager

Office (855) 289-6572

Fax (831) 480-8497



In order to Finalize your Quote, please submit this purchase packet to your governing body for Purchase Order Approval. Once you issue a Purchase Order please send by:

Fax: (831) 480-8497

**Mail: National Auto Fleet Group
490 Auto Center Drive
Watsonville, CA 95076**

Email: Fleet@nationalautofleetgroup.com

We will then send a W-9 if you need one

**Please contact our main office with any questions:
1-855-289-6572**

Vehicle Configuration Options

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)



Scelzi Enterprises, Inc.
Custom Truck Body Manufacturing

2286 E. Date Street, Fresno, CA 93706, Phone: 800-858-2883
Fax: 559-237-5554 Toll Free: (800) 858-2883

WORK ORDER / ESTIMATE

138349

Page 1 of 4

Customer: NATIONAL AUTO FLEET GROUP
Address: 1330 W MAIN STREET
ALHAMBRA, CA 91801
United States

Date: 01/10/18
Phone: (855) 289-6572
Contact: NEIL CARROLL
Terms: C.O.D.

FAX:

Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
----------	-----------------------	-------

PAINT BODY WHITE
AFT AXLE FUEL TANK

*** RE: CITY OF MORGAN HILL / UNIT # 2 ***

1 EA SB-CUSTOM \$46,902.00 /EA

MODEL # SBD CR-108-94-49-38-V-V CROWN SERVICE BODY DRW 60CA -108 LONG, 94 WIDE, 49 FLOOR WIDTH, 38 TALL VERTICAL CLOSED TOP DRIVER SIDE, VERTICAL CLOSED TOP PASSENGER SIDE

1EA - ALL LIGHTS TO BE L.E.D.

3EA - 6" DEEP SCELZI ROLLER DRAWERS MOUNTED DRIVER' SIDE FRONT COMPARTMENT STARTING FROM THE TOP

1EA - SCELZI ROLLER DRAWER MODULE MOUNTED PASSENGER SIDE FRONT STARTING FROM THE TOP WITH 3-3" DEEP, AND 1-6" DEEP

2EA - HORIZONTAL COMPARTMENTS TO HAVE (1EA) ADJUSTABLE SHELF WITH DIVIDERS

4EA - REAR COMPARTMENTS TO HAVE (2EA) ADJUSTABLE SHELVES WITH DIVIDERS

4EA - WHELEN ION T SUPER-LED LIGHTHEADS - AMBER (2EA) IN GRILLE, (2EA) AT REAR WIRED TO SINGLE UPFITTER SWITCH IN DASH

1EA - WHELEN JY2MHPW 56" JUSTICE LIGHTBAR WITH IN CAB CONTROLLER, MOUNTED ON TOP OF CAB GUARD

1EA - PERFORATED CAB GUARD

1EA - SET OF E-TRACK MOUNTED MIDWAY ON BACKWRAPPERS (1EA) ROW EACH SIDE

1EA - 100 GALLON DIESEL FUEL TANK MOUNTED IN CARGO AREA AGAINST FRONT BULKHEAD

1EA - FILLRITE FR4210 PUMP/NOZZLE/METER/FUEL FILTER AND COXREEL FUEL

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Date: 01/10/18
Phone: (855) 289-6572 FAX:
Contact: NEIL CARROLL
Terms: C.O.D.

Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
----------	-----------------------	-------

REEL #TSHF-N-550 WITH 50' X 3/4" HOSE

1EA - SHOVEL/BROOM HOLDER MOUNTED TOP OF BODY PASSENGER SIDE
UNDER CRANE

1EA - CONE HOLDER, MOUNTED DRIVER'S SIDE REAR END PANEL

1EA - 3000LB CRANE REINFORCEMENT PASSENGER REAR COMPARTMENT

1EA - AUTOCRANE 3203 PRX WITH TETHERED PENDANT, HYDRAULIC BOOM
EXTENSION TO 11', MANUAL EXTENSION TO 15' # #320989002

1EA - BOOM REST FOR CLOSED TOP

1EA - MANUAL FOLD DOWN, CRANK DOWN OUTRIGGER

1EA - AUX BATTERY WITH BATTERY BOX AND IN LINE ISOLATOR

1EA - ADDITIONAL LEAF SPRING PASSENGER SIDE REAR TO LEVEL

1EA - OSHA REQUIRED CRANE EMERGENCY HORN, HORN BUTTON, LEVELING
BUBBLES, ALL WARNING STICKERS, 5LB FIRE EXTINGUISHER, AND CRANE
CERTIFICATE

1EA - ELECTRIC AIR COMPRESSOR MOUNTED DRIVER'S SIDE REAR
COMPARTMENT MODEL# VAIR 20N2 400C SYSTEM

1EA - SPRAY ON POLYUREA APPLIED TO ALL INTERIOR OF COMPARTMENTS,
INCLUDING OPEN TOP COMPARTMENTS, EXCLUDING INTERIOR DOOR PANELS

1EA - POLYUREA SPRAY ON COATING APPLIED TO CARGO FLOOR, FRONT
BULKHEAD, BOTH SIDES, AND BACK SIDE OF TAILGATE

1EA - INSTALL FACTORY BACK UP CAMERA

1 EA	BUMPER - CROWN	\$0.00/EA
	6" DIAMOND PLATE STRAIGHT RAIL BUMPER - POWDER COATED GRAY	
	1EA - CLASS 5 RECEIVER HITCH WITH PM25612 INSERT AND PH15 PINTLE	



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Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
	1EA - TRAILER PLUG 7 PIN #12063	
	1EA - BOLT ON VISE STAND # SVS-121, MOUNTED PASSENGER SIDE REAR BUMPER - POWDER COATED GREY	
1 EA	LADDER RACK REMOVABLE SINGLE SIDE LADDER RACK MOUNTED TO DRIVER'S SIDE BACKWRAPPER WITH ADJUSTABLE ARMS - POWDER COATED BLACK	\$0.00 /EA
1 EA	HWD FEE HAZARDOUS WASTE DISPOSAL FEE	\$25.00 /EA
1 EA	WEIGHT CERTIFICATE WEIGHT CERTIFICATE OF COMPLETED UNIT	\$28.00 /EA
1 EA	PDI PRE-DELIVERY INSPECTION OF VEHICLE PER WORK ORDER	\$150.00 /EA
1 EA	TRANSPORTATION TRANSPORTATION ONE WAY TO: 100 EDES COURT MORGAN HILL, CA. 95037	\$300.00 /EA

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Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
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Disclaimer:

**SCELZI ENTERPRISES INC. DOES NOT GUARANTEE A PERFECT COLOR MATCH
DUE TO INCONSISTENCIES IN FACTORY PAINTS AND PROCEDURES**

**REVISIONS AFTER APPROVAL DATE ARE
SUBJECT TO ADDITIONAL CHARGES**

PRICES SUBJECT TO CHANGE WITHOUT NOTICE

THIS WORK
AUTHORIZED BY: _____ DATE: _____

Total: \$47,405.00

Payment in full on completion of job if credit arrangements have not been made in advance.

The above quotation is submitted according to specifications submitted by customer. Any alterations or changes increasing production costs will be charged for accordingly.

ESTIMATE
PREPARED BY: Uribe, Ruben
SALESMAN: RUBEN URIBE

ENGINE

Code	Description
99Y	ENGINE: 6.8L 3-VALVE SOHC EFI NA V10, (STD)

TRANSMISSION

Code	Description
44P	TRANSMISSION: TORQSHIFT 6-SPEED AUTOMATIC (6R140), -inc: SelectShift (STD)

TIRES

Code	Description
TFB	TIRES: 225/70RX19.5G BSW AS, (STD)

PRIMARY PAINT

Code	Description
Z1	OXFORD WHITE

PAINT SCHEME

Code	Description
___	STANDARD PAINT

SEAT TYPE

Code	Description
AS	MEDIUM EARTH GRAY, HD VINYL 40/20/40 SPLIT BENCH SEAT, -inc: center armrest, cupholder, storage and driver's side manual lumbar

AXLE RATIO

Code	Description
X8L	LIMITED SLIP W/4.88 AXLE RATIO

ADDITIONAL EQUIPMENT

Code	Description
96V	XL VALUE PACKAGE, -inc: XL Decor Group, Chrome Front Bumper, 4.2" Center-Stack Screen, Radio: AM/F Stereo/Single-CD/MP3, auxiliary audio input jack and 6-speakers, Steering Wheel-Mounted Cruise Control
90L	POWER EQUIPMENT GROUP, -inc: Deletes passenger side lock cylinder, upgraded door-trim panel, Accessory Delay, MyKey, owner controls feature, Remote Keyless Entry, Trailer Tow Mirrors w/Power Heated Glass, manual telescoping, heated convex spotter mirror and integrated clearance lamps/turn signals, Perimeter Anti-Theft Alarm, Power Front & Rear Side Windows, 1-touch up/down driver/passenger window, Power Locks
17F	XL DECOR GROUP, -inc: Chrome Front Bumper
52B	TRAILER BRAKE CONTROLLER, -inc: smart trailer tow connector, Verified to be compatible w/electronic actuated drum brakes only
87H	BLACK MOLDED HOOD DEFLECTOR (DEALER INSTALLED), -inc: Shipped separately from the vehicle for dealer installation
76C	EXTERIOR BACKUP ALARM (PRE-INSTALLED), -inc: Custom accessory
63A	UTILITY LIGHTING SYSTEM, -inc: LED side-mirror spotlights
585	RADIO: AM/FM STEREO/SINGLE-CD/MP3, -inc: auxiliary audio input jack and 6-speakers
91M	SYNC COMMUNICATIONS & ENTERTAINMENT SYSTEM, -inc: enhanced voice recognition w/911 Assist, 4.2" LCD center stack screen, AppLink, 1 smart-charging USB port and steering wheel audio controls
525	STEERING WHEEL-MOUNTED CRUISE CONTROL
872	REAR VIEW CAMERA & PREP KIT, -inc: cab wiring

18A	UPFITTER INTERFACE MODULE
43C	110V/400W OUTLET, -inc: 1 in-dash mounted outlet
76Z	ADVANCED SECURITY PACK, -inc: SecuriLock Passive Anti-Theft System (PATS) and inclination/intrusion sensors
OPTION PACKAGE	
Code	Description
650A	ORDER CODE 650A

2018 Fleet/Non-Retail Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA

WINDOW STICKER

2018 Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA

CODE	MODEL	MSRP
X4G	2018 Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA	\$40,065.00
OPTIONS		
99Y	ENGINE: 6.8L 3-VALVE SOHC EFI NA V10, (STD)	\$0.00
44P	TRANSMISSION: TORQSHIFT 6-SPEED AUTOMATIC (6R140), -inc: SelectShift (STD)	\$0.00
TFB	TIRES: 225/70RX19.5G BSW AS, (STD)	\$0.00
Z1	OXFORD WHITE	\$0.00
—	STANDARD PAINT	\$0.00
AS	MEDIUM EARTH GRAY, HD VINYL 40/20/40 SPLIT BENCH SEAT, -inc: center armrest, cupholder, storage and driver's side manual lumbar	\$0.00
X8L	LIMITED SLIP W/4.88 AXLE RATIO	\$360.00
96V	XL VALUE PACKAGE, -inc: XL Decor Group, Chrome Front Bumper, 4.2" Center-Stack Screen, Radio: AM/FM Stereo/Single-CD/MP3, auxiliary audio input jack and 6-speakers, Steering Wheel-Mounted Cruise Control	\$720.00
90L	POWER EQUIPMENT GROUP, -inc: Deletes passenger side lock cylinder, upgraded door-trim panel, Accessory Delay, MyKey, owner controls feature, Remote Keyless Entry, Trailer Tow Mirrors w/Power Heated Glass, manual telescoping, heated convex spotter mirror and integrated clearance lamps/turn signals, Perimeter Anti-Theft Alarm, Power Front & Rear Side Windows, 1-touch up/down driver/passenger window, Power Locks	\$915.00
17F	XL DECOR GROUP, -inc: Chrome Front Bumper	INC
52B	TRAILER BRAKE CONTROLLER, -inc: smart trailer tow connector, Verified to be compatible w/electronic actuated drum brakes only	\$270.00
87H	BLACK MOLDED HOOD DEFLECTOR (DEALER INSTALLED), -inc: Shipped separately from the vehicle for dealer installation	\$130.00
76C	EXTERIOR BACKUP ALARM (PRE-INSTALLED), -inc: Custom accessory	\$140.00
63A	UTILITY LIGHTING SYSTEM, -inc: LED side-mirror spotlights	\$160.00
585	RADIO: AM/FM STEREO/SINGLE-CD/MP3, -inc: auxiliary audio input jack and 6-speakers	INC
91M	SYNC COMMUNICATIONS & ENTERTAINMENT SYSTEM, -inc: enhanced voice recognition w/911 Assist, 4.2" LCD center stack screen, AppLink, 1 smart-charging USB port and steering wheel audio controls	\$365.00
525	STEERING WHEEL-MOUNTED CRUISE CONTROL	INC
872	REAR VIEW CAMERA & PREP KIT, -inc: cab wiring	\$415.00
18A	UPFITTER INTERFACE MODULE	\$295.00
43C	110V/400W OUTLET, -inc: 1 in-dash mounted outlet	\$75.00
76Z	ADVANCED SECURITY PACK, -inc: SecuriLock Passive Anti-Theft System (PATS) and inclination/intrusion sensors	\$60.00
650A	ORDER CODE 650A	\$0.00

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

SUBTOTAL**\$43,970.00**

Advert/ Adjustments

\$0.00

Manufacturer Destination Charge

\$1,295.00

TOTAL PRICE**\$45,265.00**

Est City: 25 MPG

Est Highway: 36 MPG

Est Highway Cruising Range: 666.00 mi

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

Standard Equipment**MECHANICAL**

Engine: 6.8L 3-Valve SOHC EFI NA V10
Transmission: TorqShift 6-Speed Automatic (6R140) -inc: SelectShift
4.88 Axle Ratio
GVWR: 16,500 lb Payload Package
50-State Emissions System
Transmission w/Oil Cooler
Rear-Wheel Drive
78-Amp/Hr 750CCA Maintenance-Free Battery w/Run Down Protection
HD 240 Amp Alternator
Towing w/Harness and Trailer Sway Control
9650# Maximum Payload
HD Shock Absorbers
Front And Rear Anti-Roll Bars
Firm Suspension
Hydraulic Power-Assist Steering
40 Gal. Fuel Tank
Single Stainless Steel Exhaust
Dual Rear Wheels
Front Suspension w/Coil Springs
Leaf Rear Suspension w/Leaf Springs
4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs and Brake Assist
Upfitter Switches

EXTERIOR

Wheels: 19.5" Argent Painted Steel -inc: Hub covers/center ornaments not included
Tires: 225/70R19.5G BSW AS
Clearcoat Paint
Black Front Bumper w/Black Rub Strip/Fascia Accent and 2 Tow Hooks
Black Fender Flares
Black Side Windows Trim and Black Front Windshield Trim
Black Door Handles
Black Manual Side Mirrors w/Manual Folding
Manual Extendable Trailer Style Mirrors
Fixed Rear Window
Light Tinted Glass
Variable Intermittent Wipers
Aluminum Panels
Front Splash Guards
Black Grille
Front License Plate Bracket
Reverse Opening Rear Doors
Fully Automatic Aero-Composite Halogen Daytime Running Lights Preference Setting Headlamps w/Delay-Off
Cab Clearance Lights

ENTERTAINMENT

Radio: AM/FM Stereo -inc: digital clock and 6-speakers
Fixed Antenna
1 LCD Monitor In The Front

INTERIOR

4-Way Driver Seat -inc: Manual Recline and Fore/Aft Movement
4-Way Passenger Seat -inc: Manual Recline and Fore/Aft Movement
60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat
Manual Tilt/Telescoping Steering Column
Gauges -inc: Speedometer, Odometer, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp, Engine Hour Meter, Trip Odometer and Trip Computer
Fixed Rear Windows
Manual Air Conditioning
HVAC -inc: Underseat Ducts
Illuminated Locking Glove Box
Interior Trim -inc: Chrome Interior Accents
Full Cloth Headliner
Urethane Gear Shift Knob
HD Vinyl 40/20/40 Split Bench Seat -inc: center armrest, cupholder, storage and driver's side manual lumbar
Day-Night Rearview Mirror
Passenger Visor Vanity Mirror
2 12V DC Power Outlets
Full Overhead Console w/Storage and 2 12V DC Power Outlets
Front Map Lights
Fade-To-Off Interior Lighting
Full Vinyl/Rubber Floor Covering
Underhood Lights
Instrument Panel Bin and Covered Dashboard Storage
Manual 1st Row Windows
Systems Monitor
Trip Computer
Outside Temp Gauge
Analog Display
Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints
Air Filtration

SAFETY

Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Dual Stage Driver And Passenger Front Airbags w/Passenger Off Switch
Outboard Front Lap And Shoulder Safety Belts -inc: Height Adjusters
Safety Canopy System Curtain 1st And 2nd Row Airbags



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02/27/2018

Inga Alonzo

City of Morgan Hill

17575 Peak Ave

Morgan Hill, 95037

Quote ID#5878-NC Revised
Order Cut-Off Date 03/02/18

Dear Inga Alonzo,

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	(1) One Unit
NJPA Contract Price	\$ 39,704.12
Scelzi Service Body V-V & Equip	\$ 47,406.00
Tax (9.00%)	\$ 7,839.91
CA Tire Fee	\$ 10.50
Total	\$ 94,960.53

-per your attached specifications:

This vehicles(s) is available under the **National Joint Powers Alliance (NJPA) Vehicle Contract Number 120716**. Please reference this Contract Number on all Purchase Orders to National Auto Fleet Group.

Payment terms are Net 30 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper

National Fleet Manager

Office (855) 289-6572

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In order to Finalize your Quote, please submit this purchase packet to your governing body for Purchase Order Approval. Once you issue a Purchase Order please send by:

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**Mail: National Auto Fleet Group
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Watsonville, CA 95076**

Email: Fleet@nationalautofleetgroup.com

We will then send a W-9 if you need one

**Please contact our main office with any questions:
1-855-289-6572**

Vehicle Configuration Options

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United States

Date: 01/10/18
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Terms: C.O.D.

FAX:

Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
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PAINT BODY WHITE
AFT AXLE FUEL TANK

*** RE: CITY OF MORGAN HILL / UNIT # 1 ***

1 EA SB-CUSTOM \$46,903.00 /EA

MODEL # SBDCR-108-94-49-38-VO-V CROWN SERVICE BODY DRW 60CA -108
LONG, 94 WIDE, 49 FLOOR WIDTH, 38 TALL VERTICAL OPEN TOP DRIVER SIDE,
VERTICAL CLOSED TOP PASSENGER SIDE

1EA - ALL LIGHTS TO BE L.E.D.

3EA - 6" DEEP SCELZI ROLLER DRAWERS MOUNTED DRIVER' SIDE FRONT
COMPARTMENT STARTING FROM THE TOP

1EA - SCELZI ROLLER DRAWER MODULE MOUNTED PASSENGER SIDE FRONT
STARTING FROM THE TOP WITH 3-3" DEEP, AND 1-6" DEEP

2EA - HORIZONTAL COMPARTMENTS TO HAVE (1EA) ADJUSTABLE SHELF WITH
DIVIDERS

4EA - REAR COMPARTMENTS TO HAVE (2EA) ADJUSTABLE SHELVES WITH
DIVIDERS

4EA - WHELEN ION T SUPER-LED LIGHTHEADS - AMBER (2EA) IN GRILLE, (2EA)
AT REAR WIRED TO SINGLE UPFITTER SWITCH IN DASH

1EA - WHELEN JY2MHPW 56" JUSTICE LIGHTBAR WITH IN CAB CONTROLLER,
MOUNTED ON TOP OF CAB GUARD

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1EA - SET OF E-TRACK MOUNTED MIDWAY ON BACKWRAPPERS (1EA) ROW
EACH SIDE

1EA - 100 GALLON DIESEL FUEL TANK MOUNTED IN CARGO AREA AGAINST
FRONT BULKHEAD

1EA - FILLRITE FR4210 PUMP/NOZZLE/METER/FUEL FILTER AND COXREEL FUEL



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Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA
Quantity	Part No / Description				Price

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UNDER CRANE

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EXTENSION TO 11', MANUAL EXTENSION TO 15' #320989002

1EA - BOOM REST FOR CLOSED TOP

1EA - MANUAL FOLD DOWN, CRANK DOWN OUTRIGGER

1EA - AUX BATTERY WITH BATTERY BOX AND IN LINE ISOLATOR

1EA - ADDITIONAL LEAF SPRING PASSENGER SIDE REAR TO LEVEL

1EA - OSHA REQUIRED CRANE EMERGENCY HORN, HORN BUTTON, LEVELING
BUBBLES, ALL WARNING STICKERS, 5LB FIRE EXTINGUISHER, AND CRANE
CERTIFICATE

1EA - ELECTRIC AIR COMPRESSOR MOUNTED DRIVER'S SIDE REAR
COMPARTMENT MODEL# VAIR 20N2 400C SYSTEM

1EA - SPRAY ON POLYUREA APPLIED TO ALL INTERIOR OF COMPARTMENTS,
INCLUDING OPEN TOP COMPARTMENTS, EXCLUDING INTERIOR DOOR PANELS

1EA - POLYUREA SPRAY ON COATING APPLIED TO CARGO FLOOR, FRONT
BULKHEAD, BOTH SIDES, AND BACK SIDE OF TAILGATE

1EA - INSTALL FACTORY BACK UP CAMERA

1 EA	BUMPER - CROWN	\$0.00/EA
	6" DIAMOND PLATE STRAIGHT RAIL BUMPER - POWDER COATED GRAY	
	1EA - CLASS 5 RECEIVER HITCH WITH PM25612 INSERT AND PH15 PINTLE	



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	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
	1EA - TRAILER PLUG 7 PIN #12063	
	1EA - BOLT ON VISE STAND # SVS-121, MOUNTED PASSENGER SIDE REAR BUMPER - POWDER COATED GREY	
1 EA	LADDER RACK REMOVABLE SINGLE SIDE LADDER RACK MOUNTED TO DRIVER'S SIDE BACKWRAPPER WITH ADJUSTABLE ARMS - POWDER COATED BLACK	\$0.00 /EA
1 EA	HWD FEE HAZARDOUS WASTE DISPOSAL FEE	\$25.00 /EA
1 EA	WEIGHT CERTIFICATE WEIGHT CERTIFICATE OF COMPLETED UNIT	\$28.00 /EA
1 EA	PDI PRE-DELIVERY INSPECTION OF VEHICLE PER WORK ORDER	\$150.00 /EA
1 EA	TRANSPORTATION TRANSPORTATION ONE WAY TO: 100 EDES COURT MORGAN HILL, CA. 95037	\$300.00 /EA

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)



Scelzi Enterprises, Inc.
Custom Truck Body Manufacturing

2286 E. Date Street, Fresno, CA 93706, Phone: 800-858-2883
Fax: 559-237-5554 Toll Free: (800) 858-2883

WORK ORDER / ESTIMATE

138324

Page 4 of 4

Customer: NATIONAL AUTO FLEET GROUP
Address: 1330 W MAIN STREET
ALHAMBRA, CA 91801
United States

Date: 01/10/18
Phone: (855) 289-6572 FAX:
Contact: NEIL CARROLL
Terms: C.O.D.

Make	Year	Model	Vehicle Info	Type	VIN #
	2018	CUSTTRUCK	FORD, F450, SUPERCAB, WHITE, V10 GAS, DRW 60" CA	Customer	TBA

Quantity	Part No / Description	Price
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Disclaimer:

**SCELZI ENTERPRISES INC. DOES NOT GUARANTEE A PERFECT COLOR MATCH
DUE TO INCONSISTENCIES IN FACTORY PAINTS AND PROCEDURES**

**REVISIONS AFTER APPROVAL DATE ARE
SUBJECT TO ADDITIONAL CHARGES**

PRICES SUBJECT TO CHANGE WITHOUT NOTICE

THIS WORK
AUTHORIZED BY: _____

DATE: _____

Total: \$47,406.00

Payment in full on completion of job if credit arrangements have not been made in advance.

The above quotation is submitted according to specifications submitted by customer. Any alterations or changes increasing production costs will be charged for accordingly.

ESTIMATE
PREPARED BY: Uribe, Ruben

SALESMAN: RUBEN URIBE

ENGINE

Code	Description
99Y	ENGINE: 6.8L 3-VALVE SOHC EFI NA V10, (STD)

TRANSMISSION

Code	Description
44P	TRANSMISSION: TORQSHIFT 6-SPEED AUTOMATIC (6R140), -inc: SelectShift (STD)

TIRES

Code	Description
TFB	TIRES: 225/70RX19.5G BSW AS, (STD)

PRIMARY PAINT

Code	Description
Z1	OXFORD WHITE

PAINT SCHEME

Code	Description
---	STANDARD PAINT

SEAT TYPE

Code	Description
AS	MEDIUM EARTH GRAY, HD VINYL 40/20/40 SPLIT BENCH SEAT, -inc: center armrest, cupholder, storage and driver's side manual lumbar

AXLE RATIO

Code	Description
X8L	LIMITED SLIP W/4.88 AXLE RATIO

ADDITIONAL EQUIPMENT

Code	Description
96V	XL VALUE PACKAGE, -inc: XL Decor Group, Chrome Front Bumper, 4.2" Center-Stack Screen, Radio: AM/F Stereo/Single-CD/MP3, auxiliary audio input jack and 6-speakers, Steering Wheel-Mounted Cruise Control
90L	POWER EQUIPMENT GROUP, -inc: Deletes passenger side lock cylinder, upgraded door-trim panel, Accessory Delay, MyKey, owner controls feature, Remote Keyless Entry, Trailer Tow Mirrors w/Power Heated Glass, manual telescoping, heated convex spotter mirror and integrated clearance lamps/turn signals, Perimeter Anti-Theft Alarm, Power Front & Rear Side Windows, 1-touch up/down driver/passenger window, Power Locks
17F	XL DECOR GROUP, -inc: Chrome Front Bumper
52B	TRAILER BRAKE CONTROLLER, -inc: smart trailer tow connector, Verified to be compatible w/electronic actuated drum brakes only
87H	BLACK MOLDED HOOD DEFLECTOR (DEALER INSTALLED), -inc: Shipped separately from the vehicle for dealer installation
76C	EXTERIOR BACKUP ALARM (PRE-INSTALLED), -inc: Custom accessory
63A	UTILITY LIGHTING SYSTEM, -inc: LED side-mirror spotlights
585	RADIO: AM/FM STEREO/SINGLE-CD/MP3, -inc: auxiliary audio input jack and 6-speakers
91M	SYNC COMMUNICATIONS & ENTERTAINMENT SYSTEM, -inc: enhanced voice recognition w/911 Assist, 4.2" LCD center stack screen, AppLink, 1 smart-charging USB port and steering wheel audio controls
525	STEERING WHEEL-MOUNTED CRUISE CONTROL
872	REAR VIEW CAMERA & PREP KIT, -inc: cab wiring

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

18A	UPFITTER INTERFACE MODULE
43C	110V/400W OUTLET, -inc: 1 in-dash mounted outlet
76Z	ADVANCED SECURITY PACK, -inc: SecuriLock Passive Anti-Theft System (PATS) and inclination/intrusion sensors

OPTION PACKAGE

Code	Description
650A	ORDER CODE 650A

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

2018 Fleet/Non-Retail Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA

WINDOW STICKER

2018 Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA

CODE	MODEL	MSRP
X4G	2018 Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA	\$40,065.00
OPTIONS		
99Y	ENGINE: 6.8L 3-VALVE SOHC EFI NA V10, (STD)	\$0.00
44P	TRANSMISSION: TORQSHIFT 6-SPEED AUTOMATIC (6R140), -inc: SelectShift (STD)	\$0.00
TFB	TIRES: 225/70RX19.5G BSW AS, (STD)	\$0.00
Z1	OXFORD WHITE	\$0.00
—	STANDARD PAINT	\$0.00
AS	MEDIUM EARTH GRAY, HD VINYL 40/20/40 SPLIT BENCH SEAT, -inc: center armrest, cupholder, storage and driver's side manual lumbar	\$0.00
X8L	LIMITED SLIP W/4.88 AXLE RATIO	\$360.00
96V	XL VALUE PACKAGE, -inc: XL Decor Group, Chrome Front Bumper, 4.2" Center-Stack Screen, Radio: AM/FM Stereo/Single-CD/MP3, auxiliary audio input jack and 6-speakers, Steering Wheel-Mounted Cruise Control	\$720.00
90L	POWER EQUIPMENT GROUP, -inc: Deletes passenger side lock cylinder, upgraded door-trim panel, Accessory Delay, MyKey, owner controls feature, Remote Keyless Entry, Trailer Tow Mirrors w/Power Heated Glass, manual telescoping, heated convex spotter mirror and integrated clearance lamps/turn signals, Perimeter Anti-Theft Alarm, Power Front & Rear Side Windows, 1-touch up/down driver/passenger window, Power Locks	\$915.00
17F	XL DECOR GROUP, -inc: Chrome Front Bumper	INC
52B	TRAILER BRAKE CONTROLLER, -inc: smart trailer tow connector, Verified to be compatible w/electronic actuated drum brakes only	\$270.00
87H	BLACK MOLDED HOOD DEFLECTOR (DEALER INSTALLED), -inc: Shipped separately from the vehicle for dealer installation	\$130.00
76C	EXTERIOR BACKUP ALARM (PRE-INSTALLED), -inc: Custom accessory	\$140.00
63A	UTILITY LIGHTING SYSTEM, -inc: LED side-mirror spotlights	\$160.00
585	RADIO: AM/FM STEREO/SINGLE-CD/MP3, -inc: auxiliary audio input jack and 6-speakers	INC
91M	SYNC COMMUNICATIONS & ENTERTAINMENT SYSTEM, -inc: enhanced voice recognition w/911 Assist, 4.2" LCD center stack screen, AppLink, 1 smart-charging USB port and steering wheel audio controls	\$365.00
525	STEERING WHEEL-MOUNTED CRUISE CONTROL	INC
872	REAR VIEW CAMERA & PREP KIT, -inc: cab wiring	\$415.00
18A	UPFITTER INTERFACE MODULE	\$295.00
43C	110V/400W OUTLET, -inc: 1 in-dash mounted outlet	\$75.00
76Z	ADVANCED SECURITY PACK, -inc: SecuriLock Passive Anti-Theft System (PATS) and inclination/intrusion sensors	\$60.00
650A	ORDER CODE 650A	\$0.00

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

SUBTOTAL**\$43,970.00**

Advert/ Adjustments

\$0.00

Manufacturer Destination Charge

\$1,295.00

TOTAL PRICE**\$45,265.00**

Est City: 25 MPG

Est Highway: 36 MPG

Est Highway Cruising Range: 666.00 mi

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Attachment: 2018 Utility Truck Quotes (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

Standard Equipment**MECHANICAL**

Engine: 6.8L 3-Valve SOHC EFI NA V10
Transmission: TorqShift 6-Speed Automatic (6R140) -inc: SelectShift
4.88 Axle Ratio
GVWR: 16,500 lb Payload Package
50-State Emissions System
Transmission w/Oil Cooler
Rear-Wheel Drive
78-Amp/Hr 750CCA Maintenance-Free Battery w/Run Down Protection
HD 240 Amp Alternator
Towing w/Harness and Trailer Sway Control
9650# Maximum Payload
HD Shock Absorbers
Front And Rear Anti-Roll Bars
Firm Suspension
Hydraulic Power-Assist Steering
40 Gal. Fuel Tank
Single Stainless Steel Exhaust
Dual Rear Wheels
Front Suspension w/Coil Springs
Leaf Rear Suspension w/Leaf Springs
4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs and Brake Assist
Upfitter Switches

EXTERIOR

Wheels: 19.5" Argent Painted Steel -inc: Hub covers/center ornaments not included
Tires: 225/70R19.5G BSW AS
Clearcoat Paint
Black Front Bumper w/Black Rub Strip/Fascia Accent and 2 Tow Hooks
Black Fender Flares
Black Side Windows Trim and Black Front Windshield Trim
Black Door Handles
Black Manual Side Mirrors w/Manual Folding
Manual Extendable Trailer Style Mirrors
Fixed Rear Window
Light Tinted Glass
Variable Intermittent Wipers
Aluminum Panels
Front Splash Guards
Black Grille
Front License Plate Bracket
Reverse Opening Rear Doors
Fully Automatic Aero-Composite Halogen Daytime Running Lights Preference Setting Headlamps w/Delay-Off
Cab Clearance Lights

ENTERTAINMENT

Radio: AM/FM Stereo -inc: digital clock and 6-speakers
Fixed Antenna
1 LCD Monitor In The Front

INTERIOR

4-Way Driver Seat -inc: Manual Recline and Fore/Aft Movement
4-Way Passenger Seat -inc: Manual Recline and Fore/Aft Movement
60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat
Manual Tilt/Telescoping Steering Column
Gauges -inc: Speedometer, Odometer, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp, Engine Hour Meter, Trip Odometer and Trip Computer
Fixed Rear Windows
Manual Air Conditioning
HVAC -inc: Underseat Ducts
Illuminated Locking Glove Box
Interior Trim -inc: Chrome Interior Accents
Full Cloth Headliner
Urethane Gear Shift Knob
HD Vinyl 40/20/40 Split Bench Seat -inc: center armrest, cupholder, storage and driver's side manual lumbar
Day-Night Rearview Mirror
Passenger Visor Vanity Mirror
2 12V DC Power Outlets
Full Overhead Console w/Storage and 2 12V DC Power Outlets
Front Map Lights
Fade-To-Off Interior Lighting
Full Vinyl/Rubber Floor Covering
Underhood Lights
Instrument Panel Bin and Covered Dashboard Storage
Manual 1st Row Windows
Systems Monitor
Trip Computer
Outside Temp Gauge
Analog Display
Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints
Air Filtration

SAFETY

Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Dual Stage Driver And Passenger Front Airbags w/Passenger Off Switch
Outboard Front Lap And Shoulder Safety Belts -inc: Height Adjusters
Safety Canopy System Curtain 1st And 2nd Row Airbags

RESOLUTION NO.

A RESOLUTION APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017/18 BUDGET IN THE EQUIPMENT REPLACEMENT FUND (FUND NO. 790) FOR FIFTY THOUSAND DOLLARS (\$50,000) FOR THE PURCHASE OF TWO 2018 UTILITY TRUCKS & EQUIPMENT

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2017/18 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2017/18 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2017/18 Budget of City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April, 2018.

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	Caitlin Robinett Jachimowicz

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor Pro Tem

IRMA TORREZ, City Clerk

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution for Budget Adjustment (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

035

FUND:

640 Sewer Operations Fund

DEPARTMENT:

5900 Sewer Operations

OBJECT:

49250 TRANSFER OUT-790 (EQUIP REPLACEMENT)

AGENDA DATE:

04/18/18

AGENDA ITEM TITLE:

Purchase Two 2018 Ford Utility Trucks and Equipment

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	3,166,252	10,834,510	10,846,377	3,154,385
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	25,000	(25,000)
RESULT OF RECOMMENDED ACTION	<u>3,166,252</u>	<u>10,834,510</u>	<u>10,871,377</u>	<u>3,129,385</u>

Attachment: Budget Scorecards for Purchase of Utility Vehicles (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

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

036

FUND:

650 Water Operations Fund

DEPARTMENT:

5710 Water Operations

OBJECT:

49250 TRANSFER OUT-790 (EQUIP REPLACEMENT)

AGENDA DATE:

04/18/18

AGENDA ITEM TITLE:

Purchase Two 2018 Ford Utility Trucks and Equipment

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	1,553,946	12,222,722	11,005,629	2,771,039
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	25,000	(25,000)
RESULT OF RECOMMENDED ACTION	1,553,946	12,222,722	11,030,629	2,746,039

Attachment: Budget Scorecards for Purchase of Utility Vehicles (1713 : Approve Purchase of Two 2018 Ford Utility Trucks & Equipment)

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

037

FUND:

DEPARTMENT:

OBJECT:

790 Equipment Replacement Fund

8500 Equipment Replacement

43830 AUTO/TRUCKS

AGENDA DATE:

04/18/18

AGENDA ITEM TITLE:

Purchase Two 2018 Ford Utility Trucks and Equipment

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	4,110,874	974,418	1,096,427	3,988,865
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	129,000	(129,000)
RECOMMENDED ACTION	-	50,000	50,000	-
RESULT OF RECOMMENDED ACTION	4,110,874	1,024,418	1,275,427	3,859,865



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

FIRST AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Approve First Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project for a total not to exceed contract amount of \$494,733; and
2. Authorize the City Manager to execute and administer a First Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for the Hale Avenue Extension Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure
Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On March 23, 2011, City Council awarded the design contract for the Hale Avenue Extension Project to Mark Thomas & Company for \$788,000. The scope of work included; conceptual intersection alternatives, preparation of plans and specifications, public meetings, project management, topographic survey, geotechnical report, potholing, and bidding/construction support. In February 2012, with the dissolution of RDA, the project was put on hold until a new funding source could be identified and the contract with Mark Thomas & Company was terminated.

In November 2016, the passage of the County's Measure B sales tax initiative became a new major source of revenue for the project. Thus, on January 18, 2017, the City Council approved a Service Agreement for Design Professionals with Mark Thomas & Company in the amount of \$401,873 to complete the design for the Hale Avenue Extension Project. The scope of work included, updating/finalizing construction plans and specifications, project management, attending meetings, producing schedules and estimates, traffic studies, legal descriptions and plats, potholing, and the preparation of geotechnical and various permit applications.

In the process of finalizing the design, staff has identified several items that were not

included in the current design contract scope of work with Mark Thomas & Company. These items include: end treatments for Warren Avenue and Nob Hill Terrace, architectural selection of sound walls, undergrounding of overhead utilities, Habitat permit coordination, and design coordination with the Water District's PL-566 Phase II Project. Therefore, staff recommends that Mark Thomas & Company's scope of work be amended to include these elements at a cost not to exceed \$92,860, as reflected in the contract amendment attached.

The revised contract amount with Mark Thomas & Company would total \$494,733 (\$401,873 plus \$92,860). It is estimated that the design will be completed by December of 2018.

COMMUNITY ENGAGEMENT: Involve

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. In addition, the City hired David J. Powers and Associates to complete the Environmental Impact Report (EIR) for the project. This process solicits input from the community regarding environmental impacts from the project. Additional community meetings and input will be required to complete the EIR and staff will make notifications as required by the California Environmental Quality Act (CEQA) process.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with the service agreement at this time and direct staff to wait until more information is available regarding the Measure B funding allocation timing and process. This action could put the project in jeopardy of receiving funding and ultimately delay the construction of the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 16, 2011, City Council heard a report on the community engagement and provided direction for moving forward with the project.

On March 23, 2011, City Council awarded a professional services contract to Mark Thomas & Company for \$788,000 to design the project.

On January 18, 2017, City Council approved a Service Agreement for Design Professionals with Mark Thomas & Company to complete the construction plans for the Hale Avenue extension Project for \$401,873.

FISCAL AND RESOURCE IMPACT:

This First Amendment with Mark Thomas & Company increases the contract amount by \$92,860 to a total contract amount of \$494,733. Sufficient funds for this service agreement are available in the FY 2016-17 and 2017-18 Capital Improvement Program, under the Hale Avenue Extension project. The total amount budgeted for FY 2017-18 for this project is \$2,985,000 from Traffic Impact Fund (309), project #546007.

CEQA (California Environmental Quality Act):

Project

A Final Environmental Impact Report was prepared by David J. Powers & Associates for the Hale Avenue Extension and Hale Avenue Plan Line Projects. City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

LINKS/ATTACHMENTS:

1. First Amendment-Mark Thomas signed
2. Project Location Map

FIRST AMENDMENT TO AGREEMENT MARK THOMAS & COMPANY

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, MARK THOMAS & COMPANY, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017, for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from February 6, 2017, until December 31, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the additional services set forth in revised Exhibit "B" dated February 15, 2018, attached hereto and incorporated herein by this reference."

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed a total amount of FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$494,733.00) during the term set forth in Section 2 above, and shall be billed based on the rate and basis set forth in the revised **Exhibit B** dated February 15, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated

sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement."

D. Paragraph 20.1 shall be amended and replaced in its entirety by the following:

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

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[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

MARK THOMAS & COMPANY

City Attorney

Date: _____

By: _____

Title: _____

Sasha Darsky, Vice President
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

By: _____

Title: _____

R. Matt Brogan
 R. Matt Brogan, Secretary

Print Name and Title of Signer.

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

Date: _____

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)



MARK THOMAS

EXHIBIT "B" DATED FEBRUARY 15, 2018

February 15, 2018

Project No.: SJ-17101

Mr. David Gittleson
City of Morgan Hill
Peak Avenue
Morgan Hill, CA 9

RE: Hale Avenue Extension- Additional Services

Dear David:

Mark Thomas requests additional budget for the Hale Avenue Extension Plans, Specifications, and Estimate (PS&E) and Environmental Permitting for the following additional services requested by the City:

SCOPE OF SERVICES

IMPROVEMENTS TO WESTERN TERMINUS' OF WARREN AVENUE AND NOB HILL TERRACE

The City has requested that the construction of cul-de-sacs at the western terminus of Warren Avenue and Nob Hill Terrace be added to the project. This will require additional field surveys of supplemental topography as this area is outside the limits of the original project topography. The work will require preparation of additional Site Topography and Demolition, Horizontal Control, Plan & Profile, Cross Sections, Pavement Elevations, Drainage System Plan & Profile, Utility Plan, Erosion Control, Lighting, Signing & Striping, and Construction Detail Plan sheets. Additional Geotechnical Investigation will be required to confirm soil characteristics and provide R-Values for pavement design. Construction of the improvements will require additional Right-of Way Acquisition plats and legal descriptions for the PG&E parcel.

FEE: \$19,950

SOUNDWALL AND RETAINING WALL ALTERNATIVES

The City has requested that alternatives be studied for the soundwalls and retaining walls shown on the 95% plans. The study will include up to 3 options for walls of different architectural and structural design and approximate unit costs for each wall type.

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

February 15, 2018

FEE: \$9,500

UTILITY UNDERGROUNDING- FEASIBILITY STUDY

The City has requested that Mark Thomas review the undergrounding of existing overhead utilities in the vicinity of the Hale Avenue Extension project. Pennino Management Group, as a subconsultant to Mark Thomas, will review the existing facilities and confirm the potential for undergrounding the facilities under PG&E Rule 20B Utility Undergrounding District.

FEE: \$10,000 including subconsultant mark-up

UTILITY UNDERGROUNDING- FINAL DESIGN NOB HILL TERRACE TO WEST MAIN AVENUE.

The Pennino Management Group, as a subconsultant to Mark Thomas, will prepare base information and coordinate the design by PG&E under Rule 20B of the undergrounding of existing overhead utilities in the vicinity of the project between Nob Hill Terrace and West Main Avenue, as shown on the attached exhibit.

FEE: \$25,000 including subconsultant mark-up

SCVHA COORDINATION AND SCVHP COMPLIANCE

The City has requested additional services from our environmental subconsultant, WRA, in preparation of documentation and coordination with the SCVHA and SCVHP. See attached additional services request from WRA.

FEE: \$3,410 including subconsultant mark-up

COORDINATE DESIGN WITH SCVWD'S PL-566 STORM WATER IMPROVEMENT PROJECT

The City has requested that the plans be revised at the West Main Avenue/Hale Avenue intersection to accommodate the SCVWD project to construct a by-pass tunnel west of existing Upper Llagas Creek, in the alignment of the proposed Hale Avenue Extension. The design of Hale Avenue will need to be modified to avoid conflicts with the tunnel.

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

February 15, 2018

FEE: \$25,000

TOTAL ESTIMATED FEE: \$92,860.

All work will be performed on a time and material basis, at hourly rates shown in the Rate Schedule attached, in accordance with our current agreement for consulting services for this project.

Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

MARK THOMAS



Mike Cooper, PE
Senior Project Manager

Accepted:

Signature

Name/Title

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)



**HALE AVENUE EXTENSION PROJECT
CITY OF MORGAN HILL, CALIFORNIA**

**CHANGE ORDER 1
ADDITIONAL BIOLOGICAL SUPPORT SERVICES**

Prepared for:

Admas Zewdie
1960 Zanker Road
San Jose, California, 95112

July 21, 2017

WRA Project No. 21059-1

PURPOSE

The purpose of this Change Order is to request funding not previously scoped in order to facilitate coordination with the Santa Clara Valley Habitat Agency (SCVHA) related to the Santa Clara Valley Habitat Plan (SCVHP) for the Hale Avenue Extension Project in the City of Morgan Hill in Santa Clara County.

ADDITIONAL SERVICES

- SCVHA coordination
- SCVHP compliance

CHANGE ORDER

Task 1: Santa Clara Valley Habitat Plan Coordination

The City of Morgan Hill is a participant in the Santa Clara Valley Habitat Plan (Habitat Plan; Santa Clara County 2012). The Habitat Plan's purpose is to provide streamlined permitting for sensitive habitats and endangered species, including outlined mitigation approaches through the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers (USACE). WRA will incorporate the relevant Habitat Plan avoidance and minimization measures into the USACE and the Regional Water Quality Control Board (RWQCB) permit applications as deemed applicable through coordination with the SCVHA.

SCHEDULE

WRA is available to begin work on this project immediately upon receiving authorization to proceed.

STAFFING

Amanda McCarthy will be the principal in charge of the project. She will be assisted by, Leslie Lazarotti, project manager, and qualified project staff.

ASSUMPTIONS

The following assumptions have been made in the preparation of this Change Order:

- Permitting fees to regulatory agencies are not included under this Change Order

ESTIMATED COST

The estimated cost for these services is provided below. This cost is based on assumptions provided in the Change Order. The estimated cost is subject to change based on specific conditions that arise during the conduct of this work.

Task	Budget
1. SCVHA Coordination and SCVHP Mitigation Compliance	\$3,100
Total	\$3,100

TERMS AND CONDITIONS

The conditions contained in the existing Contract Agreement dated February 10th, 2017 will apply to this Change Order.

APPROVAL TO PROCEED

The work can be initiated with a letter of authorization, through acknowledgment of this Change Order by signing a copy of this Change Order below, or by Purchase Order issued to WRA.

Scope of Work and Estimated Budget accepted by:

Signature _____ Date

Printed Name and Title _____ Email

Firm Name _____ Phone Number

Street Address _____ Fax Number

City _____ State _____ Zip Code

For WRA, Inc.

Principal _____ Date

PENNINO

MANAGEMENT GROUP

Bryan Pennino

President

Michael Locke

Vice President

Phillip Pennino

Secretary/Treasurer

February 7, 2018

Mr. Mike Cooper
Mark Thomas & Company
2290 North First Street, Suite 304
San Jose, CA 95131

Subject: PG&E Electric and Fiber Underground Coordination – Morgan Hill

Dear Mr. Cooper:

We appreciate the opportunity to discuss Electric & Fiber Coordination Services for the Morgan Hill project located in Morgan Hill, CA. As discussed, we believe Pennino Management Group (PMG) is uniquely qualified to provide Dry Utilities Coordination Services on the project.

This Letter of Engagement includes our proposed Scope of Work and Fee Schedule to successfully connect services for electric & fiber based on the information provided to PMG. PMG is ready and eager to begin work immediately.

Upon approval of this Letter of Engagement, PMG will begin with the Scope of Services as referenced on page two. Approval of this Letter of Engagement also confirms acceptance of the Fee Schedule referenced on page three. Please note these are estimated hours and Mark Thomas & Company will only be billed on the actual hours worked on the Morgan Hill project.

Please accept this Letter of Engagement by signing in the signature block below. Return the signed Letter of Engagement to PMG via standard mail or electronic mail, whichever is more convenient for you. Upon receipt, we will begin work immediately. Again, thank you and we look forward to working together.

Should you have any questions, please do not hesitate to contact me.

Sincerely,
Pennino Management Group



Phillip Pennino
Secretary/Treasurer

On behalf of Mark Thomas & Company the above referenced Letter of Engagement, attached Scope of Work and Fee Schedule is accepted:

Signature: _____

Title: _____

Mark Thomas & Company

Phone: (209) 370-9008 | Fax: (209) 551-1608 | www.PenninoManagementGroup.com
1420 S. Mills Street, Ste. E • Losi, CA 95242 | P.O. Box 1566 • Losi, CA 95241

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

Mr. Mike Cooper
February 6, 2018
Page 2

PENNINO
MANAGEMENT & CONSTRUCTION

To assist Mark Thomas & Company with evaluation and design coordination for PG&E and Fiber Services to the Morgan Hill project. To facilitate the work, PMG has developed six (6) separate tasks.

Task 1 Utilities Research & Review for Dry Utility's needs.

- Meet & review dry utilities requirements for project.
- Evaluate options for Electric and Fiber Services.
- Meet with Utilities to discuss service options and requirements.
- Establish submittal schedule and target completion date.

Task 2 PG&E Submittal

- Prepare documents for electric submittal.
- Submit applications to PG&E.
- Contact PG&E after application to review submittal.

Task 3 Design Coordination

- Coordinate utilities meetings when appropriate.
- Monitor and follow-up with utilities through engineering and contract approvals to ensure timely completion.
- Coordinate necessary easements and legal descriptions between Developer & Utilities.

Task 3.5 Contracts & Payment

- Review PG&E/AH Control
- Monitor Payment & Release

Task 4 Temporary Power for Construction (Not Included)

- Meet with Contractor to determine temporary service and timeline.
- Submit PG&E application.
- Coordinate PG&E inspections and meter set.

Task 5 Construction

- Coordinate Construction Schedule.
- Complete site visits during construction of dry utilities.
- Make sure Contractor installs dry utilities per Utility design.
- Respond to any questions/concerns from Dry Utilities.

Task 6 Fiber Coordination

- Provide primary schematic design.
- Submit application for fiber services.
- Coordinate fiber installation.
- Review construction documents and contracts.
- Coordinate communication installation with General Contractor.

Task 7 Close Out

- Prepare Closeout Documents.
- Complete Project Binder.

Scope of Work

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)



Request for Proposal
Design Coordination Construction Management for Morgan Hill

Cost Proposal
 Submitted by Pennino Management Group
 February 6, 2018

Pennino Management Group (PMG) has estimated the following hours & fees associated with the various tasks presented in the Scope of Work. The following Fee Schedule has been prepared based on the current available information. PMG will only bill for hours worked on the project and will obtain written consent from Mark Thomas for any additional contract amendments.

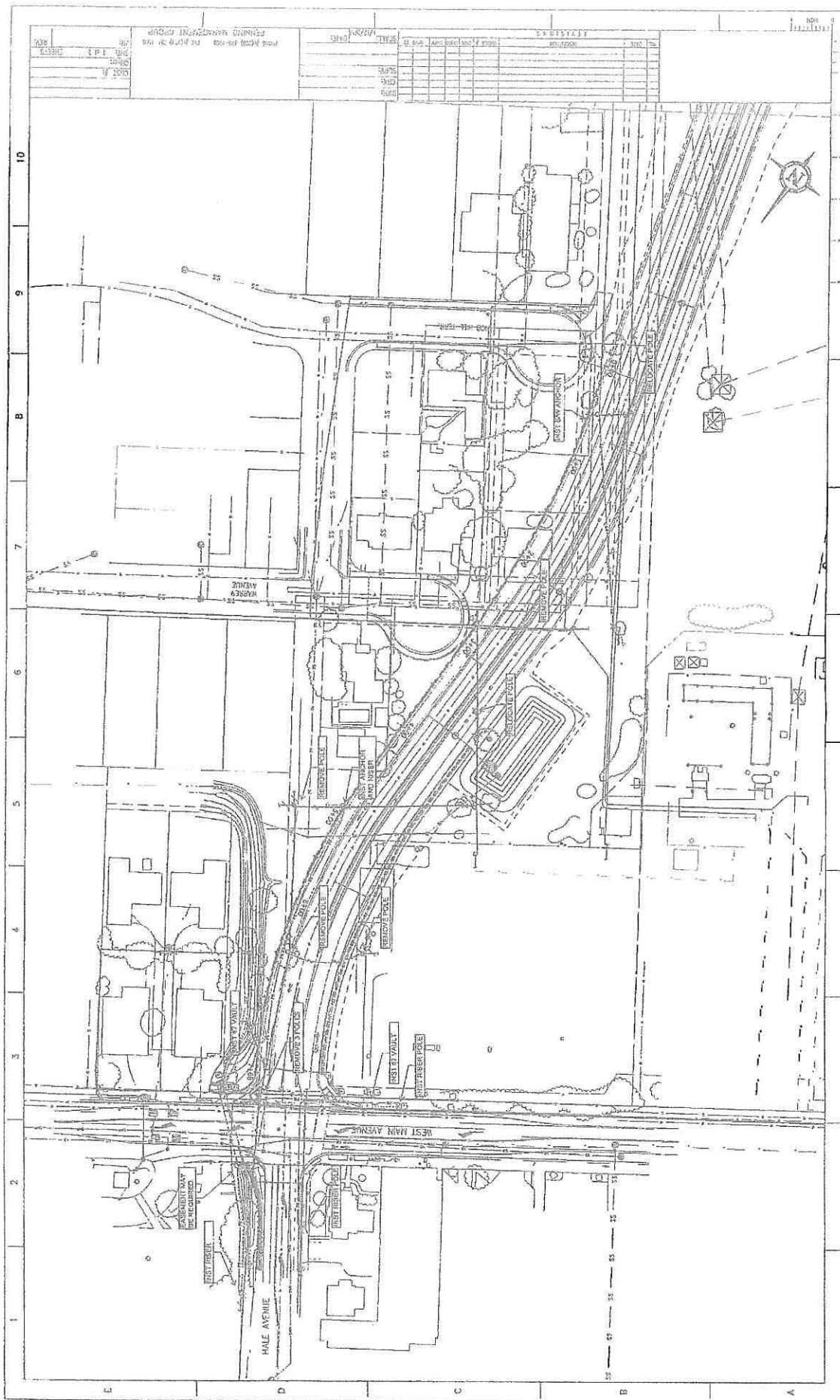
			Pre-Construction					Construction			Closeout			
Position	Name	Company	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Total Hours	Rate (per hr.)	Total Fee
Task 1: Utilities Research & Review for Dry Utilities Needs														
Project Manager	Phillip Pennino	PMG	4									4	\$ 195.00	\$ 780.00
Project Support	Kristin MacDonald	PMG	1									1	\$ 100.00	\$ 100.00
Task 2: PG&E Submittal														
Project Manager	Phil Pennino	PMG	2									2	\$ 195.00	\$ 390.00
Project Support	Kristin MacDonald	PMG	1									1	\$ 100.00	\$ 100.00
Task 3: Design Coordination														
Project Manager	Phillip Pennino	PMG			6	5						11	\$ 195.00	\$ 2,145.00
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 3.5: Contracts and Payment														
Project Manager	Phil Pennino	PMG					3					3	\$ 195.00	\$ 585.00
Project Support	Kristin MacDonald	PMG					1					1	\$ 100.00	\$ 100.00
Task 4: Temporary Power for Construction														
Project Manager	Phillip Pennino	PMG										0	\$ 195.00	\$ -
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 5: Construction														
Project Manager	Phillip Pennino	PMG						6	7	6		19	\$ 195.00	\$ 3,705.00
Project Support	Kristin MacDonald	PMG						1	1	1		3	\$ 100.00	\$ 300.00
Task 6: Fiber Coordination														
Project Manager	Phillip Pennino	PMG	4	4	4			3	3	3		21	\$ 195.00	\$ 4,095.00
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 7: Close Out														
Project Manager	Phillip Pennino	PMG									1	1	\$ 195.00	\$ 195.00
Project Support	Kristin MacDonald	PMG									4	4	\$ 100.00	\$ 400.00
Sub-Consultants														
MFL2 Design	Mike Leroy	MFL2	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00						\$ 6,000.00
														\$ -
Direct Expenses														
Mileage	N/A	N/A	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00				\$ 880.00
Travel	N/A	N/A												\$ -
Reimbursable (printing, postage, etc.)	N/A	N/A	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$45.00			\$ 125.00
GRAND TOTAL													\$	19,215.00

Reimbursable Expenses:

- Mileage is billed at \$0.545 per mile
- Printing is billed at B&W \$0.0205 & Color \$0.0943
- Out of Pocket Expenses (Billed at cost plus 10% and includes such items as travel expenses, freight, equipment rental fees, subcontractors, postage, printing or reproduction fees, supplies, etc.)

01/23/2018 4:53:30 PM
Preliminary

01/23/2018 4:53:30 PM





February 8, 2018
Proposal PA18.1007.PR

Michael Cooper
Mark Thomas & Company
3000 Oak Road, Suite 650
Walnut Creek, CA 94597

Proposal for Geotechnical Services, Hale Avenue Extension – Warren Avenue & Nob Hill Terrace Cul-de-sacs, Morgan Hill, California

Geo-Logic Associates (GLA) is pleased to present this proposal to provide geotechnical services related to the design of cul-de-sacs at the western termini of Warren Avenue and Nob Hill Terrace associated with the Hale Avenue Extension project in Morgan Hill, California.

PURPOSE AND SCOPE OF SERVICES

The objective of our investigation is to explore the existing pavement sections at the west end of Warren Avenue and Nob Hill Terrace, sample and test the subgrade soil, and provide recommendations for grading and pavement sections for the cul-de-sacs. Our proposed scope of services is discussed below.

1. A site reconnaissance to observe surface site conditions and to mark the exploration locations for Underground Service Alert (USA).
2. Obtain an encroachment permit from City of Morgan Hill for our field work. Because traffic at the west end of these streets is very light, we plan to provide minimal traffic control with cones and signs during our work.
3. Notify Underground Service Alert of our exploration so their member companies can check the boring locations for underground utilities.
4. Coordinate our field exploration with the City.
5. Drill two (2) exploratory borings up to a depth of about 2 feet to measure the existing pavement section and to identify the subgrade soil. Bulk sample of the subgrade soil will be collected for laboratory testing.
6. Perform laboratory R-value testing on the bulk samples.
7. Perform engineering analysis of the collected data.
8. Prepare a letter presenting our findings and recommendations. The letter will summarize work we performed, the existing pavement sections, and recommendations for grading and pavement sections for the new cul-de-sacs.

UNDERSTANDING AND ASSUMPTIONS

This proposal is based on the following assumptions:

- An encroachment permit is required by the City of Morgan Hill which will require traffic control plans. We have assumed the City will not require the traffic control plans to be prepared and signed by a registered Traffic Engineer. Additional fee will be required if the traffic control plans are to be prepared and signed by a registered Traffic Engineer.
- Traffic at the work areas is very light; therefore, only limited traffic control with cones and signs will be provided during our field work. If full traffic control is required, additional fees will be necessary.

SCHEDULE

We are prepared to begin work with your written approval. The project schedule will largely depend on the permit process and drilling equipment availability. After drilling, laboratory testing would take about two weeks to complete. Our letter should be ready about two weeks after completion of laboratory testing.

FEE

We propose to perform the above scope of work for a Lump Sum of \$6,800. Monthly invoices will be submitted for work completed. If additional services beyond those listed above are required during this investigation, such as meetings, or due to unforeseen conditions, additional authorization will be requested.

AUTHORIZATION

Please provide a change order to our current contract with your firm on the Hale Avenue Extension project.

CLOSURE

We appreciate the opportunity to provide these services. If you have any questions, please contact us at (408) 778-2818.

Sincerely,

Geo-Logic Associates



Chalerm (Beeson) Liang, GE
Supervising Geotechnical Engineer



RATE SCHEDULE (L-1)

EXHIBIT A

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2018*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$412
Principal	\$381
Sr. Engineering Manager	\$322
Engineering Manager	\$276
Practice Area Leader	\$276
Sr. Project Manager	\$233
Sr. Technical Lead	\$233
Project Manager	\$192
Technical Lead	\$192
Sr. Project Engineer	\$162
Sr. Technical Engineer	\$162
Project Engineer	\$140
Design Engineer II	\$124
Design Engineer I	\$101
Sr. Technician	\$119
Technician	\$86
Intern	\$59

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$243
LAUD Division Manager	\$206
Sr. LAUD Project Manager	\$181
LAUD Project Manager	\$165
Sr. Project Landscape Architect	\$124
Project Landscape Architect	\$108
Landscape Designer	\$84
Intern	\$59

Special Services

Sr. Inspector	\$121
Inspector	\$87
Expert Witness	\$390
Strategic Consulting	\$390

Survey Services

Sr. Survey Manager	\$215
Survey Manager	\$200
Sr. Project Surveyor	\$180
Project Surveyor	\$150
Sr. Surveyor	\$135
Surveyor	\$120
Lead Survey Technician	\$145
Sr. Survey Technician	\$120
Survey Technician	\$100
Survey Intern	\$70
Single Chief	\$130
Single Chainman	\$115
Apprentice	\$75
1 Person Field Crew	\$170
2 Person Field Crew	\$270
3 Person Field Crew	\$350

Project Support/Coordination Services

Sr. Project Accountant	\$124
Project Accountant	\$101
Sr. Project Coordinator	\$121
Project Coordinator	\$97
Sr. Project Assistant	\$90
Project Assistant	\$65
Sr. Technical Writer	\$105
Technical Writer	\$65
Sr. Graphic Designer	\$113
Graphic Designer	\$81

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2018

PAGE 1 OF 1

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

126-04-17-008

EXHIBIT "1"

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
Mark Thomas & Company

THIS AGREEMENT is entered into and becomes effective on 2/6/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Mark Thomas & Company a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on January 18, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to complete the Hale Avenue Extension project plans and specifications as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$401,873. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred One Thousand Eight Hundred Seventy Three dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

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

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

Address of CONSULTANT is as follows:

Mark Thomas & Company
attn: Mike Cooper, Senior Project Manager
2290 North First Street, Suite 304
San Jose, CA 95131

Address of CITY is as follows:

Development Services Center	with a copy to:
attn: David Gittleson	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **Maintenance of Records.**
- 15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.
- 15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

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

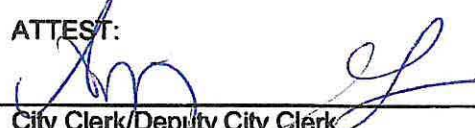
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

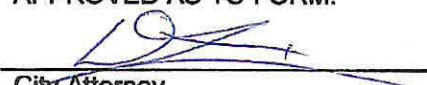
ATTEST:


 City Clerk/Deputy City Clerk

for Michelle Wilson
 Print Name

Date: 2/7/17

APPROVED AS TO FORM:


 City Attorney

Donald A. Larkin
 Print Name

Date: 2/2/2017

CITY OF MORGAN HILL


 City Manager

Steve Rymer
 Print Name

Date: 2/6/17

Mark Thomas & Company

By: 

Title: Sasha Dansky, Principal/Vice President
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: January 5, 2017

By: 

Title: Matt Breagan, Secretary
 Print Name and Title of Signer.

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

Date: January 5, 2017

**EXHIBIT A
SCOPE OF SERVICES**

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

Exhibit A

HALE AVENUE EXTENSION PROJECT

SCOPE OF WORK

January 5, 2017

City of Morgan Hill (City) and Mark Thomas & Company, Inc. (MTCO) entered into an agreement for the preparation of contract documents for the Hale Avenue Extension project in April 2011. The project is to extend Hale Avenue from its present terminus at West Main Avenue in the north to the junction of Spring Avenue and DeWitt Avenue in the south, a distance of approximately 4,700 feet. The new road will have one traffic lane in each direction and a median. Bicycle/pedestrian paths, sidewalks, shoulder areas, landscape areas, bio swales, retaining walls and sound walls are proposed along sections of the roadways. Other proposed improvements include new storm drainage facilities, two stormwater detention ponds, water mains, and light standards. The project was developed to the 90% completion level before it was suspended in 2013. The contract for the project has subsequently expired. City would like to complete the contract documents to prepare the project for construction in 2018. The scope of work presented below has been developed based on a meeting held between City and MTCO on December 17, 2015, and subsequent communications with the City. MTCO will perform the work described herein, and will diligently perform this scope of work and will be responsible for items of work under this agreement to the extent that issues arising from the performance of these services are within our reasonable control and that MTCO's obligation to indemnify and defend are limited to the extent actually caused by MTCO in the performance of this scope of work.

The scope of work assumes that the project features remain unchanged from the previous contract with the following exceptions:

- In conformance with current C.3 requirements, add Biotreatment facilities to treat stormwater runoff from the portions of the new roadway that will not be draining to the detention ponds.
- Add soundwall per EIR
- Convert plans to Civil 3D- Optional
- Convert specifications to Caltrans 2015-Optional

1. Project Management

- Supervise, coordinate, and monitor project development.
- Maintain and coordinate project files throughout the contract period.
- Prepare and regularly update a detailed Critical Path Method (CPM) schedule.
- Prepare and submit monthly progress reports.
- Provide a monthly invoice, by task, that will present charges at agreed to hourly rates.
- Perform Quality Assurance/Quality Control review at milestone submittals.

Deliverables:

- ***CPM Schedule and Monthly Updates***
- ***Monthly Invoices and Progress Reports***
- ***Quality Process Documentation***

2. Surveying

2.1. Plats and Legal Descriptions

- Prepare plat exhibits and legal descriptions for easement and right-of-way acquisitions. One plat exhibit and legal description per parcel will be prepared showing Public Street Easements, Slope Easements and Temporary Construction Easements. Separate plats and legal descriptions will be prepared for public utility easements and utility vacations. One round of review comments will be incorporated. The anticipated number of plat exhibits and legal descriptions is as follows:

Acquisition Type	Number of Plats & Legals
Public Street Easements, Slope Easements and Temporary Construction Easements	15
Public Utility Easements	5
Utility Vacations	5

2.2. Supplemental Field Surveys

- Conform Topographic Survey - Topographic surveys will be conducted at up to four (4) locations to assist in the determination of conform elevations.
- Positive Utility Pothole Survey - The locations and elevations of positive utility potholes will be surveyed using Real Time Kinematic (RTK) GPS or conventional survey methods.

Deliverables:

- ***Plats and Legal Descriptions (25 total)***
- ***AutoCAD file with topographic survey information***

3. Geotechnical Report

- Review the Draft Geotechnical Report that has been prepared for the project in 2012.
- Incorporate comments from City.
- Perform a site reconnaissance to observe existing surface conditions, focusing on changes since the draft report was prepared.
- Prepare a 100% final geotechnical investigation report presenting findings, conclusions and recommendations for the project.

Deliverables:

- ***Final Geotechnical Report (10 copies)***

4. Potholing

- Contract with a potholing firm to perform up to ten (10) potholes of existing utilities at locations where proposed improvements may conflict with existing utilities. Pothole locations will be determined based on utility mapping obtained from utility companies.
- Locations and elevations of the potholes will be surveyed under Task 2.2.

Deliverables:

- ***Layout location and depth of pothole results***

5. Utility Company Coordination

- Utility Identification and Verification – Collect updated as-built information of existing utilities from utility companies and City. Verify that existing utilities have been shown in the project plans.
- Utility Relocation Exhibits - Identify utility conflicts and prepare relocation exhibits to be used in coordinating with utility companies as they design the relocations of their utilities for up to three (3) utility companies.
- Utility Relocation Coordination - Coordinate with up to three (3) utility companies for relocations. MTCO will review relocation plans to be prepared by the utility companies. MTCO will review liability letters submitted by utility companies, and if necessary, prepare a draft utility agreement for City's signature. MTCO will also prepare utility relocation notices.

Deliverables:

- *Copies of correspondence with utility companies*
- *Utility relocation exhibits*

6. Meetings

6.1. Project Coordination Meetings

- Hold a kick-off meeting with City staff.
- Hold up to six (5) coordination meetings with stakeholders and City staff to coordinate project progress.
- Prepare meeting agenda and minutes for the above meetings.

6.2. Commission and Council Meetings

- Assist City in making up to two (2) presentation to City commissions and Council.
- Prepare draft presentation material (PowerPoint) for City's use in these presentation.
- Attend meetings to assist City staff in responding to questions from commissioners and council members. This will be considered extra work, and will be performed when requested by the City, on a time and material basis

Deliverables:

- *Meeting agenda (6 meetings)*
- *Meeting minutes (6 meetings)*
- *Draft PowerPoint presentations (2 meetings) – This will be considered extra work, and will be performed when requested by the City, on a time and material basis.*

7. Contract Documents

7.1. 95% PS&E Submittal

- Review previously submitted 90% Plans, Specifications and Estimate (PS&E) package for conformance with current design standards and guidelines.
- Update PS&E package to conform to current design standards and guidelines. The basis of the technical specifications shall be the Caltrans Standard Special Provisions for the 2015 Standard Specifications.

- Update project plans to comply with current C.3 requirements including Bioretention basins.
- Revised Civil plans to be in Civil 3D format.
- Review quantity estimates, update unit prices, and prepare an updated cost estimate.

7.2. 100% Submittal

- Prepare the 100% level of PS&E documents for the project that will be considered ready for bid advertisement.
- Update and incorporate comments received on the 90% submittal into the 100% PS&E documents.
- Revise cross sections of the improvements at 50-foot intervals on tangents, at 25-foot interval for curves and at locations of vertical and horizontal alignment changes, in Civil 3D format. The cross sections shall be to scale and presented on grid sheets to match bid plans. The cross-sections will not be part of the contract documents, but are rather intended to be provided to the contractor as supplemental information.
- Contract Bid Documents - Prepare and submit Contract Bid Documents to the City for final review and comment.
- Incorporate one (1) round of reviews and prepare a bid package. Comments are anticipated to be minor. City will be responsible for reproduction of the bid documents.
- Combine technical specifications with City-provided boiler plate specifications for final production.

Deliverables:

- *95% Plans, Specifications, Estimate – 6 hard copies (11"x17")*
- *100% Plans, Specifications, Estimate – 6 hard copies (11"x17")*
- *Design Cross Sections – 1 copy (11"x17")*
- *Bid Set – PDF copy*

8. Permitting Support

- Tree Inventory and Report - conduct an inventory and assessment of all Significant Trees pursuant to the City of Morgan Hill Tree Ordinance (Chapter 12.32 of the Municipal Code – Restrictions on Removal of Significant Trees) within and adjacent to the Project Area.
- Wetland Delineation - conduct protocol level jurisdictional wetlands delineation. Prepare a Section 404 jurisdictional wetlands delineation report in the format required by the local District of the Corps of Engineers along with a report and map of potential jurisdictional areas.
- Rare Plant Surveys and Report – conduct a protocol-level rare plant survey. This survey would be timed to coincide with the peak-blooming period of rare plant species known from the project vicinity.
- Section 404 Nationwide Permit Application – Prepare and submit a pre-construction notification (PCN) to the Corps for consideration under the Nationwide Permit program. Attend site visits with the Corps and respond to questions from the Corps about the PCN and the project.
- Section 401 Water Quality Certification – Prepare and submit a Section 401 Water Quality Certification to the Regional Water Quality Control Board (RWQCB).

- Section 1602 Streambed Alteration Agreement - prepare and submit a Section 1602 Lake and Streambed Alteration Agreement (LSAA) for the project. The LSAA covers maintenance activities with the potential to alter a stream- or lake-bed or –bank, in addition to potential wildlife habitat on their margins.
- Section 7 Biological Assessment and Coordination - prepare the Section 7 Biological Assessment report and coordinate with USFWS upon consultation initiation by the Corps.
- Provide consultation services in verifying that the mitigation measures identified in the environmental documents (to be provided by the City) are properly incorporated in the design document.
- NOTE: Portions of the work detailed above may be able to be eliminated if covered in the Project EIR currently being prepared for the City.

Deliverables:

- ***Significant Tree Assessment Report***
- ***Wetland Delineation Report***
- ***Rare Plant Survey Report***
- ***Section 404 Permit Package***
- ***Section 401 form***
- ***Section 1602 Permit Package***
- ***Section 7 Biological Assessment***

9. Bidding Support- OPTIONAL- May be included in subsequent contract amendment at time of construction.

- Provide minor clarification of PS&E documents
- Provide information in response to bidders' questions regarding the bid documents
- Attend Pre-Bid Meeting
- Prepare addenda to the bid documents
- Attend Bid Opening and assist in preparation of a bid summary

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

Deliverables:

- ***Responses to bidders' questions***
- ***Addenda to contract documents***

10. Construction Support- OPTIONAL- May be included in subsequent contract amendment at the time of construction.

10.1. Design Support During Construction

- Attend a pre-construction meeting
- Provide ongoing consultation and interpretation of contract documents

- Respond to Requests for Information (RFI) made by the Contractor as coordinated through the Resident Engineer
- Perform periodic field visits at the request of the Resident Engineer
- Provide design support to address unforeseen conflicts encountered in the field
- Review change orders and make recommendations for approval
- Review submittals and shop drawings and recommend revisions or acceptance

Deliverables:

- ***Responses to submittals and RFIs***

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

10.2. Record Drawings

- Review for completeness and accuracy marked-up drawings provided by the Resident Engineer.
- Provide “as-built” record drawings on Mylar using the marked-up Contractor drawings.
- Consultant has provided a budget for this task as an estimate only. Actual level of effort will be determined when red-lined plans are provided to the Consultant by City’s construction manager.

Deliverables:

- ***One (1) set of Mylar as-built drawings***

11. Optional Tasks – NOT INCLUDED IN THIS CONTRACT SCOPE AND FEE

11.1. Field Percolation Testing

- Perform field percolation tests in the two proposed detention pond areas:
 - Perform a site reconnaissance to mark locations of our exploration. City will secure right-of-entry to the testing sites.
 - Drill and prepare six percolation test holes (three at each detention pond sites) to a depth of about 5 feet below ground surface.
 - Perform percolation tests in the test holes to measure percolation rates.
 - Perform engineering analysis of the collected data.
 - Include the measured percolation rates in the 100% geotechnical investigation report discussed above.

11.2. Right of Way Acquisition Support

- Prepare individual acquisition exhibits on aerial photo background for use by City’s right of way acquisition team for discussion with home owners.

- Install “show-me” stakes for proposed acquisition areas to assist City’s right of way acquisition team when negotiating with property owners. All show-me stakes will be provided within a single 5-day period. Show-me stakes outside of this window can be provided as extra work.

Exhibit B
City of Morgan Hill
Hale Avenue Extension Project
MARK THOMAS & COMPANY, INC.
1/5/2017

		MTCO														Subconsultants						TOTAL COST		
		Principal	Senior Project Manager	Senior PM (Structural)	Senior Survey Manager	Senior Project Engineer	Senior Technical Engineer	Senior Technical Engineer (Structural)	Design Engineer	Project Surveyor	Senior Survey Technician	Graphic Designer	Project Coordinator	2 Person Field Party and Vehicle	Total Hours	Labor Cost	Expenses	Total	Pacific Geotechnical Engineering	Phoenix Design Group	Y&C Transportation Consultants, Inc.		WRA Environmental Consultants, Inc.	Sub Mark Up 5%
		\$357	\$225	\$225	\$210	\$158	\$158	\$158	\$117	\$158	\$123	\$78	\$116	\$297										
100	Task 1: Project Management																							
	1 Project Management	8	80									16		104	\$22,712		\$22,712						-	\$22,712
	Subtotal Phase 100	8	80	0	0	0	0	0	0	0	0	16	0	104	\$22,712	\$0	\$22,712	\$0	\$0	\$0	\$0	\$0	\$0	\$22,712
200	Task 2: Surveying																							
	1 2.1 Plats and Legal Descriptions				50				85	250				385	\$54,680		\$54,680						-	\$54,680
	2 2.2 Supplemental Field Surveys				4				8	24			24	60	\$12,184		\$12,184						-	\$12,184
	Subtotal Phase 200	0	0	0	54	0	0	0	93	274	0	0	24	445	\$66,864	\$0	\$66,864	\$0	\$0	\$0	\$0	\$0	\$0	\$66,864
250	Task 3: Geotechnical Report																							
	1 Geotechnical Report		2			8								10	\$1,714		\$1,714	14,875					744	\$17,333
	Subtotal Phase 250	0	2	0	0	8	0	0	0	0	0	0	0	10	\$1,714	\$0	\$1,714	\$14,875	\$0	\$0	\$0	\$0	\$744	\$17,333
251	Task 4: Potholing																							
	1 Potholing					4		8						12	\$1,568	\$12,000	\$13,568						-	\$13,568
	Subtotal Phase 251	0	0	0	0	4	0	8	0	0	0	0	0	12	\$1,568	\$12,000	\$13,568	\$0	\$0	\$0	\$0	\$0	\$0	\$13,568
252	Task 5: Utility Coordination																							
	1 Utility Coordination		16			40		60						116	\$16,940		\$16,940						-	\$16,940
	Subtotal Phase 252	0	16	0	0	40	0	60	0	0	0	0	0	116	\$16,940	\$0	\$16,940	\$0	\$0	\$0	\$0	\$0	\$0	\$16,940
440	Task 6: Meetings																							
	1 6.1. Project Coordination Meetings		16	3		16								35	\$6,803		\$6,803						-	\$6,803
	Subtotal Phase 440	0	16	3	0	16	0	0	0	0	0	0	0	35	\$6,803	\$0	\$6,803	\$0	\$0	\$0	\$0	\$0	\$0	\$6,803
540	Task 7: Contract Documents																							
	1 7.1. 95% PS&E Submittal		12	11		80	120	28	120		48			419	\$61,143		\$61,143						-	\$61,143
	2 7.2. 100% Submittal		12	6		60	120	8	120		24			350	\$50,746		\$50,746		28,020	18,000		2,301	\$99,067	
	Subtotal Phase 540	0	24	17	0	140	240	36	240	0	72	0	0	769	\$111,889	\$0	\$111,889	\$0	\$28,020	\$18,000	\$0	\$2,301	\$169,210	
550	Task 8: Permitting Support																							
	1 Permitting Support		12			24								36	\$6,492		\$6,492				\$7,900	2,895	\$67,287	
	Subtotal Phase 550	0	12	0	0	24	0	0	0	0	0	0	0	36	\$6,492	\$0	\$6,492	\$0	\$0	\$0	\$57,900	\$2,895	\$67,287	
SUBTOTAL PS&E PHASE HOURS		8	150	20	54	232	240	36	308	93	346	0	16	24	1527									1,527
SUBTOTAL PS&E PHASE COST		\$2,856	\$33,750	\$4,500	\$11,340	\$36,656	\$37,920	\$5,688	\$36,036	\$14,694	\$42,558	\$0	\$1,856	\$7,128		\$234,982	\$12,000	\$246,982	\$14,875	\$28,020	\$18,000	\$57,900	\$5,940	\$371,717
OPTIONAL TASKS																								
	1 CAD conversion		4			8	16					8		36	\$5,316		\$5,316						-	\$5,316
	2 Specification conversion					40	40								\$12,640		\$12,640						-	\$12,640
	3 Contingency														\$0		\$0						-	\$12,200

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

EXHIBIT B
MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
Expires June 30, 2017*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$388
Principal	\$357
Sr. Engineering Manager	\$313
Engineering Manager	\$267
Practice Area Leader	\$267
Sr. Project Manager	\$225
Sr. Technical Lead	\$225
Project Manager	\$186
Technical Lead	\$178
Sr. Project Engineer	\$158
Sr. Technical Engineer	\$158
Project Engineer	\$135
Design Engineer II	\$117
Design Engineer I	\$97
Sr. Technician	\$113
Technician	\$81
Intern	\$56

Survey Services

Sr. Survey Manager	\$210
Survey Manager	\$200
Sr. Project Surveyor	\$184
Project Surveyor	\$158
Sr. Surveyor	\$144
Surveyor	\$119
Lead Survey Technician	\$148
Sr. Survey Technician	\$123
Survey Technician	\$87
Survey Intern	\$70
Single Chief	\$128
Single Chainman	\$112
Apprentice	\$76
1 Person Field Crew	\$170
2 Person Field Crew	\$297
3 Person Field Crew	\$382

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$236
LAUD Division Manager	\$200
Sr. LAUD Project Manager	\$174
LAUD Project Manager	\$158
Sr. Project Landscape Architect	\$119
Project Landscape Architect	\$104
Landscape Designer	\$81
Intern	\$56

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

Page 1 of 2

Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

EXHIBIT B
 MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
 Expires June 30, 2017*

HOURLY CHARGE RATES

Special Services

Sr. Inspector	\$116
Inspector	\$82
Expert Witness	\$390
Strategic Consulting	\$390

Project Support/Coordination Services

Sr. Project Accountant	\$121
Project Accountant	\$98
Sr. Project Coordinator	\$116
Project Coordinator	\$93
Sr. Project Assistant	\$87
Project Assistant	\$62
Sr. Technical Writer	\$102
Technical Writer	\$64
Sr. Graphic Designer	\$109
Graphic Designer	\$78

OTHER DIRECT COSTS

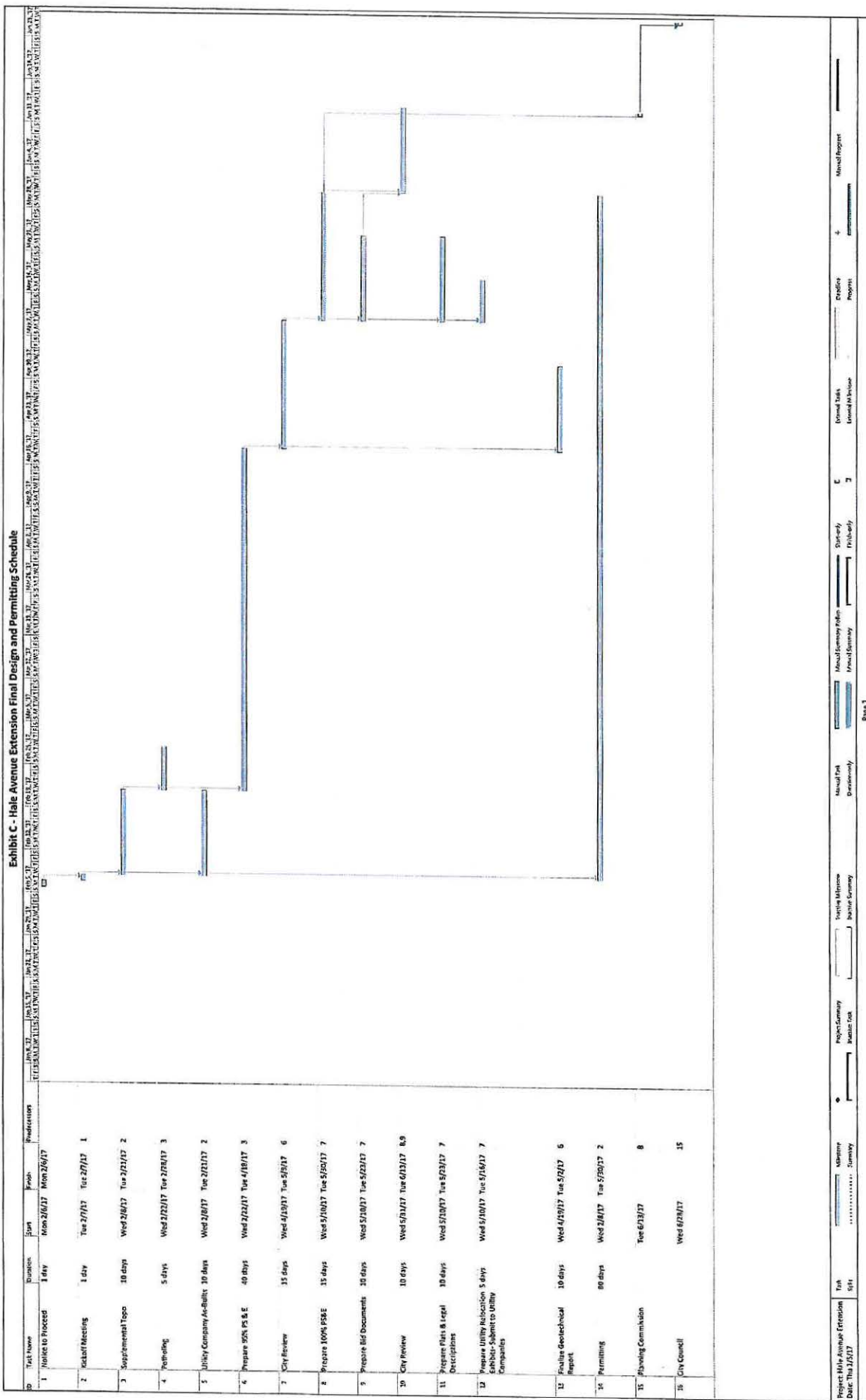
Reimbursables including, but not limited to:	
Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

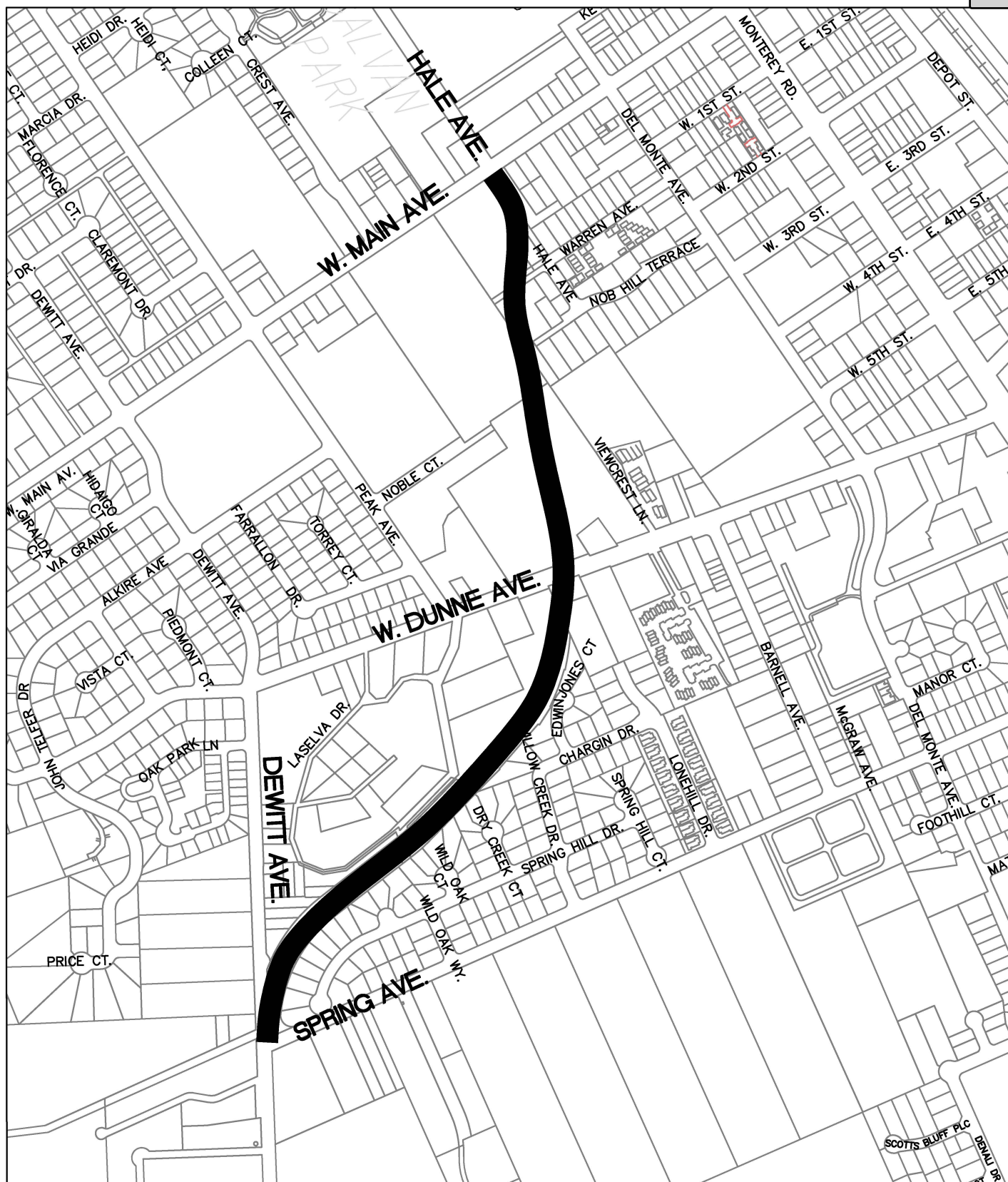
Attachment: First Amendment-Mark Thomas signed (1679 : First Amendment for Hale Extension Project)

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

EXHIBIT C
SCHEDULE OF PERFORMANCE

Exhibit C - Hale Avenue Extension Final Design and Permitting Schedule





Attachment: Project Location Map (1679 : First Amendment for Hale Extension Project)

SCALE: NTS

City of Morgan Hill

Public Works Department



CITY OF MORGAN HILL

N:\PROJECTS\CIP\STREETS\548007-Santa Teresa Const\Staff Reports\hale plot 8-24-11.dwg

LOCATION PLAN

Hale Avenue Extension

Date: 4/04/18

Drwn by: DIG

PAGE 1 OF 1

Packet Pg. 115



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

FEBRUARY 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 February 28, 2018. The Revenue and Expense Summary for the month of February is included on the first page. Overall, General Fund revenues through February totaled \$24.8 million or 66% of the budget. Expenditures totaled \$26.4 million, and including encumbrances amounted to \$28.7 million or 68% of the budget. The encumbrances represent commitments or contractual obligations that the City entered with vendors or suppliers such as Cal-West Lighting and Signal Maintenance for the maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these 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 agendized 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. February 2018 Financial Statement Analysis
2. February 2018 Financial and Investment Report



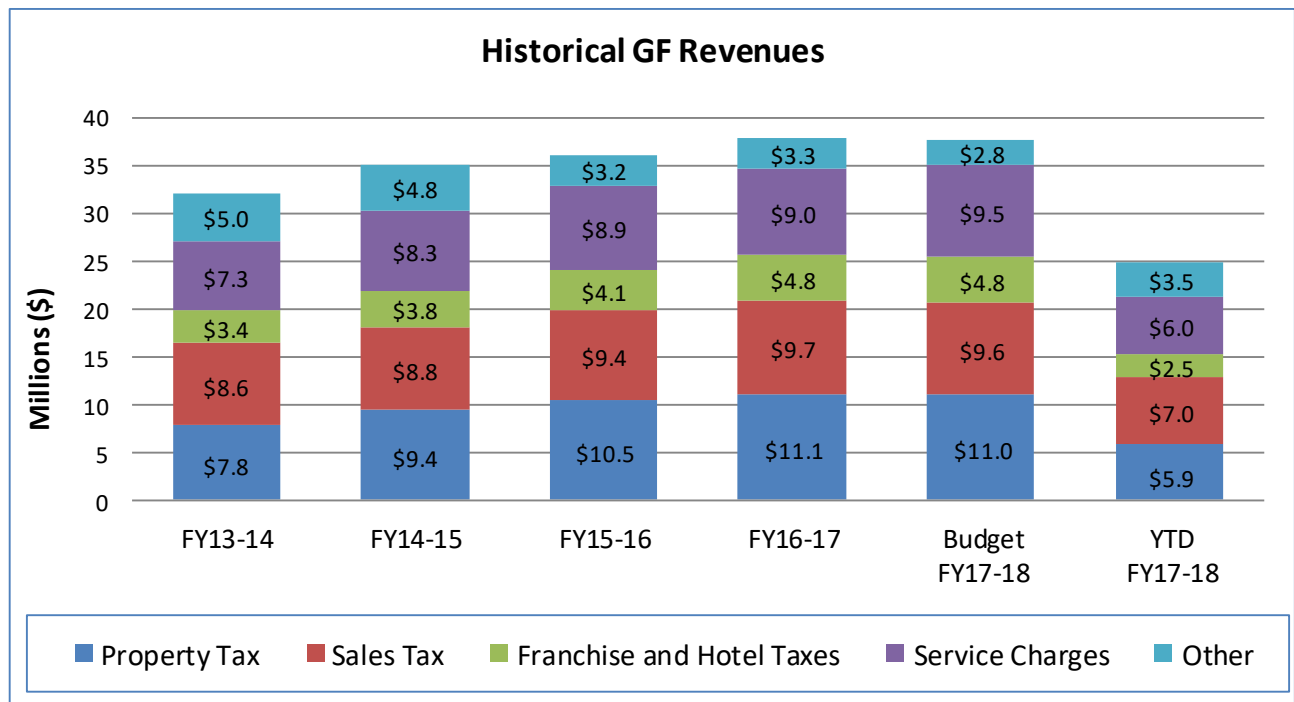
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED FEBRUARY 2018 – 67% OF YEAR COMPLETE

- **General Fund** – Overall, revenues received through February totaled \$24.8 million, or 66% of the budgeted revenues. The amount received is 11% or \$2.4 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 \$479,000. 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 \$11.3 million, which is approximately \$700,000 more than the mid-cycle revised estimate. The increase is mainly due to \$500,000 in excess Educational Revenue Augmentation Fund (ERAF) revenue. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. 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 90% 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 February 28, 2018.

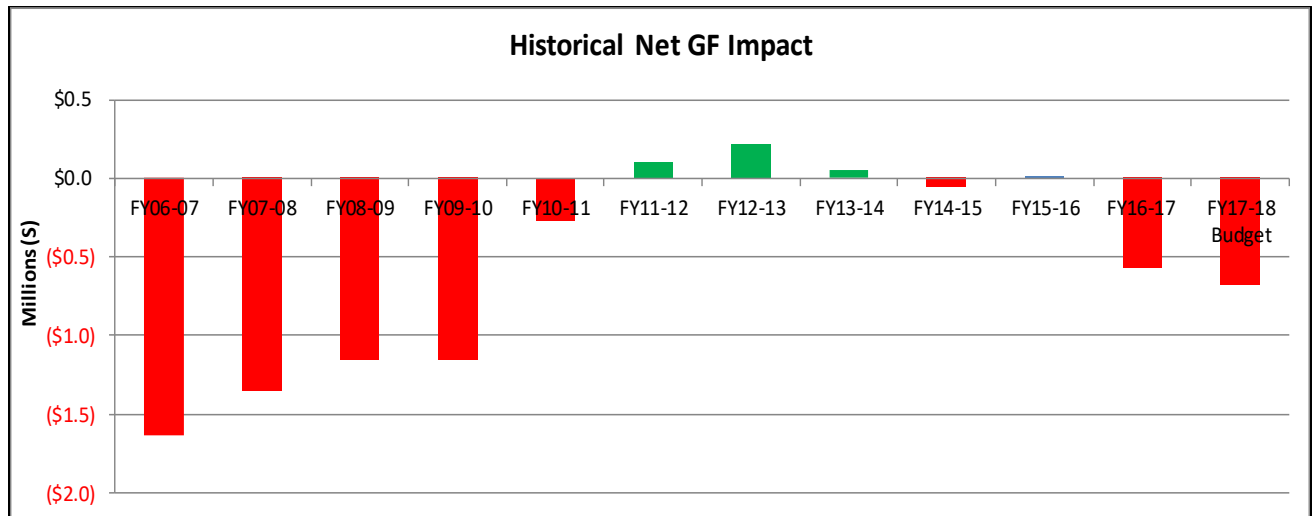


General Fund expenditures and encumbrances as of February 28, 2018 totaled \$28.7 million, of which approximately \$2.3 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED FEBRUARY 2018 – 67% OF YEAR COMPLETE

- **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 February. Without the encumbrances, year to date operations resulted in a smaller negative impact to the general fund of approximately \$127,000. 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 February totaled \$2.9 million, or approximately 80% of the budget. The amount received to date is approximately \$388,000 or 12% less than prior year. Expenditures, including encumbrances totaled \$3.7 million or 69% 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 February 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.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED FEBRUARY 2018 – 67% OF YEAR COMPLETE

- **Sewer Operations** – Revenues from Sewer Service Fees through February totaled \$6.5 million, 4% or \$250,000 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 water consumption from the prior fiscal year. Expenditures and outstanding encumbrances totaled \$6.8 million or 63% 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 February 28, 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	6.5
Expenditures	8.6	8.8	12.0	9.8	10.8	6.8
Operating Margin	0.8	1.5	(1.8)	(0.1)	-	(0.3)
Operating Margin without Encumbrances	0.8	1.5	(1.8)	(0.0)	-	-

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through February totaled \$8.8 million, approximately \$1.4 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 February totaled \$8.0 million. Without the encumbrances, however, the expenditures amounted to \$7.1 million. The table below shows Water Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of February 28, 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	8.8
Expenditures	12.1	9.3	9.7	10.8	12.1	8.0
Operating Margin	0.1	(0.5)	(1.2)	0.1	0.1	0.8
Operating Margin without Encumbrances	0.1	(0.5)	(1.2)	0.3	0.1	1.7

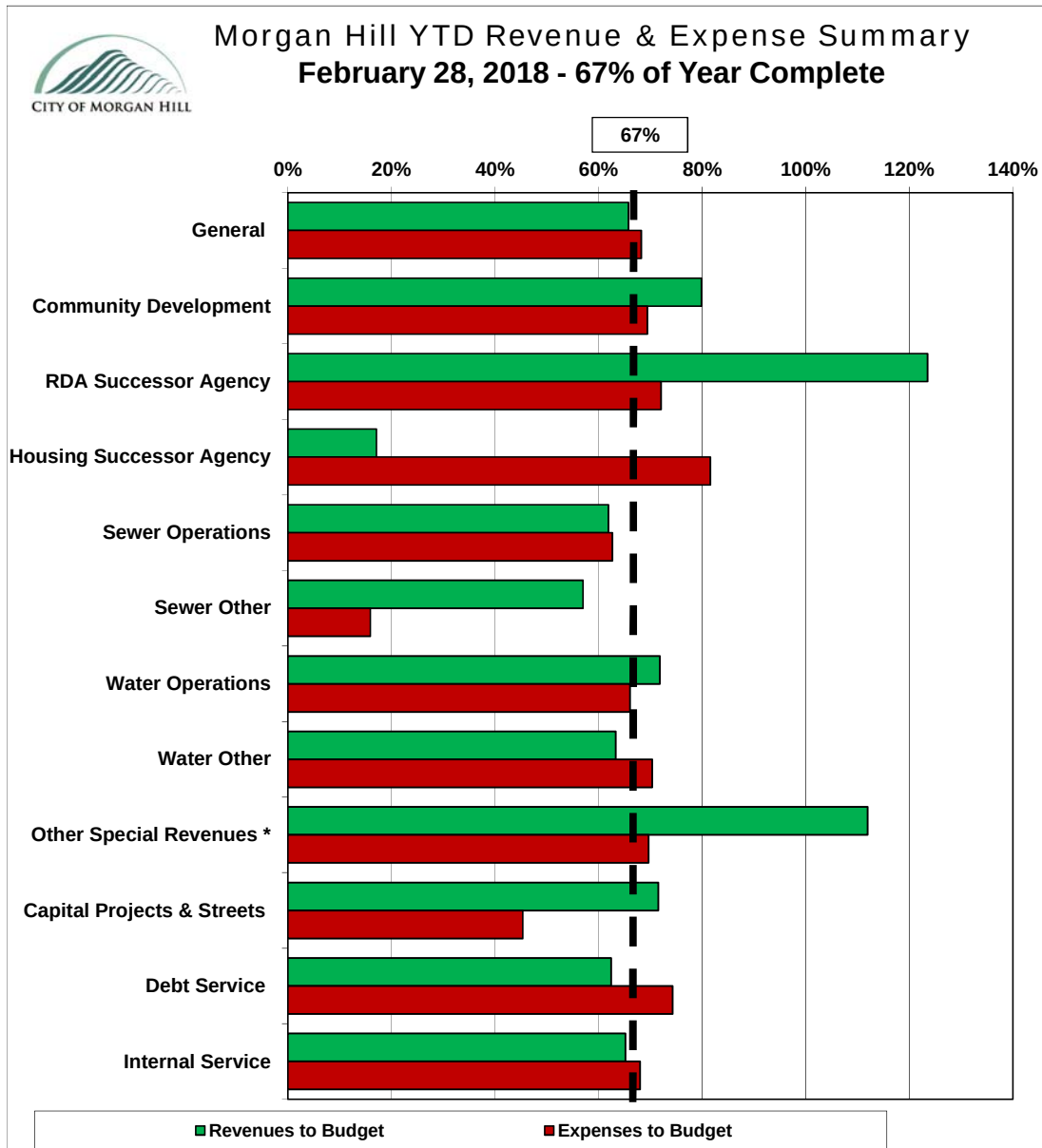
- **Investments** – Two securities were called during the month of February 2018. Total interest earnings received on investments were \$48,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
February 28, 2018 - 67% of Year Complete



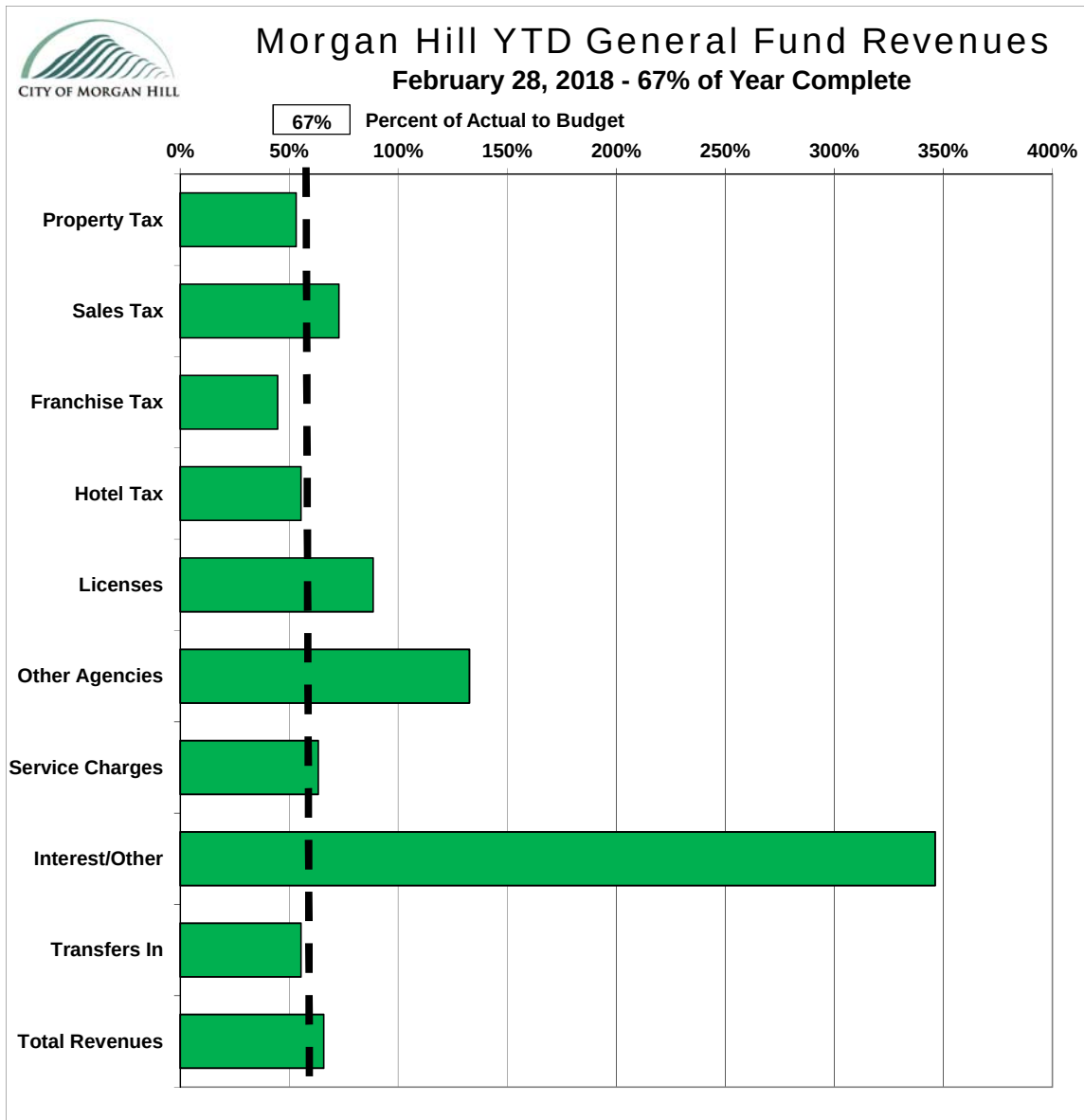
CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT

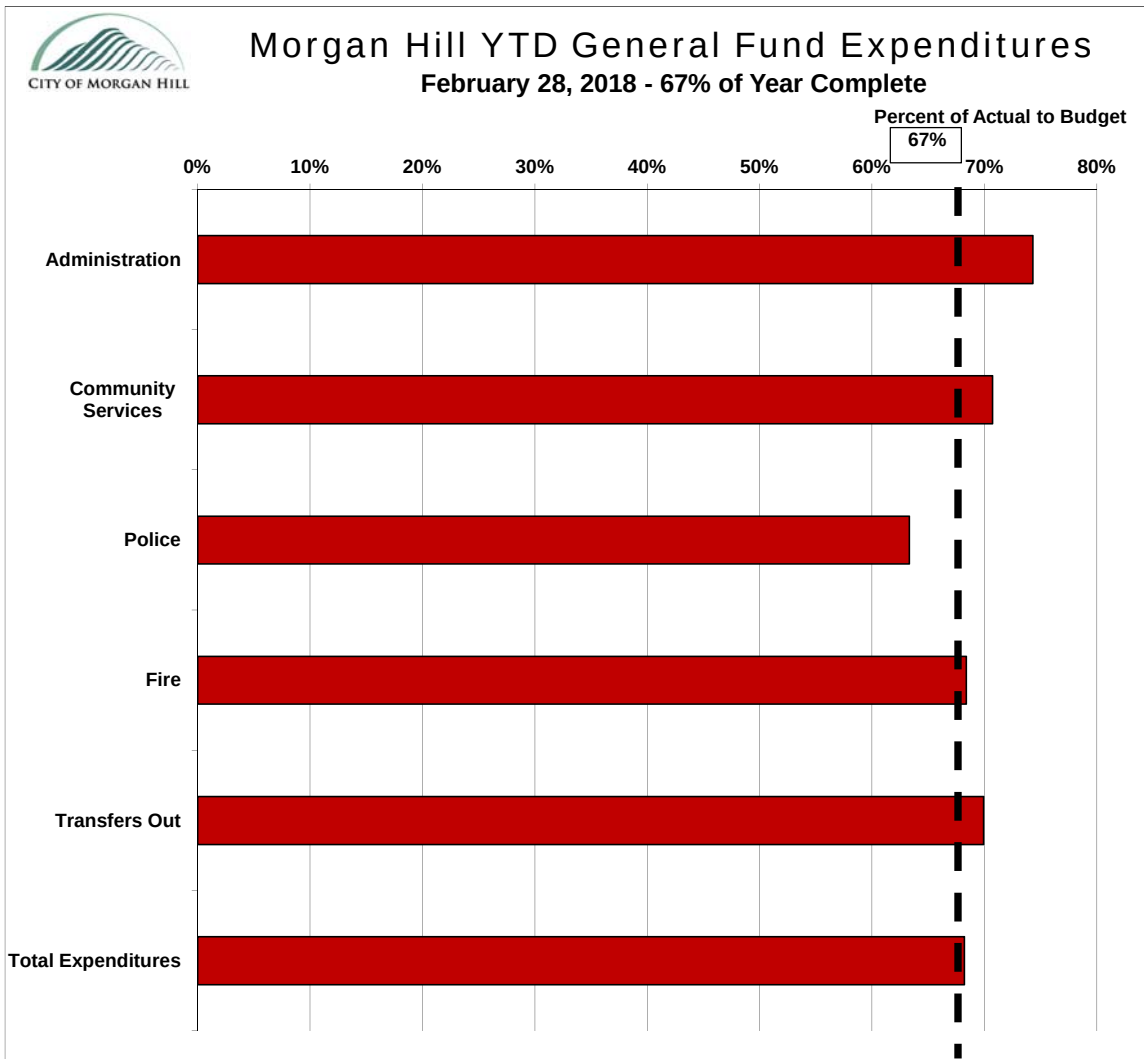


FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 24,837,903	66%	\$ 28,681,609	68%
Community Development	2,940,049	80%	3,696,462	69%
RDA Successor Agency	8,809,418	124%	5,172,219	72%
Housing Successor Agency	219,826	17%	1,586,677	82%
Sewer Operations	6,702,904	62%	6,796,015	63%
Sewer Other	4,119,567	57%	4,392,513	16%
Water Operations	8,778,166	72%	7,964,061	66%
Water Other	1,935,263	63%	4,474,847	70%
Other Special Revenues *	2,966,716	112%	1,942,229	70%
Capital Projects & Streets	9,984,902	72%	14,109,619	45%
Debt Service	426,126	62%	505,964	74%
Internal Service	6,782,434	65%	7,521,617	68%
TOTAL FOR ALL FUNDS	\$ 78,503,274	71%	\$ 86,843,832	54%

* 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	\$ 5,880,374	53%	\$ 5,555,425	6%
Sales Tax	9,588,502	6,981,182	73%	6,488,632	8%
Franchise Tax	1,981,796	886,218	45%	836,001	6%
Hotel Tax	2,827,050	1,566,734	55%	1,621,373	-3%
Licenses	210,621	186,341	89%	179,428	4%
Other Agencies	319,875	424,284	133%	291,328	46%
Service Charges	9,536,644	6,034,377	63%	5,780,922	4%
Interest/Other	561,760	1,945,025	346%	804,582	142%
Transfers In	1,682,103	933,368	56%	903,710	3%
TOTAL REVENUES	\$37,755,351	\$24,837,903	66%	\$ 22,461,401	11%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 7,443,327	\$ 5,530,002	74%	\$ 4,355,753	27%
Community Services	11,050,226	7,815,157	71%	7,281,323	7%
Police	15,871,619	10,050,216	63%	9,826,727	2%
Fire	5,785,389	3,956,099	68%	3,741,740	6%
Transfers Out	1,901,915	1,330,134	70%	1,493,807	-11%
TOTAL EXPENDITURES	\$ 42,052,476	\$ 28,681,609	68%	\$ 26,699,350	7%

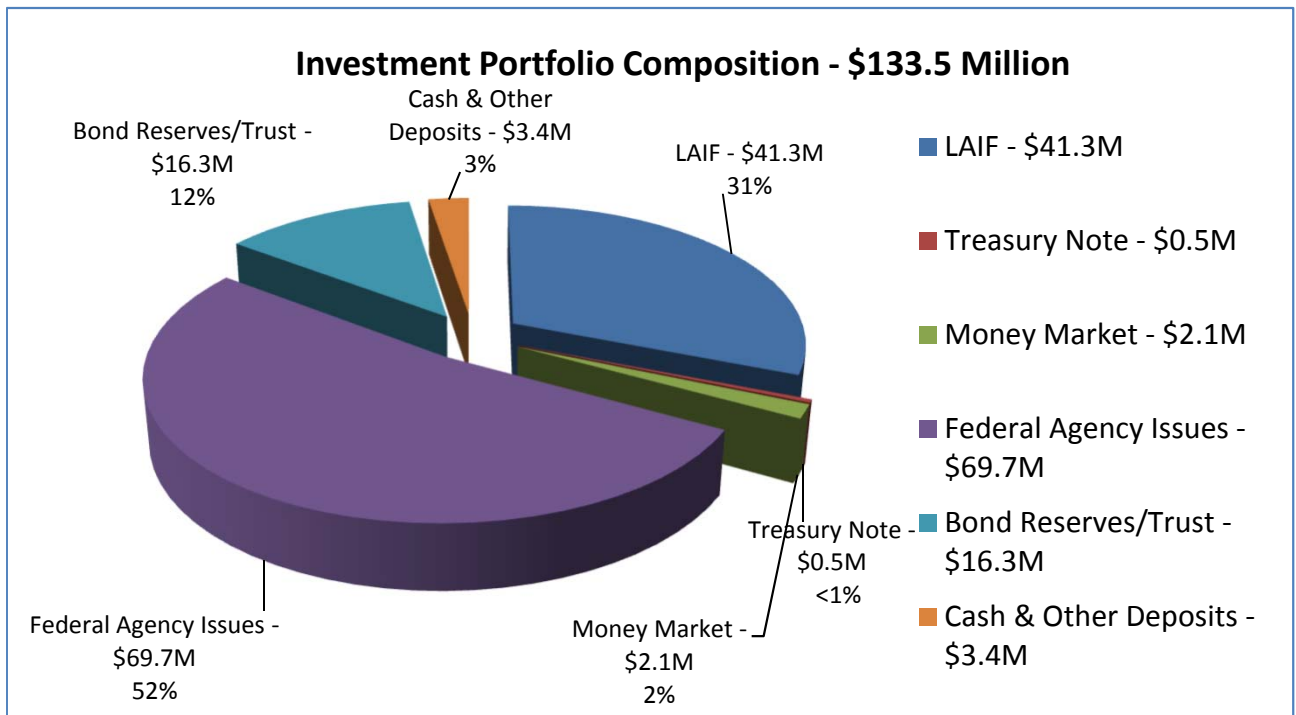


**City of Morgan Hill
Recreation Report - Fiscal Year 2017-18
For the Month and Eight Months Ended February 28, 2018
67% of Year Complete**

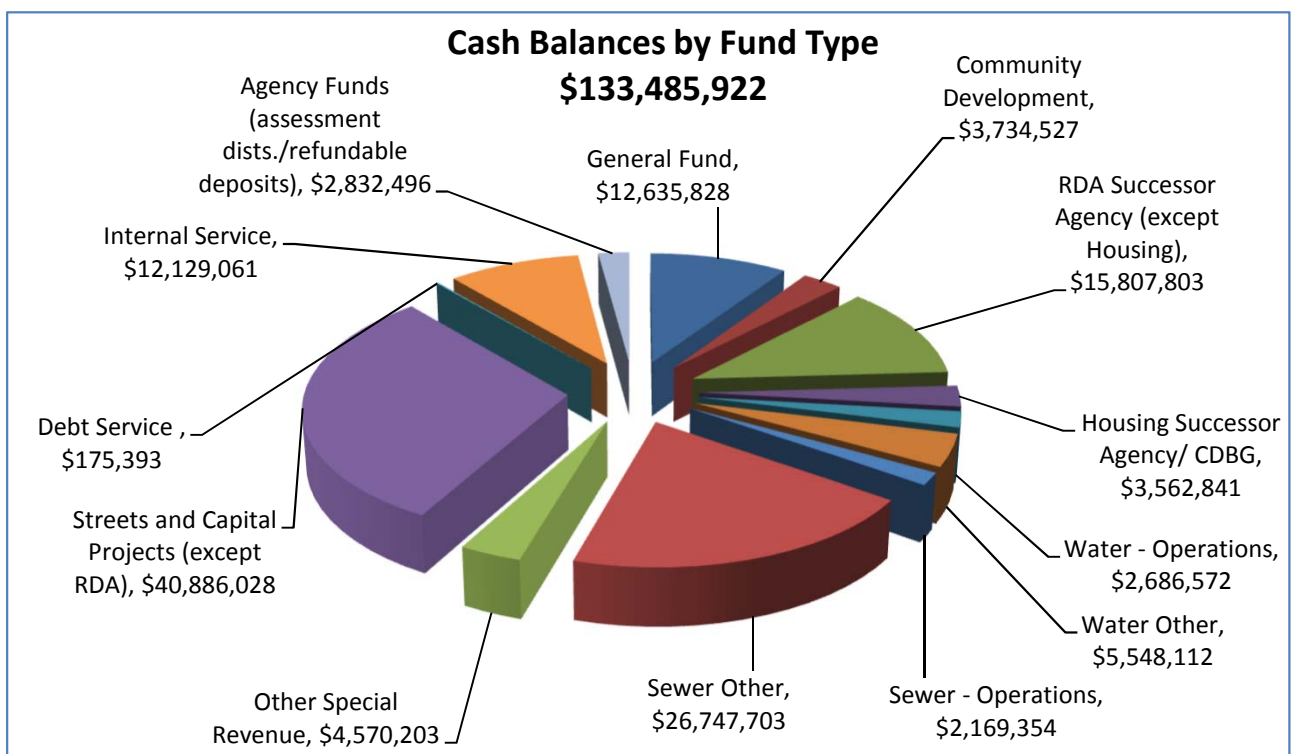
	<u>Budget</u>	<u>February 2018</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,197,036	\$ 428,912	\$ 3,881,048	
Facility Rentals	904,666	67,199	661,201	
Community Services	139,190	12,748	72,267	
Transfers in	75,000	6,250	50,000	
Total Revenues	<u>\$ 7,315,892</u>	<u>\$ 515,109</u>	<u>\$ 4,664,516</u>	64%
Less: Expenditures				
Membership & Program Services	\$ 5,914,430	\$ 302,009	\$ 3,493,234	
Facility Rentals	1,299,185	102,382	855,157	
Community Services	768,671	43,114	443,017	
Total Expenditures	<u>\$ 7,982,287</u>	<u>\$ 447,504</u>	<u>\$ 4,791,408</u>	60%
Net Impact without encumbrances	<u>\$ (666,395)</u>	<u>\$ 67,605</u>	<u>\$ (126,892)</u>	
Encumbrances	-	-	1,026,549	
Net Impact with encumbrances	<u>\$ (666,395)</u>	<u>\$ 67,605</u>	<u>\$(1,153,441)</u>	

City of Morgan Hill Monthly Investment Report - February 28, 2018

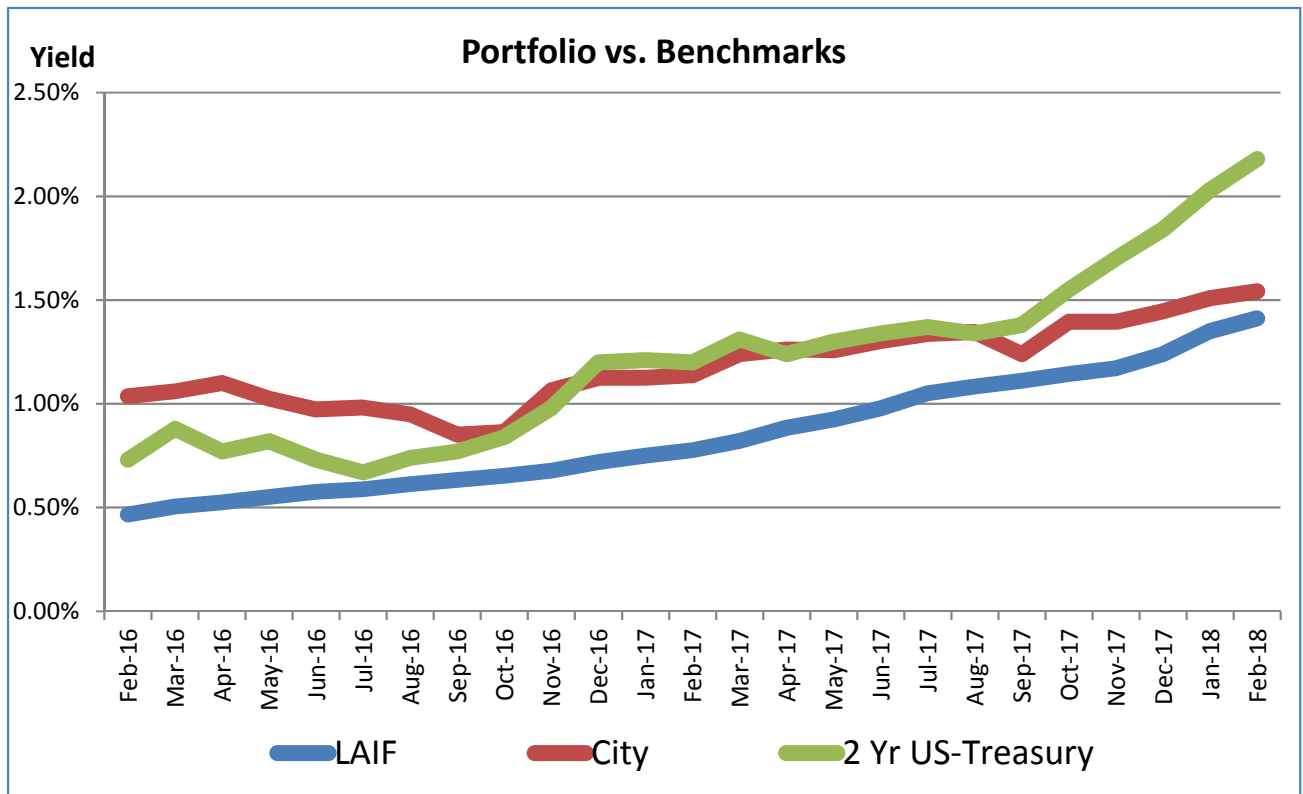
The following are the snapshots of City's investment portfolio as of February 28, 2018. The first chart shows the portfolio composition by investment type:



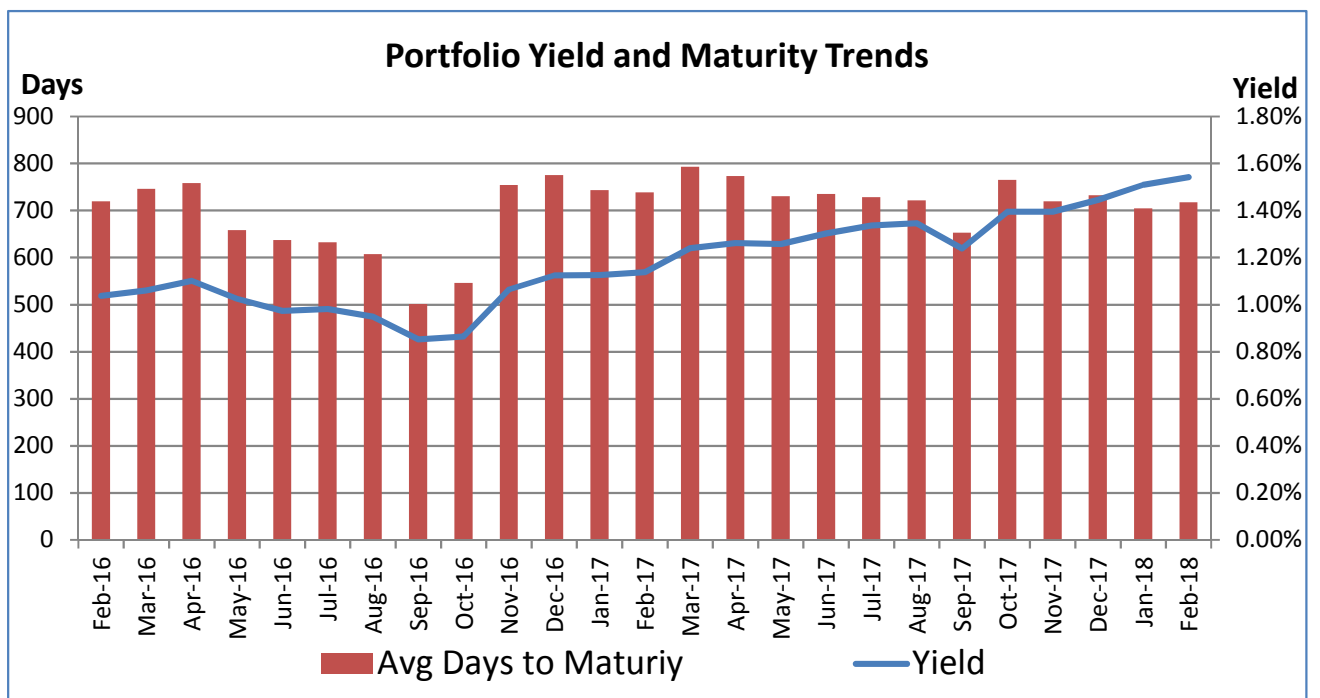
The chart below shows cash balances by fund type reconciled to City's financial system:



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 February 28, 2018

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 41,318,968	30.95%	\$ 41,240,194	1.41%		
City Managed							
Treasury Note	6/12/2015	499,872	0.37%	499,725	1.06%	3/31/2018	3/31/2018
Fed Home Loan Mortgage	7/2/2015	999,978	0.75%	999,920	0.97%	3/7/2018	3/7/2018
Fed Home Loan Bank	9/30/2015	1,000,080	0.75%	999,120	0.95%	4/24/2018	4/24/2018
Fed Home Loan Bank	10/19/2015	4,000,000	3.00%	3,914,400	1.70%	4/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	3.00%	3,841,280	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	3.00%	3,846,240	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.50%	1,934,700	1.65%	3/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	3.00%	3,828,360	1.60%	3/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	3.00%	3,810,720	1.60%	4/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	3.00%	3,808,960	1.55%	4/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.50%	1,907,600	1.65%	4/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	3.00%	3,839,400	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.25%	2,881,950	1.65%	3/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	3.00%	3,842,480	1.63%	3/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	3.00%	3,869,760	1.88%	3/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.97%	1,265,264	2.15%	3/29/2018	6/29/2022
Fed Home Loan Bank	10/19/17	3,850,000	2.88%	3,739,890	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/17	4,150,000	3.11%	4,028,986	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	01/30/18	3,000,000	2.25%	2,949,870	2.50%	1/30/2019	1/30/2023
Sub Total/Average		\$ 57,799,930	43.30%	\$ 55,808,625	1.72%		
Money Market		\$ 1,932,992	1.45%	\$ 1,932,992	0.09%		
Total City Managed/Average		\$ 101,051,889	75.70%	\$ 98,981,810	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,586	0.56%	\$ 742,710	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,705	0.56%	739,103	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,963	0.56%	738,083	1.25%	5/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.56%	739,515	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.56%	746,813	1.10%	3/13/2018	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.56%	748,530	1.00%	3/15/2018	6/15/2018
Fed Home Loan Bank	9/21/2016	749,915	0.56%	746,475	1.12%	3/21/2018	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,823	0.56%	738,458	1.29%	3/12/2018	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,858	0.56%	740,738	1.22%	5/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,449	0.55%	732,015	1.03%	7/30/2018	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,959	0.56%	737,768	1.25%	3/30/2018	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,772	0.56%	745,178	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,004,960	0.75%	994,770	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,822	0.75%	992,800	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	747,979	0.56%	741,518	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	743,427	0.56%	736,026	1.39%	6/20/2019	6/20/2019
Money Market		190,518	0.14%	190,518	0.01%		
Sub Total/Average		\$ 12,674,736	9.50%	\$ 12,551,015	1.18%		
Bond Reserve Accounts - Held By Trustees		\$ 14,534,100	10.89%	\$ 14,518,255			
Cash/Deposits		\$ 3,437,793	2.58%	\$ 3,437,793			
PARS Trust		\$ 1,787,404	1.34%	\$ 2,036,314	*Value as of 1/31/18		
GRAND TOTAL/AVERAGE		\$ 133,485,922	100.00%	\$ 131,525,188			

Attachment: February 2018 Financial and Investment Report (1718 : February 2018 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF FEBRUARY 28, 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	1.41%	\$ 33,025,912	24.74%	\$ 32,962,949
2014 Water Rev Bonds - Water Impact	Water Fund	1.41%	522,420	0.39%	521,424
2014 Water Rev Bonds - Water CIP	Water Fund	1.41%	1,088,114	0.82%	1,086,040
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.41%	6,682,521	5.01%	6,669,781
Federal Issues	All Funds Pooled	1.45%	69,784,275	52.28%	67,669,397
US Treasury Notes	All Funds Pooled	1.06%	499,872	0.37%	499,725
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.29%	2,123,510	1.59%	2,123,510
	SUBTOTAL		\$ 113,726,625	85.20%	\$ 111,532,826
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	1.29%	2,093,282	1.57%	2,093,282
US Treasury Notes - Revenue Acct.	Successor Fund	1.33%	6,862,871	5.14%	6,847,014
US Treasury Notes - Reserve Acct.	Successor Fund	0.08%	5,056,795	3.79%	5,056,806
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.05%	256,858	0.19%	256,858
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.05%	264,151	0.20%	264,151
	SUBTOTAL		14,534,100	10.89%	14,518,255
Other Cash/Deposits					
General Checking	All Funds		3,400,681	2.55%	3,400,681
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			987,404	0.74%	1,160,056 *
PARS - PENSION Trust			800,000	0.60%	876,258 *
	SUBTOTAL		5,225,197	3.91%	5,474,107
Total Cash and Investments			\$ 133,485,922	100.00%	\$ 131,525,188

CASH ACTIVITY SUMMARY
FY 2017-18

Fund Type	07/01/17 Balance	Change in Cash Balance	2/28/2018 Balance
General Fund	\$ 13,850,210	\$ (1,214,382)	\$ 12,635,828
Community Development	4,641,472	(906,944)	3,734,527
RDA Successor Agency (except Housing)	12,149,330	3,658,473	15,807,803
Housing Successor Agency/ CDBG	4,732,509	(1,169,668)	3,562,841
Water - Operations	1,512,329	1,174,243	2,686,572
Water Other	5,507,256	40,856	5,548,112
Sewer - Operations	2,085,815	83,539	2,169,354
Sewer Other	26,927,307	(179,605)	26,747,703
Other Special Revenue	4,381,840	188,363	4,570,203
Streets and Capital Projects (except RDA)	42,727,410	(1,841,381)	40,886,028
Debt Service	256,088	(80,695)	175,393
Internal Service	12,201,454	(72,393)	12,129,061
Agency Funds (assessment dists./refundable deposits)	4,008,713	(1,176,216)	2,832,496
Total	\$ 134,981,732	\$ (1,495,810)	\$ 133,485,922

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.
 * Values as of January 31, 2018.

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

Prepared by: Harjot Sangha, Accounting Manager

Approved by:

Reviewed by: Dat Nguyen, Finance Director

David Clink, Treasurer

Attachment: February 2018 Financial and Investment Report (1718 : February 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Eight Months Ended February 28, 2018
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 8,852,000	\$ 9,083,000	\$ 5,140,072	57%	\$ 4,749,262	\$ 390,809	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	148,332	52%	130,418	17,914	14%
Sales Tax	9,151,500	9,226,502	6,777,313	73%	6,298,421	478,892	8%
Public Safety Sales Tax	362,000	362,000	203,869	56%	190,211	13,658	7%
Transient Occupancy Taxes	2,827,050	2,827,050	1,566,734	55%	1,621,373	(54,639)	-3%
Franchise (Refuse, Cable, PG&E)	1,981,796	1,981,796	886,218	45%	836,001	50,217	6%
Property Transfer Tax	481,000	481,000	326,097	68%	262,767	63,330	24%
TOTAL TAXES	24,917,346	25,444,348	15,314,509	60%	14,501,431	813,078	6%
LICENSES/PERMITS							
Business License	202,878	202,878	183,118	90%	177,383	5,735	3%
Other Permits	7,743	7,743	3,223	42%	2,045	1,178	58%
TOTAL LICENSES/PERMITS	210,621	210,621	186,341	88%	179,428	6,913	4%
FINES AND PENALTIES							
Parking Enforcement	12,240	12,240	4,281	35%	6,388	(2,106)	-33%
Bails & Fines	65,280	65,280	34,419	53%	32,162	2,257	7%
Administrative Citations	-	-	13,300	n/a	500	12,800	2560%
TOTAL FINES AND PENALTIES	77,520	77,520	52,000	67%	39,049	12,951	33%
OTHER AGENCIES							
Motor Vehicle in-Lieu	17,538	17,538	23,237	132%	19,552	3,685	19%
Other Revenue - Other Agencies	406,875	319,875	424,284	133%	291,328	132,956	46%
TOTAL OTHER AGENCIES	424,413	337,413	447,521	133%	310,880	136,641	44%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,640	32,640	19,696	60%	29,967	(10,271)	-34%
Business License Application Review	36,633	36,633	24,852	68%	27,450	(2,598)	-9%
Membership Services & Rec Programs	6,023,650	6,197,036	3,881,048	63%	3,708,485	172,563	5%
Facility Rentals	932,986	904,666	661,201	73%	616,451	44,750	7%
Community Services	139,190	139,190	72,267	52%	96,650	(24,383)	-25%
General Administration Overhead	1,323,077	1,323,077	880,192	67%	838,280	41,912	5%
Other Charges Current Services	903,402	903,402	495,121	55%	463,638	31,483	7%
TOTAL CURRENT SERVICES	9,391,578	9,536,644	6,034,377	63%	5,780,922	253,455	4%
OTHER REVENUE							
Use of money/property	309,396	309,396	224,192	72%	197,035	27,157	14%
Other Revenues	151,306	157,306	1,645,595	1046%	548,945	1,096,650	200%
TOTAL OTHER REVENUE	460,702	466,702	1,869,787	401%	745,980	1,123,807	151%
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	16,664	67%	-	16,664	n/a
Sewer Operations	347,025	347,025	231,352	67%	230,000	1,352	1%
Water Operations	347,025	347,025	231,352	67%	230,000	1,352	1%
Park Development	75,000	75,000	50,000	67%	50,000	-	n/a
TOTAL TRANSFERS IN	1,655,508	1,682,103	933,368	55%	903,710	29,658	3%
TOTAL GENERAL FUND	37,137,688	37,755,351	24,837,903	66%	22,461,401	2,376,502	11%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	431,846	57%	392,136	39,710	10%
Interest / Other Revenue/Other Charges	72	72	640	888%	705	(65)	-9%
202 STREET MAINTENANCE	761,530	761,530	432,486	57%	392,841	39,645	10%

Attachment: February 2018 Financial and Investment Report (1718 : February 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Eight Months Ended February 28, 2018
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	395	395	188	48%	230	(42)	-18%
Police Grant/SLEF/JAG	100,000	100,000	81,083	81%	70,990	10,093	14%
205 PUBLIC SAFETY TRUST	100,395	100,395	81,271	81%	71,221	10,051	14%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,937,862	1,937,862	1,571,888	81%	1,621,920	(50,032)	-3%
Planning Fees	1,131,051	1,131,051	695,216	61%	554,952	140,264	25%
Engineering Fees	601,640	601,640	641,433	107%	916,831	(275,398)	-30%
Other Revenue/Current Charges	9,417	9,417	31,512	335%	234,315	(202,803)	-87%
206 COMMUNITY DEVELOPMENT	3,679,970	3,679,970	2,940,049	80%	3,328,018	(387,969)	-12%
207 LONG RANGE PLANNING	706,212	706,212	432,230	61%	528,364	(96,134)	-18%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	417	120,417	1,730	1%	7,374	(5,644)	-77%
215 and 216 HCD BLOCK GRANT	417	120,417	1,730	1%	7,374	(5,644)	-77%
225 ASSET SEIZURE	250	250	1,106	443%	66,331	(65,225)	-98%
229 LIGHTING AND LANDSCAPE	187,321	187,321	95,302	51%	99,558	(4,256)	-4%
230 COMMUNITY FACILITIES DISTRICT	43,340	43,340	23,458	54%	21,400	2,058	10%
232 ENVIRONMENTAL PROGRAMS	382,164	382,164	320,649	84%	263,543	57,106	22%
234 MOBILE HOME PARK RENT STAB.	3,931	3,931	2,803	71%	3,801	(998)	-26%
235 SENIOR HOUSING	1,633	1,633	1,646	101%	1,181	465	39%
236 HOUSING MITIGATION	842,443	842,443	1,986,964	236%	1,254,490	732,474	58%
240 EMPLOYEE ASSISTANCE	30,966	30,966	18,509	60%	17,693	816	5%
247 ENVIRONMENT REMEDIATION	1,104	1,104	1,046	95%	798	248	31%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,131,889	7,131,889	8,809,418	124%	9,077,947	(268,529)	-3%
255 HOUSING SUCCESSOR AGENCY	1,285,374	1,285,374	219,826	17%	337,754	(117,928)	-35%
TOTAL SPECIAL REVENUE FUNDS	15,158,940	15,278,940	15,368,494	101%	15,472,314	(103,819)	-1%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,439,640	1,931,640	1,737,558	90%	831,342	906,216	109%
302 PARK MAINTENANCE	888,026	905,061	1,168,369	129%	809,348	359,021	44%
303 LOCAL DRAINAGE	1,822,884	1,822,884	1,695,725	93%	1,169,960	525,765	45%
304 LOCAL DRAINAGE/NON AB1600	70,894	70,894	145,183	205%	150,994	(5,811)	-4%
306 AGRICULTURE & OPEN SPACE PRESERVATION	1,539,970	1,539,970	623,212	40%	150,397	472,815	314%
308 STREET CIP	1,357,235	1,603,833	2,089,307	130%	1,041,502	1,047,805	101%
309 TRAFFIC IMPACT	1,348,287	1,348,287	253,188	19%	480,974	(227,786)	-47%
311 POLICE IMPACT	256,218	256,218	184,215	72%	75,639	108,576	144%
313 FIRE IMPACT	94,577	94,577	55,958	59%	85,845	(29,887)	-35%
346 PUBLIC FACILITIES NON-AB1600	617,956	617,956	77,113	12%	643,253	(566,140)	-88%
347 PUBLIC FACILITIES IMPACT	171,217	171,217	125,589	73%	47,920	77,669	162%
348 LIBRARY	1,250,509	1,250,509	423,439	34%	148,276	275,163	186%
350 UNDERGROUNDING	53,236	53,236	200,871	377%	863,196	(662,325)	-77%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	544,341	544,341	84,755	16%	736,112	(651,357)	-88%
360 COMMUNITY/REC IMPACT FUND	985,274	985,274	687,935	70%	120,930	567,005	469%
TOTAL CAPITAL PROJECTS FUNDS	12,440,264	13,195,897	9,552,416	72%	7,355,688	2,196,728	30%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	297,408	297,408	196,893	66%	199,792	(2,899)	-1%
441 POLICE FACILITY BOND	385,373	385,373	229,232	59%	187,949	41,283	22%
TOTAL DEBT SERVICE FUNDS	682,781	682,781	426,126	62%	387,741	38,385	10%

Attachment: February 2018 Financial and Investment Report (1718 : February 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Eight Months Ended February 28, 2018
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,602,695	10,602,695	6,474,099	61%	6,223,984	250,115	4%
Interest Income/Transfers	48,461	48,461	16,331	34%	11,638	4,693	40%
Other Revenue/Current Charges	183,354	183,354	212,474	116%	310,187	(97,713)	-32%
640 SEWER OPERATION	10,834,510	10,834,510	6,702,904	62%	6,545,809	157,095	2%
641 SEWER EXPANSION							
Interest Income	59,474	59,474	108,930	183%	78,104	30,826	39%
Development Impact Fee	4,727,753	4,727,753	2,336,124	49%	998,522	1,337,602	134%
Transfers/Other	-	-	-	0%	600	(600)	-100%
641 SEWER EXPANSION	4,787,227	4,787,227	2,445,054	51%	1,077,226	1,367,828	127%
642 SEWER RATE STABILIZATION	15,702	15,702	18,923	121%	49,694	(30,771)	-62%
643 SEWER-CAPITAL PROJECT	2,424,509	2,424,509	1,655,590	68%	1,797,833	(142,243)	-8%
TOTAL SEWER FUNDS	18,061,948	18,061,948	10,822,471	60%	9,470,562	1,351,909	14%
650 WATER OPERATION							
Water Sales	11,201,856	11,401,856	7,719,569	68%	6,390,418	1,329,151	21%
Meter Install & Service	120,575	120,575	217,720	181%	132,422	85,298	64%
Transfers-In / Interest Income	424,507	424,507	291,561	69%	275,907	15,654	6%
Other Revenue/Current Charges	475,784	275,784	549,317	199%	577,013	(27,696)	-5%
650 WATER OPERATION	12,222,722	12,222,722	8,778,166	72%	7,375,760	1,402,406	19%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	1,944	1,944	26,860	1382%	19,724	7,136	36%
Development Impact Fee	1,196,984	1,196,984	660,720	55%	326,638	334,082	102%
651 WATER EXPANSION	1,198,928	1,198,928	687,580	57%	346,362	341,218	99%
652 Water Rate Stabilization	505,618	505,618	338,328	67%	334,230	4,098	1%
653 Water Capital Project	1,351,992	1,351,992	909,355	67%	646,471	262,884	41%
TOTAL WATER FUNDS	15,279,260	15,279,260	10,713,430	70%	8,702,823	2,010,607	23%
TOTAL ENTERPRISE FUNDS	33,341,208	33,341,208	21,535,901	65%	18,173,385	3,362,516	19%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,812	1,592,812	1,071,844	67%	1,075,215	(3,371)	0%
740 BUILDING MAINTENANCE	3,066,615	3,149,985	2,076,179	66%	2,061,423	14,756	1%
741 BUILDING REPLACEMENT	487,008	487,008	330,387	68%	316,256	14,131	4%
745 CIP ADMINISTRATION	1,869,109	1,869,109	895,355	48%	873,193	22,162	3%
760 UNEMPLOYMENT INSURANCE	1,094	1,094	1,224	112%	923	301	33%
770 WORKERS COMPENSATION	763,390	763,390	696,510	91%	492,436	204,074	41%
790 EQUIPMENT REPLACEMENT	974,418	974,418	666,753	68%	707,169	(40,416)	-6%
791 EMPLOYEE BENEFITS	624,676	624,676	409,328	66%	419,605	(10,277)	-2%
793 CORPORATION YARD COMMISSION	-	-	1,850	0%	547	1,303	238%
795 GENERAL LIABILITY INSURANCE	941,342	941,342	633,005	67%	572,521	60,484	11%
TOTAL INTERNAL SERVICE FUNDS	10,320,464	10,403,834	6,782,434	65%	6,519,288	263,146	4%
TOTAL FOR ALL FUNDS	\$ 109,081,345	\$ 110,658,011	\$ 78,503,274	71%	\$ 70,369,817	\$ 8,133,457	12%

Attachment: February 2018 Financial and Investment Report (1718 : February 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Eight Months Ended February 28, 2018
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 28,130	\$ 401,865	\$ 186,567	\$ 21,500	\$ 208,067	52%	\$ 22,130
	CITY ATTORNEY	81,283	836,813	488,202	121,916	610,118	73%	42,130
	CITY MANAGER/ATTORNEY LOAN	-	1,300,000	1,300,000	-	1,300,000	100%	83,130
	CITY MANAGER	96,614	1,901,979	728,377	655,159	1,383,536	73%	55,130
	HUMAN RESOURCES	43,046	757,742	465,216	9,025	474,241	63%	43,130
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	43,151	601,195	380,045	11,200	391,245	65%	36,130
	Elections	3,966	30,669	66,005	-	66,005	215%	12,130
	COUNCIL SVCS & RECORDS MGMT	47,117	631,864	446,049	11,200	457,249	72%	49,130
	FINANCE	124,741	1,613,065	1,056,685	40,107	1,096,791	68%	1,08,130
	TOTAL ADMINISTRATION	420,930	7,443,327	4,671,095	858,907	5,530,002	74%	4,05,130
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	302,009	5,914,430	3,493,234	984,147	4,477,381	76%	3,34,130
	Recreation Facility Rentals	102,382	1,299,185	855,157	-	855,157	66%	82,130
	Community Services	43,114	768,671	443,017	42,402	485,419	63%	41,130
	Solid Waste Management	12,978	277,104	122,411	-	122,411	44%	11,130
	Street Maintenance	147,764	2,225,954	1,259,402	220,485	1,479,887	66%	1,21,130
	Downtown Maintenance	21,873	296,241	174,827	73,063	247,890	84%	9,130
	Cable Television	1,442	49,443	12,736	-	12,736	26%	1,130
	COMMUNITY SERVICES	631,562	10,831,028	6,360,785	1,320,097	7,680,881	71%	6,02,130
	CODE COMPLIANCE	10,288	141,628	79,080	-	79,080	56%	7,130
	CONGESTION MANAGEMENT	1,338	77,570	55,196	-	55,196	71%	5,130
	TOTAL COMMUNITY SERVICES	643,188	11,050,226	6,495,061	1,320,097	7,815,157	71%	6,15,130
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	110,285	1,185,166	753,143	21,812	774,955	65%	73,130
	Field Operations	605,407	7,904,735	4,976,853	71,418	5,048,271	64%	4,87,130
	Support Services	176,221	2,089,756	1,341,434	8,658	1,350,092	65%	1,35,130
	Emergency Services/Haz Mat	17,477	217,012	118,670	-	118,670	55%	10,130
	Special Operations	150,692	2,779,972	1,736,897	-	1,736,897	62%	1,70,130
	Dispatch Services	114,263	1,694,978	1,021,332	-	1,021,332	60%	1,00,130
	POLICE	1,174,345	15,871,619	9,948,329	101,888	10,050,216	63%	9,77,130
	FIRE	437,270	5,785,389	3,914,308	41,791	3,956,099	68%	3,72,130
	TOTAL PUBLIC SAFETY	1,611,615	21,657,008	13,862,637	143,679	14,006,316	65%	13,49,130
IV. TRANSFERS								
	Other	145,443	1,901,915	1,330,134	-	1,330,134	70%	1,49,130
	TOTAL TRANSFERS	145,443	1,901,915	1,330,134	-	1,330,134	70%	1,49,130
	TOTAL GENERAL FUND	2,821,176	42,052,476	26,358,926	2,322,682	28,681,609	68%	25,19,130



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Eight Months Ended February 28, 2018
67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	169	763,480	324,402	-	324,402	42%	34%
205	PUBLIC SAFETY/SUPP.LAW	-	100,000	81,000	-	81,000	81%	5%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	168,904	2,241,307	1,217,090	381,992	1,599,082	71%	1,27%
	Building	134,716	1,789,823	1,131,536	31,758	1,163,294	65%	1,09%
	Engineering	94,356	1,292,702	822,989	111,097	934,086	72%	66%
206	COMMUNITY DEVELOPMENT FUND	397,976	5,323,832	3,171,615	524,847	3,696,462	69%	3,03%
207	LONG RANGE PLANNING	47,651	988,643	381,789	220,015	601,805	61%	32%
215/216	CDBG	132,398	165,331	141,281	63,695	204,976	124%	1%
225	ASSET SEIZURE	-	26,595	-	-	-	0%	
229	LIGHTING AND LANDSCAPE	8,840	205,430	110,982	48,914	159,895	78%	10%
230	COMMUNITY FACILITIES DISTRICT	1,101	45,100	11,684	2,320	14,004	31%	1%
232	ENVIRONMENT PROGRAMS	21,734	345,422	263,565	19,900	283,465	82%	43%
234	MOBILE HOME PARK	71	880	568	-	568	65%	
236	HOUSING MITIGATION	71,103	1,320,091	406,971	174,140	581,112	44%	2,82%
240	EMPLOYEE ASSISTANCE	1,884	41,247	15,405	-	15,405	37%	2%
250	COMH-SUCCESSOR AGENCY-MHRDA	12,621	7,178,310	5,148,329	23,890	5,172,219	72%	6,63%
255	HOUSING SUCCESSOR AGENCY	114,698	1,945,760	1,436,677	150,000	1,586,677	82%	62%
TOTAL SPECIAL REVENUE FUNDS		810,246	18,450,121	11,494,268	1,227,721	12,721,989	69%	14,43%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	186,643	7,342,206	3,676,983	446,842	4,123,825	56%	82%
302	PARK MAINTENANCE	1,550,615	2,688,257	2,121,469	1,506,811	3,628,281	135%	63%
303	LOCAL DRAINAGE	2,592	47,010	9,677	6,652	16,329	35%	1%
304	LOCAL DRAIN. NON-AB1600	384	189,171	51,327	-	n/a		1%
306	AGRICULTURE & OPEN SPACE PRESERVATION	3,207	2,481,696	31,090	88,251	119,340	5%	80%
308	STREET CIP	5,208	5,335,964	2,101,503	307,692	2,409,196	45%	9%
309	TRAFFIC IMPACT	64,992	3,913,053	1,588,609	149,788	1,738,397	44%	89%
311	POLICE IMPACT	3,767	237,117	140,473	6,652	147,125	62%	14%
313	FIRE IMPACT	1,716	623,735	2,494	6,652	9,146	1%	
346	PUBLIC FAC.NON AB1600	(23,471)	1,020,977	517,592	49,049	566,641	55%	51%
347	PUBLIC FACILITIES IMPACT	1,687	439,481	2,288	6,652	8,940	2%	
348	LIBRARY IMPACT	23,968	3,824,836	217,918	251,452	469,370	12%	28%
350	UNDERGROUNDING	45	55,539	360	-	360	1%	69%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	(12,302)	1,809,032	237,636	19,028	256,663	14%	4%
360	COMM/REC CENTER IMPACT	1,961	309,400	17,975	273,629	291,605	0%	
TOTAL CAPITAL PROJECTS FUNDS		1,811,011	30,317,473	10,717,392	3,119,152	13,785,217	45%	4,92%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	97	297,423	209,968	-	209,968	71%	21%
441	POLICE FACILITY BOND DEBT	198	383,610	295,996	-	295,996	77%	28%
TOTAL DEBT SERVICE FUNDS		295	681,033	505,964	-	505,964	74%	50%

Attachment: February 2018 Financial and Investment Report (1718 : February 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Eight Months Ended February 28, 2018
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,101,772	10,846,377	6,518,646	277,368	6,796,015	63%	6,714
641	SEWER CAPITAL EXPANSION	265,827	19,130,592	975,926	537,915	1,513,841	8%	1,099
642	SEWER RATE STABILIZATION	325	3,900	2,600	-	2,600	67%	-
643	SEWER-CAPITAL PROJECTS	207,163	8,453,383	2,655,102	220,970	2,876,072	34%	2,950
TOTAL SEWER FUND(S)		1,575,087	38,434,252	10,152,275	1,036,254	11,188,528	29%	10,772
WATER								
	Water Operations	1,056,289	11,005,629	6,523,020	793,971	7,316,991	66%	6,072
	Utility Billing	56,177	836,258	478,757	28,116	506,873	61%	450
	Water Conservation	4,765	212,502	55,065	85,133	140,197	66%	71
650	WATER OPERATIONS	1,117,232	12,054,389	7,056,842	907,219	7,964,061	66%	6,612
651	WATER CAPITAL EXPANSION	(39,279)	3,405,848	294,708	2,101,565	2,396,273	70%	1,300
652	WATER RATE STABILIZATION	51	662	408	-	408	62%	-
653	WATER-CAPITAL PROJECTS	525,569	2,991,557	1,475,503	602,663	2,078,166	69%	3,122
TOTAL WATER FUND(S)		1,603,573	18,452,455	8,827,460	3,611,448	12,438,908	67%	11,044
TOTAL ENTERPRISE FUNDS		3,178,660	56,886,707	18,979,735	4,647,701	23,627,436	42%	21,822
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	85,428	1,796,307	1,132,488	25,801	1,158,289	64%	821
740	BUILDING MAINTENANCE	237,625	3,328,743	1,967,369	248,867	2,216,236	67%	1,972
741	BUILDING REPLACEMENT	59,948	524,821	308,015	22,221	330,236	63%	562
745	CIP ADMINISTRATION	106,107	1,872,190	895,355	15,932	911,287	49%	872
760	UNEMPLOYMENT	1,262	20,400	3,728	-	3,728	18%	-
770	WORKERS COMPENSATION	12,354	808,807	892,101	-	892,101	110%	402
790	EQUIPMENT REPLACEMENT	247,321	1,096,467	648,889	132,180	781,069	71%	1,289
791	EMPLOYEE BENEFITS FUND	41,538	558,538	530,267	-	530,267	95%	422
793	CORP YARD COMMISSION	103	-	7,455	1,903	9,358	0%	-
795	GEN. LIABILITY INSURANCE	30,392	1,059,920	689,047	-	689,047	65%	750
TOTAL INTERNAL SERVICE FUNDS		822,078	11,066,194	7,074,713	446,904	7,521,617	68%	7,111
REPORT TOTAL		\$ 9,443,467	\$ 159,454,003	\$ 75,130,999	\$ 11,764,161	\$ 86,843,832	54%	\$ 73,992

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Eight Months Ended February 28, 2018 67% 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	\$ 24,837,903	66%	\$ 26,358,926	63%	\$ (1,521,023)	\$ 2,322,682	\$ 12,986,911	
TOTAL GENERAL FUND		\$ 16,830,617	\$ 24,837,903	66%	\$ 26,358,926	63%	\$ (1,521,023)	\$ 2,322,682	\$ 12,986,911	
202	STREET MAINTENANCE	440	\$ 432,486	57%	\$ 324,402	63%	\$ 108,084	\$ -	\$ 108,524	
205	PUBLIC SAFETY/SUPPL. LAW	16,702	81,271	81%	81,000	64%	271	-	16,974	
206	COMMUNITY DEVELOPMENT	2,646,685	2,940,049	80%	3,171,615	60%	(231,567)	524,847	1,890,272	
207	LONG RANGE PLANNING	1,170,077	432,230	61%	381,789	39%	50,441	220,015	1,000,502	
215 / 216	CDBG	95,752	1,730	1%	141,281	0%	(139,551)	63,695	(107,494)	
225	ASSET SEIZURE	136,345	1,106	443%	-	0%	1,106	-	137,452	
229	LIGHTING AND LANDSCAPE	160,594	95,302	51%	110,982	54%	(15,680)	48,914	96,001	
230	COMMUNITY FACILITIES DISTRICT	60,276	23,458	54%	11,684	0%	11,774	2,320	69,729	
232	ENVIRONMENTAL PROGRAMS	157,637	320,649	84%	263,565	76%	57,084	19,900	194,821	
234	MOBILE HOME PK RENT STAB.	41,059	2,803	71%	568	65%	2,235	-	43,294	
235	SENIOR HOUSING	220,710	1,646	101%	-	0%	1,646	-	222,356	
236	HOUSING MITIGATION	2,178,174	1,986,964	236%	406,971	31%	1,579,993	174,140	3,584,026	
240	EMPLOYEE ASSISTANCE	36,302	18,509	60%	15,405	37%	3,104	-	39,406	
247	ENVIRONMENT REMEDIATION	139,723	1,046	95%	-	0%	1,046	-	140,769	
250	COMH-SUCCESSOR AGENCY-MHRDA	4,650,153	8,809,418	124%	5,148,329	72%	3,661,089	14,036,838	(5,725,596)	
255	HOUSING SUCCESSOR AGENCY	3,956,700	219,826	17%	1,436,677	74%	(1,216,851)	2,663,275	76,574	
TOTAL SPECIAL REVENUE FUNDS		\$ 15,667,329	\$ 15,368,494	101%	\$ 11,494,268	62%	\$ 3,874,226	\$ 17,753,944	\$ 1,787,612	
301	PARK DEV. IMPACT FUND	4,850,439	1,737,558	90%	3,676,983	50%	(1,939,425)	446,842	2,464,172	
302	PARK MAINTENANCE	5,431,371	1,168,369	129%	2,121,469	79%	(953,101)	1,506,811	2,971,459	
303	LOCAL DRAINAGE	8,381,669	1,695,725	93%	9,677	21%	1,686,048	6,652	10,061,065	
304	LOCAL DRAINAGE/NON-AB1600	1,301,563	145,183	205%	51,327	27%	93,856	-	1,395,419	
306	AGRICULTURE AND OPEN SPACE PRESERV	6,014,381	623,212	40%	31,090	1%	592,122	88,251	6,518,252	
308	STREET CIP	1,819,399	2,089,307	130%	2,101,503	39%	(12,196)	307,692	1,499,510	
309	TRAFFIC IMPACT FUND	4,539,601	253,188	19%	1,588,609	41%	(1,335,420)	149,788	3,054,392	
311	POLICE IMPACT FUND	(778,194)	184,215	72%	140,473	59%	43,743	6,652	(741,104)	
313	FIRE IMPACT FUND	3,818,916	55,958	59%	2,494	0%	53,464	6,652	3,865,728	
346	PUBLIC FACILITIES NON-AB1600	1,117,552	77,113	12%	517,592	51%	(440,479)	6,652	670,420	
347	PUBLIC FACILITIES IMPACT FUND	343,009	125,589	73%	2,288	1%	123,301	251,452	214,857	
348	LIBRARY IMPACT FUND	2,103,639	423,439	34%	217,918	6%	205,521	-	2,309,161	
350	UNDERGROUNDING	510,438	200,871	377%	360	1%	200,511	19,028	691,921	
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,640,864	84,755	16%	237,636	13%	(152,880)	273,629	1,214,355	
360	COMM/REC CTR IMPACT FUND	268,766	687,935	70%	17,975	0%	669,959	-	938,725	
TOTAL CAPITAL PROJECT FUNDS		\$ 41,363,413	\$ 9,552,416	72%	\$ 10,717,392	35%	\$ (1,164,976)	\$ 3,070,103	\$ 37,128,334	
420	CIVIC CENTER DEBT	161,328	196,893	66%	209,968	71%	(13,075)	63	148,190	
441	POLICE FACILITY BOND DEBT	93,903	229,232	59%	295,996	77%	(66,763)	80	27,060	
TOTAL DEBT SERVICE FUNDS		\$ 255,231	\$ 426,126	62%	\$ 505,964	74%	\$ (79,838)	\$ 144	\$ 175,249	

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Eight Months Ended February 28, 2018 67% 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

640	SEWER OPERATIONS	\$ 2,997,397	\$ 6,702,904	62%	\$ 6,518,646	60%	\$ 184,258	277,368	2,904,286
641	SEWER IMPACT FUND*	13,739,517	2,445,054	51%	975,926	5%	1,469,127	537,915	14,670,730
642	SEWER RATE STABILIZATION	2,538,125	18,923	121%	2,600	67%	16,323	-	2,554,448
643	SEWER-CAPITAL PROJECTS	8,964,265	1,655,590	68%	2,655,102	31%	(999,511)	220,970	7,743,783
650	WATER OPERATIONS	1,329,683	8,778,166	72%	7,056,842	59%	1,721,324	907,219	2,143,788
651	WATER IMPACT FUND*	3,153,845	687,580	57%	294,708	9%	392,873	2,101,565	1,445,153
652	WATER RATE STABILIZATION	539,303	338,328	67%	408	62%	337,920	-	877,223
653	WATER -CAPITAL PROJECT	613,123	909,355	67%	1,475,503	49%	(566,148)	602,663	(555,688)
TOTAL ENTERPRISE FUNDS		\$ 33,875,258	\$ 21,535,901	65%	\$ 18,979,735	33%	\$ 2,556,166	\$ 4,647,701	\$ 31,783,722

730	INFORMATION SERVICES	\$ 612,170	\$ 1,071,844	67%	\$ 1,132,488	63%	\$ (60,644)	25,801	\$ 525,725
740	BUILDING MAINTENANCE	126,409	2,076,179	66%	1,967,369	59%	108,811	248,867	(13,647)
741	BUILDING REPLACEMENT	2,063,612	330,387	68%	308,015	59%	22,372	22,221	2,063,763
745	CIP ENGINEERING	32,485	895,355	48%	895,355	48%	-	15,932	16,553
760	UNEMPLOYMENT	164,584	1,224	112%	3,728	18%	(2,504)	-	162,079
770	WORKERS COMPENSATION	1,647,992	696,510	91%	892,101	110%	(195,592)	30,000	1,422,400
790	EQUIPMENT REPLACEMENT	4,110,874	666,753	68%	648,889	59%	17,864	132,180	3,996,558
791	EMPLOYEE BENEFITS FUNDS	584,228	409,328	68%	530,267	95%	(120,939)	-	483,289
793	CORP YARD COMMISSION	-	1,850	0%	7,455	0%	(5,605)	1,903	(7,508)
795	GEN. LIABILITY INSURANCE	1,106,814	633,005	67%	689,047	65%	(56,042)	-	1,050,772
TOTAL INTERNAL SERVICE FUNDS		\$ 10,449,167	\$ 6,782,434	65%	\$ 7,074,713	64%	\$ (292,279)	\$ 476,904	\$ 9,679,983

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,830,617	\$ 24,837,903	66%	\$ 26,358,926	63%	\$ (1,521,023)	2,322,682	\$ 12,986,911
SPECIAL REVENUE GROUP	15,667,329	15,368,494	101%	11,494,268	62%	3,874,226	17,753,944	1,787,612
DEBT SERVICE GROUP	255,231	426,126	62%	505,964	74%	(79,838)	144	175,249
CAPITAL PROJECTS GROUP	41,363,413	9,552,416	72%	10,717,392	35%	(1,164,976)	3,070,103	37,128,334
ENTERPRISE GROUP	33,875,258	21,535,901	65%	18,979,735	33%	2,556,166	4,647,701	31,783,722
INTERNAL SERVICE GROUP	10,449,167	6,782,434	65%	7,074,713	64%	(292,279)	476,904	9,679,983
TOTAL ALL GROUPS	\$ 118,441,015	\$ 78,503,274	71%	\$ 75,130,999	47%	\$ 3,372,275	\$ 28,271,479	\$ 93,541,812

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 18, 2018

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

RESOLUTION ADDING A PROPERTY ASSESSED CLEAN ENERGY PROVIDER

RECOMMENDATION(S)

Adopt resolution joining the California Enterprise Development Authority (CEDA) as an Associate Member and authorizing CEDA, through Dividend Finance, LLC, to offer their program and levy assessments within the City of Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

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

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

There are numerous PACE programs currently serving Morgan Hill including California First, HERO, Open Pace, Alliance NRG, Ygrene Works, and those recently added that work through the California Municipal Finance Authority. The City recently heard from the California Enterprise Development Authority (CEDA) that they would also like to serve the community. CEDA is a Joint Powers Authority formed to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest.

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

authorizing CEDA's partner, Figtree, to provide services in Morgan Hill.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has adopted numerous resolutions authorizing PACE administrators to operate in Morgan Hill in the past decade. The first resolution was adopted on December 16, 2009 and the most recent was adopted on March 7, 2018.

FISCAL AND RESOURCE IMPACT:

There are no City fiscal impacts associated with this proposed action as neither the initial funding nor the repayment assessments are administered by the City.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. Morgan Hill_Joint Resolution
2. Morgan Hill_Associate Membership Agreement
3. Resolution has attachments built into the file

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, APPROVING ASSOCIATE MEMBERSHIP BY THE CITY IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY; AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY IN THE AUTHORITY; AUTHORIZING THE CITY TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF MORGAN HILL; AND AUTHORIZING RELATED ACTIONS

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

WHEREAS, the City, upon authorization of the City Council, may pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "JPA Law") enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them;

WHEREAS, the City and other public agencies wish to jointly participate in economic development financing programs for the benefit of businesses and nonprofit entities within their jurisdictions offered by membership in the California Enterprise Development Authority (the "CEDA") pursuant to an associate membership agreement and Joint Exercise of Powers Agreement Relating to the California Enterprise Development Authority (the “Agreement”);

WHEREAS, under the JPA Law and the Agreement, CEDA is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of CEDA will not be the debts, liabilities or obligations of the City or the other members of the Authority;

WHEREAS, the form of Associate Membership Agreement (the “Associate Membership Agreement”) between the City and CEDA is attached;

WHEREAS, the City is willing to become an Associate Member of CEDA subject to the provisions of the Associate Membership Agreement;

WHEREAS, CEDA has adopted the Figtree Property Assessed Clean Energy (PACE) and Job Creation Program (the “Program” or “Figtree PACE”), to allow the financing of certain

Attachment: Morgan Hill_Joint Resolution (1721 : Add Figtree PACE)

renewable energy, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments;

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

WHEREAS, the City desires to allow the owners of property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements;

WHEREAS, CEDA will conduct assessment proceedings under Chapter 29 to establish an assessment district (the "District") and issue Bonds under the 1915 Act to finance Improvements;

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A;

WHEREAS, said ROI sets forth the territory within which assessments may be levied for Figtree PACE which territory shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (the "Boundaries");

WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to conduct assessment proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue bonds or other forms of indebtedness to finance the Improvements in connection with Figtree PACE;

WHEREAS, to protect the City in connection with operation of the Figtree PACE program, Dividend Finance, LLC, the program administrator, has agreed to defend and indemnify the City;

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued in connection with Figtree PACE;

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Morgan Hill, hereby finds, determines and declares as follows:

Section 1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute public affairs of the City. The City Council further finds that the statements, findings and determinations of the City set forth in the preambles above are true and correct.

Section 2. The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The City Manager is hereby authorized and directed, for and on behalf of the City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The officers and officials of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this resolution and the Associate Membership Agreement. All such actions heretofore taken by such officers and officials are hereby confirmed, ratified and approved.

Section 4. Good Standing. The City is a municipal corporation and in good standing.

Section 5. Public Benefits. On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

Section 6. Appointment of CEDA. The City hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code commencing with Section 8500 et seq.) (the “Law”), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

Section 7. Assessment Proceedings. In connection with Figtree PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;

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

Section 8. Program Report. The City Council hereby acknowledges that pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report" for Figtree PACE (the "Program Report") and associated documents, and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 9. Foreclosure. The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

Section 10. Indemnification. The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in Exhibit B, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

Section 11. Effective Date. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Dividend Finance, LLC .

Section 12. Costs. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April, 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Morgan Hill_Joint Resolution (1721 : Add Figtree PACE)

EXHIBIT A

CEDA Resolution of Intention

**RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT
AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF
DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY
EFFICIENCY, SEISMIC RETROFITS, ELECTRIC VEHICLE CHARGING
INFRASTRUCTURE, AND WATER EFFICIENCY IMPROVEMENTS IN THE
CITY OF MORGAN HILL**

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority authorized and existing pursuant to Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, by and among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the County _____ (the “City”) to enter into contractual assessments for the financing of the installation of Authorized Improvements in the City; and

WHEREAS, CEDA desires to declare its intention to establish a Figtree PACE program (“Figtree PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth herein, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial

loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the County pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the “Report”), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City including unincorporated territory within City Boundaries. A property owner located within a City within the City may enter into contractual assessments with CEDA only after such City has adopted a resolution to authorize participation in the PACE Program.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the “Bonds”) pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the “Improvement Bond Act of 1915”) shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Dividend Finance, LLC (the “Program Administrator”) upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that are payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date) and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by the Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of the

Board of Directors to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the “Board”), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at _____ A., for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the “Contract”), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the “Resolution Confirming Report”) or may direct the Report’s modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- (a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- (b) A draft contractual assessment contract (the “Contract”) specifying the terms and conditions of the agreement between CEDA and a property owner.
- (c) A statement of CEDA’s policies concerning contractual assessments including all of the following:
 - (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
 - (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
 - (3) A maximum aggregate dollar amount of contractual assessments.
 - (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- (d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.

A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the City, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the City on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this ____ day of ____, 201__.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Helen Schaubmayer, Assistant Secretary

EXHIBIT B
Indemnification Agreement

Attachment: Morgan Hill_Joint Resolution (1721 : Add Figtree PACE)

INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL AND
DIVIDEND FINANCE, LLC

This Indemnification Agreement (the “Agreement”) is entered into by and between the City of Morgan Hill, a municipal corporation or political subdivision, duly organized and existing under the laws of the State of California (the “City”) and Dividend Finance, LLC, a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the “Administrator”), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the “Authority”).

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority whose members include the City in addition to other cities and counties in the State of California; and

WHEREAS, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program (the “Figtree PACE Program”) to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code (“Chapter 29”) and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the City; and

WHEREAS, the legislative body of the City adopted or will adopt a resolution authorizing the City to join the Figtree PACE Program; and

WHEREAS, the City will not be responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds or other forms of indebtedness in connection therewith, including the conducting of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the Figtree PACE Program; and

WHEREAS, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the City in connection with the operations of the Figtree PACE Program as set forth herein;

Attachment: Morgan Hill_Joint Resolution (1721 : Add Figtree PACE)

NOW, THEREFORE, in consideration of the above premises and of the City's agreement to join the Figtree PACE Program, the parties agree as follows:

1. **Indemnification.** Figtree has provided the CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents, arising from or related to the Figtree PACE Program, the assessments, the assessment districts, the improvements or the financing and marketing thereof. Figtree agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage due to negligence or malfeasance of any type claims as a result of the acts or omissions of Figtree, except for such loss or damage which was caused by the sole negligence or willful misconduct of the City. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Figtree.

2. **Amendment/Interpretation of this Agreement.** This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

3. **Section Headings.** Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

4. **Waiver.** No waiver of any of the provisions of this Agreement shall be binding unless in the form of writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

5. **Severability and Governing Law.** If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

6. **Notices.** All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator

Dividend Finance, LLC
9330 Scranton Road, Suite 600
San Diego, California 92121
Attn: Chief Executive Officer

If to the City:

City Manager
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

8. **Effective Date.** This Agreement will be effective as of the date of the signature of City's representative as indicated below in the signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

APPROVED AS TO FORM:

Donald Larkin, City Attorney

City of Morgan Hill

By _____
Christina Turner
City Manager

Date: _____

Dividend Finance, LLC, a California corp.

By _____
Name: Peter Grabell
Title: Senior Vice President

Date: _____

Attachment: Morgan Hill_Joint Resolution (1721 : Add Figtree PACE)

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

CITY OF MORGAN HILL, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this “Associate Membership Agreement”), dated as of _____ by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the “Authority”) and the CITY OF MORGAN HILL, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the “City”);

WITNESSETH:

WHEREAS, the Cities of Selma, Lancaster and Eureka (individually, a “Member” and collectively, the “Members”), have entered into a Joint Powers Agreement, dated as of June 1, 2006 (the “Agreement”), establishing the Authority and prescribing its purposes and powers; and

WHEREAS, the Agreement designates the Executive Committee of the Board of Directors and the President of the California Association for Local Economic Development as the initial Board of Directors of the Authority; and

WHEREAS, the Authority has been formed for the purpose, among others, to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest; and

WHEREAS, the Agreement permits any other local agency in the State of California to join the Authority as an associate member (an “Associate Member”); and

WHEREAS, the City desires to become an Associate Member of the Authority;

WHEREAS, City Council of the City has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof;

WHEREAS, the Board of Directors of the Authority has determined that the City should become an Associate Member of the Authority;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Authority and the City do hereby agree as follows:

Attachment: Morgan Hill_Associate Membership Agreement (1721 : Add Figtree PACE)

Section 1. Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

**CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY**

By: _____
Gurbax Sahota, Chair
Board of Directors

Attest:

Helen Schaubmayer, Asst. Secretary

CITY OF MORGAN HILL, CALIFORNIA

By: _____
Christina Turner, City Manager

Approved as to form:

By: _____
Donald Larkin, City Attorney

Attest:

City Clerk

Attachment: Morgan Hill_Associate Membership Agreement (1721 : Add Figtree PACE)

3141

The resolution refers to a resolution of intent and an indemnity agreement. If you are looking for them, both of these documents are actually built into the resolution file itself - not separate attachments.

Attachment: Resolution has attachments built into the file (1721 : Add Figtree PACE)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

APPROVE RESOLUTION SUPPORTING PROPOSITION 69 ON THE JUNE 2018 BALLOT TO PRESERVE TRANSPORTATION FUNDING, OPPOSING EFFORTS TO REPEAL THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SB1), AND JOINING THE COALITION TO PROTECT LOCAL TRANSPORTATION IMPROVEMENTS

RECOMMENDATION(S)

Adopt resolution supporting Proposition 69 and opposing the repeal of the “Road Repair and Accountability Act” (SB 1), and join the Coalition to Protect Local Transportation Improvements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On April 4, 2018, the League of California Cities Peninsula Division Public Affairs Manager, Seth Miller, requested the City Council adopt a resolution to support the June 2018 ballot measure, Proposition 69, preventing the legislature from diverting transportation funds for non-transportation purpose as well as oppose efforts to repeal the Road Repair and Accountability Act of 2017. In addition, staff is requesting that the City Council join the Coalition to Protect Local Transportation Improvements.

In 2017, the California Legislature and Governor Brown approved Senate Bill 1: The Road Repair and Accountability Act of 2017 (SB 1), providing the first significant, stable, and on-going increase in state transportation funding in more than two decades. SB 1 increased several taxes and fees to raise over \$5 billion annually in new transportation revenues and prioritizes funding towards maintenance, rehabilitation and safety improvements on state highways, local streets and roads, and bridges to improve the state’s trade corridors, transit, and active transportation facilities. To raise the necessary monies, SB 1 instituted the following taxes and fees:

- A 12-cent per gallon increase in the gasoline excise tax
- A 20-cent per gallon increase in the diesel excise tax
- A 4.0% per gallon increase in the diesel sales tax rate
- A new vehicle registration fee (“Transportation Improvement Fee”)
- A new \$100 per year “Road Improvement Fee” on zero-emission vehicles

starting with year 2020 models and later

Proposition 69 (June 2018)

In conjunction with the passage of SB 1, the California Legislature referred to the June ballot the constitutional amendment, Prop 69: the California Transportation Taxes and Fees Lockbox and Appropriations Limit Exemption Amendment. Prop 69 would lockbox new or increased revenues for transportation purposes, with no possibility of being used for other purposes. Prop 69 would require the Transportation Improvement Fee (TIF) revenue be spent on public streets and highways and public transportation systems. Additionally, Prop 69 would make revenue generated by SB 1's tax increases and fee schedules exempt from the state appropriations limit.

SB 1 Repeal Initiative

There is also a proposed ballot measure aimed for the November 2018 ballot (Attorney General #17-0033) that would repeal the new transportation revenues provided by SB 1 and make it more difficult to increase funding for state and local transportation improvements in the future.

Coalition to Protect Local Transportation Improvements

This coalition of local government, business, labor, transportation, and other organizations throughout the State has been formed to support Proposition 69 which protects transportation funds from being diverted and to oppose the November 2018 measure that would repeal new transportation funds. The League of California Cities and the coalition request that the City of Morgan Hill join them in the effort to preserve transportation funding.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended resolution.

ALTERNATIVE ACTIONS:

Council could choose not to approve the resolution or request modifications to the resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 22, 2017 City Council supported transportation funding bill, SB 1.

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time, although the repeal of SB 1 would result in a loss of approximately \$800,000 in annual transportation funding to the City of Morgan Hill. Tracking legislation is a responsibility of the Administrative Analyst in the City Manager's Office.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

1. Coalition to Protect Local Transportation Improvements Sign-on Form

2. Prop 69 Repeal SB1 Resolution



YES!

7.a

I Support Safer Roads and Protecting Local Transportation Improvements

Please check one or both boxes:

☐

I/we **SUPPORT PROP 69**, a June 2018 ballot measure to prevent the state Legislature from diverting transportation funds for other purposes or redirecting funds for non-transportation projects. You may list me/my organization in formal **SUPPORT** of this constitutional amendment in your coalition materials.

☐

I/we **OPPOSE** the November ballot measure that would repeal the "Road Repair and Accountability Act" (SB 1) and rob our communities of vital road safety and transportation improvement funds. You may list me/my organization in formal **OPPOSITION** to the repeal effort in your coalition materials.

Please select a category:

☐

Organization

☐

Individual

☐

Elected

Please complete the following information:

Organization/Company (if applicable)

Date

Authorized Signature

Name

Title

Street Address

City

State

Zip

Phone

FAX

E-Mail Address (if public official, please include personal e-mail)

Please complete this form and return it to: Coalition to Protect Local Transportation Improvements If

faxing: (916) 442-3510

If e-mailing: Kyle Griffith | kgriffith@bcfpublicaffairs.com

For more information, please call (916) 443-0872

Paid for by the Coalition to Protect Local Transportation Improvements, Yes on Prop. 69, sponsored by business, labor, local governments, transportation advocates and taxpayers

Committee Major Funding from

League of California Cities

California State Association of Counties

State Building and Construction Trades Council of California

California Alliance for Jobs

Funding details at www.fppc.ca.gov

Packet Pg. 162

Attachment: Coalition to Protect Local Transportation Improvements Sign-on Form (1723 : Support Proposition 69 and Oppose Repeal of SB 1)

RESOLUTION NO.

A RESOLUTION SUPPORTING PROPOSITION 69 AND OPPOSING “THE ROAD REPAIR AND ACCOUNTABILITY ACT” (SB -1 BEAL) REPEAL, AND APPROVAL TO JOIN THE COALITION TO PROTECT LOCAL TRANSPORTATION IMPROVEMENTS

WHEREAS, California’s cities, counties, and transportation agencies face a statewide backlog of over \$130 billion in needed funds to make transportation infrastructure improvements; and

WHEREAS, “The Road Repair and Accountability Act” (SB 1 – Beal) passed by the Legislature and signed by the Governor last year will raise \$5 billion annually in long-term, dedicated transportation funding to make road safety improvements, fill potholes, and repair local streets, highways, bridges, and overpasses, with the revenues split equally between state and local government projects; and

WHEREAS, SB 1 continues to provide critically-needed funding in the City of Morgan Hill that will be used for:

- Critically needed pavement rehabilitation that supports the City’s businesses and economic growth.
- Restoring City’s streets and roads before they fail to reduce construction time which results in less air pollution from heavy equipment and less water pollution from site run-off.
- Maintaining and preserving the City’s streets and roads in good condition to reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing.

WHEREAS, SB 1 contains strong accountability provisions to streamline projects by cutting bureaucratic redundancies and red tape to ensure transportation funds are spent efficiently and effectively, while also establishing the independent office of Transportation Inspector General to perform audits, improve efficiency, and increase transparency; and

WHEREAS, Proposition 69 on the June 2018 ballot would add additional accountability for taxpayers by preventing the State Legislature from diverting or raiding any new transportation revenues for non-transportation improvement purposes; and

WHEREAS, there is also a proposal ballot measure aimed for the November 2018 ballot (Attorney General #17-0033) that would repeal the new transportation revenues provided by SB 1 and make it more difficult to increase funding for state and local transportation improvements in the future; and

WHEREAS, this proposed November proposition would raid over \$800,000 annually (\$12 million projected over ten years) dedicated to the City of Morgan Hill and halt critical investments in future transportation improvement projects in our community.

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

1. The City of Morgan Hill hereby supports Proposition 69, the June 2018 constitutional amendment to prevent new transportation funds from being diverted for non-transportational purposes.
2. The City of Morgan Hill hereby opposes the proposed November ballot proposition (Attorney General 17-0033) that would repeal the new transportation funds and make it more difficult to raise state and local transportation funds in the future.
3. The City of Morgan Hill supports and can be listed as a member of the Coalitions to Protect Local Transportation Improvements, a diverse coalition of local government, business, labor, transportation, and other organizations throughout the state, in support of Proposition 69 and opposing the repeal of SB 1.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April, 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Scott Creer, Deputy Director of Engineering
APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING FY2018-19 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

RECOMMENDATION(S)

Adopt resolution approving a list of street rehabilitation projects funded by SB 1: The Road Repair and Accountability Act.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Senate Bill 1 (SB 1), which is known as the Road Repair and Accountability Act of 2017, established a tax that formed the Road Maintenance and Rehabilitation Account (RMRA). The RMRA is intended to fund basic road maintenance and rehabilitation needs on the local street and road systems within the State. Prior to receiving RMRA funds in a fiscal year, the City must submit to the California Transportation Commission (CTC) a project list adopted by resolution. The project list must include the following information for each project: project location, project description, project schedule, and estimated useful life (Streets and Highways Code Section 2034(a)).

To ensure that the City meets the State's SB 1 funding requirement, the attached resolution has been prepared that identifies the city streets to be rehabilitated in FY 2018-19 using SB 1 funds. These streets include: Monterey Road between Cochrane Road and Tilton Avenue, and East Dunne Avenue between Hill Road and Thomas Grade. The proposed Resolution is expected to satisfy the CTC requirement that agencies adopt, via resolution, a list of projects that they intend to fund with SB 1 funds.

COMMUNITY ENGAGEMENT: Inform

Affected businesses and/or property owners will be notified of the work in their area.

ALTERNATIVE ACTIONS:

The Council could direct staff to submit a funding request for an alternative project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 27, 2017, the City Council adopted a resolution amending the City's FY 2017-18 Capital Improvement Program to include the Rehabilitation of Sutter Boulevard (from Cochrane Road to Serene Drive) to be eligible for the initial disbursement of SB 1 funds.

FISCAL AND RESOURCE IMPACT:

Funds in the amount of \$733,000 will be added to the City's CIP Pavement Rehabilitation Program (Fund 308 Street CIP and Project No. 519000) for FY 2018-19 as part of the recommended budget.

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. SB-1 Resolution Fy 18-19 Funding

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING A LIST OF STREET
REHABILITATION PROJECTS FOR FY 2018-19 FUNDED
BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY
ACT**

WHEREAS, Senate Bill 1 (SB 1), the Road and Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1 by resolution, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive an estimated \$733,000 in RMRA funding in Fiscal Year 2018-19 from SB 1; and

WHEREAS, the City has undergone a robust public process to endure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities' priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate Monterey Road & East Dunne Avenue and other similar projects into the future; and

WHEREAS, the 2016 California Statewide Local Streets and Roads Needs Assessment found that the City streets and roads are overall in good condition and this revenue will help us maintain the overall quality of our road system; and

WHEREAS, the average motorist pays more than \$700 a year in added repair costs for their vehicle, just because of the poor condition of our roads however, a recent study by the American Road and Transportation Builders Association (ARTBA) found transportation improvements from SB 1 will bring annual savings of nearly \$300 per household; and

WHEREAS, without revenue from SB 1, the City, would have otherwise been deferring projects throughout the community; and

WHEREAS, if the Legislature and Governor failed to act, city streets and county roads would have continued to deteriorate, having many and varied negative impacts on our community; and

WHEREAS, cities and counties own and operate more than 81 percent of streets and roads in California, and from the moment we open our front door to drive to work, bike to school, or walk to the bus station, people are dependent upon a safe, reliable local transportation network; and

WHEREAS, modernizing the local street and road system provides well-paying construction jobs and boosts local economies; and

WHEREAS, the local street and road system is also critical for farm to market needs, interconnectivity, multimodal needs, and commerce; and

WHEREAS, police, fire, and emergency medical services all need safe reliable roads to react quickly to emergency calls and a few minutes of delay can be a matter of life and death; and

WHEREAS, maintaining and preserving the local street and road system in good condition will reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing, which leads to reduce vehicle emissions helping the State achieve its air quality and greenhouse gas emissions reductions goals; and

WHEREAS, restoring roads before they fail also reduces construction time which results in less air pollution from heavy equipment and less water pollution from site run-off; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

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

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

Section 2. The City of Morgan Hill is adopting the following list of projects planned to be funded in fiscal year 2018-19 with Road Maintenance and Rehabilitation Account revenues:

1. Monterey Road
 - a. Project Location: Monterey Road between the intersections of Cochrane Road and Tilton Avenue.
 - b. Project Description: The removal and replacement of failed pavement sections, a 2" asphalt concrete overlay and the restriping of existing bike lanes, legends, crosswalks and lane lines.
 - c. Estimated Useful Life: The City's Pavement Management System calculates a new useful life of 10 years for this repaired roadway.
 - d. Anticipated Year of Construction: Release notice inviting bids to contractors Spring 2019, complete construction by Fall 2019.
2. East Dune Avenue
 - a. Project Location: East Dunne Avenue between the intersections of Hill Road and Thomas Grade.
 - b. Project Description: The removal and replacement of failed pavement sections, a 2" asphalt concrete overlay and the restriping of existing bike lanes, legends, crosswalks and lane lines.
 - c. Estimated Useful Life: The City's Pavement Management System calculates a new useful life of 10 years for this repaired roadway.
 - d. Anticipated Year of Construction: Release notice inviting bids to contractors Spring 2019, complete construction by Fall 2019.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 14th day of April 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPTION OF AN UNCODIFIED ORDINANCE 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

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2273, New Series, and declare that the title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

On April 4, 2018, the City Council introduced Ordinance No. 2273 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Spring, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This ordinance reaffirms the urgency ordinance that the Council enacted on December 20, 2017 to confirm that fees to support public, educational, and government (PEG) access should continue to be collected from cable subscribers in Morgan Hill.

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. 2273 State Video Franchises

ORDINANCE NO. 2273, NEW SERIES

AN UNCODIFIED ORDINANCE 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 WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18TH 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 May 19, 2018

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2273, 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: 2273 State Video Franchises (1726 : Ordinance 2273 State Video Franchises)

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, April 4, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

TELECONFERENCE

Council Member Caitlin Jachimowicz participated in the City Council meeting via teleconference as follows:

17292 Tassajara Circle
 Morgan Hill, CA 95037

Public comment from this location was allowed.

CALL TO ORDER

Mayor Tate called the meeting to order at 7:01 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Present	
Rich Constantine	Mayor Pro Tem	Present	
Larry Carr	Council Member	Present	
Caitlin Jachimowicz	Council Member	Remote	

Minutes Acceptance: Minutes of Apr 4, 2018 7:00 PM (CONSENT CALENDAR)

Rene Spring	Council Member	Present	
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DECLARATION OF POSTING AGENDA

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

Council Member Jachimowicz declared the posting of the agenda at her location.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring shared that he was invited and attended the inauguration of the U15 Cricket League at the Outdoor Sports Complex last Saturday. He really enjoyed the experience and encouraged children who want to try a different sport to check it out. He expressed that it is another example of how diverse our community is. He continued by sharing that early in the day last Saturday, he celebrated Cesar Chavez's birthday which was a great event. He commented that it is another demonstration of the diversity in our community and South County. He congratulated Council Member Constantine on his receipt of an award that was presented to him at the Cesar Chavez event.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She congratulated Morgan Hill's Police Chief David Swing who was recently sworn in as the California Police Chiefs Association President. She also recognized officer Santiago Fierro, our canine handler. He switched his schedule to go to day shifts so that he could visit the elementary schools. Through his contacts he has reached over 500 students and teachers. She reminded the community that the Poppy Jasper Film Festival starts tomorrow and runs through Sunday. You can visit their website at www.pjiff.org for more information. She concluded by sharing that effective April 1st the irrigation schedules within the city were changed back to three days per week. You can visit our website at www.morganhill.ca.gov for more details.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that the High Speed Rail (HSR) Draft Business Plan was published on March 9th and they are taking comments on the plan through May 2nd. We will be coming back to the City Council on April 18th with a comprehensive analysis and recommendations for what we think the City's position should be. The plan is dramatically different from what we have seen before, but we think we can align it with the principals that the Council has already established. We are hoping to have representatives from HSR available at the April 18th City Council meeting to give a presentation on the plan and to respond to our questions, however as you may know, Ben Tripousis is no longer with HSR and they have not yet named a replacement. It is unclear if they will have someone available. The most significant change in the plan for Morgan Hill, if the plan is adopted and if HSR does what's in the plan, is that instead of using either of the two previously identified alignments, they would use a blended system with Caltrain through to Gilroy and use the existing right-of-way. Their plan is to complete that segment in the next four years. Another significant change is that the plan does not identify funding for the tunnels under Pacheco Pass so there is no connection between Gilroy and Madera. It also does not identify funding for the segment between Madera and Merced. So, as it stands now, it appears that HSR is planning to run two separate lines; one between San Francisco and Gilroy and one between Madera and Bakersfield.

OTHER REPORTS

Council Member Constantine shared that today marks 50 years since the assassination of Reverend Dr. Martin Luther King Jr. The lessons that he taught of peaceful civil disobedience can still be seen today with the protests that are taking place with the students from Parkland, Florida. The lessons that he taught us are as prevalent and poignant today as they were 50 years ago. It is incumbent upon all of us to fight for justice. It reminds me of a quote "You must stand for something, or you will fall for anything." He asked the community to please remember Dr. Martin Luther King Jr. today. Long live the dream.

PRESENTATIONS

Silicon Valley Water Conservation Award Presentation

Legislative Update- Seth Miller, the League of California Cities

PUBLIC COMMENT

The public comment was opened at 7:19 pm. The following people were called to speak:

Roland Lebrun

Phil Couchee

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 3, 4 and 7 through 10.

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

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).

Minutes Acceptance: Minutes of Apr 4, 2018 7:00 PM (CONSENT CALENDAR)

2. ITEM PULLED FOR DISCUSSION

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. ITEM PULLED FOR DISCUSSION

6. ITEM PULLED FOR SEPARATE VOTE

Separate Vote Taken.

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.

ITEMS PULLED FOR DISCUSSION**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.

Council Member Spring thanked the Friends of the Morgan Hill Senior Center for their donation.

On behalf of the Senior Center, Older Adult Services Supervisor Debbie Vasquez thanked the Friends of the Senior Center. She shared that they have done an incredible job of supporting the center with over 40 volunteers that work every Tuesday night and have contributed money not only towards the operating costs, but also to the endowment fund.

MOTION:

Approving the recommended action.

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

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

Recommendation:

Reject all bids for the playground enhancements at Jackson Park.

MOTION:

Approving the recommended action.

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

ITEMS PULLED FOR SEPARATE VOTE**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.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [4 TO 0]
MOVER:	Rene Spring, Council Member
SECONDER:	Steve Tate, Mayor
AYES:	Tate, Constantine, Jachimowicz, Spring
ABSTAIN:	Carr

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.

Program Administrator Tony Eulo presented the report.

The public hearing was opened at 7:33 pm.
There being no requests to speak, the public hearing was closed.

RESULT:	NO ACTION TAKEN
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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.

Program Administrator Tony Eulo presented the report. General Manager of Recology South Valley Phil Couchee provided technical details regarding the rate increases.

The public hearing was opened at 7:36 pm.
John Horner was called to speak.
There being no further requests to speak, the public hearing was closed.

MOTION:

Approving the recommended action.

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

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.

Program Administrator Tony Eulo presented the report.

The public hearing was opened at 7:44 pm.

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

MOTION:

Approving the recommended action.

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

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.

Assistant City Manager Leslie Little presented the report.

Mayor Tate called a recess at 8:05 pm.

The meeting was reconvened at 8:12pm.

The public comment was opened at 8:15 pm. The following people were called to speak:

Nick Gaich
 Craig Lore
 Kim Cooke
 Brian Sullivan
 Jerri Kuehn
 Teresa Stephenson
 Suman Ganapathy
 Juliet Smith

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

MOTION:

Directing staff to proceed with a review of potential options for the City's financial support of Booksmart.

RESULT:	DIRECTED [3 TO 2]
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Carr, Jachimowicz, Spring
NAYS:	Tate, Constantine

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.

Interim Principal Planner John Baty, along with, Jen Dougherty and Lisa Wise from Lisa Wise Consulting presented the report.

The public comment was opened at 9:32 pm. The following people were called to speak:

Jason Bernstein

John Horner

John Telfer

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

Mayor Tate called a recess 10:06 pm.

The meeting was reconvened at 10:10 pm.

RESULT:	NO ACTION TAKEN
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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.

Interim Deputy City Manager Chris Ghione presented the report. Lisa Schmidt with NewCo provided additional information.

The public comment was opened at 10:28 pm.

Jeff Dixon was called to speak.

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

MOTION:

Approving the recommended action.

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

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.

Interim Deputy City Manager Chris Ghione presented the report.

The public comment was opened at 10:41 pm.

Jeff Dixon was called to speak.

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

MOTION:

Approving the recommended action.

RESULT:	AUTHORIZED [3 TO 2]
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Carr, Jachimowicz
NAYS:	Constantine, Spring

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.

Council Member Carr excused himself from the dais.

Economic Development Director Edith Ramirez presented the report.

The public comment was opened at 10:47 pm.

Rolund Lebrun was called to speak.

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

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [4 TO 0]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Jachimowicz, Spring
RECUSED:	Carr

Council Member Carr resumed his seat at the dais.

MOTION:

Extending the meeting to 11:30 pm.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

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.

Administrative Sergeant Carlos Guerrero presented the report.

The public comment was opened at 10:54 pm.

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

MOTION:

Approving the recommended action.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

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.

Assistant City Manager Leslie Little presented the report.

The public comment was opened at 10:58 pm.

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

MOTION:

Approving the recommended action.

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

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.

City Attorney Donald Larkin presented the report.

The public comment was opened at 11:00 pm.

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

MOTION:

Waiving the first and second reading of the ordinance.

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

MOTION:

Introducing the ordinance.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Constantine requested an update on the PL 566 flood control progress.

ADJOURNMENT

There being no further business the meeting was adjourned at 11:01 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

LEADERSHIP MORGAN HILL PUBLIC ART PROPOSAL

RECOMMENDATION(S)

Approve the Leadership Morgan Hill Class of 2018 class project proposal for the coordination of utility box art installation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust
Enhancing Diversity and Inclusiveness

POLICY CONSIDERATIONS:

Ten City owned utility box locations are proposed to be painted by artists through coordination by the Leadership Morgan Hill Class of 2018. Utility box art programs have successfully been implemented in other communities. As the City Council reviews this item, they may wish to consider the following policy questions.

1. Should the proposed utility box art program be approved for the locations specified?
2. Should special consideration be given to the two utility boxes on Monterey Road in the Downtown?

REPORT NARRATIVE:

The 2018 Class of Leadership Morgan Hill has reached out to the City looking to coordinate their annual class project. The Class has proposed to fundraise for and ultimately coordinate the painting of ten utility boxes locations throughout the City. The project would be subject to the City policies on public art installation. A final proposal for the artwork will ultimately need to be reviewed by the Library, Culture and Arts Commission and approved by the Council.

The action before the Council tonight is only to review and approve the concept and idea for the Class to move forward with the project. The project concept is to paint art on ten utility box locations within the City. In conjunction with the artwork, the Class would like to add positive words of encouragement to each of the boxes. The proposed locations and the proposed words of encouragement are included in Attachment 1.

The Library, Culture, and Arts Commission appointed a representative to formally work

with Leadership Morgan Hill and City staff on the project. The Commission had previously begun work on the development of a utility box art program, as it is included in the Commission's approved Fiscal Year 2017/18 Work Plan. However, the Commission had put this work on hold to focus on the Art a la Carte event and Tara Romero Sculpture fundraising. The Commission was encouraged by Leadership Morgan Hill's willingness to work on this program and recommended to the City Council that this project be approved.

In a review of programs by other cities, it was found that artwork is often encouraged to be creative and unique. However, the artwork is also encouraged to reflect the specific area or neighborhood of the installation. City staff recommend this be taken into consideration, especially with the two boxes proposed on Monterey Road in the Downtown area. If the project is approved by the Council, City staff will need to coordinate with the Leadership Class and the Commission to make the project successful. City staff will work with the class to ensure the appropriate preparation work for painting is planned and that an approved graffiti coating is applied following the painting.

The Leadership Class intends to select artists for each of the ten locations. Each piece of artwork would need to be approved by the City, with the understanding that the artwork proposals would likely need to be adjusted slightly when implemented on the utility boxes of various sizes.

COMMUNITY ENGAGEMENT: Empower

The project was brought forward by community members enrolled in Leadership Morgan Hill (Class) and will be implemented by these community members. City staff has discussed with the Class that outreach should occur with businesses and schools that are near each of the boxes, and specifically Downtown businesses for the boxes on Monterey Road.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the project, provide for direction on changes to the words of encouragement, provide direction on changing proposed location of the boxes, or provide other alternate direction to staff and the Class.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has worked with Leadership Morgan Hill on various class projects, including public art, over the last two decades. The most recent art project created by Leadership Morgan Hill is the photo collage artwork located in the back of the Council Chambers.

FISCAL AND RESOURCE IMPACT:

The funding of the project will be the responsibility of the Class and the City does not anticipate any direct costs from the project. The Class plans to provide an additional \$1,500 to the City of Morgan Hill for future maintenance or removal of murals once they have reached their end of life. The implementation of a utility box art program is in the approved Library, Culture and Arts Commission Work Plan, with planned support from Community Services Department staff.

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. LMH 2018 Art Inspiration Social Messages_



Class of 2018

Social Messages for 'Art & Inspiration' Leadership MH 2018 Project

Location of Utility Boxes:

- (i) Monterey & 4th (2 boxes) (Downtown: near the Methodist church) #11 **Love Everyone.**
- (ii) Monterey & Main (1 box) (Downtown: in front of the Chase Bank) #9 **Courage does not always roar.**
- (iii) Main & Butterfield (2 boxes) (Near Downtown: in front of Intero Real Estate) #23 **Welcome Home!**
- (iv) Railroad Park (2 boxes) (Inside the park) **Be your own hero.**
- (v) Dunne & Peppertree (2 boxes) (near Nordstrom School) #43 **Never give up. Nothing is impossible.**
- (vi) On Dunne: (1 box) (electric box near Nordstrom School) **Kindness first. Words matter.**
- (vii) Dunne & Hill: (2 boxes) (Fire Station) #31 **Let nature sing.**
- (viii) Tennant & Vineyard (on Monterey near Tennant station & Vineyard shopping areas and the CRC) (2 boxes) #45 **Value truth.**
- (ix) Main & Calle Mazatan: (2 boxes) (near El Toro) #38 **Inspire others.**
- (x) Hale & Llagas: (3 boxes) (Stratford School & Buddhist Temple) **What you think, you become.**



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

PROVIDE COMMENTS AND DIRECTION REGARDING HIGH SPEED RAIL BUSINESS PLAN

RECOMMENDATION(S)

1. Receive update on High Speed Rail's 2018 Business Draft Plan (Draft Plan); and
2. Direct the City Manager to prepare formal comments regarding the Draft Plan on behalf of the City of Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Economic Development and
Telecommunications
Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element
Station Area Master Plan

POLICY CONSIDERATION:

Does the City support the use of the Union Pacific Railroad (UPRR) right-of-way for joint use by High Speed Rail and an electrified Caltrain system?

REPORT NARRATIVE:

Background:

The California High Speed Rail Project, approved by the voters in 2008, is a high-speed rail system that would connect Los Angeles to the San Francisco Bay Area with a train system that would run at speeds over 200 miles per hour.

The original program level Environmental Impact Report (EIR) for the High Speed Rail project evaluated two potential rail alignments through Morgan Hill, one at-grade, adjacent to the UPRR tracks and a second alternative on an elevated structure on the eastside of Highway 101. In 2016, CHSRA staff indicated that two alignment alternatives traveling through the City of Morgan Hill were going to be studied for the project level EIR. Prior to publication of the Draft Business Plan, the Draft EIR was scheduled to be released for public comment in November 2018. The two proposed alignment alternatives were:

Alternative 1 – Viaduct West of US 101: An aerial structure on the west side of the US 101 freeway. This alternative would place the high-speed rail system on an aerial structure approximately 50 to 60 feet high.

Alternative 2 – Embankment East of Union Pacific Rail Road (UPRR) tracks - This alternative would place the high-speed rail system on an embankment (earthen and rock mound with retaining walls) that varies in height between approximately five feet to over twenty-five feet. The alignment roughly parallels Monterey Road east of the Union Pacific Railroad right-of-way.

On March 9, 2018, CHSRA released its 2018 Draft Business Plan (attached). The plan acknowledges 20-35% cost increases affecting each segment, project delays of as much as four years, revised cost estimates and a financing strategy aligned with Cap-and-Trade funds. Other key highlights in the 2018 Draft Business Plan (Draft Plan) include:

- The Authority will complete a 119-mile rail segment in the Central Valley, and complete environmental review for the entire Phase 1 System between San Francisco to Los Angeles/Anaheim by 2022.
- The Silicon Valley to Central Valley Line will extend from San Francisco to Bakersfield.
- Develop infrastructure on two lines 1) between Bakersfield and Madera and 2) between Gilroy and San Jose/San Francisco by 2027.
- Pacheco Pass will follow completion of Silicon Valley to Central Valley service to connect the line between Gilroy and Madera.
- Electrification of the Caltrain corridor between San Francisco and Gilroy.

For Morgan Hill, there are two items in the Draft Plan that are of particular importance.

- 1) The Draft 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 separate interim operations, one between Madera and Bakersfield and one between San Francisco and Gilroy. The connection through Pacheco Pass and extensions to Merced will be developed in a later phase as funding becomes available.
- 2) The Draft Plan proposes electrification and sharing of the UPRR tracks from south San Jose to Gilroy. This is a new alignment option that assumes staying within the UPRR right-of-way and running trains at grade at approximately 110 miles per hour.

Proposed Comments:

The CHSRA is requesting comments on the Draft Plan by May 7, 2018. Staff has inquired about how the Draft Plan affects the previously identified alignment and/or the schedule for the EIR. While CHSRA staff has not been able to definitively answer our questions, project representatives will attend the April 18th Council meeting. Because the plan is still in draft, it is unlikely they will be able to answer all of the City's questions; they will be providing us with a broad overview of the Draft Plan and its implications.

In preparation of the City of Morgan Hill's response to the Draft Plan, staff recommends founding the City's comments on the previously identified five "guiding principles" that have been cited in other formal comments to the High Speed Rail Authority. These proposed comments are provided in light of those principles.

Avoid residential, school, and commercial impacts by using existing public right-of-way. The Draft Plan achieves this result by extending Caltrain electrification from San Jose to Gilroy. The City of Morgan Hill supports electrification of the Caltrain corridor and increased Caltrain commuter service. The City's support is based on an assumption that the HSR project will stay fully within the existing UPRR right-of-way and will minimize any impact to residential and commercial property. In light of the need for grade crossings, the plan must ensure safe vehicle and pedestrian crossing while also maintaining vehicle circulation, specifically ensuring Emergency Vehicles remain able to meet emergency response times.

In the event that an agreement is not reached for use of the UPRR right-of-way, the City continues to stress that *any* alignment should remain within existing public right-of-way, minimizing any residential or commercial property impact.

The most advanced engineering and design solutions should be used to address the real-life issues of constructing California's most ambitious public works project in existing urban centers. The Draft Plan does not directly address construction impacts, but we understand and expect that the extension of Caltrain electrification to Gilroy would not require the construction of a berm through downtown Morgan Hill or a viaduct. This would minimize the impact on Morgan Hill residents and businesses. Nonetheless, we expect HSRA to continue working with the City to minimize impacts. Noise and vibration continue to remain of high concern for residents and to the many nearby businesses, including those that rely on high precision machines.

Ensure economic vitality for the City, its residents, and businesses during and after construction. The existing railroad right-of-way borders both historic Downtown Morgan Hill, vital industrial zones, and several residential neighborhoods. While the proposal to stay within the UPRR right-of-way and electrify Caltrain would have fewer adverse impacts than other proposed alignments, the long-term viability and livability of these neighborhoods is of paramount importance to the City of Morgan Hill.

Maintaining or improving the existing Caltrain station is vital to ensuring the economic health of the City. It is important that the station continue to provide access to local rail service to people living and/or working in Morgan Hill.

The manner in which the project is delivered will determine the success of the project. The City expects that any infrastructure that is impacted by the construction of High Speed Rail in Morgan Hill will be replaced in kind at no cost to the City.

Use HSR to bring benefit to the community by providing telecommunications infrastructure, recycled water, WiFi and public art, among others. While the Draft Plan does not directly address these potential benefits to Morgan Hill, the City recognizes the benefits that electrified Caltrain could provide to Morgan Hill and its residents. We continue to believe that the construction of a massive public works project like High Speed Rail offers an opportunity to bring additional benefits to those areas that will be impacted by the project, including connecting South County with recycled water (purple pipe), telecommunications infrastructure, and by providing beautification opportunities and public art.

Construction should occur sequentially from the Central Valley to San Jose. The Draft Plan proposes to complete construction between Gilroy and Madera *after* construction from San Francisco to Gilroy. This would allow increased passenger service between Gilroy and San Francisco while the HSRA identifies funding for the more expensive tunnel sections. The City supports immediate electrification of Caltrain tracks and increased commuter service. However, if High Speed Rail is unable to secure use of existing right-of-way, High Speed Rail should continue to evaluate options that limit the impact to the Community and construction of any structures (berms, trenches and/or viaducts) should not begin until a solution for connectivity between Gilroy and Madera is identified and constructed.

The Draft Plan could be a positive step for Morgan Hill with the electrification of Caltrain. However, many unknowns remain regarding the construction, timing and operations of this envisioned Express Line for the Silicon Valley segment. If CHSRA is unable to reach an agreement with UPRR, other design options and alignments would have to be considered. The remaining options that High Speed Rail has proposed are very concerning--one would have devastating impact on our entire community by creating a wall through the middle of our industrial areas and our historic downtown, the other would greatly affect many freeway-fronting businesses and tear through an established neighborhood. Unless HSRA is committed to an alignment that utilizes existing right-of-way, the impacts of alternative alignments must continue to be recognized and considered.

Regardless of any action on the Draft Plan, the City will remain engaged through the environmental review and other public processes, and we will continue to advocate for Morgan Hill residents and businesses.

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. Email announcements to all residents have been made, including post to Nextdoor. Residents that have chosen to be contacted on this topic, receive emails about any project-related meetings.

ALTERNATIVE ACTIONS:

The Council may choose not to provide comments to the Draft Plan or amend the text of the recommended comments.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

September 7, 2016: CHSRA staff presented four route alternatives that included the previous two alignments plus the West of 101 alignment and the aerial structure along the UPRR tracks.

December 2016: Council responded with a Supplemental Scoping Letter for the project EIR/EIS and requested that HSR evaluate a freeway-only alternative and continue to study all options through Morgan Hill.

January 2017: CHSRA staff provided project update, indicating narrowing down the four alternatives to only two: The West of 101 viaduct option and the at grade Monterey Corridor option.

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 and Associates, to evaluate the feasibility of a freeway-only alignment.

November 15, 2017: Rail consultant provided an update on the freeway options.

April 4, 2018: City Council approved a budget amendment to cover consultant-related costs.

FISCAL AND RESOURCE IMPACT:

No fiscal impact associated with this action.

CEQA (California Environmental Quality Act): Not a Project

By the definition provided in the California Environmental Quality Act Guidelines Section 15378 the comments on the Draft Plan do not qualify as a "project" and are therefore exempt from the California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. High Speed Rail Draft Business Plan March 9, 2018 (web link)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

CANNABIS AND TRANSIENT OCCUPANCY TAX COMMUNITY SURVEY RESULTS

RECOMMENDATION(S)

1. Receive report on Cannabis and Transient Occupancy Tax (TOT) Survey administered by Godbe Research; and
2. Discuss next steps.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

REPORT NARRATIVE:

Since voters approved Proposition 64 – The Adult Use of Marijuana Act (AUMA) – allowing for the recreational possession, sale, and use of marijuana, the City of Morgan Hill has spent a significant amount of time researching and consulting with industry experts, the effects marijuana activities would have on the Morgan Hill community.

The City has several options for regulating cannabis cultivation, cannabis-related business activity, and fees and taxes charged in connection with cannabis-related activity. Staff has prepared updates and presented policy considerations to City Council on six occasions, including two workshops with HdL consultants, and four staff report updates. Due to limited data being available and the complexity and varying degrees of regulation around cannabis-related activities, the City Council provided staff direction on February 7, 2018 to conduct a statistically valid survey to better understand the communities' receptiveness to cannabis related industries.

Godbe Research

During the months of March and April a statistically valid survey of Morgan Hill residents was conducted by Godbe Research on cannabis and Transit Occupancy Tax (TOT). The survey was accomplished through a combination of telephone and online surveying. The survey results will be presented by Godbe Research at the Council meeting.

Next Steps

Staff will return to City Council on May 16, 2018 to discuss next steps.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the completion of the cannabis and revenue survey.

ALTERNATIVE ACTIONS:

N/A – The recommendation is to receive the report.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has engaged on this topic on six occasions since the passage of Proposition 64 to include workshops on February 1 and September 27, 2017, and staff reports on February 15, 2017, July 19, 2017, January 17, 2018, and February 7, 2018. The Morgan Hill Municipal Code (MHMC) was changed on July 26, 2017 to ensure alignment with the requirements of the AUMA.

FISCAL AND RESOURCE IMPACT:

None at this time.

CEQA (California Environmental Quality Act):

Not a Project - Organizational or administrative activities of governments that will not result in direct or indirect physical changes



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Tiffany Brown, Associate Planner
APPROVED BY: City Manager

APPROVE AGREEMENT GRANTING EXCLUSIVE RIGHT TO NEGOTIATE THE REDEVELOPMENT OF HALE LUMBER SITE IN CONJUNCTION WITH VACATION OF 0.29 ACRES OF DEPOT STREET AND REALIGNMENT OF DEPOT STREET TO CHURCH STREET AND EAST DUNNE AVENUE INTERSECTION.

RECOMMENDATION(S)

Approve negotiations with Latala Homes, LLC and property owner to explore a residential development proposal that would require vacating approximately 0.29 acres of Depot Street, requiring a re-alignment of Depot Street to Church Street.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan
Vision Zero

POLICY CONSIDERATION:

Should the City enter into an Exclusive Negotiating Agreement (ENA) for the Hale Lumber Property which would also explore the realignment of Depot Street in conjunction with the redevelopment of the property?

REPORT NARRATIVE:

The attached Agreement would allow the City to negotiate exclusively with the Latala Group, LLC and provide the opportunity to explore a residential development proposal on the Hale Lumber site as identified by Assessor's Parcel Number 726-13-049, and a portion of Depot Street near the East Dunne Avenue intersection. The development proposal would vacate 0.29 acres of Depot Street. The concept would require a re-alignment of Depot Street to Church Street and the applicant has included a conceptual route.

A proposal to develop the Hale Lumber property, including a portion of Depot Street and the Community and Cultural Center (CCC) parking lot is not a new request of the Council. In February 2017, the City Council was asked to consider approving a development of similar context, however that proposal was far more disruptive than the current proposal. This ENA includes a conceptual plan which addresses most of the issues identified by the City Council as uncertain and/or disruptive to the CCC's functions, and approaches development in the area differently.

Specifically, the concept proposal:

- Does not include the construction of a parking structure to replace parking
- Modifies the parking layout, but adds parking spaces to the CCC facility
- Realigns Depot Street to connect with East Dunne Avenue in response to the proposed vacation on Depot Street. This connects Depot Street to Church Street at the traffic light, improving circulation
- Constructs a residential project adding housing to Downtown, exceeding parking requirements by adding visitor parking
- Provides pedestrian friendly urban design with complete sidewalk connections in furtherance of City goals (Vision Zero/SAMP)
- Places housing facing the street and contains pocket parks on site
- Improves the safety of Dunne Avenue/Depot Street Railroad crossing by moving the Depot Street entrance/exit away from the railroad tracks
- Provides bicycle path continuation on Depot Street to intersection
- Installs new detached curb and sidewalk with landscape strip on both sides of Depot Street
- Creates enhanced pedestrian walkways through the CCC parking lot

Hale Lumber Project Site

The Hale lumber site, adjacent to the east side of Depot Street between 5th Street and East Dunne Avenue, is a half-acre parcel currently operating as an industrial use. The property owner is interested in moving the industrial use, consistent with the City's General Plan and Downtown Specific Plan and selling the property to the Latala Group, LLC to develop the site for residential use.

Property Constraints for Redevelopment

The property is a narrow rectangle shape located near the railroad tracks. A Noise and Vibration Study (Attachment 1) was prepared for the site and requires a 50-foot setback from centerline of the railroad tracks, further narrowing the developable area for the site. In addition, the site is only accessible from Depot Street. Depot Street's grade begins to separate from the Hale Lumber site as it inclines from the current Depot Street and the East Dunne Avenue intersection about six feet up to meet with the railroad track crossing.

The Developer has taken the General Plan, Downtown Specific Plan, and Station Area Master Plan into consideration with the conceptual design proposal and is requesting this exclusive right to negotiate (Attachment 2) to explore a re-alignment opportunity for Depot Street and incorporate that design into the site development.

Conceptual Site Plan

The conceptual site plan (Attachment 3) includes the proposed layout of the new residential development and the realignment of Depot Street. The total residential development area is approximately 2.28 acres and currently includes 43 three story townhomes with two covered parking stalls per unit, two open space areas with amenities totaling 3,500 square feet, and 24 guest parking stalls. The plan includes four different buildings sizes (one 9-plex, one 8-plex, two 7-plexes, and three 4-plexes) with contemporary architecture that utilizes earth-tone colors with metal siding accents and brick detailing. The four building sizes provide variety and visual breaks between buildings which reduce building massing on the site. The roof lines vary in heights throughout each building and the front elevations include patios with offset entrances to provide architectural interest.

The residential development primarily faces Depot Street with a portion of the project facing East Dunne Avenue. Without the Depot Street vacation, there will not be a substantial front of the project facing Dunne.

Depot Street

Depot Street is located within the Downtown Specific Plan, between East Main Avenue and East Dunne Avenue, west of Monterey Road. This report only focuses on the realignment of the segment of Depot Street between 5th Street and East Dunne Avenue. The 2035 General Plan, Transportation Chapter includes Policy number TR-3.15 that discusses re-aligning Depot Street through the existing CCC Parking lot, which connects Depot Street to the East Dunne Avenue and Church Street intersection. The intent of this policy is to enhance the circulation within Downtown and to support the function of Monterey Road as the “main street” for Downtown.

Traffic count data (Attachment 4) was taken at all intersections and will be further studied as part of the Traffic Impact and Circulation Analysis that will be conducted during the due diligence phase of this Agreement if approved.

COMMUNITY ENGAGEMENT: Inform

If the exclusive right to negotiate is approved, the due diligence required by the ENA includes community outreach meetings.

Staff received two comments on the ENA. Please see Attachments 5 and 6.

ALTERNATIVE ACTIONS:

Disapprove the Agreement to explore a residential development project that includes the realignment of Depot Street.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 16, 2016, the Council reviewed and approved an Agreement to Negotiate Exclusively with Brookfield Residential Properties, Inc. for the vacation and development of a portion of Depot Street, the construction of a new parking structure, and the realignment of Depot Street to East Dunne Avenue and the Church Street intersection.

The Planning Commission held a workshop on the progress of the Agreement to Negotiate Exclusively on November 22, 2016. The Disposition and Development Agreement (DDA) by Brookfield was reviewed by the Planning Commission on January 24, 2017 for comments, and they recommended support of the project to City Council.

City Council reviewed the DDA at their February 15, 2017 meeting and continued the item to a date uncertain, with the following comments:

- There shall be no displacement or net loss of parking
- A Traffic Impact Analysis, and circulation study should be prepared prior to DDA
- Potential impacts to the CCC should be minimized

The Previous ENA subsequently expired.

FISCAL AND RESOURCE IMPACT:

None.

California Environmental Quality Act (CEQA):

Upon approval of the Agreement to the Exclusive Right to Negotiate, a project specific initial study and related environmental studies will be conducted during the project design phase.

LINKS/ATTACHMENTS:

1. Noise_Vibration Assessment Study 2017-02-08
2. Exclusive Negotiating Agreement (ENA)
3. Conceptual Site plan
4. Depot Street Realignment Traffic Counts
5. Property Owner - Robert Hammond email
6. Public comment



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February 8, 2017
Project No. 48-065

Mr. Joe Guerra
Brookfield Homes
500 LaGonda Way
Suite 100
Danville, CA 94526

Subject: Preliminary Noise and Vibration Assessment Study for the Planned “Hale Property” Multi-Family Development, East Dunne Avenue, Morgan Hill

Dear Mr. Guerra:

This report presents the results of a preliminary noise and vibration assessment study for the planned “Hale Property” multi-family development along East Dunne Avenue in Morgan Hill, as shown on the Conceptual Site Plan, Ref. (a). The noise exposures at the site were evaluated against the standards of the City of Morgan Hill General Plan Noise Element, Ref. (b), and the State of California Code of Regulations, Title 24, Ref. (c). The on-site ground-borne vibration levels from rail operations were evaluated against guidelines established by the Federal Transit Administration, Ref. (d). The on-site data used in this study was acquired for the noise and vibration analysis for the Casa Diana development directly across the railroad tracks, Ref. (e). The analysis of the noise data applied to the subject project indicate that the noise environment is created primarily by railroad sources on the adjacent Union Pacific Railroad line and traffic sources on East Dunne Avenue. The results of the analysis reveal that interior noise level excesses will occur and mitigation measures will be required. The ground-borne vibration levels are within the limiting guidelines of the FTA. Mitigation measures for vibration will not be required.

Attachment: Noise_Vibration Assessment Study 2017-02-08 (1630 : Exclusive Right to Negotiate: Hale Lumber Site)

Sections I and II of this report contain a summary of our findings and recommendations, respectively. Subsequent sections contain the analyses and evaluations. Appendices A and B, attached, contain the list of references, descriptions of the standards, definitions of the terminology, descriptions of the instrumentation used for the field survey and general building shell controls.

I. Summary of the Findings

A. Noise and Vibration Standards, Criteria and Guidelines

The noise exposures presented herein were evaluated against the standards of the City of Morgan Hill Noise Element, which utilizes the Day-Night Level (DNL) 24-hour descriptor to define acceptable noise exposures for various land uses.

Policy 7

New development projects shall be designed and constructed to meet acceptable exterior noise level standards (see *Table 9*), as follows:

- *The maximum exterior noise level of 60 dBA Ldn shall be applied in residential areas where outdoor use is a major consideration (e.g., backyards in single family housing developments and recreation areas in multi-family housing projects). Where the City determines that providing an Ldn of 60 dBA or lower cannot be achieved after the application of reasonable and feasible mitigation, an Ldn of 65 dBA may be permitted.*
- *Indoor noise levels should not exceed an Ldn of 45 dBA in new residential housing units.*

- 3 -

- *Noise levels in new residential development exposed to an exterior Ldn 60 dBA or greater should be limited to a maximum instantaneous noise level (e.g., trucks on busy streets, train warning whistles) in bedrooms of 50 dBA. Maximum instantaneous noise levels in all other habitable rooms should not exceed 55 dBA.*
- *The maximum outdoor noise level for new residences near the railroad shall be 70 dBA Ldn, recognizing that train noise is characterized by relatively few loud events.*

Note that exterior living areas are not shown on the Conceptual Site Plan. Therefore, an evaluation of noise impacts to exterior areas is not provided in this study.

The City of Morgan Hill Planning Department has determined that applying noise controls to the private exterior spaces of the projects (balconies, patios) is not feasible due to the close proximity of the railroad and the elevation of the tracks.

Our experience with applying maximum noise limits reveals that there are problems achieving these very stringent standards. The window and glass door sound ratings usually need to be unreasonably high for a single, 1 second noise event. The reasoning behind the 50 dBA maximum limit for bedrooms is to inhibit sleep disturbance. The reasoning behind the 55 dBA maximum limit for other living spaces is to inhibit speech interference. Rather than evaluating the highest maximum sound level, which by definition, is a 1 second rms level of the peak noise event over the entire 24-hour day, the highest L_1 value could be used. The L_1 is the level of noise that is exceeded for 1% of the period, in this case each hour of the 24-hour day. Since 1% of 1 hour is 36 seconds, the hourly L_1 represents a 36 second cumulative period in the hour where the noise levels exceeded that level. For instance, an L_1 of 70 dBA means that 70 dBA was exceeded for a total of 36 seconds during the hour.

For sleep disturbance, 36 seconds of sound in excess of 50 dBA in a bedroom has a low probability (less than 15%) of awakening a person in second stage or third stage (REM) sleep.

- 4 -

A sound level of 55 dBA in other living spaces (kitchens, living rooms, etc.) is roughly equivalent to the level of two people having a normal conversation or of typical television or stereo sound levels.

This study evaluates the highest hourly L_1 noise level during the daytime hours of 7:00 a.m. to 10:00 p.m. calculated for the interior living spaces against the 55 dBA limit for other living spaces (other than bedrooms). This study also evaluates the highest hourly L_1 noise level during the nighttime hours of 10:00 p.m. to 7:00 a.m. calculated for the bedrooms against the 50 dBA limit for bedrooms.

The Title 24 standards use the DNL descriptor and specify that when the exterior noise exposures exceed 60 dB DNL at planned multi-family dwelling units an acoustical analysis must be performed to limit interior noise exposures to 45 dB DNL or lower.

The Title 24 standards also specify minimum sound insulation ratings for common partitions separating different dwelling units and dwelling units from interior common spaces. The standards specify that common walls and floor/ceiling assemblies must have a design Sound Transmission Class (STC) rating of 50 or higher. In addition, common floor/ceiling assemblies must have a design Impact Insulation Class (IIC) rating of 50 or higher. As design details for the interior partitions of the project were not available at the time of this study, an evaluation of the interior partitions has not been made.

The vibration levels shown in the findings are expressed in units of dB re: 1×10^{-6} in/sec (peak velocity). The human response to vibration can vary within wide limits, as it depends on the position and inherent motion of the person perceiving the vibration, as well as the physical and psychological makeup of the particular person.

The City of Morgan Hill currently does not have any standards for vibration in residential areas. Therefore, the vibration analysis presented in this report uses the criteria established by the Federal Transit Administration (FTA). For residences near rail lines that carry fewer than 70 trains per day, which is considered infrequent, the FTA recommends a limit of 80 decibels of vibration (VdB) inside the dwelling. The FTA guidelines provide adjustment methodologies to vacant site vibration levels to determine the approximate vibration levels in various floor elevations of residential structures.

The noise exposures and noise and vibration levels shown below represent the noise environment for existing and post-project site conditions.

Exterior Noise Exposures (dB DNL)

- The existing exterior noise exposure at the most impacted planned building setback from the UPRR tracks (60 ft. from the centerline) is 71 dB DNL. Under future conditions, the noise exposure is expected to remain at 71 dB DNL. Thus, the noise exposures are up to 11 dB in excess of the Title 24 criterion.
- The existing exterior noise exposure at the most impacted planned building setback from East Dunne Avenue (60 ft. from the centerline) is 63 dB DNL. Under future traffic conditions, the noise exposure is expected to increase to 66 dB DNL. Thus, the noise exposure will be up to 6 dB in excess of the Title 24 criterion.

Note: As traffic on East Dunne Avenue and the railroad do not occur at the same time (vehicular traffic stops at the crossing), the noise levels from the two sources are not combined.

The exterior noise exposures at the planned building setbacks exceed the 60 dB DNL criterion of Title 24. An acoustical is required by the State Building Code. The report is intended to satisfy that requirement.

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B. Exterior Noise Levels (dBA L₁)

- The existing highest L₁ values at the planned minimum building setback from the railroad are 81 dBA during the daytime and 76 dBA at night.
- The existing highest L₁ values at the planned minimum building setback from East Dunne Avenue are 73 dBA during the daytime and 69 dBA at night. Under future traffic conditions, the L₁ values are expected to increase to 76 dBA during the daytime and to 72 dBA at night.

C. Interior Noise Exposures (dB DNL)

- The interior noise exposure in the most impacted living spaces closest to the UPRR will be 56 dB DNL. Thus, the noise exposures will be up to 11 dB in excess of the City of Morgan Hill Noise Element and Title 24 standards.
- The interior noise exposure in the most impacted living spaces closest to East Dunne Avenue will be 48 and 51 dB DNL, under existing and future traffic conditions, respectively. Thus, the noise exposures will be up to 6 dB in excess of the City of Morgan Hill Noise Element and Title 24 standards under future conditions.

D. Interior Noise Levels (dBA L₁)

- The interior L₁ noise levels in the most impacted living spaces closest to the UPRR will be 71 dBA during the daytime and 66 dBA at night. Thus, the noise levels will be up to 16 dB in excess of the 55 dBA daytime limit and up to 16 dB in excess of the nighttime limit of the City of Morgan Hill Noise Element standards.

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- The interior L_1 noise levels in the most impacted living spaces closest to East Dunne Avenue will be 63 and 66 dBA, under existing and future traffic conditions, respectively, during the daytime. The nighttime L_1 noise levels will be 59 and 62 dBA under existing and future traffic conditions, respectively. Thus, the noise levels will be up to 12 dB in excess of the City of Morgan Hill Noise Element standards.

The findings reveal that interior noise exposure and noise level excesses will occur and mitigation measures will be required. The recommended measures are described in Section II.

E. Railroad Vibration Levels

- The railroad induced ground-borne vibration levels at the most impacted planned building setback 60 ft. from the centerline of the railroad tracks are 71 VdB for freight trains and 67 VdB for passenger trains (CalTrain). Using the adjustment methodologies of the FTA, the vibration levels in the living spaces will be 68, 69 and 70 VdB for passenger trains and up to 72, 73 and 74 VdB for freight trains, at first, second and third floor elevations, respectively. Thus, the vibration levels will be within the 80 VdB guideline recommended by the Federal Transit Administration.

Mitigation measures for ground-borne vibration will not be required.

II. Recommendations

A. Interior Noise Controls

Attempting to achieve compliance with the 50 dBA maximum instantaneous limit contained in the City of Morgan Hill Noise Element would require window sound ratings up to Sound Transmission Class (STC) 58. These types of windows are not available for residential construction. Therefore, we recommend that the City of Morgan Hill Planning Department waive the “maximum instantaneous” requirements and adopt the L₁ noise level methodology described in the study.

To comply with the 45 dB DNL standard of the City of Morgan Hill Noise Element, the 50 dBA nighttime L₁ for bedrooms and the 55 dBA daytime L₁ for other living spaces, the following noise control measures will be required. In addition, general construction measures affecting the building shell are also recommended, as described in Appendix B.

- Maintain closed at all times all windows and glass doors of living spaces of the project.
- Install windows and glass doors rated minimum Sound Transmission Class (STC) 35 at living spaces within approximately 120 ft. of the railroad tracks. Install windows and glass doors rated minimum STC 31 at all other living spaces between 120 ft. and 180 ft. of the railroad tracks.
- Install windows and glass doors rated minimum STC 31 at all living spaces with a direct or side view to East Dunne Avenue and within approximately 110 ft. of the centerline.
- Install windows and glass doors rated minimum STC 28 at all other living spaces of the project.

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- Provide some type of mechanical ventilation for living spaces with a closed window condition.

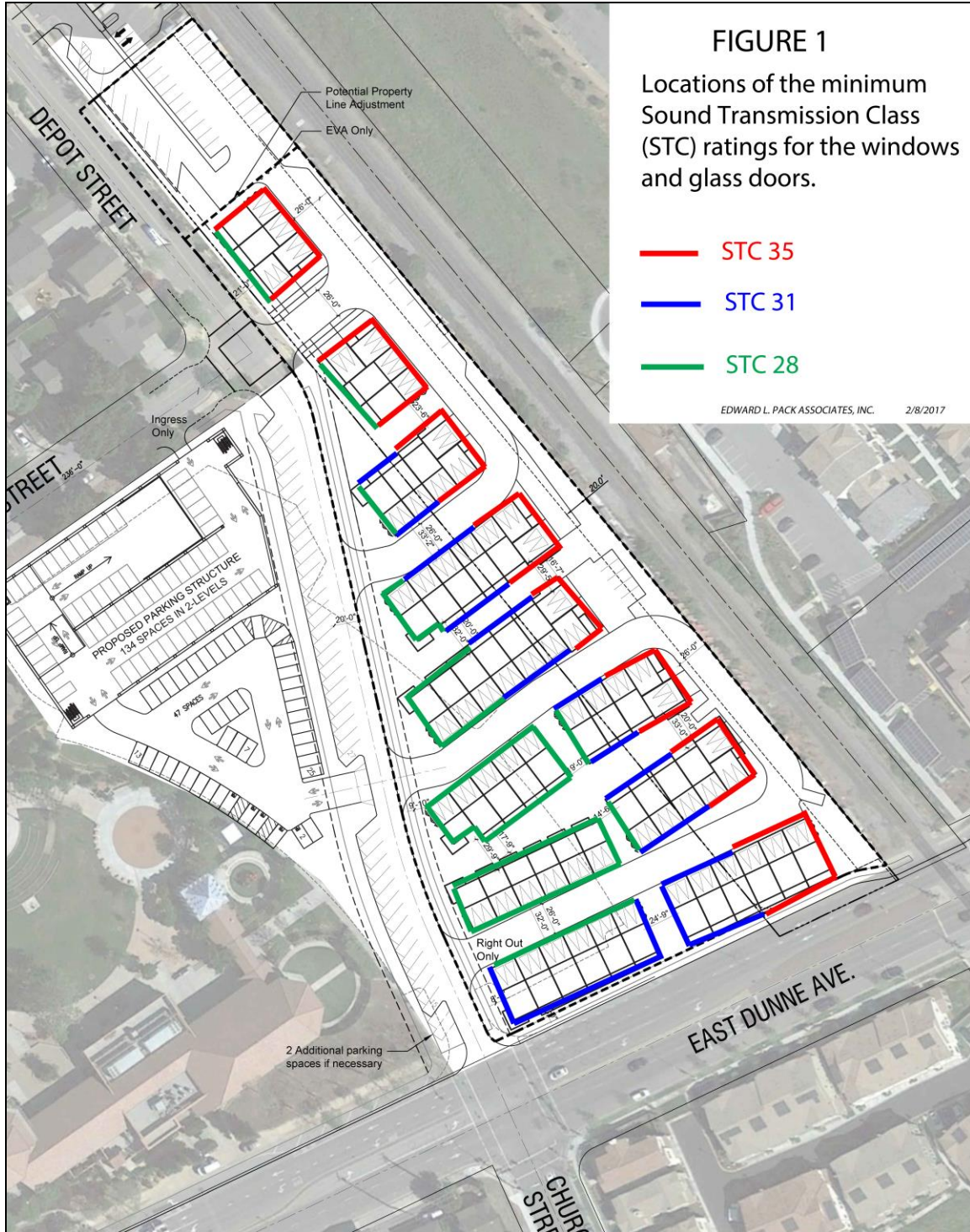
Please see Figure 1 for the locations of the sound rated window and glass door assemblies

When windows and doors are maintained closed for noise control, some type of mechanical ventilation to assure a habitable environment must be provided. The mechanical ventilation requirements specified by the Uniform Building Code (UBC) are described in Appendix B. The windows and glass doors specified to be maintained closed are to be operable, as the requirement does not imply a “fixed” condition. All other windows and glass doors of the project and all bathroom windows may have any type of glazing and may be kept opened as desired unless the bathroom is an integral part of a living space and not separated by a closeable door.

In addition to the required STC ratings, the windows and doors shall be installed in an acoustically-effective manner. To achieve an acoustically-effective window construction, the sliding window and door panels must form an air-tight seal to the outside environment when in the closed position and the window frames must be caulked to the wall opening around their entire perimeter with a non-hardening caulking compound to prevent sound infiltration. Exterior doors must seal air-tight around the full perimeter when in the closed position.

Please be aware that many dual-pane window and glass door assemblies have inherent noise reduction problems in the traffic and railroad noise frequency spectra due to resonance that occurs within the air space between the window lites, and the noise reduction capabilities vary from manufacturer to manufacturer. Therefore, the acoustical test report of all sound rated windows should be reviewed by a qualified acoustician to ensure that the chosen windows will adequately reduce traffic and railroad noise to acceptable levels.

The implementation of the above recommended measures will reduce interior noise exposures to 45 dB DNL and to 50 dBA L₁ or lower during nighttime hours.



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The above report presents an initial noise and vibration assessment study for the planned “Hale Property” multi-family development along East Dunne Avenue in Morgan Hill. The study findings for present conditions are based on field measurements and other data and are correct to the best of our knowledge. Future noise exposures were based on information provided by the City of Morgan Hill and estimates made by Edward L. Pack Associates, Inc. Significant deviations in the future traffic volumes, changes in motor vehicle or railroad technology, speed limits, noise regulations or other future changes beyond our control may produce long-range noise results different from our estimates.

If you need any additional information or would like an elaboration on this report, please call me.

Sincerely,

EDWARD L. PACK ASSOC., INC.

A handwritten signature in blue ink, reading "Jeffrey K. Pack", is written over a horizontal line.

Jeffrey K. Pack
President

Attachment: Appendices A and B

APPENDIX A

References:

- (a) Conceptual Site Plan, Hale Property, by KTGy, December 9, 2016
- (b) City of Morgan Hill General Plan, Health and Safety Element, “Noise”, July 2001, Updated Through February 2010
- (c) California Code of Regulations, Title 24, Chapter 2, Section 1207 “Sound Transmission”, Subsection 1207.4 (Allowable Interior Noise Levels), Revised 2013
- (d) Transit Noise and Vibration Impact Assessment, U.S. Department of Transportation, Federal Transit Administration, Prepared by Harris, Miller, Miller & Hanson, Inc., May, 2006
- (e) “Noise Vibration Assessment Study for the Planned ‘Casa Diana’ Single-Family Development, Diana Avenue, Morgan Hill”, Edward L. Pack Associates, Inc., Project No. 39-057, October 5, 2007

APPENDIX B

Noise Standards, Terminology and Instrumentation

1. Noise Standards

A. City of Morgan Hill Noise Element Standards

The Public Health and Safety (Noise) Element of the City of Morgan Hill General Plan, adopted July, 2001 and updated through February 2010, contains land use compatibility standards for various land uses. a section on noise. The Noise Element references the Land Use Compatibility chart from the State of California Guidelines for the Preparation of a Noise Element. The “Normally Acceptable” standards for the land use categories are as follows:

Residential (Single-Family)	60 dB DL
Residential (Multi-Family, Hotels, Motels)	65 dB DNL
Schools, Libraries, Churches, Hospitals	70 dB DNL
Auditoriums, Concert Halls, Amphitheaters	70 dB DNL (conditionally acceptable)
Sports Arenas, Outdoor Spectator Sports	75 dB DNL (conditionally acceptable)
Playgrounds, Neighborhood Parks	70 dB DNL
Golf Courses, Riding Stables, Water Recreation	75 dB DNL
Office Buildings, Business Commercial and Professional	70 dB DNL
<u>Interior Noise Exposure Limits:</u>	
Residential	45 dB DNL
Offices	45 dBA L _{eq}

B. Title 24 Noise Standards

The California Code of Regulations, 1, Title 24, Chapter 2, Section 1207, "Sound Transmission", applies to all new multi-family dwellings including condominiums, apartments, hotels, motels and dormitories. The standards, which utilize either the Day-Night Level (DNL) descriptor or the Community Noise Equivalent Level (CNEL), whichever is consistent with the local jurisdictional standards, specify that interior noise exposures from exterior sources shall not exceed 45 dB DNL/CNEL in any habitable room.

The Title 24 standards also establish minimum sound insulation requirements for interior partitions separating different dwelling units from each other and dwelling units from common spaces such as garages, corridors, equipment rooms, etc. The common interior walls and floor/ceiling assemblies regulated by the California Building Code (apartments, condominiums, hotels, etc.) must achieve a minimum Sound Transmission Class (STC) rating of 50 for airborne noise. Common floor/ceiling assemblies must achieve an Impact Insulation Class (IIC) rating of 50 for impact noise. These ratings are based on laboratory tested partitions. Field tested partitions must achieve ratings of NIC and FIIC 45. Attached dwellings regulated by the California Residential Code (townhouses under 3 stories in height) must achieve minimum STC 45 for the common partition.

2. Terminology

A. Statistical Noise Levels

Due to the fluctuating character of urban traffic noise, statistical procedures are needed to provide an adequate description of the environment. A series of statistical descriptors have been developed which represent the noise levels exceeded a given percentage of the time. These descriptors are obtained by direct readout of the Sound Level Meters. Some of the statistical levels used to describe community noise are defined as follows:

- L_1 - A noise level exceeded for 1% of the time.
- L_{10} - A noise level exceeded for 10% of the time, considered to be an "intrusive" level.
- L_{50} - The noise level exceeded 50% of the time representing the "mean" sound level.
- L_{90} - The noise level exceeded 90 % of the time, designated as a "background" noise level.
- L_{eq} - The continuous equivalent-energy level is that level of a steady-state noise having the same sound energy as a given time-varying noise. The L_{eq} represents the decibel level of the time-averaged value of sound energy or sound pressure squared and is used to calculate the DNL and CNEL.

B. Day-Night Level (DNL)

Noise levels utilized in the standards are described in terms of the Day-Night Level (DNL). The DNL rating is determined by the cumulative noise exposures occurring over a 24-hour day in terms of A-Weighted sound energy. The 24-hour day is divided into two subperiods for the DNL index, i.e., the daytime period from 7:00 a.m. to 10:00 p.m., and the nighttime period from 10:00 p.m. to 7:00 a.m. A 10 dBA weighting factor is applied (added) to the noise levels occurring during the nighttime period to account for the greater sensitivity of people to noise during these hours. The DNL is calculated from the measured L_{eq} in accordance with the following mathematical formula:

$$DNL = \left[\left[(10 \log_{10}(10^{\Sigma L_{eq}(7-10)})) \times 15 \right] + \left[((10 \log_{10}(10^{\Sigma L_{eq}(10-7)})) + 10) \times 9 \right] \right] / 24$$

C. A-Weighted Sound Level

The decibel measure of the sound level utilizing the "A" weighted network of a sound level meter is referred to as "dBA". The "A" weighting is the accepted standard weighting system used when noise is measured and recorded for the purpose of determining total noise levels and conducting statistical analyses of the environment so that the output correlates well with the response of the human ear.

3. Instrumentation

The on-site field measurement data were acquired by the use of one or more of the sound analyzer listed below. The instrumentation provides a direct readout of the L exceedance statistical levels including the equivalent-energy level (L_{eq}). Input to the meters was provided by microphones extended to a height of 5 ft. above the ground. The “A” weighting network and the “Fast” response setting of the meters were used in conformance with the applicable standards. The Larson-Davis meters were factory modified to conform to the Type 1 performance standards of ANSI S1.4. All instrumentation was acoustically calibrated before and after field tests to assure accuracy.

Bruel & Kjaer 2231 Precision Integrating Sound Level Meter

Larson Davis LDL 812 Precision Integrating Sound Level Meter

Larson Davis 2900 Real Time Analyzer

Larson Davis 831 Precision Integrating Sound Level Meter

4. **Building Shell Controls**

The following additional precautionary measures are required to assure the greatest potential for exterior-to-interior noise attenuation by the recommended mitigation measures. These measures apply at those units where closed windows are required.

- Unshielded entry doors having a direct or side orientation toward the primary noise source must be 1-5/8" or 1-3/4" thick, insulated metal or solid-core wood construction with effective weather seals around the full perimeter. Mail slots should not be used in these doors or in the wall of a living space, as a significant noise leakage can occur through them.
- If any penetrations in the building shell are required for vents, piping, conduit, etc., sound leakage around these penetrations can be controlled by sealing all cracks and clearance spaces with a non-hardening caulking compound.
- Ventilation openings shall not compromise the acoustical integrity of the building shell

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT TO NEGOTIATE EXCLUSIVELY (“**Agreement**”) dated for reference purposes as of April 18, 2018, is entered into by and between the City of Morgan Hill, a California municipal corporation (“**City**”) and The Latala Group, LLC, a California Limited Liability Company (“**Developer**”). Developer and City are sometimes referred to herein individually as a “**Party**”, and collectively as the “**Parties**.”

R E C I T A L S :

A. City owns approximately 0.8 acre real property right-of-way road located in-between Fifth Street and East Dunne Avenue, more particularly known as a portion of Depot Street and described in Exhibit A attached hereto and incorporated herein (“**Property**”) and the Community and Cultural Center parking lot more particularly depicted and described in Exhibit B attached hereto and incorporated herein.

B. On February 16, 2018, the City received an application from Developer requesting the City to consider the realignment of Depot Street to the Church Street and East Dunne intersection, the vacation of approximately .29 acres of the existing Depot Street, and the potential sale of that .29 acres to Developer.

C. Developer has submitted a conceptual proposal as shown in Exhibit C, attached hereto and incorporated herein, to develop the Property and adjacent property as a residential project, with related amenities. The conceptual proposal is contingent on the acquisition of .29 acres of right-of-way. The City has elected to exclusively negotiate with the Developer regarding the potential sale of Property to developer for the Depot Street realignment. City has considered the proposal for realignment and residential development submitted by Developer.

D. City and Developer desire to enter into this Agreement in order to set forth the terms under which City and Developer will exclusively negotiate the terms and conditions of a potential Disposition and Development Agreement (“**DDA**”) providing for City’s sale of Property to Developer for a fair market value purchase price, Developer’s development of the Project, as described in Section 2 below, and Developer’s cooperation with City in its efforts to phase construction to minimize potential impacts to the Community and Culture Center.

A G R E E M E N T S :

CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. NEGOTIATIONS

1.1 Good Faith Negotiations. City and Developer, acknowledge that time is of the essence, and agree for the Negotiation Period set forth in Section 1.2 below, to negotiate diligently and in good faith to prepare a DDA to be considered for execution between City and Developer with respect to the conveyance of the Property and development thereon of the Project (as defined in Section 2 below). City agrees, for the Negotiation Period, not to

negotiate with, solicit offers or proposals regarding, or respond to inquiries from (other than to notify the inquiring party, person or entity that City is subject to an exclusive negotiation agreement), any other person or entity regarding development of the Property or any portion thereof. A DDA resulting from the negotiations hereunder shall become effective only if and after the DDA has been considered and approved by the City Council at a duly noticed public meeting called for such purpose. If the DDA is executed by City and Developer, the DDA shall thereafter govern the rights and obligations of the Parties.

1.2 Duration of this Agreement. Subject to discretionary administrative extension as provided below, the negotiating period (“**Negotiation Period**”) shall commence on the Effective Date and expire upon the execution of a DDA or August 30, 2018, whichever occurs first. The Negotiation Period may be extended for thirty days at a time, but no more than twice, on the City’s behalf, by the City Manager, if the City Manager determines in her sole discretion that the Parties have made substantial progress toward negotiation and drafting of a DDA to merit such extension. However, the cumulative total of all such extensions granted by the City Manager shall not exceed sixty (60) days. Any further extension of the Negotiation Period shall require the approval of the City Council, which may be granted or denied in its sole discretion. It is anticipated that, during the Negotiation Period, the Developer will conduct Due Diligence and; 1) Obtain title report for Depot Street, 2) Prepare public improvement concept plans delineating the portion of City property required for the re-alignment, the required public right-of-way for the Project, and the residual parcel, and 3) Prepare a survey. The City will participate in the preparation of the environmental review, review of title report exceptions, and prepare appraisal of Property. The Parties will evaluate the timing and schedule of development of the proposed Project and negotiate and draft a proposed DDA to be considered for approval by the Developer and the City Council.

1.3 Developer's Due Diligence. It is anticipated that Developer will be conducting due diligence, including physical investigations of the Property (assessing the realignment of Depot Street to Church, environmental audits, storm water retention analysis, and investigation of adequacy of utilities, including water, sewer, gas and electricity) and financial and feasibility analysis of the proposed Project (collectively, “**Due Diligence**”) during the Negotiation Period. It is not anticipated that any physical disturbance of City property will be necessary for Developers due diligence.

1.4 Right of Entry. Developer and its employees, agents, contractors and subcontractors (collectively, “**Developer Parties**”) shall have the right to enter the Property during normal business hours to conduct investigations in accordance with this Agreement. In connection with such entry and investigation, Developer shall comply with the following:

1.4.1 Notice. Developer shall give City reasonable advance notice of any such entry.

1.4.2 Repair and Restoration. Developer shall immediately repair and restore any damage Developer or Developer Parties may cause.

1.4.3 Copies of Reports. Developer shall deliver to City, within ten (10) days of receipt thereof, a complete copy of any written investigation, test, report or study which Developer or any of the Developer Parties conducts, or causes to be conducted, with respect to the Property.

1.5 Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. Such insurance coverage shall be as follows:

1.5.1 Policy types and limits:

- (i) Commercial General Liability insurance in which the limits are not less than \$1,000,000 combined single limit, per occurrence for death or bodily injury for any one person or property damage and \$2,000,000 general aggregate
- (ii) Business Automobile Liability insurance with a combined single limit no less than \$1,000,000 per occurrence. (If Developer does not own vehicles, then coverage for non-owned automobile insurance is required).
- (iii) Workers' Compensation coverage as required by law.

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

(1) ALL Policies:

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

(2) General Liability:

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

- b. “Primary and Non-Contributing” - Insurance shall be primary non-contributing;
- c. **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 1.4., with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.
- d. **Qualification of Insurers.** All insurance required pursuant to this Contract must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of “A” or better and a financial size rating of “VIII” or better.
- e. **Certificates.** Contractor shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Contractor’s Contract with City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (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 provided herein.

Certificate Holder address:

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

2. DEVELOPMENT CONCEPT

2.1 Project Components. The negotiations hereunder include redesigning Depot Street to City Engineering Standards. The redesign would realign Depot Street to the Church Street and East Dunne Avenue intersection, through the existing Community and Culture Center (CCC) parking lot as depicted in the conceptual plan attached as Exhibit C. The proposal may include identification and dedication of land within the CCC parking lot for public right-of-way, planned construction of remainder modifications to the CCC parking lot, and will insure no net loss of parking stalls within the newly configured CCC parking lot. Once due diligence of Property title is complete, and if existing Depot Street is owned by City, the project contemplates that the .29 acres of the no longer utilized portion of Depot Street to be sold to the Developer at market value. If a portion of the Property is held by City as a right-of-way easement, the City may vacate the easement on

that portion of the Property to remove the easement. The remaining portion of the Property owned by the City would be sold. In either situation, the .29 acres would be combined with the adjacent Hale Lumber site identified by Assessor's Parcel Number 726-13-049.

3. DEVELOPER'S RESPONSIBILITIES

3.1 Full Disclosure. Developer has provided to City (a) the names of its principals, officers and/or those with managerial authority, joint venturers, negotiators, development managers, consultants and directly-involved managerial employees; and (b) all other material information concerning Developer reasonably requested by City. Any material change in the identity of any of the foregoing shall be subject to the approval of City, which shall not be unreasonably withheld.

3.2 Entitlement Applications. Developer shall cooperate with City in the review of the proposed Depot Street re-alignment by supplying necessary technical data and other related information and/or development plans concerning the proposed Project.

3.3 Progress Reports. Within ten (10) days following City's request, which may be made from time to time during the Negotiation Period, Developer shall submit to City a written progress report advising City on the status of all work being undertaken by or on behalf of Developer.

4. CITY'S RESPONSIBILITIES

4.1 City Assistance and Cooperation. City shall cooperate with Developer by providing information regarding the development potential of the Property.

4.2 Entitlement Processing. City shall cooperate in the review of the re-alignment plans as stated in 1.2 above. City shall conduct community outreach meetings. City, at Developer's expense, shall prepare an initial study, traffic impact analysis with circulation study, and other appropriate CEQA documentation, if any, based upon the Master Environmental Impact Report for the Downtown Morgan Hill Specific Plan, required for the proposed DDA under the California Environmental Quality Act ("CEQA").

5. GENERAL PROVISIONS

5.1 No Brokerage Fees. City shall not be liable for any real estate commission or brokerage fees which may arise from the purchase and sale or other acquisition of the Property or any portion thereof or interest therein. Developer represents and warrants to City that it has not engaged any broker, agent or finder other than in connection with the acquisition or development of the Property. Developer agrees to indemnify, defend and hold City harmless from any claim by any broker, agent or finder retained by, or alleged to have been retained by, Developer. Developer's indemnity obligations under this Section 5.1 shall survive expiration or termination of this Agreement.

5.2 Notices. Any approval, disapproval, demand or other notice which either Party may desire to give to the other Party under this Agreement must be in writing and

may be given by any commercially acceptable means, including personal delivery, or overnight courier, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice.

To City: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Leslie Little, Asst. City Manager

With a copy to: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: City Attorney

To Developer: The Latala Group, LLC.
1462 Stonebridge Court
Morgan Hill, CA 95037
Attention: Paul Latala
(408) 515-9205

With a copy to: Ruggeri-Jensen-Azar
8055 Camino Arroyo
Gilroy, CA 95020
Attention: John Moniz
(408) 848-0300

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

5.3 Limitations of this Agreement. By its execution of this Agreement, City is not committing itself to or agreeing to undertake: (i) disposition of the Property to Developer; (ii) approval of the proposed residential development described in Section 4.2 above, or (iii) any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof. This Agreement does not constitute a disposition of property by City. Execution of this Agreement by City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof,

reserving final discretion and approval by City as to any DDA and all proceedings and decisions in connection therewith. In addition, nothing in this Agreement shall be construed to limit the application of CEQA to any DDA or the proposed Project, or to changes to the foregoing, or to control the actions of City in meeting its CEQA obligations. In fulfilling its obligations under CEQA, City shall act independently, reserving full and complete discretion with respect to any such CEQA approvals without reference to this Agreement. City shall not be liable, in any respect, to Developer for its action or inaction in fulfilling its CEQA obligations. City will not consider the approval of any DDA or the proposed Project, or to changes to the foregoing, unless and until it has fully reviewed and considered the environmental impacts in accordance with CEQA. City is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve the proposed Project or any DDA, changes to the foregoing, or any other agreement. After CEQA review, City is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations for approval of or to take any other action in support of the proposed Project or any DDA or any changes to the foregoing, nor is City precluded from rejecting the DDA or proposed Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the proposed Project. If City rejects the DDA or proposed Project, this Agreement shall automatically terminate and, except as otherwise provided in Sections 5.1, 5.8, 5.9, and 5.13, neither Party shall have any further rights or obligations hereunder.

5.4 Integration. This Agreement contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

5.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party. City Manager is authorized to sign the writing on behalf of the City.

5.6 Severability. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

5.7 No Assignment. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Accordingly, except as otherwise expressly provided below, Developer may not transfer or assign any or all of its rights or obligations under this Agreement except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole absolute discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, the Parties acknowledge that Developer intends to form a new special purpose entity to develop the proposed Project and to enter into the proposed

DDA. Except as otherwise expressly set forth in this Section 5.7, this Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, personal representatives, nominees, successors or assigns.

5.8 Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City, and its officers, employees, agents and representatives, harmless from, all claims, demands, damages, defense costs or liability of any kind or nature arising directly or indirectly from the implementation of this Agreement, including any Developer investigation and/or acquisition activities under Sections 1.3 and 1.4 above, including damages to property or injuries to persons, accidental death, and reasonable attorneys' fees and costs, whether such activities or performance thereof be by Developer or by any Developer Parties and whether such damage shall accrue or be discovered before or after expiration or termination of this Agreement. Developer's indemnity obligations under this Section 5.8 shall not extend to claims, demands, damages, defense costs or liability to the extent occasioned by the sole negligence or willful misconduct of City or its officers, employees, agents or representatives.

5.9 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it. The provisions of this Section shall survive expiration or other termination of this Agreement.

5.10 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by both Parties, shall constitute a binding agreement.

5.11 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms.

5.12 Authority. If Developer is a corporation, limited liability company, partnership, trust, association or other entity, Developer and each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (i) Developer is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (ii) Developer has and is duly qualified to do business in California, (iii) Developer has full corporate, partnership, trust, association or other power and authority to enter into this Agreement and to perform all of Developer's obligations hereunder, and (iv) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so.

5.13 Limitation of Remedies. In the event of an uncured default by either Party under this Agreement, the non-defaulting Party's exclusive remedy is to terminate this Agreement, with the sole exception of a violation of section 1.3 by Developer which results in physical damage to City property. In such an event, Developer shall be responsible to

immediately repair and restore the City property to its pre-existing state, and City reserves the right to seek monetary damages; this requirement shall survive termination of this Agreement. In no event shall either Party have the right, and each Party expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) in the event of a default by the other Party under this Agreement.

5.14 Joint and Several Liability. If more than one person or entity is named as Developer hereunder, each such person or entity shall be jointly and severally liable for the obligations of Developer hereunder.

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5.15 Governing Law. This Agreement, and the interpretation and enforcement thereof, shall be governed by the laws of the State of California without regard to conflicts of law principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by City.

CITY OF MORGAN HILL, a California
municipal corporation

By: _____
Christina Turner, City Manager

ATTEST:

DATED: _____, 2018

Irma Torrez, City Clerk

APPROVED AS TO FORM:

DEVELOPER:

The Latala Group, LLC, a California Limited
Liability Company

By: _____
Donald Larkin, City Attorney

By: _____
Name: _____

DATED: _____, 2018

Title: _____
Date: _____

and

DATED: _____, 2018

By: _____
Name: _____
Title: _____
Date: _____

Attachment: Exclusive Negotiating Agreement (ENA) (1630 : Exclusive Right to Negotiate: Hale Lumber Site)

EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY**

Depot Street, Morgan Hill, California 95037

A portion of DEPOT STREET, a street right-of-way, in the City of Morgan Hill, County of Santa Clara, State of California, and is described as follows:

BEGINNING at the at northern corner of the parcel as shown upon that certain CERTIFICATE OF COMPLIANCE LOT LINE ADJUSTMENT, filed for record in Document No. 15899105 in the City of Morgan Hill, County of Santa Clara;

Thence along the southwesterly right-of-way line of DEPOT STREET as said right-of-way is shown on said CERTIFICATE OF COMPLIANCE SOUTH 39°27'00" EAST, a distance of 583.89 feet;

Thence NORTH 64°27'39" EAST 65.13 feet to the northeasterly right-of-way line of DEPOT STREET as said right-of-way is shown on said MAP;

Thence along the northeasterly right-of-way line of DEPOT STREET NORTH 39°27'00" WEST, a distance of 604.61 feet;

Thence SOUTH 55°08'00" WEST, a distance of 60.18 feet to POINT OF BEGINNING.

Attachment: Exclusive Negotiating Agreement (ENA) (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



EXHIBIT B**LEGAL DESCRIPTION OF COMMUNITY AND CULTURAL CENTER WITH
PARKING LOT**

17000 Monterey Road, Morgan Hill, California 95037

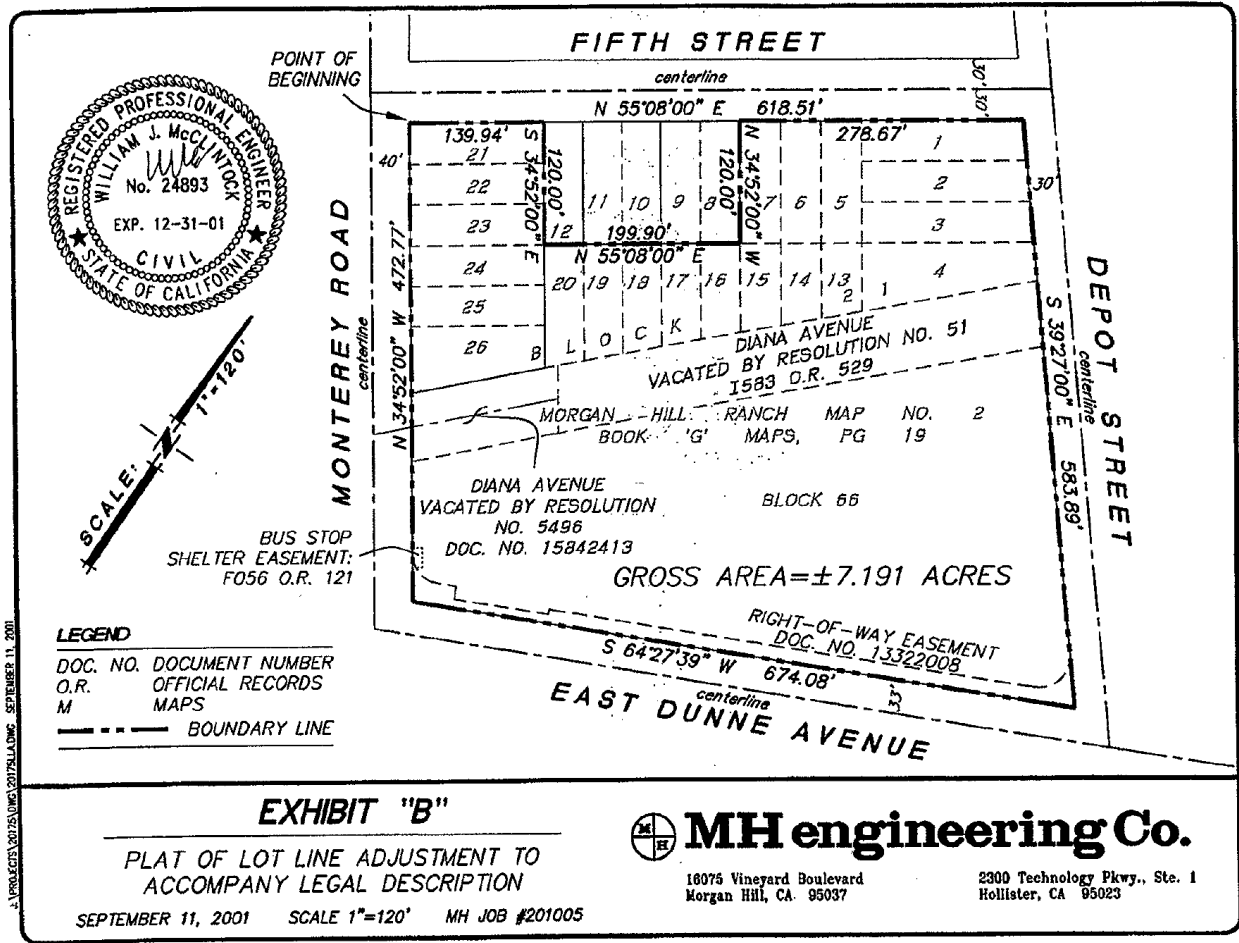
The land referred to herein is situated in the State of California County of Santa Clara, City of Morgan Hill, and is described as follows:

Being all of Blocks 21 and 66 as said Blocks are shown upon that certain Map entitled, "Morgan Hill Ranch Map No.2", filed for record in Book 'G' of Maps, at Page 19, Office of the Recorder of Santa Clara County and also being those portions of Diana Avenue as described and vacated by Resolution No. 51 filed for record in Book 1583 of Official Records at page 529, Office of the Recorder of Santa Clara County and Resolution No. 5496 filed for record in Document No. 15842413, Office of the Recorder of Santa Clara County; excepting therefrom Lots 8 through 12 of said Block 21 and being more particularly described as follows:

BEGINNING at the western corner of said Lot 21; thence along the northwesterly line of said Lot 21 which is common with the southeasterly right-of-way line of Fifth Street, as said line is shown on said MAP, North 55°08'00" East, a distance of 139.94 feet to the northern corner of said Lot 21 which is common with western corner of said Lot 12; thence leaving said right-of-way line and along the northeasterly lines of said Lots 21, 22, and 23 which are common with the southwesterly line of said Lot 12, South 34°52'00" East, a distance of 120.00 feet to the corner common to Lots 12, 20, 23, and 24; thence along the northwesterly lines of said Lots 16 through 20 which are common with the southeasterly lines of said Lots 8 through 12, North 55°08'00" East, a distance of 199.90 feet to the corner common to said Lots 7, 8, 15, and 16; thence along the northeasterly line of said Lot 8 which is common with the southwesterly line of said Lot 7, North 34°52'00" West, a distance of 120.00 feet to the northerly corner of said Lot 8 which is common with the westerly corner of said Lot 7 and a point on the southeasterly right-of-way line of said Fifth Street; thence along said right-of-way line and the northwesterly lines of said Lots 1, 5, 6, and 7, North 55°08'00" East, a distance of 278.67 feet to the northern corner of said Lot 1; thence along the southwesterly right-of-way line of Depot Street as said right-of-way is shown on said Map, which is common with the northeasterly lines of said Lots 1 through 4, said portion of Diana Avenue vacated by Resolution No. 51 and said Block 66, South 39°27'00" East, a distance of 583.89 feet to the eastern corner of said Block 66; thence along the southeasterly line of said Block 66 which is common with the northwesterly right-of-way line of East Dunne Avenue as said line is shown on said Map, South 64°27'39" West, a distance of 674.08 feet to the southern corner of said Block 66; thence along the northeasterly right-of-way line of Monterey Road as said right-of-way is shown on said Map, which is common with the southwesterly lines of said Lots 21 through 26, said portion of Diana Avenue vacated by Resolution

Attachment: Exclusive Negotiating Agreement (ENA) (1630 : Exclusive Right to Negotiate: Hale Lumber Site)

No. 5496 and said Block 66, North 34°52'00" West, a distance of 472.77 feet to the POINT OF BEGINNING and containing an area of 7.191 acres, more or less.



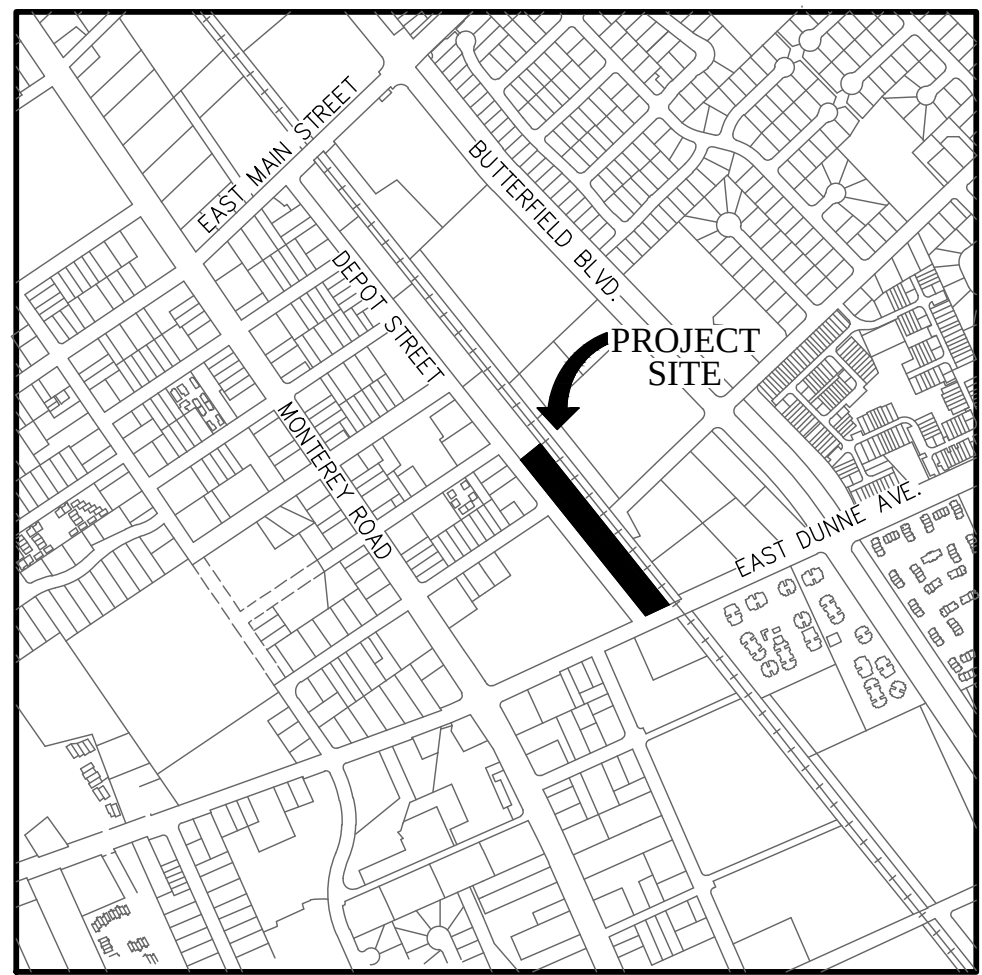
CONCEPTUAL SITE PLAN





ARCHITECTURAL
THEMES AND
SAMPLE ELEVATIONS

SDG Architects, Inc.

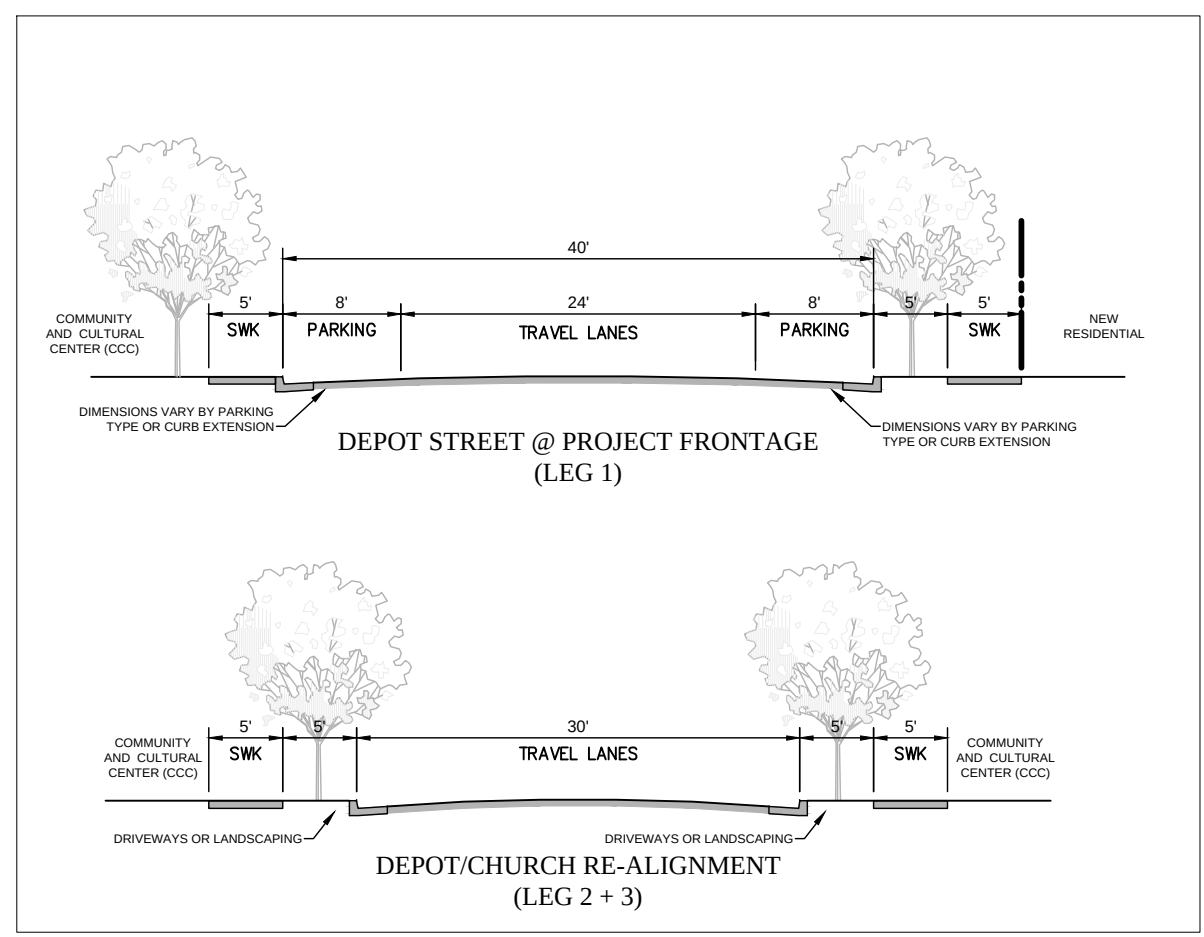


VICINITY MAP

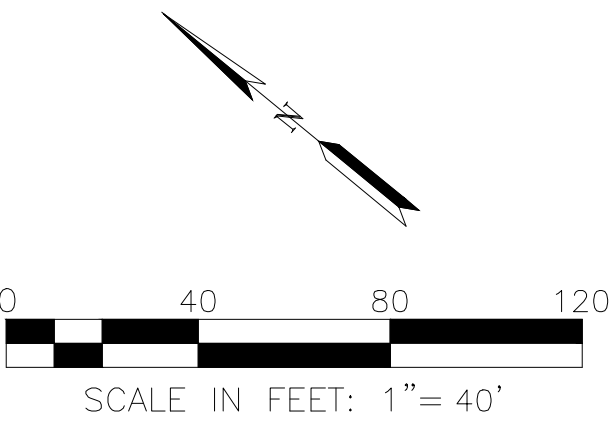
- PROJECT SUMMARY**
- THE PROPOSED PROJECT CONSISTS OF THE DEVELOPMENT OF 43 TOWN HOMES (THREE STORIES), PRIVATE OPEN SPACE AND CIRCULATION.
 - PUBLIC IMPROVEMENTS INCLUDE THE RE-ALIGNMENT OF DEPOT STREET TO INTERSECT WITH CHURCH STREET: ALL UNDERGROUND AND SURFACE IMPROVEMENTS THEREIN.
 - IMPROVEMENTS TO THE COMMUNITY CENTER PARKING LOT INCLUDE:
 1. RE-STRIPING TO ACCOMMODATE ANGLED AND COMPACT PARKING
 2. REPLACEMENT OF LANDSCAPE ISLANDS
 3. STRIPING FOR PEDESTRIAN PATHWAYS

ADDRESS	17020 DEPOT STREET (726-13-049)
GP DESIGNATION	MIXED USE
ZONING DISTRICT	CENTRAL BUSINESS DISTRICT (CBD)
AREA (EXIST)	2.00 AC
R/W DEDICATION	0.01 AC (±400 SQFT)
R/W VACATION	0.29 AC (±12,750 SQFT)
AREA (NET)	2.28 AC
PROPOSED DENSITY	43 DWELLINGS/2.28 AC = 18.9 DU/AC
PROPOSED PARKING	86 (2 COVERED SPACES/UNIT) 24 OPEN SPACES 110 TOTAL SPACES (2.6/UNIT)

COMMUNITY CENTER PARKING SUMMARY	
EXISTING SPACES	
PARKING LOT	240
CURB SIDE (DEPOT)	20 (WEST SIDE ONLY)
	260
LOSS OF PARKING WITH DEPOT-CHURCH RE-ALIGNMENT	
PARKING LOT	59
CURB SIDE (DEPOT)	9 (WEST SIDE ONLY)
	68
GAINED PARKING	
CURB SIDE (DEPOT)	20
PARKING LOT	48
	68
SURPLUS/DEFICIT	0



- NOTES**
1. AERIAL IMAGE PROVIDED BY OTHERS, LATE 2016.
 2. EXISTING NUMBER OF SPACES AT CCC FROM SAMP



Hale Lumber Residential Project and Proposed Depot Street Re-Alignment Morgan Hill, CA

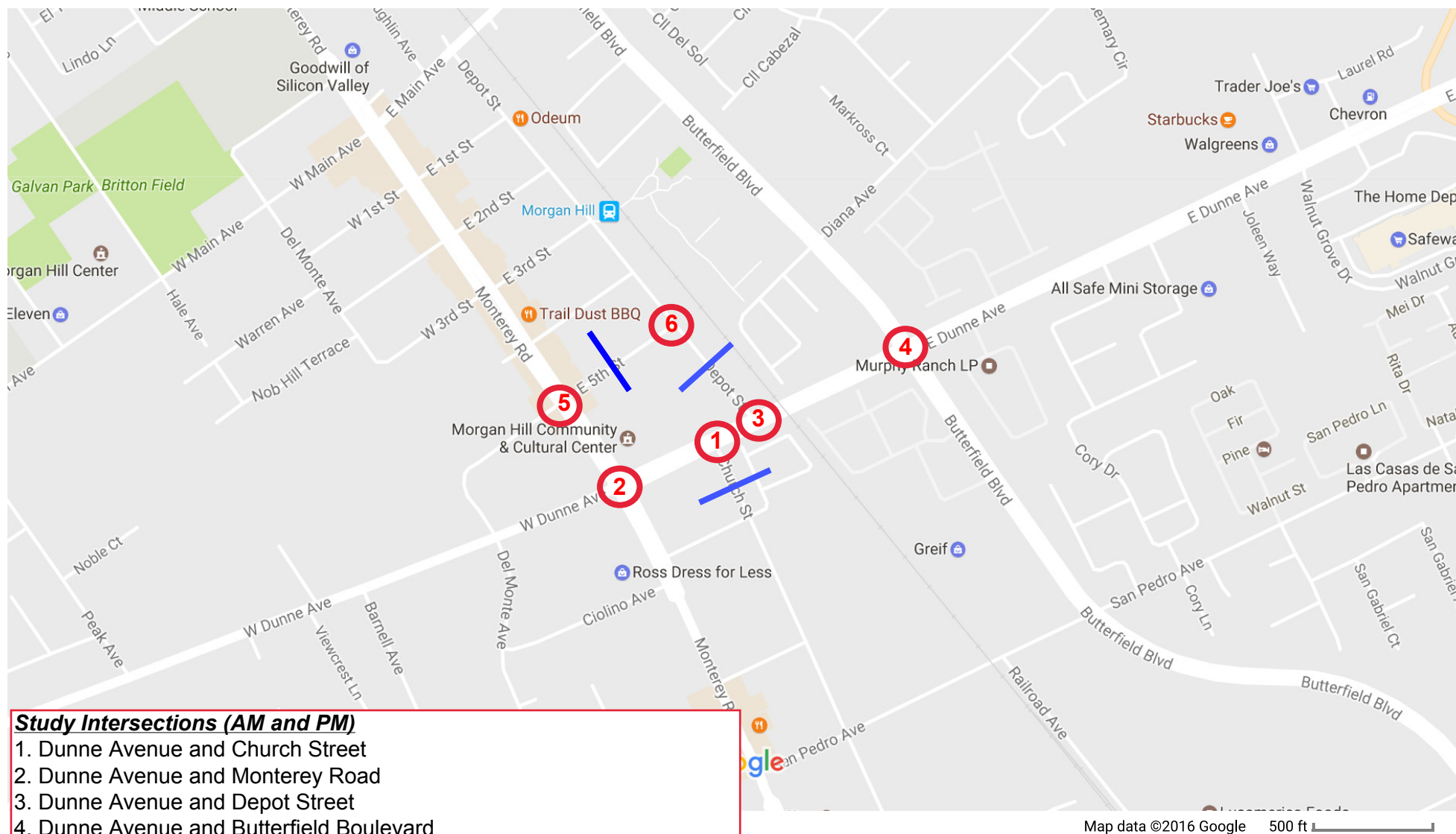


Latala
HOMES INC.
1999 S. Bascom Avenue, Suite 700
Campbell, CA 95008
www.latalahomes.com

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302
Updated March 26, 2018
162016-1001



Depot Street Realignment - Morgan Hill



Study Intersections (AM and PM)

1. Dunne Avenue and Church Street
2. Dunne Avenue and Monterey Road
3. Dunne Avenue and Depot Street
4. Dunne Avenue and Butterfield Boulevard
5. 5th Street and Monterey Road
6. 5th Street and Depot Street

Study Roadway Segments (24-hr volume only)

1. Depot Street, north of Dunne Avenue
2. Church Street, south of Dunne Avenue
3. 5th Street, between Depot Street and Monterey Road

Map data ©2016 Google 500 ft

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber

ALL TRAFFIC DATA SERVICES

9660 W. 44TH AVE
WHEAT RIDGE, CO 80033
www.ALLTRAFFICDATA.NET

Page 1

Date Start: 14-Dec-16
Date End: 14-Dec-16
Site Code: 7
DEPOT ST N/O DUNNE AVE

Start Time	14-Dec-16 Wed	NB	SB							Total
12:00 AM		2	9							11
01:00		1	3							4
02:00		0	1							1
03:00		1	2							3
04:00		11	1							12
05:00		9	6							15
06:00		21	28							49
07:00		67	57							124
08:00		57	60							117
09:00		45	33							78
10:00		40	43							83
11:00		58	61							119
12:00 PM		69	101							170
01:00		52	120							172
02:00		58	131							189
03:00		66	153							219
04:00		80	164							244
05:00		92	149							241
06:00		88	132							220
07:00		35	86							121
08:00		23	67							90
09:00		22	46							68
10:00		12	26							38
11:00		7	9							16
Total		916	1488							2404
Percent		38.1%	61.9%							
AM Peak	-	07:00	11:00	-	-	-	-	-	-	07:00
Vol.	-	67	61	-	-	-	-	-	-	124
PM Peak	-	17:00	16:00	-	-	-	-	-	-	16:00
Vol.	-	92	164	-	-	-	-	-	-	244
Grand Total		916	1488							2404
Percent		38.1%	61.9%							
ADT		ADT 2,404	AADT 2,404							

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber

ALL TRAFFIC DATA SERVICES

9660 W. 44TH AVE
WHEAT RIDGE, CO 80033
www.ALLTRAFFICDATA.NET

Page 1

Date Start: 14-Dec-16
Date End: 14-Dec-16
Site Code: 8
CHURCH ST S/O DUNNE AVE

Start Time	14-Dec-16	NB	SB								Total
12:00 AM		2	7								9
01:00		1	3								4
02:00		2	0								2
03:00		3	3								6
04:00		10	5								15
05:00		30	11								41
06:00		49	21								70
07:00		72	53								125
08:00		102	106								208
09:00		74	113								187
10:00		93	97								190
11:00		103	88								191
12:00 PM		157	112								269
01:00		116	131								247
02:00		106	126								232
03:00		134	137								271
04:00		133	157								290
05:00		130	143								273
06:00		80	98								178
07:00		43	73								116
08:00		33	71								104
09:00		19	46								65
10:00		21	26								47
11:00		8	7								15
Total		1521	1634								3155
Percent		48.2%	51.8%								
AM Peak	-	11:00	09:00	-	-	-	-	-	-	08:00	
Vol.	-	103	113	-	-	-	-	-	-	208	
PM Peak	-	12:00	16:00	-	-	-	-	-	-	16:00	
Vol.	-	157	157	-	-	-	-	-	-	290	
Grand Total		1521	1634								3155
Percent		48.2%	51.8%								
ADT		ADT 3,155	AADT 3,155								

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber

ALL TRAFFIC DATA SERVICES

9660 W. 44TH AVE
WHEAT RIDGE, CO 80033
www.ALLTRAFFICDATA.NET

Page 1

Date Start: 14-Dec-16
Date End: 14-Dec-16
Site Code: 9
5TH ST E/O MONTEREY RD

Start Time	14-Dec-16 Wed	EB	WB							Total
12:00 AM		2	1							3
01:00		0	0							0
02:00		0	0							0
03:00		0	0							0
04:00		0	0							0
05:00		5	1							6
06:00		27	1							28
07:00		40	7							47
08:00		22	8							30
09:00		19	10							29
10:00		15	15							30
11:00		23	15							38
12:00 PM		31	19							50
01:00		25	21							46
02:00		15	21							36
03:00		26	12							38
04:00		24	18							42
05:00		27	22							49
06:00		23	30							53
07:00		20	7							27
08:00		15	5							20
09:00		11	7							18
10:00		3	3							6
11:00		0	3							3
Total		373	226							599
Percent		62.3%	37.7%							
AM Peak	-	07:00	10:00	-	-	-	-	-	-	07:00
Vol.	-	40	15	-	-	-	-	-	-	47
PM Peak	-	12:00	18:00	-	-	-	-	-	-	18:00
Vol.	-	31	30	-	-	-	-	-	-	53
Grand Total		373	226							599
Percent		62.3%	37.7%							
ADT		ADT 599	AADT 599							

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber



(303) 216-2439
www.alltrafficdata.net

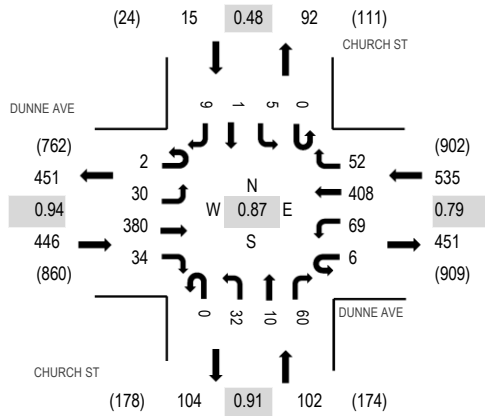
Location: 1 CHURCH ST & DUNNE AVE AM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 07:45 AM - 08:45 AM

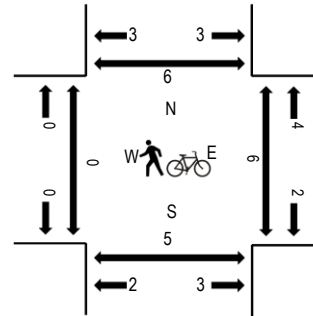
Peak 15-Minutes: 07:45 AM - 08:00 AM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				CHURCH ST Northbound				CHURCH ST Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
7:00 AM	0	1	77	2	2	4	44	0	0	2	1	13	0	0	0	1	147	865	0	0	1	0
7:15 AM	0	2	78	0	5	7	56	1	0	2	0	13	0	0	1	0	165	967	0	0	0	1
7:30 AM	1	1	99	8	13	14	77	0	0	7	5	13	0	0	0	0	238	1,096	0	1	2	5
7:45 AM	0	4	104	8	3	25	136	6	0	11	0	17	0	0	0	1	315	1,098	0	0	0	0
8:00 AM	0	5	111	11	1	10	80	6	0	9	3	12	0	0	0	1	249	1,095	0	0	3	0
8:15 AM	2	15	103	4	1	16	95	27	0	3	6	20	0	0	1	1	294		0	4	0	5
8:30 AM	0	6	62	11	1	18	97	13	0	9	1	11	0	5	0	6	240		0	2	1	1
8:45 AM	0	2	127	16	5	21	112	6	0	6	0	10	0	3	1	3	312		0	1	3	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	0	3
Lights	2	30	374	34	6	67	401	52	0	31	10	58	0	5	1	9	1,080
Mediums	0	0	6	0	0	1	5	0	0	1	0	2	0	0	0	0	15
Total	2	30	380	34	6	69	408	52	0	32	10	60	0	5	1	9	1,098

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



(303) 216-2439
www.alltrafficdata.net

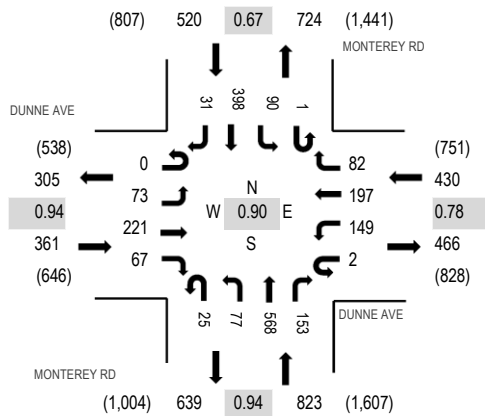
Location: 2 MONTEREY RD & DUNNE AVE AM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 08:00 AM - 09:00 AM

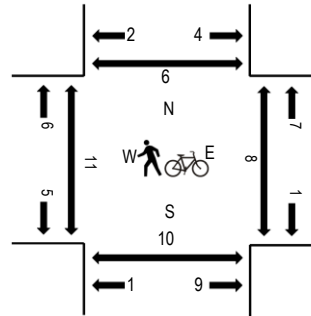
Peak 15-Minutes: 08:45 AM - 09:00 AM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				MONTEREY RD Northbound				MONTEREY RD Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
7:00 AM	0	23	30	7	0	11	15	19	0	3	155	32	1	9	36	1	342	1,677	1	0	2	0
7:15 AM	0	11	44	16	0	22	29	8	4	9	160	27	0	10	51	3	394	1,864	0	2	1	0
7:30 AM	0	16	48	9	0	21	41	14	1	13	151	31	0	24	53	5	427	1,950	0	2	4	0
7:45 AM	0	16	49	16	0	40	78	23	5	29	120	44	0	14	73	7	514	2,054	0	1	0	0
8:00 AM	0	19	62	12	0	29	53	21	5	21	149	43	0	19	85	11	529	2,134	1	2	5	0
8:15 AM	0	15	53	23	1	29	46	18	7	25	130	43	0	18	72	0	480		5	3	2	2
8:30 AM	0	22	45	14	0	40	40	24	7	14	181	22	0	17	101	4	531		0	1	0	1
8:45 AM	0	17	61	18	1	51	58	19	6	17	108	45	1	36	140	16	594		3	1	3	3

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	1	0	0	0	0	2	0	0	0	1	0	4
Lights	0	71	220	66	1	146	196	81	25	75	550	150	1	88	381	31	2,082
Mediums	0	2	1	1	1	2	1	1	0	2	16	3	0	2	16	0	48
Total	0	73	221	67	2	149	197	82	25	77	568	153	1	90	398	31	2,134

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



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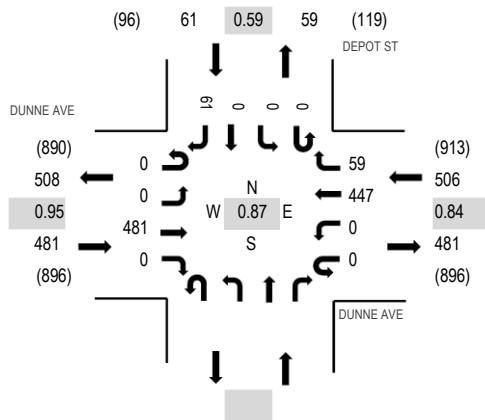
Location: 3 DEPOT ST & DUNNE AVE AM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 07:30 AM - 08:30 AM

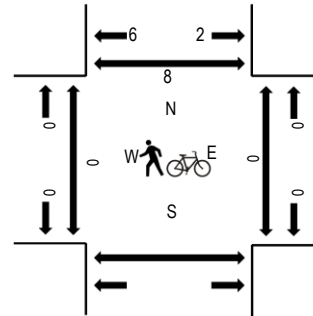
Peak 15-Minutes: 07:45 AM - 08:00 AM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				Northbound				DEPOT ST Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
7:00 AM	0	0	88	0	0	0	0	48	12				0	0	0	5	153	867	0	0		
7:15 AM	0	0	94	0	0	0	0	56	14				0	0	0	8	172	959	0	0		1
7:30 AM	0	0	126	0	0	0	0	73	15				0	0	0	26	240	1,048	0	0		5
7:45 AM	0	0	124	0	0	0	0	146	17				0	0	0	15	302	1,042	0	0		4
8:00 AM	0	0	120	0	0	0	0	103	11				0	0	0	11	245	1,038	0	0		0
8:15 AM	0	0	111	0	0	0	0	125	16				0	0	0	9	261		0	0		2
8:30 AM	0	0	95	0	0	0	0	112	19				0	0	0	8	234		0	0		1
8:45 AM	0	0	138	0	0	0	0	131	15				0	0	0	14	298		0	0		1

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	3	0					0	0	0	0	3
Lights	0	0	468	0	0	0	438	58					0	0	0	61	1,025
Mediums	0	0	13	0	0	0	6	1					0	0	0	0	20
Total	0	0	481	0	0	0	447	59					0	0	0	61	1,048



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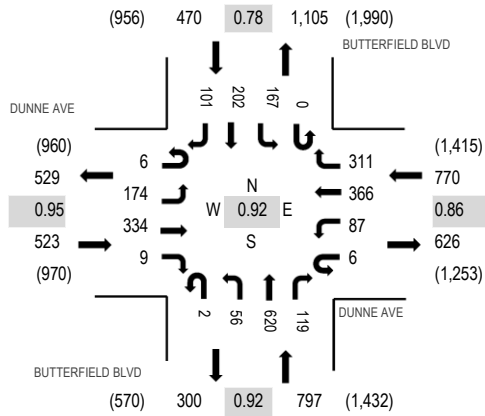
Location: 4 BUTTERFIELD BLVD & DUNNE AVE AM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 07:30 AM - 08:30 AM

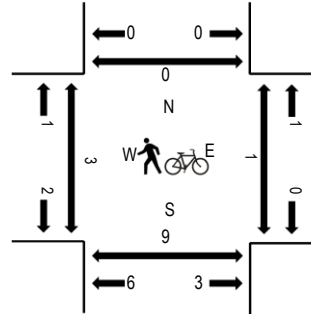
Peak 15-Minutes: 07:45 AM - 08:00 AM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				BUTTERFIELD BLVD Northbound				BUTTERFIELD BLVD Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
7:00 AM	0	24	67	2	2	12	48	81	0	9	168	23	0	29	31	11	507	2,385	0	0	0	0
7:15 AM	0	21	94	0	1	16	56	43	0	7	157	21	1	49	37	17	520	2,438	1	0	0	0
7:30 AM	1	29	99	3	1	26	83	71	0	15	163	29	0	51	69	22	662	2,560	1	0	5	0
7:45 AM	3	47	76	2	2	28	114	86	0	17	174	29	0	49	42	27	696	2,483	1	0	1	0
8:00 AM	1	52	84	1	3	14	71	71	0	6	117	32	0	36	51	21	560	2,388	1	0	3	0
8:15 AM	1	46	75	3	0	19	98	83	2	18	166	29	0	31	40	31	642		0	1	0	0
8:30 AM	3	21	66	3	4	13	97	86	0	8	112	27	1	56	56	32	585		0	2	1	0
8:45 AM	1	31	107	7	1	17	102	66	0	10	73	20	0	60	76	30	601		0	0	1	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	2	3	2	0	0	6	1	0	1	0	0	15
Lights	6	166	331	9	6	84	358	303	2	56	607	114	0	163	196	100	2,501
Mediums	0	8	3	0	0	1	5	6	0	0	7	4	0	3	6	1	44
Total	6	174	334	9	6	87	366	311	2	56	620	119	0	167	202	101	2,560

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



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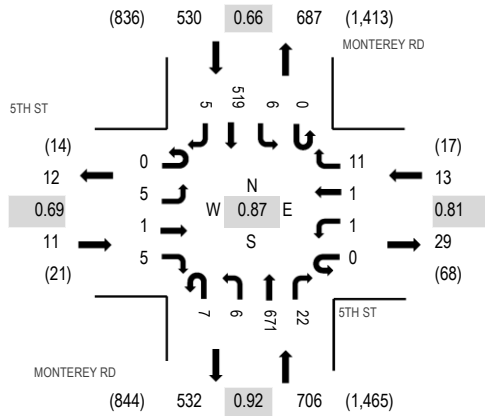
Location: 5 MONTEREY RD & 5TH ST AM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 08:00 AM - 09:00 AM

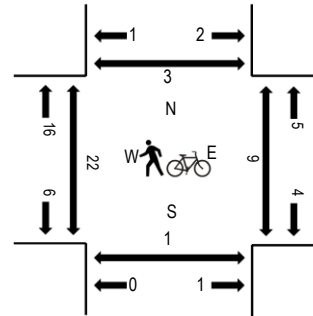
Peak 15-Minutes: 08:30 AM - 08:45 AM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	5TH ST Eastbound				5TH ST Westbound				MONTEREY RD Northbound				MONTEREY RD Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
7:00 AM	0	0	1	0	0	0	0	0	0	0	193	14	0	0	41	0	249	1,079	2	1	0	0
7:15 AM	0	1	0	2	0	0	0	0	3	0	172	7	0	0	70	0	255	1,096	1	2	1	0
7:30 AM	0	3	1	0	0	1	0	0	0	0	179	9	0	2	85	0	280	1,129	1	2	0	0
7:45 AM	0	1	1	0	0	1	0	2	1	2	175	4	0	0	108	0	295	1,213	7	6	4	2
8:00 AM	0	0	0	2	0	0	0	2	2	1	156	6	0	0	95	2	266	1,260	0	2	1	1
8:15 AM	0	1	0	1	0	1	1	1	0	3	177	6	0	3	94	0	288		11	5	0	2
8:30 AM	0	1	1	1	0	0	0	4	2	0	212	7	0	3	131	2	364		1	1	0	0
8:45 AM	0	3	0	1	0	0	0	4	3	2	126	3	0	0	199	1	342		3	1	0	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	1	0	0	2	0	0	0	1	0	4
Lights	0	5	1	5	0	1	1	10	7	6	652	22	0	6	500	5	1,221
Mediums	0	0	0	0	0	0	0	0	0	0	17	0	0	0	18	0	35
Total	0	5	1	5	0	1	1	11	7	6	671	22	0	6	519	5	1,260

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



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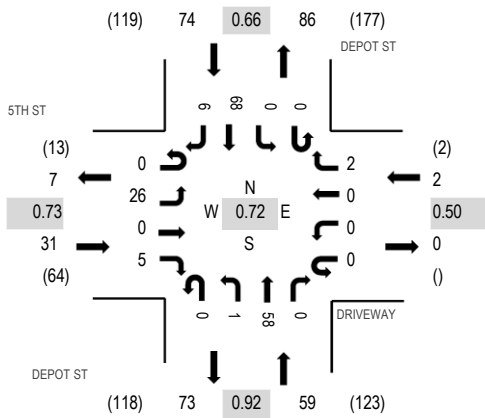
Location: 6 DEPOT ST & DRIVEWAY AM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 07:30 AM - 08:30 AM

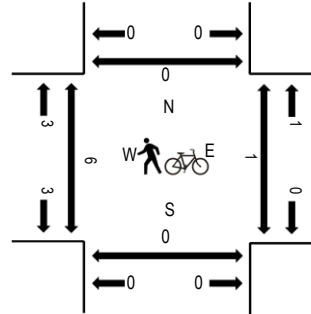
Peak 15-Minutes: 07:30 AM - 07:45 AM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	5TH ST Eastbound				DRIVEWAY Westbound				DEPOT ST Northbound				DEPOT ST Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
7:00 AM	0	12	0	2	0	0	0	0	0	0	13	0	0	0	4	1	32	165	0	0	0	0
7:15 AM	0	8	0	0	0	0	0	0	0	1	17	0	0	0	10	0	36	164	0	0	0	0
7:30 AM	0	11	0	2	0	0	0	0	0	0	17	0	0	0	27	1	58	166	2	0	0	0
7:45 AM	0	4	0	2	0	0	0	1	0	1	17	0	0	0	11	3	39	146	1	0	0	0
8:00 AM	0	7	0	0	0	0	0	0	0	0	10	0	0	0	13	1	31	143	0	0	0	0
8:15 AM	0	4	0	1	0	0	0	1	0	0	14	0	0	0	17	1	38		3	1	0	0
8:30 AM	0	7	0	0	0	0	0	0	0	0	14	0	0	0	14	3	38		1	0	0	0
8:45 AM	0	2	0	2	0	0	0	0	0	1	18	0	0	0	13	0	36		1	0	0	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lights	0	26	0	5	0	0	0	2	0	1	57	0	0	0	68	6	165
Mediums	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Total	0	26	0	5	0	0	0	2	0	1	58	0	0	0	68	6	166

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



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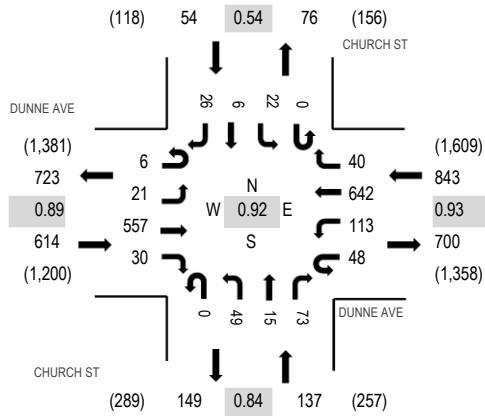
Location: 1 CHURCH ST & DUNNE AVE PM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 04:45 PM - 05:45 PM

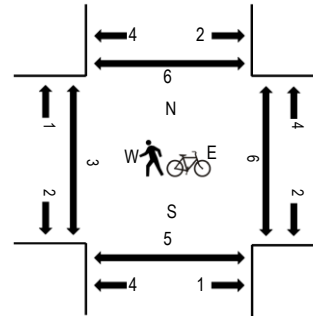
Peak 15-Minutes: 05:30 PM - 05:45 PM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				CHURCH ST Northbound				CHURCH ST Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
4:00 PM	0	8	134	7	17	28	136	2	0	6	3	21	0	14	2	4	382	1,567	0	0	4	2
4:15 PM	2	3	126	7	5	32	172	10	0	7	2	18	0	9	5	15	413	1,590	1	0	3	1
4:30 PM	2	1	147	12	10	18	141	1	0	14	3	23	0	3	0	4	379	1,579	2	0	0	1
4:45 PM	1	3	152	6	9	37	143	6	0	8	5	16	0	4	0	3	393	1,648	1	1	1	3
5:00 PM	2	3	114	8	19	23	178	6	0	16	1	21	0	6	2	6	405	1,617	0	0	1	0
5:15 PM	1	10	135	6	9	29	154	10	0	14	1	14	0	6	2	11	402		1	3	1	2
5:30 PM	2	5	156	10	11	24	167	18	0	11	8	22	0	6	2	6	448		0	2	2	0
5:45 PM	1	17	109	10	8	18	145	23	0	6	7	10	0	4	1	3	362		0	0	2	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lights	6	21	553	28	48	112	634	40	0	49	15	72	0	22	6	26	1,632
Mediums	0	0	4	2	0	1	8	0	0	0	0	1	0	0	0	0	16
Total	6	21	557	30	48	113	642	40	0	49	15	73	0	22	6	26	1,648

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



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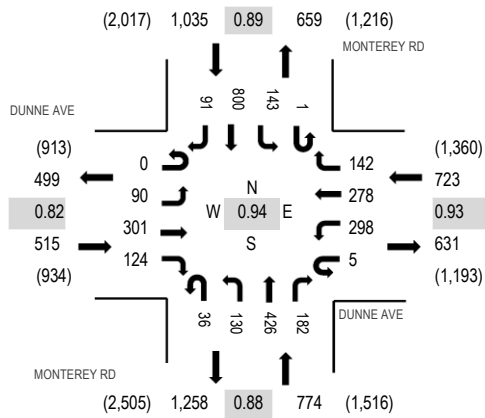
Location: 2 MONTEREY RD & DUNNE AVE PM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 04:45 PM - 05:45 PM

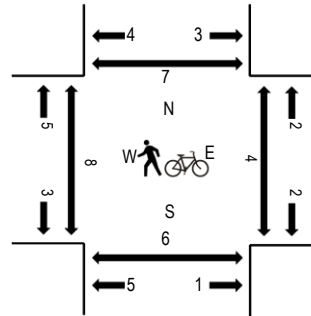
Peak 15-Minutes: 05:30 PM - 05:45 PM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				MONTEREY RD Northbound				MONTEREY RD Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
4:00 PM	0	16	64	21	1	76	39	14	13	20	107	43	1	26	214	19	674	2,837	6	2	6	0
4:15 PM	0	26	50	27	1	93	68	19	19	22	93	56	1	29	209	25	738	2,933	4	1	1	0
4:30 PM	0	20	62	32	2	66	80	20	19	29	82	50	0	33	184	17	696	2,933	3	1	1	0
4:45 PM	0	20	94	43	2	73	59	27	6	29	82	48	1	29	193	23	729	3,047	2	1	0	0
5:00 PM	0	27	47	28	0	83	61	40	7	48	126	47	0	38	195	23	770	2,990	2	1	1	0
5:15 PM	0	22	85	26	1	73	78	42	14	24	95	37	0	30	192	19	738		1	0	3	1
5:30 PM	0	21	75	27	2	69	80	33	9	29	123	50	0	46	220	26	810		2	1	2	2
5:45 PM	0	23	50	28	1	70	57	30	14	26	104	45	1	49	162	12	672		0	2	3	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lights	0	89	299	124	5	294	275	142	36	128	420	181	1	141	792	90	3,017
Mediums	0	1	2	0	0	4	3	0	0	2	6	1	0	2	8	1	30
Total	0	90	301	124	5	298	278	142	36	130	426	182	1	143	800	91	3,047

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



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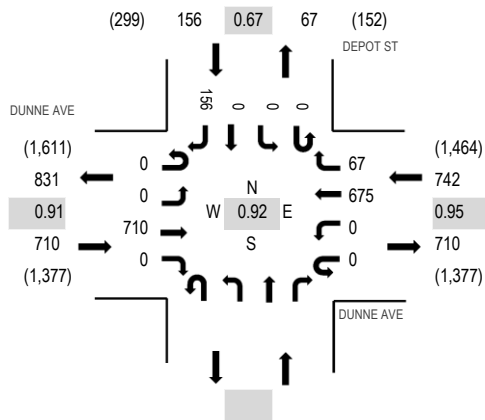
Location: 3 DEPOT ST & DUNNE AVE PM

Date and Start Time: Wednesday, December 14, 2016

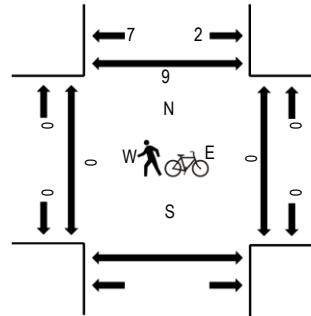
Peak Hour: 04:45 PM - 05:45 PM

Peak 15-Minutes: 05:30 PM - 05:45 PM

Peak Hour - All Vehicles



Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				Northbound				DEPOT ST Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
4:00 PM	0	0	185	0	0	0	0	127	20				0	0	0	59	391	1,541	0	0		4
4:15 PM	0	0	158	0	0	0	0	172	27				0	0	0	36	393	1,558	0	0		3
4:30 PM	0	0	180	0	0	0	0	165	11				0	0	0	26	382	1,553	0	0		1
4:45 PM	0	0	179	0	0	0	0	146	12				0	0	0	38	375	1,608	0	0		3
5:00 PM	0	0	172	0	0	0	0	158	18				0	0	0	60	408	1,599	0	0		0
5:15 PM	0	0	163	0	0	0	0	186	16				0	0	0	23	388		0	0		4
5:30 PM	0	0	196	0	0	0	0	185	21				0	0	0	35	437		0	0		1
5:45 PM	0	0	144	0	0	0	0	173	27				0	0	0	22	366		0	0		0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	0					0	0	0	0	0
Lights	0	0	706	0	0	0	667	67					0	0	0	156	1,596
Mediums	0	0	4	0	0	0	8	0					0	0	0	0	12
Total	0	0	710	0	0	0	675	67					0	0	0	156	1,608



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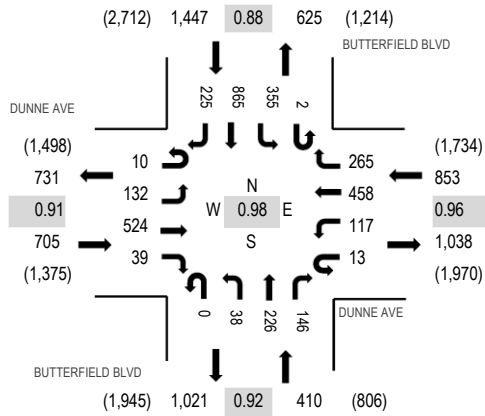
Location: 4 BUTTERFIELD BLVD & DUNNE AVE PM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 04:30 PM - 05:30 PM

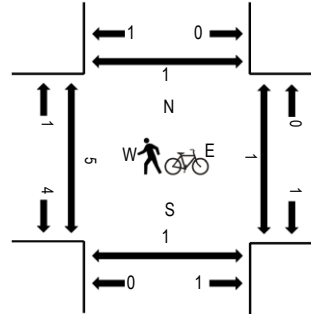
Peak 15-Minutes: 05:00 PM - 05:15 PM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	DUNNE AVE Eastbound				DUNNE AVE Westbound				BUTTERFIELD BLVD Northbound				BUTTERFIELD BLVD Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
4:00 PM	1	28	154	11	2	33	115	58	1	10	57	39	0	72	206	58	845	3,388	3	0	1	2
4:15 PM	1	33	106	4	4	28	120	58	0	9	51	42	0	65	233	61	815	3,412	0	0	2	0
4:30 PM	4	44	138	9	6	48	123	56	0	19	50	42	0	80	204	42	865	3,415	1	1	1	0
4:45 PM	4	30	135	9	5	20	91	63	0	5	51	34	0	96	258	62	863	3,380	1	0	0	0
5:00 PM	1	33	131	11	0	23	122	76	0	6	66	41	2	88	212	57	869	3,239	3	0	0	0
5:15 PM	1	25	120	10	2	26	122	70	0	8	59	29	0	91	191	64	818		0	0	0	0
5:30 PM	7	42	144	7	1	37	129	68	0	13	46	35	0	66	176	59	830		1	0	0	0
5:45 PM	7	22	90	13	5	32	116	75	0	12	50	31	1	76	143	49	722		1	0	1	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	3	0	0	0	0	0	1	0	1	1	0	6
Lights	10	129	523	39	13	114	456	264	0	38	221	144	2	350	854	216	3,373
Mediums	0	3	1	0	0	0	2	1	0	0	5	1	0	4	10	9	36
Total	10	132	524	39	13	117	458	265	0	38	226	146	2	355	865	225	3,415

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



(303) 216-2439
www.alltrafficdata.net

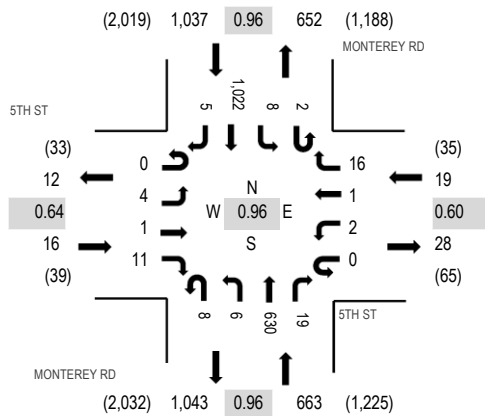
Location: 5 MONTEREY RD & 5TH ST PM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 04:45 PM - 05:45 PM

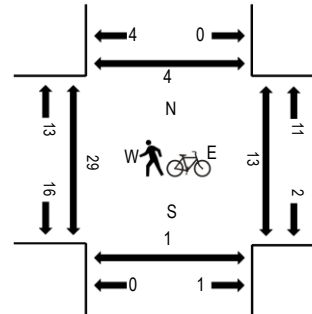
Peak 15-Minutes: 05:15 PM - 05:30 PM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	5TH ST Eastbound				5TH ST Westbound				MONTEREY RD Northbound				MONTEREY RD Southbound				Total	Rolling Hour	Pedestrian Crossings			
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right			West	East	South	North
4:00 PM	0	1	0	4	0	0	0	5	4	4	114	7	0	2	254	5	400	1,602	4	2	1	0
4:15 PM	0	1	0	6	0	1	0	3	6	5	134	7	0	1	263	0	427	1,632	8	4	1	0
4:30 PM	0	0	0	9	0	0	0	0	1	0	127	1	1	3	226	2	370	1,656	4	2	2	0
4:45 PM	0	0	0	1	0	1	0	1	1	1	141	5	0	3	250	1	405	1,735	8	6	1	0
5:00 PM	0	2	0	4	0	1	0	2	2	2	163	6	1	0	246	1	430	1,716	9	4	0	1
5:15 PM	0	1	1	5	0	0	0	10	0	1	165	3	1	2	260	2	451		8	1	0	0
5:30 PM	0	1	0	1	0	0	1	3	5	2	161	5	0	3	266	1	449		4	2	0	2
5:45 PM	0	0	0	2	0	1	0	6	1	1	141	9	3	7	211	4	386		5	4	0	0

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lights	0	4	1	11	0	2	1	16	8	6	623	19	2	8	1,010	4	1,715
Mediums	0	0	0	0	0	0	0	0	0	0	7	0	0	0	12	1	20
Total	0	4	1	11	0	2	1	16	8	6	630	19	2	8	1,022	5	1,735

Attachment: Depot Street Realignment Traffic Counts (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



(303) 216-2439
www.alltrafficdata.net

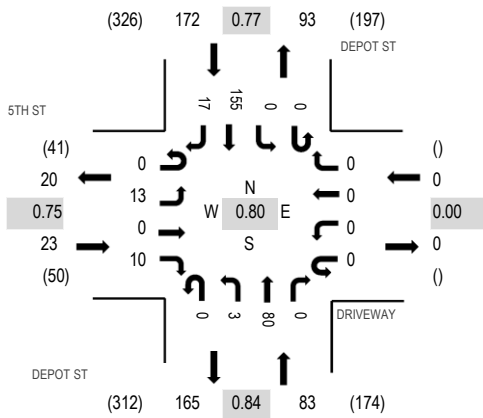
Location: 6 DEPOT ST & DRIVEWAY PM

Date and Start Time: Wednesday, December 14, 2016

Peak Hour: 04:00 PM - 05:00 PM

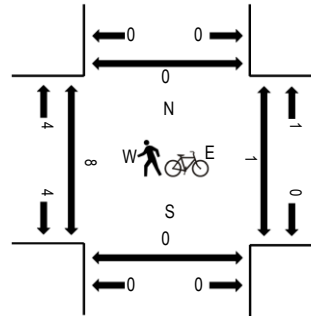
Peak 15-Minutes: 04:00 PM - 04:15 PM

Peak Hour - All Vehicles



Note: Total study counts contained in parentheses.

Peak Hour - Pedestrians/Bicycles in Crosswalk



Traffic Counts

Interval Start Time	5TH ST				DRIVEWAY				DEPOT ST				DEPOT ST				Total	Rolling Hour	Pedestrian Crossings				
	Eastbound				Westbound				Northbound				Southbound						West	East	South	North	
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right							
4:00 PM	0	2	0	5	0	0	0	0	0	2	22	0	0	0	53	3	87	278	1	0	0	0	
4:15 PM	0	6	0	0	0	0	0	0	0	0	26	0	0	0	35	6	73	273	2	0	0	0	
4:30 PM	0	1	0	3	0	0	0	0	0	1	13	0	0	0	30	3	51	266	2	0	0	0	
4:45 PM	0	4	0	2	0	0	0	0	0	0	19	0	0	0	37	5	67	278	3	1	0	0	
5:00 PM	0	5	0	2	0	0	0	0	0	1	19	0	0	0	53	2	82	272	0	0	0	1	
5:15 PM	0	7	0	2	0	0	0	0	0	0	19	0	0	0	31	7	66		0	0	0	0	
5:30 PM	0	2	0	1	0	0	0	0	0	1	24	0	0	0	31	4	63		1	0	0	0	
5:45 PM	0	3	0	5	0	0	0	0	0	2	25	0	0	0	22	4	61		4	0	1	0	

Peak Rolling Hour Flow Rates

Vehicle Type	Eastbound				Westbound				Northbound				Southbound				Total
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	
Articulated Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lights	0	13	0	10	0	0	0	0	0	3	80	0	0	0	155	17	278
Mediums	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	13	0	10	0	0	0	0	0	3	80	0	0	0	155	17	278

From: [Edith Ramirez](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Leslie Little](#); [Jennifer Carman](#); [Tiffany Brown](#); [Christina Turner](#); [Chris Ghione](#)
Subject: FW: Depot
Date: Tuesday, April 10, 2018 1:38:00 PM

For the Hale Lumber/Depot Realignment project—please include in Council Packet...one of two emails.

From: Robert Hammond <bobh18race6@gmail.com>
Sent: Tuesday, April 10, 2018 12:52 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Depot

Edith, I am giving you some of my thoughts for the meeting on April 18th since I will be out of town. I have worked at Hale Lumber since 1960 and have witnessed the changes. The current use of entering Depot from Dunne and Depot to Dunne is dangerous and at times a quagmire. There is no good way to connect Depot to Church, but all are better than the present situation. Now there is no flow of traffic from Depot to Church. With the new projects and new restaurants being close to completion the traffic will naturally increase without any flow. Any flow will be an improvement and when there is more congestion people will finally start use alternate routes. I was at the meeting when the Brookfield project was being discussed there was some politics in the air. The facts will always remain that improvement is needed and the facts should be used to come to an outcome beneficial to the City and its people. Hale Lumber has from 15 to 30 semi trucks per week that have no easy way to get to the yard. The trucks turn right on Monterey from Dunne and turn right on 4th , right on Depot to get to the staging area in the yard. To leave they go down 5th street and go left or right on Monterey to get back to 101. The can exit Depot turn right on Dunne but the need to make a U turn to get to 101. Traffic can go North on Depot to Main and go right or left to get to 101. You can see there is no easy way for the big rigs to get in and out of town. Our own trucks have the same problem getting and out. Hale traffic along with food service trucks making deliveries in the downtown is magnified that is also not pleasant for the foot traffic. In order for Hale to consider relocation we would need to have the revenue from a sale to start looking for a properly zoned location. Garrett Toy a city official, contacted me over 10 years ago to look at relocation and at that time we said would if there was enough revenue for land purchase and relocation we would, every year that goes by makes it more and more difficult. Thank you Robert V. Hammond Sr.

Attachment: Property Owner - Robert Hammond email (1630 : Exclusive Right to Negotiate: Hale Lumber Site)

From: [Edith Ramirez](#)
To: [Angie Gonzalez](#); [Michelle Bigelow](#)
Cc: [Leslie Little](#); [Jennifer Carman](#); [Chris Ghione](#); [Christina Turner](#); [Tiffany Brown](#)
Subject: FW: Depot
Date: Tuesday, April 10, 2018 1:39:32 PM

For the Hale Lumber/Depot Realignment project—please include in Council Packet...two of two emails.

From: Robert Hammond <bobh18race6@gmail.com>
Sent: Tuesday, April 10, 2018 12:55 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Depot

Attached a typical day at Hale in regards to trucking.

Attachment: Property Owner - Robert Hammond email (1630 : Exclusive Right to Negotiate: Hale Lumber Site)





Tiffany Brown

From: Charles Weston <charles@wmarchitects.com>
Sent: Wednesday, April 11, 2018 12:50 PM
To: Tiffany Brown
Subject: Hale development - From Charles Weston
Attachments: 04112018124516-0001.pdf

Hi Tiffany, here is my opposing thoughts on this project and attached is a plan I think works better. Really, the plan the developer proposed is no better than what currently exists. Please let me know you have received and if there is anything else I need to do so it can be included in your packet.

Hale Lumber Residential project and Proposed alignment

The current proposed plan for the Hale Depot project is not taking into consideration several important factors. The most significant is the traffic flow that will be substantially increasing with the introduction of more units being constructed on Depot including a significant number of apartment units behind the parking structure and the current 25 units that are being constructed now as well as this new project. The second is the preservation of native Oaks required by City code. Finally the division of the existing parking lot at the CCC and site safety.

Regarding the street alignment

Depot Street needs a more direct access to the Dunne and Church street intersection with as few driveway approaches and pedestrian crossings as possible due to the significant amount of existing traffic and traffic for projects already in the pipeline. The multiple numbers of access points on the proposed plans will be both dangerous and confusing with both one way and two-way traffic conditions. In an effort to start the conversation, I've included a quick sketch of an overall site plan that could work better. See attached site plan.

One option is to take the traffic from the development off of Depot exiting directly on to Dunne, very similar to the current conditions. This would just be internal traffic for the development so would be minimal.

Additionally, with Depot turning to parallel Dunne, stacking can occur and a direct lineup and connection to Church. The parking lot for the CCC remains intact allowing for a safer route for events and ensuring that ADA is met as well site safety with no cars backing into the road and confusing the intersection.

Regarding the removal of mature, historic native oak trees.

Morgan Hill City ordinance, the Downtown Plan, and the current Urban Forest Community group both rank native mature oak trees as a priority to maintain. This plan removes 3 of the 5 very large mature trees. With proper pruning maintenance and protection during construction, these trees would be an asset to the design. The opportunity to modify the design of the site and the units to properly address the existing trees should be required and should be included. Too often site design is based on housing blocks that could be constructed anywhere. Instead, we should be able to see site-specific plans that address the trees.

In summary, the plan may need to reduce the unit count slightly but to accommodate safety, proper traffic flow, accessibility, internal parking and maintaining the historic trees.

Sincerely,
 Charles Weston

Attachment: Public comment (1630 : Exclusive Right to Negotiate: Hale Lumber Site)

Charles Weston AIA, NCARB, LEED AP

Principal

P: (408) 779-6686 M: (408) 515-9468

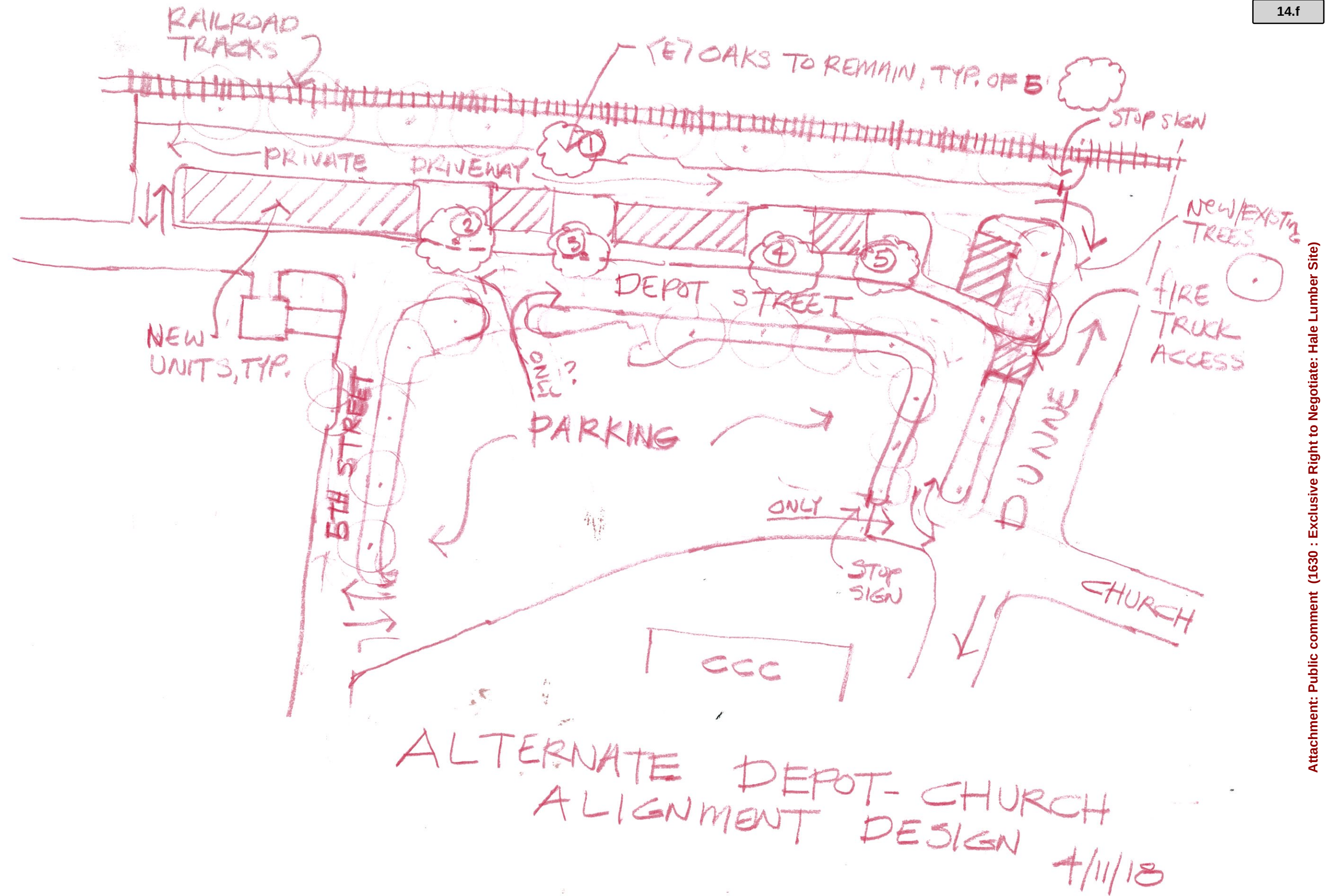
17500 Depot Street, Suite #120

Morgan Hill, CA 95037



Visit us at www.wmarchitects.com

Attachment: Public comment (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



Attachment: Public comment (1630 : Exclusive Right to Negotiate: Hale Lumber Site)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

ADOPTION OF RESOLUTIONS AND APPROVAL OF AGREEMENTS SUPPORTING THE PURCHASE OF AN AGRICULTURAL CONSERVATION EASEMENT ON FOUNTAIN OAKS RANCH

RECOMMENDATION(S)

1. Adopt resolution approving and supporting the purchase of an agricultural conservation easement (Easement) by the Santa Clara Valley Open Space Authority (Authority) on Fountain Oaks Ranch;
2. Adopt resolution amending the Adopted Fiscal Year 2017-2018 Budget to appropriate \$2,000,000 from the City's Agriculture and Open Space Preservation Fund (Fund 306) for the City's contribution to the Easement purchase;
3. Authorize the City Manager to execute a Funding Agreement with the Authority and Santa Clara County (County) requiring the contribution of up to \$3,000,000 of City funds for the purchase of the Easement subject to further negotiation and the review and approval of the City Attorney; and
4. Authorize the City Manager to execute an agreement or memorandum of understanding with the State of California, Authority, and County apportioning the mitigation credits associated with the Easement proportionally among the parties funding the purchase of the Easement subject to further negotiation and the review and approval of the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to approve moving forward with the collaborative purchase of an approximately 68-acre agricultural easement on the Fountain Oaks Ranch.

On November 5, 2014, the City Council adopted an Agricultural Lands Preservation Program (Program) as a component of the City's actions addressing the Southeast Quadrant (SEQ). While the related land use annexation in the SEQ was denied by the Santa Clara Local Agency Formation Commission, the Agricultural Program (Program) remains active and a high priority for the City. Preserving agricultural uses is specifically

called out as one of the “Big Ideas” in the City’s new General Plan and is supported by numerous policies in the General Plan.

A key implementation activity in the Program involves securing agricultural conservation easements on private properties through dedication, purchase, or donation. Once recorded, an agricultural conservation easement essentially eliminates future development or subdivision of the subject property, which ensures that the land will remain available for agricultural activities. The Program specifies that the City’s efforts to secure easements should be focused within the SEQ itself.

For the past eighteen months, the City has been collaborating with staff from Santa Clara County (County) and the Santa Clara Valley Open Space Authority (Authority) on the development of a large agricultural conservation easement on the Fountain Oaks Ranch property. The City has funded the title report and appraisal for the property. The County, with the assistance of the City’s agricultural preservation consultant and staff from the Authority, prepared a grant application that was submitted to the State High Speed Rail Authority (HSR) last May. The HSR has tentatively awarded the grant for the easement purchase pending the resolution of some concerns relating to the appraisal and some relatively minor formalities. Adoption of the attached resolution is required by the State before the grant can be finalized.

If the grant is ultimately awarded, local matching funds from the City and the Authority will be required to bridge the gap between the grant award and the purchase price of the agricultural conservation easement. Pending final Council approval, the City has tentatively pledged up to \$3 million toward the easement purchase. There is currently \$1 million of appropriated funds available for property acquisition in the “Agricultural Preservation” project in the Capital Improvement Program. This amount was a placeholder as the actual costs of easements are not known during budget preparation. The second attached resolution appropriates the additional \$2 million needed to fund this investment from Fund 306, the City’s Agriculture and Open Space Preservation Fund. The actual final investment required from the City, which cannot exceed \$3 million, will be determined when the State approves the final appraisal.

The Council’s approval of two additional agreements is recommended in order to enable the City to move forward in support of the Easement. The first is a Funding Agreement between the City, the County, and the Authority. This agreement specifies each agency’s required investment in the Easement and the applicable uses. Of primary interest to the City is the specification of nearly \$3 million in investment from the City and a requirement that the mitigation credits that the City garners from the investment can only be used to mitigate agricultural land conversion within the City’s existing incorporated boundaries. As noted above, the actual final investment required from the City, which cannot exceed \$3 million, will be determined when the State approves the final appraisal. The draft agreement is attached and will be finalized once the appraisal is approved by the State. Staff recommends that the Council authorize the City Manager to execute the Funding Agreement subject to further negotiation and the review and approval of the City Attorney.

The second agreement will be a brief agreement or memorandum of understanding that apportions the mitigation credits among the funding parties. This simple document has not yet been drafted by the State and staff recommends authorizing the City Manager to execute it subject to further negotiation and the review and approval of the City Attorney. Given the size of the easement and the City's level of investment, the City's mitigation credits will be approximately 29 acres. These credits will be banked to cover future conversions of agricultural lands within the City's current boundaries. Despite the banking of the credits, the developer of future projects resulting in the conversion of agricultural lands will still be required to pay the City's mitigation fee in order to partly reimburse the City's Agriculture and Open Space Preservation Fund for this advance investment.

COMMUNITY ENGAGEMENT: Collaborate

The concept of preserving agricultural land in and around the City is itself an outgrowth of input and discussion held with the community. The purchase of this agricultural conservation easement is only possible because the City, the land owner, and other organizations collaborate to secure the easement.

ALTERNATIVE ACTIONS:

The Council could decline to adopt the resolution or approve the related agreements.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the Agricultural Lands Preservation Program on November 5, 2014. The support of the grant submission to the HSR and negotiation parameters were approved by the Council on May 17, 2017.

FISCAL AND RESOURCE IMPACT:

The City's final direct contribution to the purchase of the Easement is expected to be slightly less than \$3 million. Funds for this investment come from Fund 306, the City's Agriculture and Open Space Preservation Fund. The primary revenue source for this Fund is voluntary contributions from developers made through the Residential Development Control System. Additional revenues contributed to the Fund come from mitigation fees required for development that converts agricultural lands.

In round numbers, the total easement cost of nearly \$7 million will be funded by a \$3.5 million state grant, \$3 million from the City's investment, and \$0.5 million from the Authority.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities authorized by this report are categorically exempt under the provisions of the California Environmental Quality Act Guidelines as specified in Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) Subsection (b) Acquisition, sale or other transfer of areas to allow continued agricultural use of the areas.

LINKS/ATTACHMENTS:

1. CMH Resolution Approving Ag Easement on Fountain Oaks Ranch
2. Resolution for Easement Appropriation
3. Budget Scorecard for Fountain Oaks Ranch
4. DRAFT Easement Funding Agreement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE AGRICULTURAL CONSERVATION EASEMENT ACQUISITION OF APPROXIMATELY 68 ACRES OF FOUNTAIN OAKS RANCH IN COORDINATION WITH THE CALIFORNIA DEPARTMENT OF CONSERVATION'S AGRICULTURAL LAND MITIGATION PROGRAM

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

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;

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 "Adoption of Resolutions and Approval of Agreements Supporting the Purchase of an Agricultural Conservation Easement on Fountain Oaks Ranch" submitted for City Council consideration at its meeting of April 18, 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;

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

WHEREAS, the activities allowed under this Resolution are categorically exempt under the provisions of the California Environmental Quality Act Guidelines as specified in Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) Subsection (b) Acquisition, sale or other transfer of areas to allow continued agricultural use of the areas;

WHEREAS, the City of Morgan Hill (City) has adopted an *Agricultural Lands Preservation Program* which calls for the permanent protection of agricultural lands in South Santa Clara County;

WHEREAS, City staff has been working collaboratively with Santa Clara County (County) staff, Santa Clara Valley Open Space Authority (Authority) staff, and the owners of Fountain Oaks Ranch to secure State funding for the purchase of an agricultural easement;

WHEREAS, the Agricultural Land Mitigation Program is administered by the Department of Conservation in collaboration with other public agencies to secure agricultural conservation easements for mitigation purposes;

WHEREAS, in cooperation with the Department of Conservation's Agricultural Land Mitigation Program, the California High Speed Rail Authority has approved a grant to support the purchase of an agricultural conservation easement on the Fountain Oaks Ranch; and

WHEREAS, the Authority, using funding from the State grant, the City, the Authority itself, and the County, intends to purchase an agricultural conservation easement from the owners of Fountain Oaks Ranch on approximately 68 acres of Fountain Oaks Ranch located generally on the northwest corner of Foothill Avenue and Maple Avenue in unincorporated Morgan Hill for the purpose of conserving priority agricultural land resources.

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 the proposed easement purchase is approved and meets the following eligibility criteria:

- The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.
- The City and County have general plans which demonstrate a long-term commitment to agricultural land conservation. This commitment is reflected in the goals, objectives, policies, and implementation measures of the plan, as they relate to the area of Santa Clara County where the easement acquisition is proposed.
- Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future

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

City of Morgan Hill
 Resolution No.
 Page 3 of 3

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: CMH Resolution Approving Ag Easement on Fountain Oaks Ranch (1717 : Chiala Easement Approval)

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 AGRICULTURE AND OPEN SPACE PRESERVATION FUND (FUND NO. 306) TO APPROPRIATE \$2 MILLION THEREFOR

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

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;

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 "Adoption of Resolutions and Approval of Agreements Supporting the Purchase of an Agricultural Conservation Easement on Fountain Oaks Ranch" submitted for City Council consideration at its meeting of April 18, 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;

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

WHEREAS, the activities allowed under this Resolution are categorically exempt under the provisions of the California Environmental Quality Act Guidelines as specified in Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) Subsection (b) Acquisition, sale or other transfer of areas to allow continued agricultural use of the areas;

WHEREAS, the City of Morgan Hill (City) has previously adopted a resolution approving the investment of City funds in the purchase of an agriculture conservation easement on Fountain Oaks Ranch in collaboration with Santa Clara County and the Santa Clara Valley Open Space Authority that is consistent with the strategy identified in the City's adopted *Agricultural Lands Preservation Program*;

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 additional funds required to fulfill the City's pledged investment in the conservation easement;

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 the proposed easement purchase is approved and meets the following eligibility criteria:

- 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 the City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

Attachment: Resolution for Easement Appropriation (1717 : Chiala Easement Approval)

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution for Easement Appropriation (1717 : Chiala Easement Approval)

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

034

FUND:

DEPARTMENT:

OBJECT:

306	Agricultural Preservation and Open Space Fund
8063	Open Space
86360	CONSTRUCTION (Project 140016)

AGENDA DATE:

AGENDA ITEM TITLE:

04/18/18
Property Acquisition Fountain Oaks Ranch

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	6,014,382	1,539,970	2,481,696	5,072,656
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	265,000	(265,000)
RECOMMENDED ACTION	-	-	2,000,000	(2,000,000)
RESULT OF RECOMMENDED ACTION	6,014,382	1,539,970	4,746,696	2,807,656

Attachment: Budget Scorecard for Fountain Oaks Ranch (1717 : Chiala Easement Approval)

FUNDING AGREEMENT

This FUNDING Agreement (“Agreement”) is entered into between the County of Santa Clara (“COUNTY”), Santa Clara Valley Open Space Authority (“OSA”), and the City of Morgan Hill (“CITY”) (COUNTY, OSA, and CITY are sometimes referred to herein individually as a “Party”, and collectively as the “Parties”).

WHEREAS:

1. Parties have identified a parcel which has open space and agricultural value, located within an unincorporated area of the County of Santa Clara, State of California, described as Santa Clara County Assessor’s Parcel Number 817-21-011, containing in the aggregate approximately 68.36 acres, more or less, and further described in Exhibit A attached hereto (the “Property”);
2. Parties agree that purchase of an Agricultural Conservation Easement (“Easement”) attached hereto as Exhibit B on and over the Property will serve as mitigation through the California Department of Conservation’s Agricultural Land Mitigation Program for impacts of High Speed Rail and through the City of Morgan Hill’s Agricultural Lands Preservation Program for development within current municipal boundaries and the Parties shall receive mitigation credit proportional to their funding amounts towards the Purchase Price of **\$XXX,XXX**;
3. The purpose of this Agreement is to establish funding terms necessary to acquire the Easement.

Now, therefore, in consideration of the foregoing, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Parties Contribution to Purchase Easement:
 - A. COUNTY agrees to fund and deposit into escrow all transactional expenses associated with purchase of the Easement, not covered by the Seller, which shall include but not be limited to standard escrow fees, Pro Forma, and title insurance. (“County’s Contribution”)
 - B. CITY agrees to fund and deposit into escrow **Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00)** toward the purchase of the Easement (“City’s Contribution”). The City acknowledges that the City will be awarded mitigation credit proportional to the City’s Contribution and any such mitigation credit awarded may only be applied toward new development within the City’s existing municipal limits as it exists on the date of the close of escrow for the Easement, and this mitigation credit shall not be used for mitigation for any annexations to the City after the close of escrow for the Easement.

- C. OSA agrees to fund and deposit into escrow **Five Hundred Thousand Dollars (\$500,000.00)** toward the purchase of the Easement (“OSA’s Contribution”) and to hold the Easement in perpetuity.
- D. The Parties acknowledge that this Funding Agreement sets forth the Parties’ respective funding contribution toward the purchase of the Easement.
2. Contingency: This Agreement is contingent upon:
- A. Department of General Services approving the appraised purchase price of the Easement.
 - B. The Parties securing funding from the California Department of Conservation’s Agricultural Lands Mitigation Program, with an authorized funding match by both the CITY and the OSA.
3. Captions: Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, or as evidence of the intention of the Parties hereto.
4. Choice of Laws: This Agreement will be governed by the laws of the State of California.
5. Entire Agreement: This Agreement constitutes the Parties’ final and complete understanding with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings and agreements regarding the subject matter of this Agreement.
6. Writing: This Agreement may be modified or amended only as mutually agreed upon by the Parties in writing.
7. Notice: Any notices pursuant to this Agreement will be given to the Party at its address specified below. A Party may specify another address for receipt of any notice only by written notice to the other Party. Notices shall be deemed given upon personal delivery or fax (with confirmation of complete receipt), or three (3) days after deposit in the U.S. mail with the necessary postage. The Parties agree to send by electronic mail a courtesy copy of any notice provided pursuant to this Section 7.

If to OSA, to: Andrea Mackenzie, General Manager
 Santa Clara Valley Open Space Authority
 33 Las Colinas Lane
 San Jose, CA 95119
 Telephone: (408) 224-7476
 Email: amackenzie@openspaceauthority.org

If to COUNTY, to: Rob Eastwood

Attachment: DRAFT Easement Funding Agreement (1717 : Chiala Easement Approval)

If to CITY, to:

Christina Turner, City Manager
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

8. Counterparts: This Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together will constitute one agreement.
9. Mutual Cooperation and Fair Dealings: Each Party hereto agrees to execute and deliver such other and further instruments and documents as may reasonably be requested by the other to carry out this Agreement. Each Party hereto covenants to use its best efforts to cause satisfaction of all conditions to its obligation under this Agreement, and to exercise good faith in fulfilling its obligations under this Agreement.
10. Miscellaneous: Should any provisions of this Agreement prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof and such remaining provisions shall remain in full force and effect. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any Party.

[remainder of page intentionally left blank]

In witness whereof, the Parties have caused this Agreement to be duly executed as of the date first set forth above by their respective duly authorized officers.

THE COUNTY OF SANTA CLARA

Approved as to form:

 _____, County Counsel

SANTA CLARA VALLEY OPEN SPACE AUTHORITY

Andrea Mackenzie, General Manager

Approved as to form:

 William P. Parkin, Legal Counsel

THE CITY OF MORGAN HILL

Christina Turner, City Manager

Approved as to form:

 Donald Larkin, City Attorney

Attachment: DRAFT Easement Funding Agreement (1717 : Chiala Easement Approval)

Exhibit A

Legal Description

DRAFT

Attachment: DRAFT Easement Funding Agreement (1717 : Chiala Easement Approval)

Exhibit B

Agricultural Conservation Easement

DRAFT

Attachment: DRAFT Easement Funding Agreement (1717 : Chiala Easement Approval)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

PUBLIC HEARING AND BALLOT TABULATION FOR SANDALWOOD SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

RECOMMENDATION(S)

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purposes of this report are to:

- provide the public with a final 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);
- call an official close to the submission of ballots;
- tabulate the ballots; and
- certify the results of the ballot proceeding.

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.

The City Council approved the resolution of intent needed to start this process at its meeting of February 21, 2018. Immediately thereafter, City staff mailed the required public notice and ballot to all of the property owners in the Sandalwood Subarea informing them about the ballot proceeding and their options to respond. The mailing included a special return envelope and the City Clerk has been receiving sealed ballots in the intervening weeks. These ballots will now be opened and tabulated at the close of tonight's public hearing.

Once the ballots have been tabulated, the City Clerk will announce the results of the tabulation and the Council may adopt a resolution certifying the results of the ballot proceeding. If it is not possible to tabulate the ballots for some unforeseen reason, the City Council may continue the item to a future meeting in order to finalize the tabulation.

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:

N/A

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. A public meeting allowing the public to "be heard" was convened at the April 4, 2018 Council meeting.

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 on May 16, 2018. 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.

LINKS/ATTACHMENTS:

1. Resolution A Certifying Ballot Proceeding
2. Resolution B Certifying Ballot Proceeding

Resolution

A

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE RESULTS OF THE BALLOT TABULATION FOR THE ASSESSMENT BALLOT PROCEEDING SUBMITTED TO THE QUALIFIED PROPERTY OWNERS ON THE QUESTION OF THE PROPOSED INCREASE IN THE MAXIMUM ASSESSMENT RATE FOR THE SANDALWOOD SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING IN FISCAL YEAR 2018/19

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council has previously formed Landscape Assessment District No. 1 (District), previously the Fox Hollow/Murphy Springs Landscape Assessment District, to levy and collect assessments pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the “Act”) that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto;

WHEREAS, City representatives have met with residents of the Sandalwood Subarea of Landscape Assessment District No. 1 who have expressed an interest in increasing the level of maintenance in the Sandalwood Subarea in order to obtain a higher level of service;

WHEREAS, the City Council adopted a Resolution of Intent on February 21st approving a supplemental engineer’s report and initiating an assessment ballot proceeding on the question of increasing the maximum amount of the assessments in the Sandalwood Subarea;

WHEREAS, immediately thereafter, the City mailed a notice and ballot to all of the property owners in the Sandalwood Subarea; and

WHEREAS, the City Clerk has tabulated the ballots submitted in compliance with State law.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO CHAPTER 2, SECTION 22587 OF THE ACT AND CALIFORNIA CONSTITUTIONAL ARTICLES XIII C AND XIII D, AS FOLLOWS:

Results: The City Clerk has tabulated the ballots properly and legally submitted on the question of increasing the maximum assessment allowed in the Sandalwood Subarea and determined that a majority protest of “No” votes has not been submitted. Without a majority protest, the maximum assessment rate for the Sandalwood Subarea of the District is increased beginning in the 2018-2019 Fiscal Year to \$450.

City of Morgan Hill
Resolution No.
Page 2 of 2

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April, 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution A Certifying Ballot Proceeding (1701 : Sandalwood Final Public Hearing)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE RESULTS OF THE BALLOT TABULATION FOR THE ASSESSMENT BALLOT PROCEEDING SUBMITTED TO THE QUALIFIED PROPERTY OWNERS ON THE QUESTION OF THE PROPOSED INCREASE IN THE MAXIMUM ASSESSMENT RATE FOR THE SANDALWOOD SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING IN FISCAL YEAR 2018/19

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council has previously formed Landscape Assessment District No. 1 (District), previously the Fox Hollow/Murphy Springs Landscape Assessment District, to levy and collect assessments pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the “Act”) that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto;

WHEREAS, City representatives have met with residents of the Sandalwood Subarea of Landscape Assessment District No. 1 who have expressed an interest in increasing the level of maintenance in the Sandalwood Subarea in order to obtain a higher level of service;

WHEREAS, the City Council adopted a Resolution of Intent on February 21st approving a supplemental engineer’s report and initiating an assessment ballot proceeding on the question of increasing the maximum amount of the assessments in the Sandalwood Subarea;

WHEREAS, immediately thereafter, the City mailed a notice and ballot to all of the property owners in the Sandalwood Subarea; and

WHEREAS, the City Clerk has tabulated the ballots submitted in compliance with State law.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO CHAPTER 2, SECTION 22587 OF THE ACT AND CALIFORNIA CONSTITUTIONAL ARTICLES XIII C AND XIII D, AS FOLLOWS:

Results: The City Clerk has tabulated the ballots properly and legally submitted on the question of increasing the maximum assessment allowed in the Sandalwood Subarea and determined that a majority protest of “No” votes has been submitted. With a majority protest, the maximum assessment rate for the Sandalwood Subarea of the District is not increased.

City of Morgan Hill
 Resolution No.
 Page 2 of 2

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of April, 2018.

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

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution B Certifying Ballot Proceeding (1701 : Sandalwood Final Public Hearing)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Richard Smeaton,
APPROVED BY: City Manager

ZA2017-0007, DA2017-0003: E. DUNNE-KYONO (FORMERLY E. DUNNE MANA) - ZONING AMENDMENT AND DEVELOPMENT AGREEMENT FOR A 32 LOT SUBDIVISION, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-02-014 LOCATED AT 505 E. DUNNE AVENUE

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

MH Las Colinas 2017, LLC proposes a Development Agreement to memorialize Residential Development Control System (RDCS) public benefit commitments and a Zone Change to establish a residential PD Master Plan for 32 dwelling units and associated improvements. The project includes 24 attached single-family units and 8 detached single-family units. Two units are Below Market Rate (BMR) units. There is a 0.36-acre park with a play area, and shade arbor included within the development.

Planning Commission Review

The Planning Commission held a public hearing on the Zoning Amendment, the Development Agreement, the Tentative Subdivision Map, the Substitution of RDCS public benefit commitments and the Environmental Assessment at its March 27, 2018 meeting. Reviewing the Initial Study, the Planning Commission was concerned with the air quality analysis and consideration of the adjacent sensitive receptors (Morgan Hill KinderCare). The Planning Commission modified the Standard Conditions of Approval to require the site to be watered more than two times a day, if necessary for dust

control. The Planning Commission accepted the applicant's proposal to substitute the public benefit commitments, except for the request for project excellence points. With the requested substitutions, the project was able to retain the original RDCS score. There was discussion regarding the requirement for the project to provide a reciprocal public pedestrian access easement traversing the central open space through the project. The purpose of this easement is to provide continued legal public access from St. Anthony Drive through the private open space to Las Colinas Drive to E. Dunne Avenue. The applicant did not object to this condition and it was accepted.

The Planning Commission recommend approval of the Zoning Amendment and the Development Agreement. The Planning Commission approved the Tentative Subdivision Map, the Substitution of RDCS public benefit commitments and adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project. A link to the Planning Commission staff report and related exhibits is included in this report.

COMMUNITY ENGAGEMENT:

The Morgan Hill Community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

The project was initially noticed for a public hearing with the Planning Commission on February 27, 2018, but was continued to March 27, 2018. Several neighboring property owners attended that meeting and expressed concerns with the design of the street circulation for the project. Following the continuance hearing, the applicant met with twenty-one property owners surrounding the project to discuss their concerns and incorporate suggested changes. Changes incorporated into the project include replacing the one- story houses along the northern property line with two-story houses.

ALTERNATIVE ACTIONS:

In addition to denial of the Zoning Amendment or the Development Agreement, the City Council could direct staff to make changes to the Zoning Amendment or the Development Agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted Ordinance No. 1047 N.S. on September 4, 1991 establishing the R-2 3,500 zoning for the site, with the Residential Planned Development (RPD) overlay district. A PD Master Plan was not adopted for the site.

The Planning Commission adopted Resolution No. 16-02 on January 12, 2016, awarding the project 16 Fiscal Year 2017-2018 residential building allotments.

On October 19, 2016, the City Council deemed the Kyono project a pre-existing Pipeline project in accordance with the Morgan Hill 2035 General Plan and allowed the project to compete in the 2016 RDCS process.

The City Council adopted Resolution 17-017 on February 15, 2017, reaffirming the award of an additional 15 Fiscal Year 2018-2019 residential allotments for full project buildout.

The City Council adopted Resolution No. 17-098 on December 6, 2017, changing the land use designation from Residential Attached Medium to Residential Attached Low.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

California Environmental Quality Act (CEQA):

A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

LINKS/ATTACHMENTS:

1. Zoning Amendment Ordinance - E. Dunne-Kyono
2. Development Agreement Ordinance - E. Dunne-Kyono
3. Development Agreement
4. Planing Commission Staff Report and related exhibits (web link)

ORDINANCE NO. NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING ZONING AMENDMENT ZA2017-0007 FOR A PLANNED DEVELOPMENT MASTER PLAN FOR A 32-UNIT RESIDENTIAL DEVELOPMENT TO BE LOCATED ON A 5.26- ACRE SITE LOCATED AT 505 E. DUNNE AVENUE. (APN 726- 02-014)

WHEREAS, MH Las Colinas 2017 LLC proposes to develop the property located at 505 E. Dunne Avenue, identified by Assessor Parcel Number(s) 726-02-014, on the north side of E. Dunne Avenue between Butterfield Boulevard and Walnut Grove Drive, with a 32-unit residential housing project;

WHEREAS, through the RDCS process, on January 12, 2016, the Planning Commission adopted Resolution No. 16-02 awarding the project 16, Fiscal Year 2017-2018 residential allotments and on February 15, 2017, the City Council adopted Resolution No. 17-017 reaffirming the award of an additional fifteen, Fiscal Year 2018-2019 residential allotments for full project buildout;

WHEREAS, said Planned Development (PD) overlay district requires the adoption of a PD Master Plan prior to development on the site;

WHEREAS, findings must be made pursuant to Section 18.62.070 to support a request for an amendment to a PD, and any Planned Development Plan shall be found consistent with the findings described in Section 18.30.050;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of March 27, 2018, at which time the Planning Commission recommended approval of Zoning Amendment application, ZA2017-0007: E. Dunne-Kyono; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

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

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan as required by Section 18.62.070 of the Municipal Code.

The project complies with the allowed density range for units on the site. The project is consistent with the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.070 of the Municipal Code.

The project is a housing project that would provide variety and opportunity for those seeking housing in the current market.

SECTION 3. The City Council of the City of Morgan Hill hereby finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study and the Mitigated Negative Declaration, and th

reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 4. The City Council finds that the Planned Development (PD) Master Plan is consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.

- A. The development of the subject property, with the uses and in the manner proposed by the applicant, will not be detrimental to the public welfare, will be in the best interests of the city, and will be in keeping with the general intent and spirit of the zoning regulations of the city of Morgan Hill, with the Morgan Hill General Plan, and with any applicable plans adopted by the city.

The project is a residential housing development which is requesting one modification to the underlying zoning ordinance to allow for larger lots than would normally be allowed in the R-2 3,500 zoning district. Larger lots will abut the existing single family lots to the north of the site. The project has been designed to blend in with adjoining zoning districts to the north and west of the project site.

- B. That the plan for the proposed development presents a unified and organized arrangement of buildings and/or service facilities which are appropriate in relation to adjacent or nearby properties, and that adequate landscaping and/or screening is included if necessary to insure compatibility.

The project includes single-story and two-story houses with articulated elevations including a variety of building materials and modulation of building planes. Landscaping provides a buffer between E. Dunne Avenue and the residences.

- C. Any exception from standard ordinance requirements is warranted by the provision of affordable housing, senior housing, overall quality of design and/or the incorporation of amenities within the general development plan, in accord with adopted policy of the Planning Commission and the City Council.

The exception for larger lots adjacent to the detached single-family houses to the north is warranted to increase overall quality of the design.

SECTION 5. The City Council hereby adopts the amendment to the Precise Development Plan, on file at the Development Services Department entitled "Las Colinas" dated March, 2018, as prepared by MH Engineering Co. The plan includes 32 units and one development variation for the development of the project on the 5.26-acre site, as illustrated in Exhibit A.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF APRIL 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ___ DAY OF _____, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____ New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the day of _____, 2018.

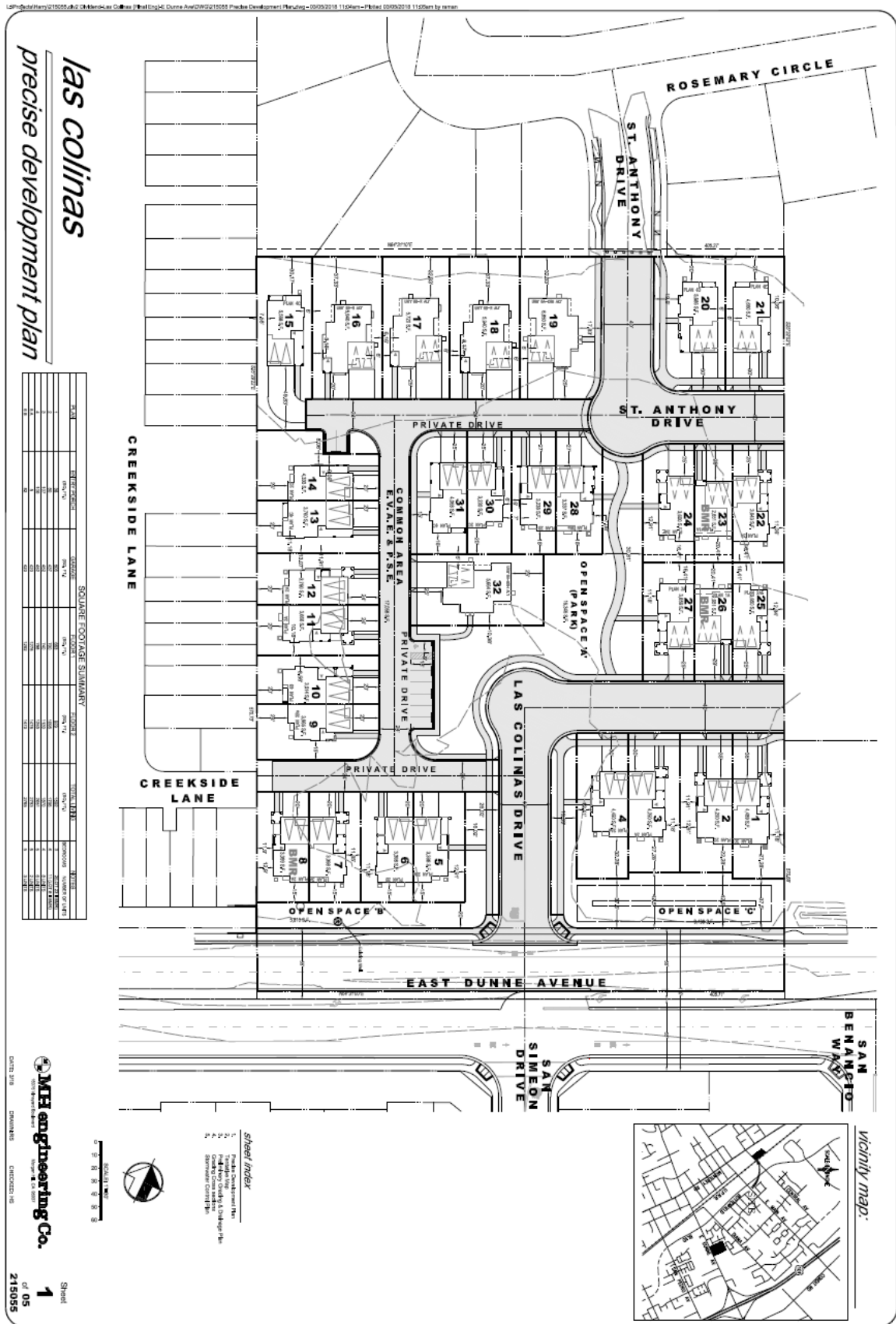
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

 IRMA TORREZ, City Clerk

Date: _____

Exhibit A



Attachment: Zoning Amendment Ordinance - E. Dunne-Kyono [Revision 1] (1714 : E. Dunne-Kyono Project)

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2017-
0003: E. DUNNE- KYONO FOR A 32-UNIT RESIDENTIAL
DEVELOPMENT ON A 5.26-ACRE SITE LOCATED AT 505
E. DUNNE AVENUE (APN 726-02-014)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.78 of the Morgan Hill Municipal Code, awarded 16 building allotments for application MC-15-16: E. Dunne-Mana for FY 2017-2018 and awarded 15 building allotments for application MC2016-0009: E. Dunne-Mana for FY 2018-2019.

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance number 1594, establishing a procedure for processing Development Agreements in Chapter 18.80 for projects receiving allotments through the Residential Development Control System, Chapter 18.78, of Title 18 of the Morgan Hill Municipal Code.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide 32 single-family residential units in a variety of housing options. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 6. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing development project is a permitted use within the R-2 3,500 zoning district and is compatible with the surrounding residential and commercial uses.

SECTION 7. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 8. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 9. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study and the Mitigated Negative Declaration and this finding reflects the City Council's independent judgment and analysis.. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 11. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 12. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 13. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF APRIL 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE __ DAY OF _____ 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk_____
STEVE TATE, Mayor

✧ CERTIFICATION ✧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the _____ day of _____, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
MH LAS COLINAS 2017, LLC
REGARDING
THE LAS COLINAS RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Development Agreement (1714 : E: Dunne-Kyono Project)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 MH LAS COLINAS 2017, LLC
 REGARDING THE
 LAS COLINAS PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and MH Las Colinas 2017, LLC, a limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.80 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. 31 building allotments (Sixteen (16) allotments for FY 2017-2018 and fifteen (15) allotments for FY2018-2019), and conditions attached to the award of such allotments including an exercise of allotment deadline of December 30, 2018 and December 30, 2019, respectively;
2. Zoning Amendment application ZA2017-0007;
3. Subdivision application SD2016-0009;
4. Environmental Assessment EA2016-0009;

The Existing Approvals are more particularly described in the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 12, 2016 the Morgan Hill Planning Commission awarded allotments for the project, and on February 15, 2017, the Morgan Hill City Council re-affirmed the award of additional allotments for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.78 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.78.120.J of the Code.

G. On March 27, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an Ordinance ("Ordinance"), accepting the recommendation of the Planning Commission, finding that this Agreement's provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) "**Director**" shall mean the Director of Community Development, and his or her designee.

- (5) *"Existing Approvals" shall have that meaning set forth in paragraph D of the Recitals of this Agreement.*
- (6) *"Existing City Laws" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.*
- (7) *"Impact Fees" shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.*
- (8) *"Legal Effect" shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.*
- (9) *"New City Laws" shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.*
- (10) *"Project" means the development containing residential uses, as more particularly described in the RDCS applications MC-15-16 E. Dunne-Mana and RDCS2016-0009 E. Dunne-Mana. Any reference in this Agreement to the "Project" shall mean and include the "Property".*
- (11) *"Project Approvals" mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.*
- (12) *"Property" shall mean that certain real property consisting of approximately 5.26 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.*
- (13) *"RDCS" means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.*
- (14) *"Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.*
- (15) *"Subdivision Document" means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.*
- (16) *"Subsequent Approvals" and "Subsequent Approval" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or*

desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) *All the provisions, terms and conditions of this Agreement.*
- (2) *Existing Approvals.*
- (3) *The Subsequent Approvals, provided such Subsequent Approvals are:*
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) *The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.*

- (5) *Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.*

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project

Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments may be allowed in limited circumstances, as provided in the adopted Planning Commission Policy entitled "Changes to Approved Residential Development Control System Projects", and Section IV. F and Table 1: "Criteria Advancing Objectives" of the RDCS Competition Manual. If the Substitution may be approved by the Director of Community Development,

the Substitution shall be documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. In circumstances in which Substitution within the same category is not possible, Substitution may be allowed only by resolution of the Planning Commission. No changes which would degrade the quality of the project, lower the value of commitments or lower the total point score in the RDCS evaluation, or would subject the Project to further environmental review under CEQA, shall be approved.

(c) The Developer's RDCS application – MC-15-16 and RDCS2016-0009 and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain

from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (e.g., City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal

laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer

of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.78.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.78.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, Substitution of Commitments within the same criteria category may be processed administratively by the Director. Any Administrative Amendment must be made in writing signed by the Director, and approved by the City Attorney, and by the Developer.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent

prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to

agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party

Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("City Costs"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which

notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages

because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Dick Oliver
MH Las Colinas 2017 LLC
385 Woodview Ave #100
Morgan Hill, CA 95037
Tel: (408) 779-5900
Fax: (408) 779-3840

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties appear on next page.

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IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date last hereinbelow written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney
Date: _____

DEVELOPER:

MH LAS COLINAS 2017, LLC

s/ Berkah S. Ellwin

President of Dividend Homes, Inc.,
Name/Title General Manager

Date: 4-12-18

Corporate entities must provide a
second signature:

s/

Vice President of Dividend
Name/Title Homes, Inc., General Manager

Date: 4-12-2018

Adopted by Ordinance No. _____

By action of City Council on _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)

Attachment: Development Agreement (1714 : E. Dunne-Kyono Project)

NOTARY ACKNOWLEDGEMENT

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 ClaraOn April 12, 2018 before me, Jamie Jessel, Notary Public
(insert name and title of the officer)personally appeared Richard B. Oliver

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

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

WITNESS my hand and official seal.

Signature

Jamie Jessel

(Seal)



EXHIBIT "A"

Legal Description

For APN/Parcel ID(s): 726-02-014

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING ALL OF THAT LAND DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

PORTION OF LOT 70, AS SHOWN UPON THAT CERTAIN MAP ENTITLED MORGAN HILL RANCH MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JUNE 1, 1892 IN BOOK G OF MAPS, PAGES 2 AND 3, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER OF LOTS 69 AND 70 IN THE 10 LINKS OR SALE LINE OF DUNNE AVENUE, AS SHOWN UPON THE MAP ABOVE REFERRED TO; AND RUNNING THENCE ALONG SAID 10 LINKS OR SALE LINE OF DUNNE AVENUE, NORTH 64° 31' EAST 6.14 CHAINS TO THE COMMON CORNER OF LOTS 70 AND 71 IN SAID 10 LINKS OR SALE LINE OF DUNNE AVENUE; THENCE ALONG THE LINE BETWEEN SAID LOTS 70 AND 71, NORTH 25° 29' WEST 8.646 CHAINS; THENCE PARALLEL TO SAID SALE LINE IN DUNNE AVENUE AND DISTANT 8.646 CHAINS, NORTHERLY THEREFROM, SOUTH 64° 31' WEST 6.14 CHAINS TO A POINT IN THE LINE BETWEEN SAID LOTS 69 AND 70; AND THENCE ALONG SAID LAST NAMED LINE SOUTH 25° 29' EAST 8.646 CHAINS TO THE POINT OF BEGINNING,

EXCEPTING THEREFROM: BEING A PORTION OF THAT LAND DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERN CORNER COMMON TO LOTS 7 AND 8, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN TRACT ENTITLED TRACT NO. 8736, STONE CREEK - PHASE 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, AUGUST 15, 1995 IN BOOK 669 OF MAPS AT PAGES 5 AND 6, AND RUNNING THENCE ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT 8, SOUTH 64° 32' 48" WEST, 48.24 FEET TO THE SOUTHERN MOST CORNER OF SAID LOT 8; THENCE LEAVING SAID SOUTHERN CORNER AND RUNNING ALONG THE WESTERN BOUNDARY LINE OF SAID LANDS OF KYONO, SOUTH 25° 27' 23" EAST, 5.70 FEET THENCE LEAVING SAID WESTERLY BOUNDARY LINE, NORTH 64° 32' 48" EAST, 44.12 FEET; THENCE NORTH 10° 24' 26" EAST, 7.03 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM: BEING A PORTION OF THAT LAND DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERN CORNER COMMON TO LOTS 7 AND 8, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN TRACT ENTITLED TRACT NO. 8736, STONE CREEK - PHASE 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, AUGUST 15, 1995 IN BOOK 669 OF MAPS AT PAGES 5 AND 6, AND RUNNING THENCE ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT 7, NORTH 64° 32' 48" EAST, 120.20 FEET TO THE SOUTHEASTERN MOST CORNER OF SAID LOT 7; THENCE LEAVING SAID SOUTHEASTERN CORNER, SOUTH 25° 29' 00" EAST, 5.70 FEET; THENCE SOUTH 64° 32' 48" WEST, 124.33 FEET; THENCE NORTH 10° 24' 26" EAST, 7.03 FEET TO THE POINT OF BEGINNING.

Attachment: Development Agreement (1714 : E: Dunne-Kyono Project)

Title No.: FWPS-4475170040-KF
Amendment: B

EXHIBIT "A"
Legal Description
(continued)

ALSO EXCEPTING THEREFROM: BEING A PORTION OF THAT LAND DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERN CORNER COMMON TO LOTS 5 AND 6, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN TRACT ENTITLED TRACT NO. 8736, STONE CREEK - PHASE 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, AUGUST 15, 1995 IN BOOK 669 OF MAPS AT PAGES 5 AND 6, AND RUNNING THENCE ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT 6, SOUTH 64° 32' 48" WEST, 35.09 FEET TO THE SOUTHERN MOST CORNER OF SAID LOT 6; THENCE LEAVING SAID SOUTHERN CORNER, SOUTH 25° 29' 00" EAST, 5.70 FEET; THENCE NORTH 64° 32' 48" EAST, 35.09 FEET; THENCE NORTH 25° 29' 00" EAST, 5.70 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM: BEING A PORTION OF THAT LAND DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERN CORNER COMMON TO LOTS 5 AND 6, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN TRACT ENTITLED TRACT NO. 8736, STONE CREEK - PHASE 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, AUGUST 15, 1995 IN BOOK 669 OF MAPS AT PAGES 5 AND 6, AND RUNNING THENCE ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOTS, NORTH 64° 32' 48" WEST, 51.94 FEET TO THE SOUTHEASTERN MOST CORNER OF SAID LOT 5; THENCE LEAVING SAID SOUTHEASTERN, SOUTH 25° 29' 00" EAST, 5.70 FEET; THENCE SOUTH 64° 32' 48" WEST, 51.89 FEET; THENCE NORTH 25° 29' 00" EAST, 5.70 FEET TO THE POINT OF BEGINNING

ALSO EXCEPTING THEREFROM: BEING A PORTION OF THAT LAND DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN MOST CORNER OF LOT 4, AS SAID LOT IS SHOWN UPON THAT CERTAIN TRACT ENTITLED TRACT NO. 8736, STONE CREEK - PHASE 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, AUGUST 15, 1995 IN BOOK 669 OF MAPS AT PAGES 5 AND 6, AND RUNNING THENCE ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT 4, SOUTH 64° 32' 48" WEST, 89.85 FEET TO THE SOUTHERN MOST CORNER OF SAID LOT 4; THENCE LEAVING SAID SOUTHERN CORNER AND RUNNING SOUTH 25° 02' 48" EAST, 5.70 FEET; THENCE NORTH 64° 32' 48" EAST, 89.90 FEET TO A POINT IN THE EASTERN BOUNDARY LINE OF SAID LANDS OF KYOTO THENCE ALONG SAID EASTERN BOUNDARY LINE NORTH 25° 30' 20" WEST, 5.70 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM BEING A PORTION OF THAT DESCRIBED IN THAT DECREE TERMINATING JOINT TENANCY OF MASUMI KYONO, RECORDED MARCH 25, 1960 IN BOOK 4741 AT PAGE 13, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Title No.: FWPS-4475170040-KF
Amendment: B

EXHIBIT "A"
Legal Description
(continued)

BEGINNING AT THE SOUTHERN MOST CORNER OF LOT 4, AS SAID LOT IS SHOWN UPON THAT CERTAIN TRACT ENTITLED TRACT NO. 8736, STONE CREEK - PHASE 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, AUGUST 15, 1995 IN BOOK 669 OF MAPS AT PAGES 5 AND 6, AND RUNNING THENCE ALONG THE SOUTHERN BOUNDARY LINE OF SAID TRACT, SOUTH 64° 32' 48" WEST, 60.00 FEET TO THE SOUTHEASTERN MOST CORNER OF LOT 5, AS SAID LOT IS SHOWN UPON THAT AFOREMENTIONED TRACT MAP; THENCE LEAVING SAID SOUTHEASTERN CORNER AND RUNNING SOUTH 25° 02' 48" EAST, 5.70 FEET; THENCE NORTH 64° 32' 48" EAST, 60.00 FEET; THENCE, NORTH 25° 02' 48" WEST, 5.70 FEET TO THE POINT OF BEGINNING.

Attachment: Development Agreement (1714 : E: Dunne-Kyono Project)

EXHIBIT B**DESCRIPTION OF PROJECT****LAS COLINAS**

MC-15-16 E. Dunne-Mana

FY 2016-2017: Sixteen (16) Building Allotments

Exercise of Allotment deadline December 30, 2018

RDCS2016-0009 E. Dunne-Mana

FY2018-2019: Fifteen (15) Building Allotments

Exercise of Allotment deadline December 30, 2019

Attachment: Development Agreement (1714 : E. Dunne-Kyono Project)

EXHIBIT C
SPECIFIC RESTRICTIONS AND REQUIREMENTS
(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to the Development proposed in the RDCS applications MC-15-16 and RDCS2016-0009 E. Dunne-Mana and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	\$825 per unit	Prior to issuance of building permits for each unit.	\$26,400
B.4	Off-site pedestrian safety improvements	\$4,950 per unit	Completed prior to the completion of the 20 th unit.	\$158,400
	Open Space			
B.1.a	Open space buffer (freeway/arterials)	Provided on site plan		N/A
B.1.b	Common useable open space	Private usable open space is provided with playground area and picnic area with shade trellis.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
<u>B.1.c</u>	<u>Convenient access to amenities</u>	<u>The project re-design allows for these points to be available to the project.</u>	<u>Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.</u>	<u>N/A</u>

Attachment: Development Agreement (1714 : E. Dunne-Kyono Project)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.d	Accessibility to parks/open space			N/A
B.1.e	<u>Access to existing/proposed parks outside project boundaries</u>	<u>An internal path to the City park has been provided which is not redundant to the sidewalk.</u>	<u>Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.</u>	<u>N/A</u>
B.1.f	Private usable open space for 75% or 100% (single-family attached projects)	Project provides private usable yards for all units		N/A
B.1.g	Dual purpose open space (storm water detention)	The centrally located common usable open space area will also retain underground storm retention.		N/A
B.1.h	Historical sites and landmarks			N/A
B.3	Shared open space (downtown vertical mixed projects)			N/A
B.4.a	TDC for projects (<20% slope)			N/A
B.4.b	TDC for projects (>25 units)			N/A
B.4.c	TDC for projects zoned R-2 or R-3	The project is zoned R-2. Applicant commits to purchase double TDC's from property owners with land of greater than twenty percent slope (based upon the ratio of one TDC for every twenty dwelling units proposed).	Prior to the final building inspection for each unit.	\$13,880 per unit = \$44,160
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines			N/A
B.5	<u>Project Master Plan</u>	<u>The project has been redesigned, addressing circulation issues and overall design and transition issues.</u>		<u>N/A</u>
	Public Facilities			
B.2.a	Grids water			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.b	Drainage concept consistent with City's storm drain system			N/A
B.2.c	Storm drain lines constructed within paved area of the street	Public Storm drains are proposed under paved streets.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.d	No on-site detention pond or open space retention areas required			N/A
B.2.e	Provides municipal water well			N/A
B.2.f	Excess public improvements	Applicant agrees to pay \$4,400 per unit to complete offsite street improvements from city approved list.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	\$140,800
B.2.g	Contribution to RDCS Capital Improvements fund	Applicant will contribute \$1,100 per unit to the RDCS Capital Improvements fund.	Prior to the final building inspection for each unit.	\$35,200
	Parks and Paths			
B.1	Park in-lieu fee (<50 units)	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to the final building inspection for each unit.	N/A
B.2	On-site recreational amenities	Project shall provide: a cabana or shade trellis areas; and a tot lot with a minimum of three age appropriate activities and two BBQ areas. <u>BBQ/picnic/shuffle board area will be added for two additional points.</u>	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.3	Bicycle/equestrian/pedestrian paths	Project shall provide at least .8 miles of Class II bike lanes. Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location	Prior to final occupancy permit being issued.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		for the Class II bike lane improvements to be installed		
B.4	Pedestrian connections (Downtown)			N/A
B.5	On-site/off-site neighborhood or public park (<150 units)			N/A
B.6	Additional park fees (in-lieu fee)	In addition to standard park fees, project shall pay the lesser of either six times the in-lieu park fees or \$3,300 per unit.	Prior to the issuance of building permit	\$105,600
B.7	Additional park fees (in-lieu fee) for projects (>50 units)			N/A
B.8	Dedication of land			N/A
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units			N/A
B.2.a	Standard Housing Fee			N/A
B.2.b	Double Housing Fee			N/A
B.2.c	Double Housing Fee and 20% dwellings with 2 nd dwellings			N/A
B.3.a	Affordable Units for Sale or Rent	Applicant commits to 8% BMR(s) units; 2 Low Income BMR(s) (70% AMI) 1 Low income BMR (70% AMI): 3 bedroom, 2 bath and approx. 1592 sq. ft of living area, located on Lot #23 1 Low income BMR (70% AMI): 4 bedroom, 2 bath and approx. 1796 sq. ft of living area. Located on Lot #8	BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. In this project, (1) BMR shall be finalized prior to the Certificate of Occupancy of 16th unit and (1) BMR shall be finalized prior to the Certificate of Occupancy of the 31st unit. Low Income Housing Contribution	\$72,000

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		Project will provide 2 BMR(s) priced at low income and pay 48% of a standard housing fee $8\% \times 31 = 2.48$ units. $.48 \times \\$150,000. = \\$72,000$. Fractional Fee. Fractional fee due prior to blue card signoff of your 31st unit. BMR sales price determination is based on median income and household size. All BMR units are deed restricted for 45 years. Final BMR sales price is based on verification of property zoning and housing types. Low Income is defined as 73% Area Median Income (as determined and updated annually by the State HCD). Individual unit prices are dependent on unit sizes/bedroom counts and subject to the prices shown in the City of Morgan Hill's "New BMR Sales Pricing Index" table. BMRs are also subject to the requirements listed under "Additional Requirements" and as referenced per the Affordable Housing Agreement (AHA). BMR units are subject to the following BMR Development Standards Adopted by City Council Resolution May 18, 2016:	will be provided before the Final Inspection of the 31st unit.	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		1. Location. BMR units shall be distributed evenly throughout the project. – in this project, BMR's will be located at Lot #'s 8 and 23. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; in this project, Lot #8 will be at least 4 bedroom/2 bath, and Lot #23 will be at least 3 bedroom/2bath. 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home. 6. Minimum Interior standard finishes will be as follows		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener		
B.3.b	Downtown overall affordability			N/A
B.3.c	Multi-family rental project (>150 units)			N/A
B.4	Joint Venture BMR units			N/A
B.5	Multi-family rental with 50% enclosed garages			N/A
	Housing Types			
B.1.a	Diversity of housing	Provides single story, detached and		N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		attached units.		
B.1.b	10% detached units (R-2), 10% attached units (R-1), 10% ownership (R-3)	Provides 10% detached units		N/A
B.2.a	Economic diversity	The applicant commits to provide 8% of the 32 units as BMRs, (2 Low-income BMRs for sale).	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.2.b	10% units affordable (>150 units)			N/A
B.3.a	Housing variation- single-family	Project meets criteria, provides at least fifty percent variation in house size from the smallest to largest floor plan and each house size represents at least ten percent of the total units. There are four floor plans.	Shall be shown on the site plan and shall be verified prior to the issuance of building permits.	N/A
B.3.b	Housing variation- Multi-family			N/A
B.3.c	Housing variation-Vertical mixed use			N/A
B.4	25% visitability accessible units	Applicant commits to providing 25 percent of units as visitability accessible units.	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
	Quality of Construction Standards			
B.1.a	OSB/Plywood wrap	Yes		N/A
B.1.b	Foundations	Yes		N/A
B.1.c	Wallboard	Yes		N/A
B.1.d	Electrical raceway	Yes		N/A
B.1.e	Storm doors	No		N/A
B.1.f	90% high efficiency fan forced heating	Yes		N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.g	Zoned heating and air conditioning	Yes		N/A
B.1.h	Multiple efficiency improvements	Yes		N/A
	Lot Layout and Orientation			
B.1.a	Complies with Zone District	Project will require one deviations from the lot size standards of the base zoning district, but otherwise complies with the underlying zoning district.	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.1.b	Excess side yard setbacks	The zoning is R-2 3,500. The minimum setback has been provided. Project does not create deep narrow lots and provides side yard setback of 6 to 12 feet, minimum required is 0, 3, or 4 feet depending product type in the R-2 3,500 district.	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	NA
B.1.c	Separation of buildings			NA
B.1.d	Avoids sound walls			N/A
B.1.e	Avoids driveways greater than 150 feet	Circulation consists of loop patterns with no driveways in excess of 150 feet.		N/A
B.1.f	Transition of lot sizes	Buildings in proper scale with existing improvements and similar zoning/product as surrounding properties.		N/A
B.1.g	Above average lot layouts			N/A
B.1.h	Project design	Single building, no repeat factor	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.2.a	Continuous park/open space	Playground in open space area conveniently located within	Shall be shown on building permit plans and complete prior to the	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		development	final building inspection for the final unit.	
B.2.b	<u>Enhance neighborhood security</u>	<u>Project has committed to additional security measures.</u>	<u>Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.</u>	<u>N/A</u>
B.3.a	Front setback variation	A minimum five foot front setback variation is provided between the adjoining units.	Shall be shown on the site plan.	N/A
B.3.b	Rear setback variation			N/A
B.3.c	Lot width variation	Lot widths range from 40', 44', 48' and 52' for the end unit/lots.		N/A
B.3.d	Garage placement variation (single family and multi family)	Project retains over 25% garages that conform to the criteria being rear loaded and side loaded.		N/A
B.3.e	Garage placement variation (multi-family)			N/A
B.3.f	Building articulation (multi-family)			N/A
B.3.g	Unit entries			N/A
B.3.h	Garage door width	Conforms to the criteria. All buildings have front facades with detailed garage doors that do not exceed 65% of the width of the front façade or are void of a garage door.	Shall be shown on the building permit plans and shall be verified prior to the issuance of building permits.	N/A
B.4	Noise reduction	Project conforms. The project includes a greater setback with a significant landscape buffer area along E Dunne Ave. Units along East Dunne Avenue retain setback which exceeds required setback by 10 feet. Windows to side yards are minimized and noise	Shall be shown on the site plan and building permit plans and shall be verified prior to the final building inspection.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		producing elements such as air conditioners will be located away from side yards and adjoining dwellings		
B.5	Second story articulation (Downtown/multi-family)			N/A
B.6	Building to Building variation (Downtown/multi-family)			N/A
B.7	Shared parking (Downtown/multi-family)			N/A
	Circulation Efficiency			
B.1.a	<u>Future street extensions</u>	<u>The project has been redesigned to provide two stubs to undeveloped land to the east.</u>	<u>Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.</u>	<u>N/A</u>
B.1.b	Future drive aisle extensions			N/A
B.1.c	Eliminates stub or substandard streets	The project will eliminate an existing stub at St Anthony Drive and another at Creekside Lane		N/A
B.1.d	Avoids short blocks	Short blocks not created		N/A
B.1.e	Backout distance	The project provides a minimum 20-foot clear view back-out distance between enclosed garage space the adjacent public street		N/A
B.2.a	Two access points	Project access is provided from two locations. From the north via St Anthony drive as well as from E Dunne Ave at the south end		N/A
B.2.b	Avoids long cul-de-sacs	The project avoids the creation of any new permanent cul-de-sacs		N/A
B.2.c	Detached sidewalks	Project proposes detached sidewalks	Shall provide on improvement	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		along a majority of the project.	plans prior to approval and complete prior to the final building inspection for the final unit.	
B.2.d	Facilitates emergency response	Project configuration will provide for adequate circulation for emergency response and police patrol.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.e	Provides public parking in Downtown			N/A
B.3.a	Converts lighting	The project agrees to pay the streetlight conversion fee of \$750.00 per dwelling unit.	Shall be paid prior to the issuance of the building permit.	\$24,000
B.3.b	Converts lighting (Downtown and R-3)			N/A
B.4	General Community Benefit	Based on the points requested for this category it is understood that the applicant agrees to spend \$2,200/unit toward the construction of roadway improvements near or adjacent to the proposed development.	Prior to the final building inspection for each unit.	\$70,400
B.5.a	Mid-block pedestrian connections (Downtown)			N/A
B.5.b	Project entries (Downtown)			N/A
B.5.c	Closes gaps (Downtown)			N/A
B.5.d	Bicycle parking (Downtown)			N/A
B.6	Lighted circulation map (R-3 or mixed use)			N/A
	Safety and Security			
B.1.a	Fire proof safe			N/A
B.1.b	First aid kit	Will provide first aid kit and poison control in kitchen of each unit	Prior to the final building inspection for each unit.	N/A
B.1.c	Fire protection device			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.d	Outdoor lighting	Applicant commits to providing lighting on all buildings that meet Police Department specifications, California Electrical Code and MHMC. Applicant commits to installation of motion detector light on each unit per police department specifications	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.e	Pedestrian scale lighting	Applicant commits to installing pedestrian scaled lighting along walkways and in common areas. Applicant will not utilize bollard style lighting.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.f	Illuminated address numbers	Applicant commits to installing lighted address numbers on each building and illuminated unit numbers. Applicant commits to installing painted reflective curb numbers where possible.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.g	Intrusion protection device	Applicant commits to installing dead bolts on all exterior doors.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	
B.1.h	Parks with lighting	Applicant commits to providing on-site lighting in all large usable areas and parks to a minimum of 1.5. foot candles or modified electrolier.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.i	Covered bicycle parking			
B.1.j	Security Cameras			N/A
B.1.k	Illuminated pathways/walkways	All pathways will be illuminated to 1 candle foot	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2	Crime Prevention through Environmental Design (CPTED)	Project designed to provide natural surveillance. Open space, courtyards are visible by surrounding and upstairs units.		N/A
B.3	Lockable hardware	Applicant commits to installing lockable hardware on all side yard and patio gates.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.4	Central Monitoring	Project will install an intrusion, fire alarm and heat detector system monitored by a central station. Project will include a one-year monitoring contract with each home purchase.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.5	Neighborhood emergency preparedness	Applicant commits to establishing a Neighborhood Preparedness Program administered through the Property Management Company. Applicant will direct property manager to contact Office of Emergency Services within 180 days of first five homeowners taking occupancy to schedule a resident meeting.	Shall be verified prior to the final building inspection for each unit.	N/A
B.6	Neighborhood "Watch Program"	Applicant commits to including in the CC&Rs of the development provisions to direct an HOA Board Member to contact the appropriate Police Department staff member to assist in the establishment of a Neighborhood Watch Program. The Applicant commits to establishing the program within 120 days of the first five homeowners taking occupancy.	Shall be verified prior to the final inspection for each unit.	N/A
	Landscaping, Screening and Color			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	Twenty-four inch box trees	Project will provide one 24" box tree for every 10 trees provided in the landscaped area	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.b	Planting around off-street parking	Applicant agrees to provide sufficient planting around all necessary and appropriate group parking areas to achieve visual screening as viewed from a public or private street.		N/A
B.1.c	Varied front yard landscaping	Varied front yard landscaping plans will be installed by the developer.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.d	Street Tree Master Plan	Project provides/conforms to a Street Master Plan addressing selection, location and spacing of trees.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.a	Pervious hardscape cover	The landscape to be installed by the developer will include pervious hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Low to moderate water use	Low to moderate water use plants will be using in landscaped areas	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.c	Existing water supply (off-site irrigation well)			N/A
B.3	Overall Landscaping	Landscaping to be installed on all areas (i.e. common areas and open space areas) visible from public and private	Shall be shown on landscape plans as part of the Site and Architecture Permit and Building Permit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		rights-of-way. The use of wildflower mix, hydroseeding, or areas predominantly covered in mulch or mulch-type groundcover will not achieve commitment.		
B.4	Underground retention	Project proposes pervious pavement in parking stalls to reduce storm water runoff. The soil is class B type (highly permeable) per SCVURPPP soil classification	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.5	Building color (Downtown)			N/A
	Natural and Environmental Features			
B.1	Site Grading	Project commits to criterion and will minimize site grading, and will restrict the amount of runoff caused by impervious surfaces and the covering of land area suitable for percolation or bio-swales where applicable.	Shall be show on the grading plans prior to the issuance of the grading permit.	N/A
B.2.a	Solar Water heating			N/A
B.2.b	Solar photovoltaic panels (50%)			N/A
B.2.c	Solar photovoltaic panels (60%)			N/A
B.2.d	Solar photovoltaic panels (70%)			N/A
B.2.e	Solar photovoltaic panels (80%)			N/A
B.2.f	Solar photovoltaic panels for club house			N/A
B.2.g	Exceeds Title 24	25%	Shall be shown on building permit plans prior to approval and verified with final building inspection.	N/A
B.2.h	Build It Green	40 additional points	Shall be shown on building permit plans prior to approval and verified	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
			with final building inspection.	
B.2.i	220 Volt outlet			N/A
B.2.j.1	Community pool solar water heater			N/A
B.2.j.2	Community pool salt-chlorinator			N/A
	Livable Communities			
B.2.a	Bus shelters, benches, street sections			N/A
B.2.b	School bus benches and shelter			N/A
B.4	Vertical Mixes Use			N/A
B.5	Builds to Planned Density			N/A
B.6	Architectural variation	At least 25% of the units use porches, decks, verandas, and balconies that can be viewed from the public right-of-way. Project uses at least two different roof lines and two different roof pitches throughout the project. The project is adjacent to R2 development to the west. Proposed product is consistent with size and mass of homes that exist to the north. Architectural relief, articulation, and detailing are consistent on all four building elevations. Each standard base and trim color will represent no more than 15% of the project.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.7	Maximizes privacy	Project provides privacy such that windows do not face porch, patio, or balcony of adjacent unit.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.8	Washer and dryers (Multi-family)			N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

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

2018 INFRASTRUCTURE UPDATE REPORT

RECOMMENDATION(S)

Receive the updated 2018 Report on City Infrastructure.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways

Trails

Parks and Recreation Masterplan

Sewer System Master Plan

Water System Master Plan

POLICY CONSIDERATIONS:

This report is intended to provide an overview of the various issues the City is facing in relation to maintaining the various areas of infrastructure for which the City is responsible. The report reviews service levels and funding considerations. The timing of the report is intended to provide the City Council an opportunity to receive information on these issues ahead of the development of the Fiscal Year 2018/19 and 2019/20 budget. The 2018 Infrastructure Report is included as Attachment 1.

COMMUNITY ENGAGEMENT: Inform

The purpose of this report is to inform the Council and community of the status of the City's Infrastructure.

ALTERNATIVE ACTIONS:

This report is intended to provide information only, as such, there are no alternative actions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The previous Infrastructure Report was provided to the City Council in November 2014.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with receiving this report.

CEQA (California Environmental Quality Act):

Categorical Exemption

Discussion of this report is exempt from CEQA under Public Resources Code § 21102, 21150 (Feasibility or planning studies for possible future actions that the agency has not approved, adopted, or funded).

LINKS/ATTACHMENTS:

1. 2018 Infrastructure Update Report

INFRASTRUCTURE UPDATE REPORT

City of Morgan Hill



April 18, 2018

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Appendices/Weblinks

Bikeways, Trails, Parks & Recreation Master Plan – <http://www.morganhill.ca.gov/1429/Master-Plan-for-Parks-Trails-and-Bikeway>

2017 Engineers Report for the Landscape Assessment District - <http://www.morganhill.ca.gov/DocumentCenter/View/22853>

Storm Water Memo - <http://www.morganhill.ca.gov/DocumentCenter/View/22850>

2013 Sustainable Streets Study - <http://www.morganhill.ca.gov/DocumentCenter/View/22852>

2017 Pavement Condition Report - <http://www.morganhill.ca.gov/DocumentCenter/View/22851>

Water System Master Plan - <http://www.morganhill.ca.gov/1646/Utilities-Master-Plans>

Water & Wastewater Rate Study - <http://www.morganhill.ca.gov/DocumentCenter/View/17363>

Wastewater System Master Plan - <http://www.morganhill.ca.gov/1646/Utilities-Master-Plans>

Sanitary Sewer Management Plan - <http://www.morganhill.ca.gov/589/Sewer-Division>

Acknowledgements

This report was developed “in-house” by teammates within the Community Services Department and the Engineering and Utilities Department.

Introduction

Purpose of the Report

The City of Morgan Hill's infrastructure is a very diverse system that supports a number of essential community needs and is utilized by both residents and visitors. Maintenance of this infrastructure is an expensive endeavor for the City, and one that is vital for public safety, economic development, and quality of life. Well-maintained infrastructure is a critical element for a "Sustainable Morgan Hill" that is safe, inclusive, socially responsible, environmentally conscious, and economically sound. This report is intended to provide an overview of the various issues the City is facing in relation to maintaining the various areas of infrastructure. In particular, the service levels and funding considerations are reviewed. The timing of the report is intended to provide the City Council an opportunity to receive information on these issues ahead of the development of the Fiscal Year 2018/19 and 2019/20 budget.

Overview

The City of Morgan Hill has the responsibility of planning, constructing, and maintaining infrastructure to meet the needs of the community, which can be divided into two categories: 1) those needed to accommodate new growth; and 2) those needed to maintain the existing system. The City utilizes "development impact fees" charged to new development in order to mitigate the impacts of new growth on the existing community. This funding source can only be used to pay for projects to expand the City's infrastructure capacity and not for ongoing maintenance. To fund maintenance activities, the City primarily relies on General Fund taxes or customer charges. This report attempts to answer two foundational questions:

1. What are the City's existing infrastructure maintenance needs?
2. Are there existing funding gaps?

The City owns, operates and maintains a variety of infrastructure assets. For the purpose of this report the areas are broken down into the following areas:

- | | |
|---------------------------------|-------------------------------|
| • Buildings and Facilities | • Storm Water Drainage System |
| • Downtown | • Streets and Sidewalks |
| • Landscape Assessment District | • Wastewater System |
| • Parks, Trails and Open Spaces | • Water System |

For each of these areas, a section of this report has been established to focus on both funding associated with the day to day operations and the capital projects. Each section discusses conditions, developments, and opportunities associated with that specific area of infrastructure. The sections also provide policy questions for the Council to consider for future decision making.

Summary of Current Infrastructure Needs and Funding Sources

The following matrix on the next page outlines the primary funding and current status for each of the infrastructure areas: The current level of unfunded maintenance at approximately \$3.6 million dollars, which is down from \$5.8 million identified in 2014. This reduction is due primarily to the additional funding for pavement maintenance that the City anticipates receiving. The \$3.4 million does not include the future anticipated funding needs related to park maintenance and storm water. Nor does it account for actions necessary to deliver the future capital project needs related to the Water and Wastewater Enterprises.

Areas of Infrastructure Summary Primary Funding Sources		Current Status
Buildings and Facilities		
- General Fund Non-discretionary revenue (Rec Facilities) - General Fund Discretionary revenue - Other funds based on percentage use of facilities - Recreation Center Impact Fees (expansion)		- Facilities are well maintained - Base Level Operations are fully funded \$458,648 annually in unfunded future capital replacement costs
Downtown		
- General Fund Discretionary revenue - Public Facilities Fund - Developer Contributions		- Facilities are well maintained - Base Level Operations are fully funded \$12,500 in annual costs for "twinkle" tree lights are unfunded
Landscape Assessment District (LAD)		
Property Tax Assessments for those within District		- Maintenance levels vary by subarea: - 8 areas are well maintained - 6 areas are average - 6 areas maintained below average or poorly \$45,840 in unfunded maintenance needs
Parks, Trails and Open Spaces		
- Park Maintenance Fund - Developer Contributions - General Fund Discretionary revenue		- Facilities are maintained in average condition - Additional annual investment of an undetermined amount would be necessary to maintain the parks in above average condition - Base Level Operations Funding is in jeopardy due to declining RCDS revenues. Park Maintenance Fund balance will be depleted in about 10 years utilizing current funding strategy (~\$800,000/yr) \$585,711 in annual future replacement needs are unfunded
Storm Water Drainage System		
- General Fund Discretionary revenue - Storm Drain Fund - Prior Developer Contributions - Storm Drain Impact Fees (expansion)		- Facilities are well maintained - No identified funding for future capital needs - Funding available (Impact fees) to connect to Water District Flood Control Project - New State regulations may require millions in capital investment over the next decade
Streets and Sidewalks		
- Gas Tax (Including New SB1 Revenue) - VTA Passthrough of Vehicle Registration Fees - Grant Funds - Includes One Bay Area Grant - New Measure B Sales Tax Revenue - General Fund Discretionary Revenue - School Pedestrian Safety Fund - Developer Contributions - Public Facilities Fund - Developer Contributions		- City Streets and Sidewalks are well maintained - Citywide weighted average pavement condition "very good" \$193,000 in annual revenue is needed to fully fund basic maintenance \$2.3 million annually in unfunded capital street repair - Ongoing sidewalk repair funding and other street related enhancements may be impacted in the future due to declining RDCS revenues.
Wastewater System		
- Customer Fees - Sewer Impact Fees (expansion)		- System is well maintained - Base Level Operations are near fully funded with requests for new technology and equipment to improve efficiency - Increased funding for capital projects for rehabilitation and expansion is believed to be necessary
Water System		
- Customer Fees - Water Impact Fees (expansion)		- System is well maintained - Base Level Operations are near fully funded with requests for new technology and equipment to improve efficiency - Increased funding for capital projects for rehabilitation and expansion is believed to be necessary

Infrastructure Considerations

There are several considerations the City must continue to review as the City continues to develop its strategies to maintain its infrastructure at a high level. Some of the general considerations are outlined below:

Decline in prior revenues – The significance of the loss of Redevelopment Agency continues to grow for the City. The RDA previously was able to expend dollars to offset impact fees in support of economic development, fund the construction of major infrastructure projects, and support the maintenance of the facilities it owned. For many years the Residential Growth Control System competition resulted in significant funds to support maintenance and rehabilitation projects for City infrastructure. As the City has slowed growth and updated the competition it appears the voluntary contributions from developers will decline significantly. This may be a consideration to review prior to the next competition.

New Requirements – The City often has to fulfill requirements developed by the State and other regulating entities. The City has commitments relating to future Wastewater System projects that must be completed in the next five years. The City is also anticipating increased requirements resulting in new projects for the Storm Water system in the next decade.

Economic Development and Impact Fees – The City is currently updating its impact fee study. When this item returns to Council for review, a policy question will undoubtedly be how the updated fees impact economic development and the attraction of new businesses. At the same time, the importance of collecting full fees cannot be understated, as these fees are necessary to fund the basic infrastructure necessary to attract these businesses.

Impact of Visitors – Visitors to Morgan Hill support economic development through increased sales tax and transient occupancy tax revenues. These same visitors impact City services and infrastructure. Maintaining the infrastructure of the City roadways and facilities is needed to support tourism through quality visitor experiences. Consideration of increased fees (facility fees at the OSC) or tax revenues (TOT) for those visiting be may another consideration.

Construction Costs of the Area – A major factor magnifying the infrastructure funding issue is construction costs, which have increased at a national level, but have increased even more severely in the Bay Area.

New Revenues and Opportunities – Recent legislative actions have provided for new revenues, including approximately \$1.6 million in funding annually for pavement maintenance from the Measure B County sales tax increase and State Senate Bill 1 increasing the gas tax. Until the recent passage of State Senate Bill 1, the real value of gas tax revenues dropped for decades, contributing to the backlog in pavement maintenance across the State of California. Additionally, State Senate Bill 231 may provide an opportunity to collect revenues to support storm water management.

Funding Options – The City has reviewed a number of options over the last two years to fund infrastructure. These options may continue to be opportunities the City Council considers going forward. Options include:

- **New Tax Revenue Source** – Some communities have successfully passed ballot measures to increase local taxes. The recent polling that was conducted did not show a desire from residents for an increase in taxes. The Transit Occupancy Tax is currently being polled with the community and this may be a desirable option for the Council to pursue.
- **New or Expanded Financing Districts** - A financing district could be created which would be responsible for the care and maintenance of a portion of the City's Street Infrastructure or the City's Parks. Financing districts typically require approval (typically 2/3 majority) by the property owners within the district's boundaries. Revenues are generated from property owner approved assessments, property tax increments, or voluntary diversion of property tax revenues. It may be possible to expand the City's

current LAD to be all encompassing of the City. There are a variety of opportunities for financing Districts in addition to the current LAD. City staff have continued to review this option, but were previously deterred, as it was believed a new assessment would poll similarly to the tax measures previously tested with the community. However, more recently City staff have been considering an option where the format of a District may be flexible in applying assessments based on current residents versus future residents. Staff plan to continue to review this option and return to Council if it is found to be a viable opportunity.

- Increase Fees – The considerable capital projects outlined in the Water System and Sewer System Masterplans are currently being reviewed as a component of the development of the Capital Improvement Budget. Existing water and wastewater rates will need to be revisited at some time in the future and the timing of revisiting these rates may be accelerated by the need to move capital projects forward.
- Dedication of increased General Fund Revenues for Infrastructure - It is at the City Council's discretion to decide on utilization of any amount of General Fund dollars to support the maintenance of infrastructure. However, any use of General Fund resources would mean a reduction in service in another area and could have an adverse impact on the community.

Next Steps

This report has been developed to provide the City Council and community background information in preparation for the upcoming budget process. The City Manager will make several recommendations relating to infrastructure funding within the proposed budget. The proposed Capital Improvement budget will also outline much of the infrastructure funding planning.

Building and Facilities

The City owns 12 facilities that are operated for a variety of public purposes including facilities operated and maintained by the City and others operated and maintained by partner organizations. These facilities include the two City Fire Stations, City Hall/Development Services Center, Council Chambers Building, Police Station, Corp Yard, Library, Aquatics Center, Centennial Recreation Center, Community and Cultural Center, Friendly Inn Non-Profit Center, El Toro Youth Center, and Outdoor Sports Center.

Revenue Support

Maintenance of City facilities is funded via the fund that uses the facility. The City Recreation Centers, although part of the General Fund, recover costs through user fees for operations including facility maintenance. Other City facility maintenance funding is provided through the funds that fund the departments that use each of the facilities. For example, the maintenance of the Corporation Yard is funded through the Water Fund, Sewer Fund, Park Maintenance Fund, and General Fund.

Base Service Operations

Facility maintenance is managed by the Community Services Department. In some cases, facilities are maintained through agreements with partner organizations (CALFIRE, County Library, Boys & Girls Club and the Morgan Hill Youth Sports Alliance). It is believed that current base level maintenance services are fully funded and being provided at an adequate to high level throughout all the City facilities.

Capital Replacement

In most cases, as each facility was constructed and opened for use, the City developed a replacement schedule that addressed the major components of each facility. This schedule has been funded by annual operating budget allocations. Replacement schedules were not developed for the Outdoor Sports Center and Friendly Inn while other replacement schedules for some City buildings were not as comprehensive as others. Staff has updated schedules as a component of this report. Upon conclusion of this update, it is estimated that the facility replacement fund is underfunded by \$458,648 annually. Table 7 outlines each facility, current replacement funding, and recommended funding.

Facility Replacement	Current Annual	Recommended Annual	Funding Gap
Aquatics Center	\$ 55,441	\$ 215,610	\$ 160,169
Centennial Recreation Center	\$ 90,499	\$ 190,141	\$ 99,642
Community and Cultural Center	\$ 65,846	\$ 76,615	\$ 10,769
Civic Center Facilities	\$ 38,387	\$ 67,804	\$ 29,417
Corporation Yard	\$ 5,290	\$ 23,052	\$ 17,762
Friendly Inn	\$ -	\$ 12,517	\$ 12,517
El Toro Youth Center	\$ -	\$ 6,620	\$ 6,620
Police Department	\$ 112,803	\$ 121,396	\$ 8,593
Outdoor Sports Center	\$ -	\$ 113,160	\$ 113,160
Fire Stations	\$ 26,928	\$ 26,928	\$ -
Bus Yard	\$ 10,000	\$ 10,000	\$ -
Total	\$ 395,194	\$ 853,842	\$ 458,648

Infrastructure

6 Recreation Facilities

Police Station

2 Fire Stations

Library

City Hall/Development Services Center

Council Chambers Building

Corporation Yard

There were some key factors that created a change in the recommended annual funding of facility replacement for a few facilities. These factors are outlined below for the facilities that are impacted.

Aquatics Center (AC) – The AC was constructed by the Redevelopment Agency in 2004 and ownership was transferred to the City of Morgan Hill. The Community Services Department budget includes an annual contribution to the Building Replacement Fund for the annual depreciation of the major building and facility systems. This plan however is underfunded as the replacement schedule originally did not include some very significant pool related components. Two of the largest factors are replacement of the pool deck and pool heating components.

Centennial Recreation Center (CRC) – The CRC was constructed by the Redevelopment Agency and opened in the City's centennial year, 2006. Ownership was transferred to the City which, through the annual Community Services budget contributes to the Building Replacement Fund. The expansion of the CRC in 2010 was paid for by the RDA since the facility is located in the former Project Area and specifically included in the Redevelopment Plan. Similar to the Aquatics Center, after updating the replacement schedule it is believed the CRC's future replacement is underfunded. The largest factors in this area include adding the solar panels at the CRC to the future replacement funding.

Community and Cultural Center (CCC) – The CCC was constructed by the Redevelopment Agency in 2001 and ownership was transferred to the City of Morgan Hill. The Community Services Department budget includes an annual contribution to the Building Replacement Fund in an amount equivalent to the annual depreciation of the major building and facility systems. The funding is adequate as only a small adjustment would be needed.

El Toro Youth Center – The El Toro Youth Center is leased to Community Christian who now serves as a master tenant at the site coordinating use by Alcoholics Anonymous and Narcotics Anonymous. Community Christian is currently responsible for all maintenance of the facility, but this may not be the case indefinitely and it would be prudent for the City to fund contributions for future maintenance replacement. Currently, there is no contribution to the replacement fund for the facility. It is recommended that contributions begin to be made from the General Fund.

Friendly Inn – The Friendly Inn has served the community in a variety of roles for over half of a century. It was renovated by the Redevelopment Agency in 2010 as a non-profit center. It is now leased to the Boys and Girls Club of Silicon Valley for their El Toro Clubhouse. The Boys and Girls Club subleases a small portion of the building to Advent Ministries. The Boys and Girls Club is responsible for all day to day maintenance and operations, but the City still has the responsibility for capital replacement costs. Funding for future replacement would need to be allocated from the General Fund.

Outdoor Sports Center (OSC) – The Redevelopment Agency purchased the land for the Center and initially leased it to the California Youth Soccer Association to operate as a regional tournament facility. In 2007 the RDA improved the area with artificial turf fields, parking, lighting, and restrooms. The RDA conveyed the property to the City which, in turn, has leased it to the Morgan Hill Youth Sports Alliance (MHYSA) for a community serving sports center as well as host for regional tournaments. As previously noted, a replacement schedule and annual operating funding were not initiated when the OSC came online. At the time of opening, the fees for the facility were directly related to recovering costs for operations. Including replacement funding would have more than quadrupled the user fee for use of the facility. Shortly after the initial opening, the City entered into a concessionaire agreement to operate the OSC and it was envisioned that a capital fund would be created. This did not materialize and neither the City nor the operator has contributed significantly to such a fund. In 2017, the City replaced the artificial turf fields at the OSC, without replacement funding established for the OSC, the City was forced to utilize Park Maintenance Funds to keep the facility open. The City will be transitioning to a new operator in June 2019 and City staff will be working to coordinate replacement funding within that agreement. It

is still recommended the City's General Fund begin making contribution on behalf of the OSC if there is adequate funding.

City Council Chamber Building – The Council Chamber Building recently went through a \$2 million dollar renovation to become a state-of-the-art Chamber with new meeting room space, upgraded restrooms, and a new lobby area. It is utilized for City Council, commission, or other public meetings. The building is also housing a number of City staff offices. With the newly installed equipment, including state-of-the-art audio-visual systems, funding the replacement of this equipment would be prudent.

City Hall/Development Services Center (CH/DSC) - The current CH/DSC is home to the City's Administrative Services Department, Community Development Department, Engineering Division, City Manager's Office, and City Attorney's Office. The building was remodeled in 2009 using the proceeds of a financing instrument called Certificates of Participation. The City agreed to make annual lease payments equivalent to debt service. The occupants of the building pay their proportionate share of the annual debt service. This type of financing is known as a "budgetary pledge" because no specific revenue source was dedicated to the debt service. The occupants also contribute annually to the Building Replacement Fund.

The Morgan Hill Library - The Library was constructed by the City of Morgan Hill and is leased to the County Library JPA for operations and maintenance. The capital costs were financed by a capital contribution by the RDA and a bond issue for a portion of the costs attributable to "new growth". The library was "sized" to accommodate the planned population of the City in 2020. The annual debt service is paid from available Development Impact fees and the General Fund. The City receives income from the library lease to the JPA which helps offset debt service.

Police Headquarters – In 2004, the City acquired an industrial building and upgraded the building to serve as an "essential public safety" building and Police headquarters. The costs were financed by issuing Certificates of Participation. Because the facility was sized to accommodate future growth, a portion of the annual debt service is paid by Development Impact fee revenue. The balance of debt service is paid as an annual operating cost of the Police Department and charged to the General Fund. The General Fund receives a small amount of revenue from a lease of current excess space to a private party. The annual budget also includes contributions to the Building Replacement Fund.

Corporation Yard – The city's field crews and equipment are housed at the "Corporation Yard" at Edes Court. The land including the adjacent Community Park was acquired by the City decades ago and initially developed as the city's first wastewater treatment facility. In the 1970's, the Corporation Yard was developed with the proceeds of bonds issued by a Joint Powers Agency which included improvements for the school "bus yard" north of Edes Court. The City leases the Bus Yard site to the Morgan Hill Unified School District, but is responsible for capital repairs. The City's operating funds of the utilities (sewer and water) and the annual budgets of the streets and parks operations make annual contribution to the Building Replacement Fund.

Fire Stations – As part of the transition of CALFIRE in 2013, the City financed the purchase of its two fire stations. These loan payments are included in the Fire Department's annual operating budget and paid for by the General Fund. The base level maintenance of these fire stations is coordinated by CALFIRE as part of the agreement with the City and funded through the General Fund within the Fire Department's operating budget. The City established a Building Maintenance Fund contribution of \$60,000 annually for replacement of Building Components. After the recent inventories conducted by staff, it is believed that this replacement funding can be reduced to about \$25,000 annually.

Policy Discussion

Three of the City's recreation center's make up the largest portion of the funding gap. The Aquatics Center and Centennial Recreation Center have continually strong financial performance and replacement funding will be important to their continued success. Including the additional replacement fund costs in the annual operating budget for Recreation and Community Services would be consistent with the City's effort of "Balancing Cost Recovery and Community Access" at the City recreation facilities. The OSC has been a driver of economic development bringing hundreds of thousands of visitors to Morgan Hill annually. The City is currently negotiating an agreement with a new operator for the OSC and the need to identify future replacement funding will be incorporated into those discussions. Overall policy questions for Building and Facility Maintenance include, but not limited to:

1. Should replacement funding at facilities be expanded to fully plan for all future capital replacement and repair costs?
2. Should fees be reviewed to assist in covering additional future replacement costs at our Recreation Facilities or should the General Fund invest more annually?
3. Who should be responsible for Outdoor Sports Center Future Replacement funding? The City? The operator? Both?

Downtown

Maintenance of the Downtown includes a variety of public spaces, landscaping, medians, parks and parking areas. With the recent investments in the Downtown Area, the City has increased its investment maintaining the area at a high level. The day to day lighting, janitorial and landscaping components are coordinated through ongoing maintenance contracts. City staff from the Community Services Maintenance team regularly repair damage, remove graffiti and coordinate more complicated maintenance tasks.

Base Service Operations

Base level maintenance services are adequately funded through the General Fund at approximately \$320,000 per year. The one area that is in need of funding is replacement of the “twinkle” tree lights on both sides of Monterey Road through the downtown. The investment to install these lights was done with one-time funding during the Downtown Placemaking Investment Strategy. The lights have been repaired multiple times, but now must be completely replaced. This funding was not budgeted and would increase costs by \$25,000 every two years.

Capital Improvements

The major capital components that would require future capital replacement costs are the Downtown Parking Structure and the park play equipment components. Ongoing funding into a capital replacement fund for the parking garage has been included in the Downtown operating budget. As is the case for all parks, future replacement of the equipment is not funded.

Many improvements in the Downtown are still planned, including additional in-ground crosswalk lights. These enhancements will be included in the proposed Capital Improvement Plan with identified funding sources.

Policy Discussion

To maintain the “twinkle” tree lighting on an ongoing basis, there will be an average annual cost of approximately \$12,500. The City staff had hoped that private businesses or a re-established PBID could take on the responsibility of managing the lights, but this does not appear to be likely in the near term.

- Should the City look to invest additional General Fund dollars in the Downtown to maintain the “twinkle” tree lights or continue to look for private partners to take on this task?

Infrastructure

3 Downtown Parks

Public Restrooms

Parking Structure

Parking Lots

Public Art

Sidewalks

Medians

Landscaped Areas

Lighting

City owned retail space



Landscape Assessment District

The Citywide Landscape Assessment District (LAD) is made up of 20 separate sub areas that collect assessments from 757 properties that are located in the District boundaries. While the District is a single entity each of the 20 subareas must be managed independently. Proper maintenance of the properties benefits the owners. Assessment charges are collected by the County on property tax rolls and remitted to the City. The District revenues and expenses total approximately \$185,000 annually. Of these 20 subareas, 7 contain parks. Each lot within a specific subarea is assessed the same amount to obtain the level of service desired by the subarea residents.

Infrastructure Elements

20 Subareas

757 Assessed Properties

7 Parks

2 Tennis Courts

The requirement for independent financial management of each sub area requires extensive staff monitoring and management from both a contract management perspective and an accounting perspective. This work allows for each subarea to be evaluated financially. City staff has been able to further evaluate in detail the infrastructure needs and financial stability at each site.

Landscape Assessment Areas			
# of Areas	Category	Unfunded Annual Capital Replacement	Unfunded Basic Service
8	Healthy with reserve funds for infrastructure.	\$ -	\$ -
6	Stable with limited reserve funds	\$ 27,590	\$ -
6	Unhealthy with no reserve funds or declining reserves	\$ 4,800	\$ 13,450
20	Total for all subareas	\$ 32,390	\$ 13,450

Base Services

Base level maintenance services are provided based on each subarea's available funding. Many of these areas are funded and maintained well, while others are limited to weed abatement only, due to lack of funding and property owners' unwillingness to increase assessments.

Capital Funding

All capital funding for the facility replacement is allocated from each subarea's fund balance. Each subarea has an established fund balance reserve target based on the size, maintenance requirements, and amenities of the subarea. However, in the case of the LAD subareas which contain parks, the fund balances maintained would not be sufficient to replace or repair major park components.

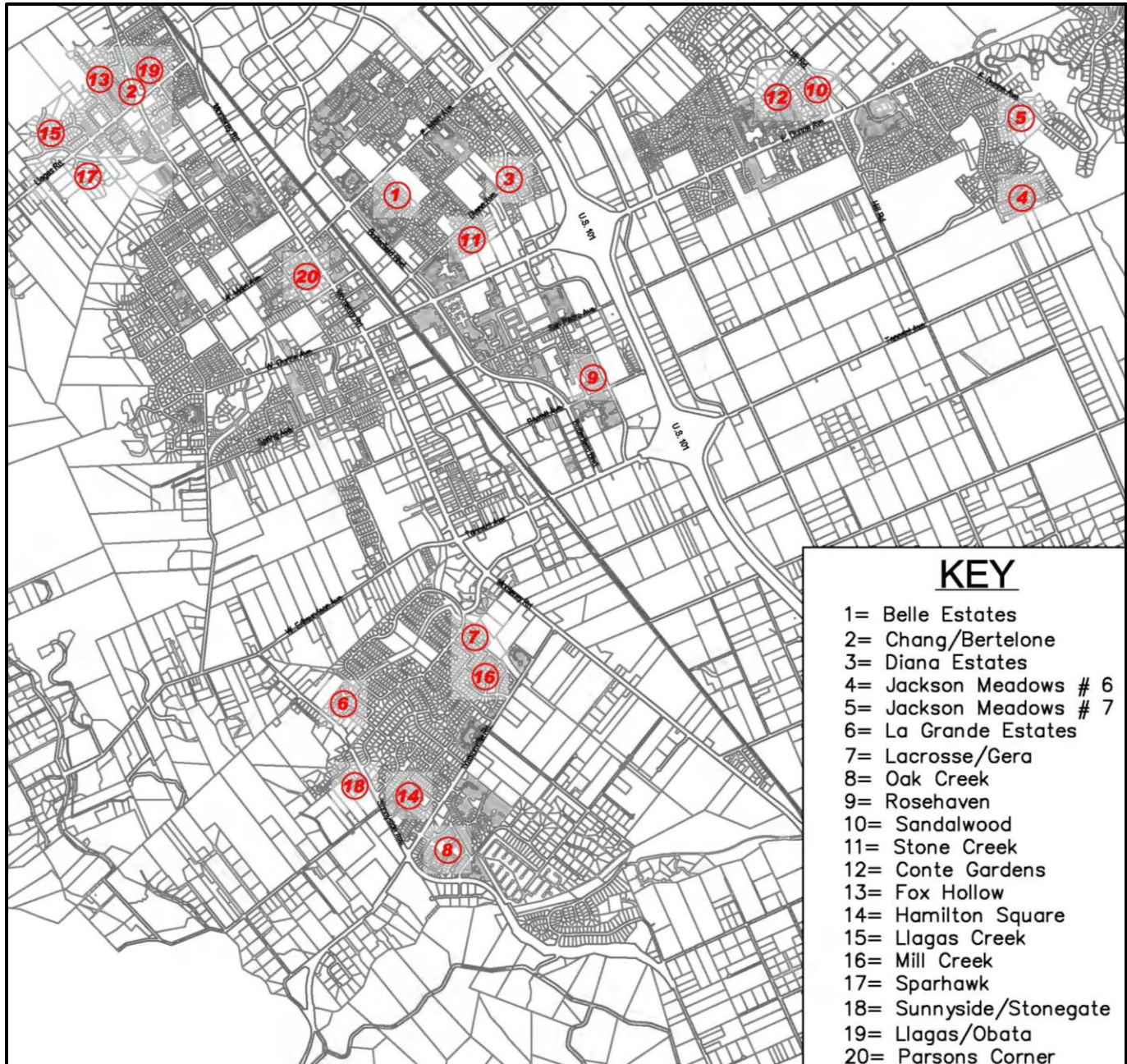
Policy Discussion

While funding issues at any subarea are difficult, LAD subareas with parks provide a unique challenge. The parks are open and available to use for the entire community, but are paid for by a specific set of residents located in the LAD subarea. In essence, a small percent pay for amenities used by many. One example of this challenge is occurring at Diana Estates, which has a tennis court that needs significant funding to resurface and has insufficient replacement dollars. This scenario will eventually play out in other subareas. Many subareas are at the max assessment cap, which means an increase for funding would need to be approved by voters in that subarea. In the past, LAD residents have shown reluctance to increase their own assessments for increased maintenance, resulting in some subareas receiving the bare minimum maintenance services. Over the last four years City staff has worked to develop relationships with residents of many subareas and discussed increases to assessments. The residents of the Sandalwood subarea recently worked with staff to conduct a vote on raising their assessments to fund maintenance in their area. Staff will continue this outreach, but this will be a long

tedious process for each subarea. Alternate approaches to funding LAD maintenance may be necessary to prevent some sub areas from turning into empty dirt lots.

1. Should a Citywide LAD or Community Facilities District for all City owned Parks be explored?
2. Should supplemental funding be used to ensure that LAD Park resources are maintained when assessment funds do not cover the cost of maintenance and residents are unwilling to increase their assessments?

LAD Subarea Locations



Parks, Trails and Open Space

The City of Morgan Hill has parks, trails and open space totaling over 300 acres of which 60 are maintained. Parks in Morgan Hill are funded in one of three ways, that include:

1. City Parks and Trails – Owned by the City and funded through the Park Maintenance Fund and General Fund.
2. Home Owners Association (HOA) Parks – Privately owned and funded by residents of the HOA.
3. Landscape Assessment District Parks – Owned by the City and funded by a limited number of residents within the assessment district for a specific park.

This section refers specifically to the maintenance of the first category, which includes parks, bicycle and walking trails, and open spaces. These areas include a wide variety of amenities including: playgrounds, basketball courts, fields, tennis courts, picnic areas, lighting and many more.

Base Service Operations

Park Maintenance activities are managed by the Community Services Maintenance Team. Maintenance functions are performed by both in-house staff and via contract. It is estimated that base level City park and trail maintenance services are funded at an adequate level to be safely used and to protect the City's assets in these areas. However, the level of service for these areas is not "top notch" and City parks would be considered at a level 3 or "Adequate" when applying the City's previously developed Park Maintenance Numeric Rating System. Increased funding of base level services could improve aesthetics and user experience, but would not considerably increase sustainability of park and trail infrastructure. It should be noted that the recently constructed Downtown Parks are being maintained in coordination with the other Downtown areas and are maintained at a higher level.

The Park Maintenance Fund relies on voluntary contributions through the City's Residential Development Control System to sustain the fund. Currently, base level park maintenance service is funded via the Park Maintenance Fund and supplemented by \$200,000 annually from the General Fund. It was previously anticipated that this strategy could be sustainable for 20 or more years. However, the recently adopted General Plan updated the City's population cap thus reducing the annual allotments for new housing. Along with reduced allocations, the RDSCS competition scoring criteria was updated. The recent competition has resulted in almost no contributions committed to the Park Maintenance Fund. These developments lead staff to believe the current Park Maintenance funding strategy will deplete the Fund in less than 10 years.

Infrastructure

22 Parks

60+ acres of
Developed Park Land

250+ Acres of Open
Space

3 Maintained Trails

15+ Parks with Play
structures

10 Tennis Courts

5 Ball Fields

1 Duck Pond

Capital Improvements

The City staff have identified over \$6 million in future replacement needs stretching over the next 50 years, with a total unfunded annual replacement cost of \$585,771. No funds have been set aside for this replacement, although a past practice has been to use the Park Maintenance Fund for annually identified replacement projects. However, with the Park Maintenance Fund funding the base level maintenance and drawing down the Fund at an increasingly rapid rate, use of the Fund for capital replacement and repair projects is not sustainable.

Policy Discussion

When unfunded replacement needs to occur in parks, it is currently viewed on an annual project-specific basis and weighted against other projects of a citywide nature. In some cases, the life cycle of equipment is extended through repairing versus replacing equipment. In other cases, a choice may be to remove an asset. For example, turf could degrade to a point where it is in poor condition, but this would really only result in a decrease in user experience. Conversely, while a playground could degrade to a point where it must be removed for safety standards and, if not funded, would not be replaced. This funding shortfall for future replacement and repair of City Parks is a new discussion. Some policy questions that should be explored in this area include, but are not limited to:

1. Should a replacement/repair fund be established and funded for future park maintenance needs?
2. Should it be a goal for the existing Park Maintenance Fund to be utilized for this purpose?
3. Should a new revenue source for parks be explored? These may include tax revenue or assessments through a Citywide Community Facilities District.

The updated Bikeways, Trails, Parks and Recreation Master Plan sets ambitious goals for park development, most notably the plan to construct the new Magical Bridge Playground, which may cost \$30,000-\$50,000 annually to maintain. While improved park maintenance and new park facilities support many of the Council's priorities, including economic development, alternate strategies for park development may need to be considered.

4. Should future park development be slowed until sustainable funding for existing parks can be established?
5. Should the new Magical Bridge Inclusive Playground be planned for funding within the City's General Fund to account for the unsustainability in the Park Maintenance Fund?
6. Should the new Magical Bridge Inclusive Playground be funded at a level to support enhanced maintenance?

City Parks and Trails	Annual Unfunded Replacement
Community	224,557
Galvan	109,352
Paradise	38,106
Diana	31,052
Nordstrom	47,407
Jackson	17,201
Howard Weichert	7,235
Sanchez	3,188
Skate Park	23,219
Civic Center	47,026
Trails	37,429
Total	585,771

Storm Water Collection System

The City is responsible for maintenance of the Storm Water Collection System that transfers rain water from the developed areas of the City into our local creeks. Day to day maintenance is managed by the Community Services Maintenance Team in coordination with general street maintenance, the Engineering Division is responsible for improvement projects that expand or rehabilitate the System, and the Environmental Programs Division is responsible for managing the City's storm water pollution prevention programs.

Base Service Operations

Funding for the day to day operations management of our storm drain systems is primarily supported by the General Fund and has been adequate with the exception of future replacement funding for storm drain pumps and funding for inspections. These funding issues are outlined in the Streets and Sidewalks Section of this report.

Capital Improvements

Capital projects that expand the City's system are funded through impact fees. The City has reserved several million dollars in the Storm Drain Impact Fund to support connection to the upcoming Upper Llagas Creek Flood Control Project. The Flood Control Project is managed and funded by the Santa Clara Valley Water District, but once completed, the City plans to connect to the new system. This project will eliminate the majority of the flooding issues for the City.

Funding for capital improvements relating to rehabilitation to the storm drain system cannot be funded through impact fees. The City previously received fees from developers for storm drain rehabilitation. There are no dedicated capital funding sources for rehabilitation and major rehab projects would need to identify funding on a project by project basis.

The City is regulated by the State Water Resources Control Board in regard to storm water pollution prevention. In 2015, the Board adopted the Statewide Trash Provisions which will eventually require the City to install, operate, and maintain State-certified devices that capture all trash down to 5 millimeters in size from Priority Land Use areas including industrial, commercial, mixed-use, high-density residential and public transportation stations. Currently, it is anticipated these provisions will be adopted in 2019, with a ten-year period to complete improvements relating to compliance by 2029. Although this is far into the future, planning on this issue is important as the improvements related to the provision could be extend into the range of millions of dollars.

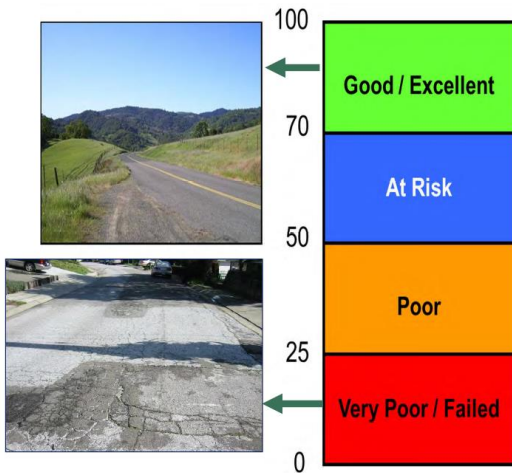
Policy Discussion

The State of California recently passed State Senate Bill 231, which redefines "sewer" to include storm water, which in turn allows the charge of a fee for the management of the storm water systems. The intent of the legislation is to allow cities and counties to establish fees for storm water systems, versus having to pass ballot measures to establish a tax for this purpose. No Cities have utilized the provision of the new law, but a group of large Cities is working together to implement, as law suits relating to the validity of the new law are anticipated. If SB 231 stands up to legal scrutiny, it could be an excellent option to fund the future needed capital improvements and potentially even operations.

Streets and Sidewalks

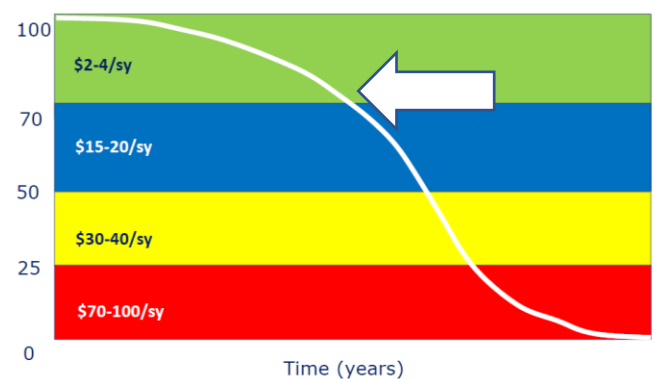
The City Council has identified the “Streets Infrastructure” as a vital community element and over the last several years has devoted significant amounts of General Fund reserves to pavement maintenance. The City has approximately 128 miles of local streets with a variety of attached ancillary elements including: street trees, traffic signals, signs, curb & gutter, streetlights, bridges, medians and planters, furnishings, guard rails, parking lots, and sidewalks. It should be noted that maintenance of the City’s Storm Drain System is not included in this section of the report and is discussed independently in the previous section. Management of the streets and sidewalk infrastructure is broken into two areas;

- Base Level Operations – Day to day routine operations
- Capital Repairs and Improvements – Large projects, including the pavement rehabilitation program



The greatest concern in the area of street maintenance continues to be the degradation of the streets themselves. Evaluating the condition of the City’s Streets is accomplished using the Pavement Condition Index (PCI). The City via grants from the Metropolitan Transportation Commission (MTC) has regularly received consultant generated Pavement Condition Reports. The last report received was conducted in early 2017. The City had anticipated conducting the report in 2019, but was recently informed by the MTC that the grant issuance would move to a three-year cycle due to limited funding. This will mean the City will next receive a report in early 2020. In the 2017 report, the weighted PCI for the City’s roadway network was 72, down from 76 in 2012. The current backlog of street maintenance is \$23.2 Million.

At the current level of funding, the City’s weighted PCI will continue to fall. Since it costs less to maintain roads in good condition than bad, investing early to keep the weighted PCI higher is critical. As demonstrated in the chart to the right, the maintenance cost grows much faster as the PCI drops. Once a roadway deteriorates to the point of failure the only option is complete roadway replacement.



Funding

The City funds ongoing base service street maintenance activities through the General Fund and Gas Tax Revenue, while the capital pavement rehabilitation program is funded primarily through the streets fund which receives revenues from gas taxes (via VTA), vehicle registration fees and the One Bay Area Grant. Over the last six years, the City has supplemented capital funds with significant dollars from the General Fund. Two new significant funding sources have been established through the passage of Measure B to increase the sales tax in Santa Clara County and State Senate Bill 1 which increases the gas tax. New funding from these sources shall increase funding for pavement rehabilitation projects by \$1.6 annually. Both funding sources are not guaranteed to date, with Measure B being challenged in court and an initiative to repeal SB1 likely to head to voters in November of 2018.

Infrastructure

128 Miles of Streets
3,700 Street Lights
45 Traffic Signals
60 Acres of Maintained Parks
13 Public Facilities
18 Sports Fields
4 Swimming Pools

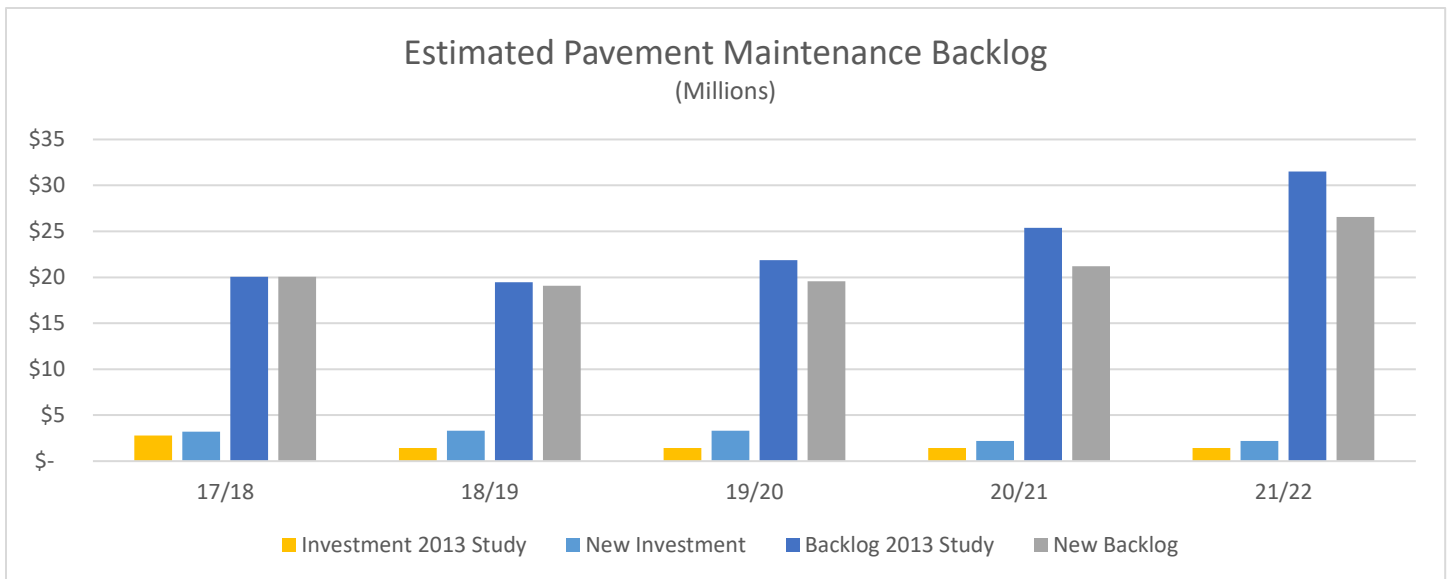
Base Service Operations

The Community Services Maintenance Team is responsible for the day-to-day maintenance of streets and associated infrastructure for the City. A combination of City employees and contract services are used to perform regular street maintenance. In 2013 Sustainable Streets Study was conducted that looked holistically at base level operations for streets and associated infrastructure elements. The report identified several service areas that were unfunded, this total included annual funding of \$368,000 and one-time funding of \$107,000. However, through increased investment authorized by the City Council and innovative improvements in maintenance operations these unfunded programs have been significantly reduced over the last several years as detailed in the following table.

Unfunded Base Maintenance Services	Annual	1-time	Notes
<i>Downtown Park Lot Slurry & Striping</i>			Funded ongoing through Parking Lot CIP Program.
<i>Concrete/Brick Paver Repairs</i>			Some locations repaired in DT Streetscape Project. Ongoing spot repairs funded in Downtown Maintenance budget.
<i>Sidewalk Repairs</i>			Funded through sidewalk CIP Project annually.
<i>Curb & Gutter Repairs</i>			Funded through sidewalk CIP Project annually.
<i>Repaint Colored Curbs</i>	40		Not funded, annual funding needed.
<i>Replace Aging Wood Streetlight Poles</i>	15		Not funded, annual funding needed.
<i>Renovate Medians</i>	30		Not funded, annual funding needed.
<i>Repair & Renovate Brick Planters</i>			Some locations repaired in DT Streetscape Project. Ongoing spot repairs funded in Downtown Maintenance budget.
<i>Prepare & Maintain Street Tree Inventory</i>	10		Partially funded. Inventory has been prepared by consultant, resources for coordination and management are not present.
<i>Remove/Replace Street Trees</i>	38		Tree removal and replacement are done retroactively versus proactively.
<i>Regular Street Tree Trimming 5 Year Cycle</i>			Funded.
<i>Storm Drain Pipe & Culvert Inspection & Repair</i>	10	25	Not funded. Repairs performed as time and funding permits.
<i>Storm Drain Pump Station Future Replacement Funding</i>	50		Not funded.
Total Unfunded Base Level Services	193	25	

Capital Improvements

Capital improvements for street maintenance are managed by the Engineering Division through the City's annual Capital Improvement Program. Over the last four years, the City has invested one-time grant dollars augmented by General Fund dollars to increase the amount of funds used on pavement rehab projects. The City is anticipating both Measure B funding and SB1 funding in the coming years. City staff have utilized the information from the 2017 Pavement Condition Report along with proposed increased funding to anticipate the future backlog for the next six years. The next chart outlines these estimates.



As is demonstrated in the chart the increased funding related to the new measures slows the growth of the pavement maintenance backlog. Instead of reaching \$31.5 million in Fiscal Year 21/22, the backlog is estimated to only grow to about \$27 million. To maintain the current PCI (72) and try to stabilize the backlog of work approximately \$4.5 million in funding would be necessary. To increase the PCI by five points (to 77) and reduce the backlog approximately \$6.1 million in funding would be required.

Investing at a level that increases PCI from its current condition is important, because investing enough to just maintain the current PCI will not reduce the backlog of maintenance and will end up costing the City more in the long run. It is also important to note that investing in the capital pavement rehabilitation component directly impacts base level operations. As the streets deteriorate, increasing amounts of maintenance resources will be necessary to make interim repairs (filling pot holes, etc.). As more resources are needed to support interim street repairs, other service areas will need to be reduced.

Policy Discussion

To eliminate the backlog of street maintenance and fulfill base operational needs relating to street maintenance of over \$2.4 million annually will be needed to be dedicated to this purpose. Although the recent increased funding from Measure B and SB 1 will provide for much needed maintenance, the City's streets will continue experience declines in condition, which will in turn begin to impact and increase the resources needed for base level operations and the deferred maintenance for streets will continue to grow. This degradation and funding backlog will only continue to mount unless a new sustainable revenue source can be identified, current General Fund services are significantly reduced and funding is reallocated to streets, or new revenue can be generated.

1. Should General Fund discretionary revenues be prioritized to support street maintenance, which would require reduction in other services?
2. Should the City explore the development of a new tax revenue source?

Wastewater System

The City's Water and Wastewater systems are the critical components in ensuring health and safety of the Morgan Hill Community. The System also is critical to achieving the City's economic development priority, serving commercial and industrial users. The City provides sewer collection services to approximately 12,400 residential, commercial, industrial, and institutional accounts. The City's collection system consists of approximately 158 miles of up to 30-inch gravity sewer pipes, which includes part of the Morgan Hill-Gilroy Joint Sewer Trunk, that convey flows to the South County Regional Wastewater Authority (SCRWA) Wastewater Treatment Plant (WWTP), located southeast of the City of Gilroy.

The City's Utilities Division manages the day to day operations utilizing experienced and knowledgeable staff to manage the system. The day to day operations are guided by the Sanitary Sewer Management Plan, recently adopted in February 2018.

The Utilities Division Coordinates with the Engineering Division and consultants to plan for major capital projects associated with repair, replacement and expansion of the system. In follow-up to the City's recent General Plan Update, the City Council adopted the 2017 Sewer System Master Plan. This plan identifies significant projects in the coming years. During adoption it was anticipated the funding options for these improvements would be reviewed during the 2018/19 Capital Improvement Budget process.

Infrastructure

12,400 Connections
158 Miles of Sewer Lines
14 lift stations
3,284 manholes
2.9 miles of force mains
23 siphons

Project Type	Relief Trunk	Suggested Expenditure Budget ¹			
		General Plan Horizon			
		Near-Term	Intermediate Term	Long-Term	
		2018-2020	2021-2025	2026-2030	2031-2035
Pipeline Capacity	\$27,823,301	\$3,030,098	\$2,133,295	\$1,807,775	\$0
Infiltration and Inflow		\$782,921	\$0	\$0	\$0
Rehabilitation		\$8,848,893	\$5,731,826	\$0	\$0
Joint Trunk Condition Assessment		\$200,000	\$0	\$0	\$0
Comprehensive Plan Updates		\$400,000	\$400,000	\$400,000	\$400,000
CCTV-Sewer System		\$380,160	\$633,600	\$633,600	\$633,600
Currently Planned Projects		\$28,420,000	\$26,150,000	\$0	\$0
Total	\$27,823,301	\$42,062,072	\$35,048,721	\$2,841,375	\$1,033,600
Cumulative Cost	\$27,823,301	\$69,885,373	\$104,934,093	\$107,775,469	\$108,809,069

AKEL
ENGINEERING GROUP, INC.

8/15/2017

Funding

Wastewater System Operations are funded through fees for service to users of the system. Capital projects associated with the expansion of the system are funded through Impact Fees to developers as new construction is connected to the system. A Comprehensive Rate Study was completed and approved by the City Council in January 2016. The 2016 rate study did not include projects from the 2017 Sewer Master Plan. In addition, it is important to note that since the rate study was conducted several new developments have occurred that may require the fee study to be revisited. These developments include:

- Infiltration and Inflow (I&I) Projects – Due to recent sewer overflows the City has begun a systemwide assessment to fully identify I&I issues within the system. This assessment will result in several rehabilitation projects that were not identified in the previous rate study.
- Relief Trunk Line to Treatment Plant – Also in relation to the overflows, the design of a second relief trunk line to the treatment plant in Gilroy was accelerated. This project, estimated at \$30 Million, would be funded 25% by rate payers.

An update of the City's Impact Fees is currently underway based on the updated Sewer System Master Plan, this update is taking recent needs into consideration. In addition to the Relief Trunk Line costs, the City anticipates Morgan Hill's share of the expansion of the Wastewater Treatment Plant to cost \$30 million.

Base Service Operations

In operation of the Wastewater System the Utilities must follow requirements outlined by the State Water Resources Control Board. The recently adopted Sanitary Sewer Management Plan (SSMP) is required for operations. Wastewater operations have been traditionally funded at adequate levels and rates have been adjusted to meet the needs of operating the System. Driven by both the SSMP and increases I&I staff is proposing some operational enhancements such as improving business systems and upgrading field equipment. These include a work order system, CCTV Truck, and specialized off-road sewer flushing equipment. Additionally, the Division intends to conduct most of the I&I assessment utilizing "in-house" staff. Upgraded equipment and technology provides for increases in efficiency and will allow existing staff within the Division to conduct this increased work.

Capital Improvements

Aging infrastructure is an issue the City is facing in multiple areas; however, the City's wastewater system must be prioritized. With much of the infrastructure out of sight, the ongoing planning and evaluation is critical. The current Master Plan calls for \$109 million in projects to be funded through 2035, including approximately \$52 million funded through ratepayers and \$57 million funded through impact fees.

The urgent projects relating to I&I, the Relief Trunk Line, and the Treatment Plant Expansion are all priorities that must continue to move forward. At the same time City staff will be recommending that alternate options for expanding capacity be analyzed. This would include how future recycled water developments could impact the timing of the need for the Treatment Plant Expansion and Relief Trunk Line construction. In coordination with this analysis, staff will also be recommending a full assessment of the existing trunk line in relation to capacity enhancements and rehabilitation needs.

"Infiltration and Inflow"

Inflow and infiltration or I & I are terms used to describe the ways that groundwater and stormwater enter into dedicated wastewater or sanitary sewer systems. Inflow is stormwater that enters into sanitary sewer systems at points of direct connection to the systems. Various sources contribute to the inflow, including footing/foundation drains, roof drains or leaders, downspouts, drains from window wells, outdoor basement stairwells, drains from driveways, groundwater/basement sump pumps, and even streams. These sources are typically improperly or illegally connected to sanitary sewer systems. Infiltration is groundwater that enters sanitary sewer systems through cracks and/or leaks in the sanitary sewer pipes. Cracks or leaks in sanitary sewer pipes or manholes may be caused by age related deterioration, loose joints, poor design, installation or maintenance errors, damage or root infiltration.

Policy Discussion

Recent developments have increased the urgency in completion of expansion projects and the rehabilitation of components of the existing wastewater system. The available project funding will be presented to the City Council in the proposed Capital Improvement Plan during the upcoming budget process. However, available funding in the Sewer Utility is not adequate to support the proposed capital plan. Staff is recommending that a rate study be conducted immediately to understand what rate increase would be needed to fund the proposed capital plan.

- Should an update to the wastewater rate study commence immediately?

When the results of the Impact Fee study are available it is anticipated that that the recommended Sewer Impact Fees will increase. Increased impact fees are an area of concern as it relates to commercial and industrial development, which in turn can be a hindrance to development. However, understanding the urgency of the Wastewater System expansion projects, these fees will need to be prioritized.

Relief Trunk Line Alignment



LEGEND:

- EXISTING JOINT SEWER TRUNK
- SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY WASTEWATER TREATMENT PLANT
- TRUNK SEWER SOUTH OF HIGHLAND
- TIE-IN TO HARDING AVE RELIEF SEWER TRUNK
- TIE-IN TO CITY OF GILROY RELIEF SEWER TRUNK

Water System

The City's municipal water system provides service to approximately 14,072 residential, commercial and industrial customers. The City's Water and Wastewater systems are the critical components in ensuring health and safety of the Morgan Hill community. The System also serves as the key component for fire response through the network of fire hydrants located throughout the City. The City's water system consists of approximately 165 miles of pipeline throughout the City.

The City's Utilities Division manages the day to day operations managing both water and wastewater system operations. The City's Finance Division manages the billing of both water and wastewater fees. The Utilities Division partners with the Engineering Division and consultants in planning for major Capital Improvement Projects. In follow-up to the City's recent General Plan Update, the City Council adopted the 2017 Water System Master Plan. This plan identifies significant expansion and some rehabilitation projects in the coming years. During adoption of the plan, it was noted the funding options for these improvements would be reviewed during development the 2018/19-20 Fiscal Year Capital Improvement Budget.

Funding

Operation of the Water System is funded through an enterprise fund, receiving fees for service from users of the system. Capital projects that expand the system to accommodate growth are funded through Impact Fees charged to developers as new construction is connected to the system. A comprehensive rate study was completed and approved by the City Council in January 2016, with new rates going into effect at that time. An update of the City's impact fees is currently underway based on the updated Water System Master Plan, this update is taking recent needs into consideration.

Base Service Operations

Similar to the City's wastewater enterprise, funding for operations managing the water system have been adequate to address the day to day system management needs. Rates were last adjusted in 2016 and were increased to meet the needs of operating the System. The greatest needs for enhancements relate technology and equipment upgrades to support ongoing system management. The Utilities Division recently completed upgrades to its metering system bringing online fully deployed Advanced Metering Infrastructure. This deployment was completed with existing "in-house" staff over a four-year time period. Upgraded equipment and technology provides for increases in efficiency and will allow existing staff within the Division to conduct work related to major projects such as this.

Capital Improvements

In 2014, the City issued bonds to fund several water rehabilitation and expansion projects. These bonds were utilized in the rehabilitation of two wells, the construction of one new well, along with the other rehabilitation and transmission line projects. However, due to very large increases in construction costs over the last several years, the bond funds did not fund as many projects as were anticipated. The most notable project that adequate funding was not available for was the new East Dunne Water Reservoir and associated pump station. This project is needed to increase the capacity for future growth within the City and to improve service and safety to those in the east hills. The increased construction costs are not an issue exclusive to Morgan Hill and have been seen across the country but are even more severe here in Silicon Valley.

Infrastructure

17 Groundwater Wells

10.5 Million Gallons in Storage

20 Pressure Zones

12 Storage Tanks

9 Pumping Stations

165 Miles of Pipeline

The table to the right outlines the proposed water system future capital projects. In total \$48.4 million in water system capital improvements have been identified, \$16.8 allocated for existing ratepayers and \$31.6 million to be funded through impact fees.

Policy Discussion

The funding considerations associated with the Water System are similar in nature to those for the Wastewater System, in that the recently adopted Water Master Plan identifies significant projects for the system. The Water Utility is underfunded for both expansion and rehabilitation projects. However, the projects tend to be weighted more heavily towards expansion. Consequently, City Council will need to consider increasing water impact fees. Like Sewer, staff is also recommending that a rate study be conducted for the Water Utility to determine the rate changes needed to support the rehabilitation component of the capital program.

Well				\$7,909,200
Pump Station	\$2,197,900	\$1,881,759		
Valve	\$79,937			
Comprehensive Plan Updates	\$400,000	\$400,000	\$400,000	\$400,000
Currently Planned Projects	\$4,190,000	\$450,000		
Total	\$14,382,645	\$8,998,850	\$10,981,572	\$14,059,096
Cumulative Cost	\$14,382,645	\$23,381,495	\$34,363,067	\$48,422,162



7/2/2017

Additionally, the Water Utility has not programmed dollars into its capital improvement program to specifically support the development of recycled water in the City. The policy question for City Council is should recycled water be added to the capital program or should the City continue to rely on Santa Clara Valley Water District or grants to move the needle in this area.

Future East Dunne Reservoir





CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Derek Witmer, Fire Chief

APPROVED BY: City Manager

FIRE RESOURCES REPORT

RECOMMENDATION(S)

Accept report on Fire resources and update on Public Safety Master Plan recommendations.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

Background

The purpose of this report is to provide an update related to ongoing fire and EMS Services in the City, including fire protection, fire marshaling, and emergency medical services (EMS).

In 2011, Council directed Staff to issue a request for proposal (RFP) for the delivery of fire/EMS services. The RFP was developed based on the City Council's priorities:

1. Substantially reduce the City's expense in providing Fire/EMS service
2. Achieve the City's goals of a single service provider with a single governance system
3. Maintain or exceed the 2011 level of service

On May 2, 2012, after receiving a response from CAL FIRE, Council directed staff to negotiate an agreement for services with CAL FIRE for delivery of Fire/EMS Services effective January 2013. In the preceding months, up to January 2013, staff in conjunction with CAL FIRE, implemented a plan to reconstitute the Morgan Hill Fire Department (MHFD), acquire property and real estate to house City fire equipment, and hire fire personnel. City staff negotiated with the previous fire and EMS provider, Central Fire Protection District, to acquire the two existing fire stations in Morgan Hill, and acquire through a lease purchase program, the needed fire apparatus and equipment necessary to operate the fire department. CAL FIRE hired and trained staff to implement the MHFD.

Third-Party Review and Master Plan

The City and CAL FIRE have had a great partnership since inception. In 2016, Council approved a third-party review of Police and Fire Services. A request for proposal was advertised and Center for Public Safety Management (CPSM) was chosen to provide the review services. Since fire services are a regionalized service, the South Santa Clara County Fire District (SSCCFD) also participated in the fire services review. After several months of interviews, including a CPSM field review, CPSM reported its findings to City and County Executive Staff for MHFD and SSCCFD in its report dated February 22, 2017 (Attachment 1). The MHFD began reviewing and addressing recommended changes when the draft CPSM report was first provided to fire administration.

Some report highlights include operational recommendations and best practices including the now implemented South County Automatic Aid / Boundary Drop Agreement and singular command and organizational structure used in the South County region.

The report stated that at least 95% of the time, the MHFD meets the Countywide EMS response goal of having a paramedic engine company at the scene of a request for medical services in eight minutes or less. Note that the MHFD goal remains at a five minute or less response time.

Financial Analysis of CAL FIRE Contract

The prior five-year agreement has resulted in the anticipated savings that were part of the impetus to consider other service providers. The chart below compares the original budget of the initial agreement to the actual expenditures by year, which indicates that CAL FIRE has consistently operated within the budget per the Fire Protection Reimbursement Agreement.

Year	Original Budget	Actual Expenditures	Variance
2012-13 (6 months)	\$2,061,336	\$1,547,751	\$513,585
2013-14	\$4,122,671	\$3,512,730	\$609,941
2014-15	\$4,225,738	\$3,709,357	\$516,381
2015-16	\$4,331,382	\$3,901,345	\$430,037
2016-17	\$4,439,666	\$4,218,729	\$220,937
2017-18	\$4,706,046	\$4,706,046 <i>(estimated)</i>	\$0

New 5-year Agreement

The CAL FIRE agreement expired June 30, 2017 and was extended to June 30, 2018. The City and CAL FIRE are finalizing a new agreement that will begin to address the operations of the future fire station, future growth, capacity and continuity of operations of the MHFD in providing administration, dispatching, fire marshaling, and Fire and EMS operations.

As part of working in a regional deployment model, the balancing of personnel and equipment ensures that MHFD continues to meet reciprocity with the fire departments that the City has automatic aid agreements with, including SSCCFD. As calls for service increase, the MHFD continues to analyze the regional delivery services model, look for improvements to service demands, and propose to Council any recommended changes.

The proposed new agreement will allow Council the flexibility to change as the needs of the City are identified and staffing is approved. The additional positions and classifications allow the agreement to expand or contract as needed, without having to move through the lengthy process to modify or amend the agreement with CAL FIRE and the California Department of General Services.

To accommodate the growing service level needs of the City, CAL FIRE has made the following recommended enhancements to existing services based on current workload and forecasted growth and impacts.

Immediate Service Enhancements (to be included in FY 2018-19 and FY 2019-20 Recommended Budget):

1. Personnel average cost increase of approximately 12%

Negotiated salary and benefit increases at the State level for CAL FIRE resulted in increases to the contract amount.

2. Share 50% of the cost for a Heavy Equipment Mechanic position

In the original RFP, a mechanic was recommended, however the City opted instead to increase the overtime fund until the workload increased to share the position. The Cities fleet is now at eight and the equipment is six years old requiring more maintenance. The cost for the City's share of this position is \$71,294.

3. Share 50% of the cost for an Analyst position

Currently the City does not pay any of the Analyst position. It is currently paid 100% by South Santa Clara County Fire District. This position would assist with budgets, Cooperative Agreements, policy requirements, accounting/finance, revenue projections, fiscal reports and staff reports. The cost of this position would be split equally with the City and South Santa Clara County Fire District, with each paying \$54,071.

4. Incremental cost increases for an Assistant Chief position

There is increased management workload in the City and the District including planning and managing the construction of a new fire station. This position will add depth and capacity to the regional fire deployment model. This position will be split between the City, District and State. The City's share will be 25%, or \$74,224 in 2018-2019, and 33%, or \$100,915 in 2019-2020. This position will then be split 50/50 between the City and the District beginning in 2020-2021.

5. Upgrade EMS Fire Captain position to Battalion Chief position

This position is currently shared between the City and the District. The EMS Fire Captain position would be upgraded to a Battalion Chief in 2018-19, and this cost would be equally paid by the City, the District, and the State. This would result in a savings to the City of \$24,900 which represents the difference between the current 50% salary of the EMS Fire Captain of \$105,069 and the 1/3 salary of the Battalion Chief of \$80,169.

6. Shift in funding an Engineer Paramedic

This is an existing position currently paid for in contractual services through existing savings in the CAL FIRE contract. The cost of approximately \$200,000 will move from contract services to the CAL FIRE contract account in 2018-2019.

Future Service Enhancements (to be considered in future budget cycles):

Personnel:

1. Additional Fire Operations positions over 2 fiscal years to support staffing options (Total Cost = approximately \$600,000)

There is a need for three new operations positions (Fire Captain Paramedic, Fire Captain, and an Engineer Paramedic) to be phased in as financial resources permit over the next few fiscal years to accommodate the increased call volume in the City. This is a conservative approach to add positions which will allow staffing options such as a squad response model. Several additional positions will be phased in over the next several years, and at the completion of this plan the City will be able to fully staff a third station by 2024.

Equipment:

1. The addition of a Rehabilitation Support Vehicle - \$10,000

The Rehab Vehicle will serve as a multi-role unit. It will be used as a rehab unit at the scene of fires or other type of incidents requiring a long period of commitment of fire crews. It could be used for an ambulance in times of a disaster or large-scale incidents. The City would have a resource for transport should County EMS change the contract for patient transport.

2. The addition of a Type 3 Fire Engine - \$550,000

A Type 3 fire engine would increase response capability during wildland/interface fires and area flooding emergencies, as well as provide an additional fire engine for events, natural disasters, and high fire danger days. The fire engine would also be used as a reserve fire engine during times when the first out fire engine is unavailable.

3. Purchase Electronic Medicine Dispensary - \$41,000

Safe for storing controlled substances (narcotics) with Wi-Fi capabilities and double-locking requirements that meet Drug Enforcement Administration requirements.

4. **Purchase Automatic Vehicle Location System - \$70,000**

Technology for the emergency response vehicles that ensures the closest available resources are dispatched to an emergency incident in support of existing Automatic Aid and Boundary Drop agreements.

5. **Purchase Advanced Life Support Monitors - \$80,000**

Purchase two Advanced Life Support monitors to ensure response vehicles are equipped to provide Paramedic (ALS) services.

6. **Purchase Automatic External Defibrillators - \$10,000**

Used for Basic Life Support (BLS) services and equipped on emergency response vehicles.

7. **Purchase Equipment for Type I Fire Engine - \$167,000**

Tools, hose, and other equipment to outfit the Type I engine purchased in 2016.

8. **Purchase American Heart Association Advanced Cardiac Pediatric and Adult Mannequins - \$25,000**

Training mannequins to increase the quality and consistency of CPR delivery on emergency incidents.

Facility Improvements:

1. **Remodel Kitchen at Dunne Hill Fire Station (\$125,000)**

Kitchen modernization.

2. **Reroofing El Toro Fire Station (\$156,000)**

Repairs necessary due to roof leaks and related damage.

3. **El Toro Fire Station Stucco Repair and Exterior Paint (\$24,000)**

Repairs to damaged siding due to dry rot and age.

The above enhancements will be considered as part of the current and future budget processes. Staff acknowledges that fiscal resources are limited and that any increase in expenditures requires a revenue/funding source or a reduction in other expenditures.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community and highlight the current and future needs for Fire resources.

ALTERNATIVE ACTIONS:

No alternatives as this report serves to inform Council only.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- In 2011, Council directed staff to issue a request for proposal for the delivery of fire/EMS services.

- On June 27, 2012, Council delegated to the City Manager to execute an agreement for services with CAL FIRE for the administration and operation of the Morgan Hill Fire Department.
- In 2016, Council approved a third-party review of Police and Fire Services, which was awarded to Center for Public Safety Management (CPSM).
- On February 22, 2017, Council received the report from CPSM.
- On May 17, 2017, Council approved the extension of the Fire Protection Reimbursement Agreement between the City of Morgan Hill and CAL FIRE.

FISCAL AND RESOURCE IMPACT:

The acceptance of this report has no fiscal impact. Future City Council decisions to potentially increase resources will determine the fiscal impact. The upcoming Recommended Budget will include the updated Agreement for Fire Services.

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. The City will be required to conduct CEQA review before making a decision to move forward with any project that involves physical changes, such as the construction of a new fire station.

LINKS/ATTACHMENTS:

1. Public Safety Master Plan February 2017 (web link)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 18, 2018

PREPARED BY: Cynthia Hasson, Assistant City Attorney
APPROVED BY: City Manager

ADOPT ORDINANCE TO 1) UPDATE ENFORCEMENT PROVISIONS OF THE MUNICIPAL CODE, 2) AMEND PROVISIONS REGARDING ANIMAL NUISANCES, AND 3) CLEAN UP VARIOUS TYPOGRAPHICAL AND OTHER ERRORS IN THE CODE

RECOMMENDATION(S)

1. Waive the first and second reading of the Ordinance to update code enforcement; and
2. Introduce the Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Preserving and Cultivating Public Trust

POLICY CONSIDERATIONS:

Should the City Council take steps to update the administrative citation and code enforcement sections of the Morgan Hill Municipal Code to provide greater prosecutorial discretion?

Should the animal nuisance sections be amended to clarify when animal noise constitutes a public nuisance?

REPORT NARRATIVE:

The purpose of this ordinance is to revise the Morgan Hill Municipal Code sections related to code violation administration and enforcement. The primary goal of code enforcement activity is to gain compliance, not necessarily to punish the violator. To that end, it is helpful to have a number of tools available with discretion as to their use to provide a robust code enforcement program. While current language allows civil, criminal and administrative enforcement, the enforcement language is inconsistent and confusing. This ordinance is intended to provide greater clarity and flexibility in obtaining compliance with City laws.

Prosecutorial Discretion

Generally, a city may impose fines and penalties for violations of its ordinances through an enabling ordinance. Under California law, violation of a city's municipal code is a misdemeanor unless the city has adopted an ordinance requiring or allowing the

violation to be charged as an infraction. Currently, violations of the code vary in whether they are designated as infractions or misdemeanors. Enforcement provisions in the code are inconsistent, leading to a lack of clarity as to how a specific violation should be charged. For criminal prosecutions, the City Attorney currently has very little prosecutorial discretion—the violation is either a misdemeanor or an infraction. The proposed ordinance will give the City Attorney discretion to charge a violation as a misdemeanor or an infraction depending on whether 1) financial penalties would be unwarranted, and probation or a diversion program would be more appropriate, 2) the severity of the violation and/or 3) the violator's criminal history. The proposed ordinance would also clarify that administrative and/or civil enforcement is available in all cases where criminal enforcement is not warranted.

Criminal Prosecution

The lack of discretion can lead to unintended consequences and inefficiencies. For example, a person convicted of a municipal code infraction will be required to pay a fine—usually \$100. For some people, even a small fine is an extreme burden. If the violator does not pay the fine on time, the penalty is usually an additional \$300. Failure to pay may also lead to more serious criminal charges and other impacts such as loss of a driver's license. For someone without the ability to pay, an infraction citation is unnecessarily onerous and is usually ineffective.

Unlike infractions, a person convicted of a misdemeanor can be sentenced to serve time in a county jail. As such, a misdemeanor charge is seen as more serious than an infraction charge. However, the imposition of jail time for a municipal code violation is very rare. Most municipal code misdemeanors are resolved through diversion, where a violator is required to complete an education or treatment program either as a condition of probation or in exchange for a dismissal or reduction in the charges. Even where diversion is not available, a person convicted of a municipal code violation will normally be sentenced to informal probation in lieu of jail. Depending on the nature of the violation and/or ability to pay, a fine may be imposed in addition to any probation terms. If imposed, fines can be paid over time rather than in a lump sum.

Administrative Citations

Administrative citations are often used as an alternative to criminal prosecution or civil litigation. Administrative citations are monetary penalties that can be issued by anyone responsible for enforcing provisions of the municipal code. The advantages of administrative citations are 1) fines are paid directly to the City and the City can more easily recover costs of enforcement, 2) the City only needs to show that it is more likely than not that the person cited committed a violation (rather than the reasonable doubt standard), and 3) most administrative citations are resolved entirely at the City level, without requiring court appearances. In addition, the violator will not have a criminal conviction on his or her record. For those reasons, administrative citations are the preferred enforcement tool for most violations that might otherwise be charged as infractions.

However, administrative citations are generally not effective when the violator does not have the means to pay the fines. For larger violations, the City may lien the violator's property if he or she fails to pay the fine. In other cases, the fine might be sent to debt collection. If the violator does not own property, or have the means to pay the debt, there is very little recourse.

Under the current code, administrative citations are not available for all violations. Because administrative citations are the preferred method of enforcement, particularly for property related violations, we propose allowing administrative enforcement of all municipal code violations.

Civil Enforcement

Civil litigation is the most resource intensive and time-consuming method of enforcing the municipal code. While we can sometimes obtain short-term injunctive relief to prevent immediate damage from code violations, long-term compliance through civil litigation typically involves intensive discovery and numerous court appearances. For that reason, we generally initiate civil litigation only when informal or administrative remedies have failed, or when other enforcement tools are not appropriate. Under the proposed changes, civil enforcement will remain an option in those cases where it is warranted.

Proposed Changes

Enforcement Provisions

Proposed modifications to Chapter 1.24 provide that nearly all code violations are misdemeanors, subject to the City Attorney's prosecutorial discretion. The only exceptions are certain vehicle violations, which are covered under state law. Language specifying infraction or misdemeanor classifications will be deleted from the remainder of the code in most instances. Generally applicable language, such as that each day a violation exists is considered a separate violation, remedies are cumulative, and establishing the City's right to recover costs, is consolidated in Chapter 1.24.

Chapter 1.19 was added to the Municipal Code in 2007 to authorize administrative fines and penalties for violations of the Municipal Code as an additional legal remedy. At that time, building and zoning code violations were specifically exempted from the administrative citation process. The proposed ordinance will allow administrative citations to be issued for both building code and zoning code violations. Additional changes are proposed to Chapter 1.19 to provide for flexibility in enforcement of the code, and provide additional tools for enforcement, including authorizing the recordation of Notices of Violation against real property which provides notice to third parties and puts prospective buyers of the property on notice of the pending code violations or nuisance conditions, and provide an incentive for correction of the conditions when the owner desires to sell or refinance the property.

Changes to Animal Nuisance Provisions

Changes are proposed to Title 6 (Animals) to update terminology (“animal service officer” instead of “animal control officer”), and to provide clarification for purposes of enforcement. Changes to Chapters 6.24 and 8.24 are proposed to simplify enforcement regarding animal disturbances. Because the code is currently written to require more than one person be disturbed beyond the complaining party, Police Department resources are expended in investigating the complaints to determine whether a number of people are disturbed beyond the complaining party. Additional changes to Chapter 6.24 are intended to clarify the restrictions on animal urination and/or defecation.

Other Clean-Up Changes

- Amend Chapter 5.52 to clarify that only two tow car services are required for the City’s “rotation tow program.” Currently, only two companies are needed to meet the needs of the City.
- Minimal changes to Title 18 are proposed at this time. Other changes will occur as part of the Zoning Code update.
- Minor changes to correct spelling and punctuation are included throughout the code.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community regarding the proposed amendments to the Morgan Hill Municipal Code.

ALTERNATIVE ACTIONS:

City Council could decline to adopt this ordinance and code violations will continue to be enforced as specifically described as infractions or misdemeanors or pursued administratively where authorized.

The Council could also direct the City Attorney to bring back a revised ordinance that contains only some of the proposed changes.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No recent prior City Council action.

FISCAL AND RESOURCE IMPACT:

No fiscal impacts are anticipated by amending the Morgan Hill Municipal Code. It is anticipated that some of the changes will have a minor positive impact by allowing flexibility in pursuing remedies, and reducing some of the burdensome requirements, but it is difficult to quantify the fiscal impact at this time.

CEQA (California Environmental Quality Act):

Administrative activities of governments that will not result in direct or indirect physical changes in the environment are not a project under CEQA.

LINKS/ATTACHMENTS:

1. Ordinance Amending Penalty Provisions for Violation of the Municipal Code-
Amending Animal Nuisance Provisions-and Cleaning Up Errors in the Code

ORDINANCE NO. ____, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 1.19 OF THE MORGAN HILL MUNICIPAL CODE TO ALLOW FOR ADMINISTRATIVE CITATIONS TO BE ISSUED FOR CONTINUING VIOLATIONS OF BUILDING, PLUMBING, ELECTRICAL, OR OTHER SIMILAR STRUCTURAL OR ZONING ISSUES; ADOPTING A SCHEDULE OF FINES FOR VIOLATIONS OF TITLE 15 (BUILDING AND CONSTRUCTION); AND CLARIFYING THE PROCESS FOR ADMINISTRATIVE CITATIONS; AMENDING CHAPTER 1.24 TO MAKE ALL OFFENSES OF THE MORGAN HILL MUNICIPAL CODE, EXCEPT FOR TRAFFIC VIOLATIONS IN TITLE 10, PROSECUTABLE AS MISDEMEANORS WHICH MAY BE MADE INFRACTIONS AT THE DISCRETION OF THE CITY ATTORNEY; AND AMENDING VARIOUS CODE PROVISIONS TO DELETE SPECIFIC MISDEMEANOR OR INFRACTION CLASSIFICATIONS

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 1.19 of Title 1 (General Provisions) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

Chapter 1.19 - ADMINISTRATIVE CITATIONS AND FINES

1.19.010 - Applicability.

- A. This chapter provides for an administrative citation process that may be used by the City to address any violation of the Municipal Code, or any regulations adopted under the authority of the Municipal Code, including state laws delegated by statute to any City department for enforcement. References to "Municipal Code" include adopted regulations. ~~finest which may be collected in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this code.~~
- ~~B. The administrative citations process set forth in this chapter does not apply to continuing violations of this code that pertain to building, plumbing, electrical, or other similar structural or zoning issues.~~
- B. This chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of fines pursuant to California Government Code Section 53069.4, as amended from time to time, or successor legislative enactment.
- C. The provisions of this chapter are cumulative and in addition to any other remedies available under federal, state, or local law.
- ~~D. Use of this chapter shall be at the sole discretion of the city, subject to Section 1.19.010(B).~~

1.19.020 - Enforcement officer—Defined.

For purposes of this chapter, "enforcement officer" shall mean any city employee or agent of the city with the authority to enforce any provision of this code. }-

1.19.030 - Issuance of an Administrative citation.

- A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation. An administrative citation for building, plumbing, electrical, or other similar structural or zoning codes, as specified in section 1.19.040, may be issued following the correction period specified in the notice of violation unless the violation(s) create an immediate danger to health or safety.
- B. Each administrative citation shall contain the following information:
 - 1. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;
 - 2. The address or a definite description of the location where the violation occurred;
 - 3. The section of this code violated and a description of the violation;
 - 4. The amount of the fine for the code violation;
 - 5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 - 6. An order prohibiting the continuation or repeated occurrence of the code violation(s) described in the administrative citation;
 - 7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
 - 8. The name and signature of the citing enforcement officer.
- C. Each day on which a violation occurs or continues shall be a separate violation for which a citation may be issued. Each section of the Morgan Hill Municipal Code violated constitutes a separate violation.

1.19.040 - Issuance of a notice of violation for continuing violations of building, plumbing, electrical, or other similar structural or zoning issues.

- A. When an enforcement officer determines that a responsible person has committed a violation of a building, plumbing, electrical, or other similar structural or zoning code, the enforcement officer may issue a notice of violation to the responsible person. Such notice shall serve as a written warning of responsibility and require action by the responsible person to abate the violation(s). A notice of violation shall specify a reasonable time for the responsible person to correct or otherwise remedy the violation. Such reasonable time shall be at least five days from the issuance of the notice of violation unless the violation creates an immediate danger to health or safety.

- B. On such form as may be provided by the city, any responsible person cited for violation(s) of a building, plumbing, electrical, or other similar structural or zoning code that does not cause immediate danger to health or safety may petition the enforcement officer for an extension of time to correct the violation(s) so long as the petition is received before the end of the correction period, as stated in the notice of violation. The enforcement officer may, in his or her sole discretion, grant an extension of time to correct the violation(s) if the enforcement officer determines that the responsible person has supplied sufficient evidence showing that the correction(s) cannot reasonably be made within the stated period. The enforcement officer's decision shall be final and, notwithstanding any other provision of this code, not subject to appeal except in an appeal challenging the issuance of an administrative citation.
- C. No administrative citation may be issued for a continuing violation of building, plumbing, electrical, or other similar structural or zoning issues unless a notice of violation has first been issued to a responsible person in accordance with this section. Such notice must provide for a reasonable time to cure the violation(s) unless the violations create an immediate danger to health or safety. If, after the correction period, the violation(s) are not abated, the enforcement officer may issue an administrative citation assessing fines in accordance with this chapter.

1.19.050 - Notice of violation recordation.

- A. Recording of notice of violation. The enforcement officer may record a notice of violation with the County Recorder on the property which is the subject of the violation after the time limit for compliance if the violation has not been cured within the time limit set for compliance, or the owner or responsible person fails to provide sufficient evidence to establish reasonable doubt that a violation exists, or, if a hearing is held, after the Hearing Officer has determined responsibility. The notice shall include a description of the property, a description of the violation
- B. Right of appeal. If, following recordation of the notice of violation, the owner, responsible person or his or her authorized agent disagrees with the determination that a violation of this Code exists on the property and such determination has not already been made as a result of a hearing under this Chapter, he or she may apply for a "Cancellation of Notice of Violation" by requesting a hearing before the hearing officer pursuant to the provisions of this Chapter.
- C. Cancellation of notice of violation. The enforcement officer shall submit the "Cancellation of Notice of Violation" to the County Recorder for recordation when the violation no longer exists, all required work to abate the violation has been completed, and all related abatement and administrative costs have been reimbursed to the city and approved as determined by the enforcement officer or hearing officer on appeal. A fee shall be paid by the owner or occupant for processing the "Cancellation of Notice of Violation" as set by City Council.

1.19.0460 - Amount of fines.

- ~~A.(a)~~ Unless a different amount is specified in this code, the amount of the fine payable to the city for an administrative citation shall be set by resolution of the city council.
- ~~B.~~ If no specific fine amount is set, the amount of the fine shall be one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation of the same ordinance within one (1) year, and five hundred dollars (\$500) for each additional violation of the same ordinance within one (1) year.
- ~~C.~~ For violations of local building and safety codes, the amount of the fine shall be one hundred dollars (\$100) for a first violation, five hundred dollars (\$500) for a second violation of the same ordinance within one (1) year, and one thousand dollars (\$1,000) for each additional violation of the same ordinance within one (1) year.
- ~~D.(b)~~ Between July 1 and July 7 and between December 30 and January 2 of each year, the fine for a violation of the following sections will be three (3) times the amount that would otherwise be assessed under subsection ~~B(a)~~:
1. Section 08.32.010: Sale or Possession of Fireworks—Prohibited
 2. Section 09.04.010: Discharge—Permit Required
 3. Section 09.08.010: Drinking in Public—Permit Requirement

1.19.0570 - Payment of the fine.

- A. The fine shall be paid to the city within thirty (30) days from the date of service of the administrative citation.
- B. Any administrative citation fine paid pursuant to subsection A shall be refunded in accordance with Section 1.19.1100 if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation(s) or that there ~~was~~ere no violation(s) as charged in the administrative citation.
- C. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation(s) that ~~is~~are the subject of the administrative citation.

1.19.0680 - Hearing request.

- A. Any recipient of an administrative citation may contest that there was a violation of the code or that he or she is the responsible party by completing a request for hearing form and returning it to the city within thirty (30) days from the date of service of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 1.19.0780.
- B. A request for hearing form may be obtained from the department specified on the administrative citation.
- ~~C. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.~~

~~D. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.~~

1.19.0790 - Advance deposit hardship waiver.

- A. Any person who intends to request a hearing to contest that there was a violation of the code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section 1.19.0860(A) may file a request for an advance deposit hardship waiver.
- B. The request shall be filed with the department of finance on an advance deposit hardship waiver application form, available from the department of finance, within fifteen (15) days of the date of service of the administrative citation.
- C. The requirement of depositing the full amount of the fine as described in Section 1.19.0680(A) shall be stayed unless or until the director of finance or designee makes a determination not to issue the advance deposit hardship waiver.
- D. The director of finance or designee may waive the requirement of an advance deposit set forth in Section 1.19.0680(A) and issue the advance deposit hardship waiver only if the cited party submits to the director of finance or designee a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director of finance or designee the person's actual financial inability to deposit with the city the full amount of the fine in advance of the hearing.
- E. If the director of finance or designee determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the city within ten (10) days of the date of that decision or thirty (30) days from the date of service of the administrative citation, whichever is later.
- F. The director of finance or designee shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the director of finance or designee shall be final.
- G. The written determination of the director of finance or designee shall be served upon the person who applied for the advance deposit hardship waiver.

1.19.1080 - Hearing officer.

The city manager shall designate the hearing officer for the administrative citation hearing.

1.19.1190 - Hearing procedure.

- A. No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with Section 1.19.0860 or an advance deposit hardship waiver has been issued in accordance with Section 1.19.0970.

- B. A hearing before the hearing officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this chapter, unless this time is extended based upon agreement of the parties.
- C. The person requesting the hearing shall be notified of the date, time and place set for the hearing at least ten (10) days prior to the date of the hearing.
- D. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be mailed to the person requesting the hearing at least five (5) days prior to the date of the hearing.
- E. After a hearing date is set, the enforcement officer or responsible person may apply to the hearing officer for a continuance within ten (10) working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the ten (10) working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.
- ~~E~~F. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.
- ~~G~~G. At the hearing, the City and the party contesting the administrative citation shall be given the opportunity to testify, ~~and to present evidence, and to call and examine witnesses~~ concerning the administrative citation.
- ~~F~~H. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.
- I. The hearing officer may conduct the hearing informally, both as to rules of procedure and admission of evidence, in any manner which will provide a fair hearing.
- J. Evidence sought to be introduced is not limited by any legal rules of evidence except for the rule that it must be relevant and material to the issues to be decided.
- ~~K~~D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
- ~~E. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.~~

1.19.1200 - Hearing officer's decision.

- A. After considering all of the testimony and evidence submitted at the hearing, the hearing

officer shall issue a written decision within 30 days of the conclusion of the hearing to uphold or cancel the administrative citation and shall list in the decision the reason or reasons for that decision. The written decision of the hearing officer shall be final and is an exhaustion of administrative remedies.

B. The standard of proof shall be by a preponderance of the evidence.

~~BC.~~ If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the city shall be retained by the city.

~~DC.~~ If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

~~ED.~~ If the hearing officer determines that the administrative citation should be upheld, and the City has requested administrative costs, the hearing officer may order payment of the administrative costs by the responsible person to the City.

F. Administrative costs may include any and all costs incurred by the city (both direct and indirect costs) in investigating and commencing administrative proceedings for the violation as well as any and all costs incurred by the city in connection with the hearing before the hearing officer, including but not limited to costs of the code enforcement officer incurred in preparation for the hearing and for participating in the hearing itself and costs of the city to conduct the hearing.

~~GD.~~ If the hearing officer determines that the administrative citation should be canceled and the fine was deposited with the city, then the city shall promptly refund the amount of the deposited fine, ~~together with interest at the average rate earned on the city's portfolio for the period of time that the fine amount was held by the city.~~

~~HE.~~ The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.

~~IF.~~ The employment, performance evaluation, compensation, and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.

1.19.1310 - Late payment charges.

A. Unless otherwise provided in this code, any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this chapter, on or before the date that fine is due, shall also be liable for the payment of a late payment charge of ten percent (10%) of the amount of the delinquent fine.

B. Any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this chapter, on or before thirty (30) days after its due date shall also pay a second penalty of ten percent (10%) of the delinquent amount.

1.19.1240 - Recovery of administrative citation fines and costs.

- A. The city may collect any past due administrative citation fine, administrative costs, or late payment charge by use of all available legal means, including filing a civil lawsuit.
- B. Any person who fails to pay any obligation shall be liable in any action brought by the city for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees.
- C. Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.
- D. Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.

1.19.15025 - Right to judicial review.

Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the superior court in Santa Clara County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

1.19.1360 - NoticesService.

- A. The enforcement officer may issue a notice of violation, administrative citation, or any other notice, order, or other document required to be given by this chapter by personal service, mail, or posting as specified below.
 - 1. For personal service, the enforcement officer shall attempt to locate and personally serve the responsible person. If an agent, manager, or representative of a responsible person is personally served, a copy of the document(s) served shall also be mailed to the responsible person at his/her last-known business or residence address as the same appears in the records of the city, or, if the city lacks such records, the county. In such instances, the date a copy of the document(s) is deposited with the U.S. Postal Service shall constitute the service date.
 - 2. For service by mail, the enforcement officer shall mail the document(s) by first class mail with a requested return receipt at the recipient's last-known business or residence address as the same appears in public records of the city, or, if the city lacks such records, the county. The date a copy of the document(s) is deposited with the U.S. Postal Service shall constitute the service date.
 - 3. For violations involving real property, if the enforcement officer is not able to serve the responsible party in person or by mail, the enforcement officer shall post the document(s) on any real property within the city that is the subject of the notice of violation or administrative citation. The date of posting shall constitute the date of service.
- ~~A. The administrative citation required to be given by this chapter shall be served on the responsible party in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.~~

~~All subsequent notices shall be served on the responsible party by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.~~

- B. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

SECTION 2. Sections 1.24.010 and 1.24.020 of Chapter 1.24 (General Penalty) of Title 3 (General Provisions) are hereby amended, and section 1.24.030 through 1.24.050 are added to read as follows (additions in underline, deletions in ~~strikeout~~).

1.24.010 - Violations deemed a misdemeanor—Penalty.

- A. Except as provided in ~~Chapter 10.08~~Title 10 pertaining to civil penalties for parking violations, whenever in this code, any act is prohibited or is made or is declared to be unlawful, or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful or a ~~misdemeanor~~, the violation of any such provision of this code shall ~~not be considered a misdemeanor, but rather an infraction, punishable upon conviction not by imprisonment in the county jail for a period not to exceed six (6) months or, but by a fine not exceeding one thousand dollars (\$1,000) or by both such imprisonment and fine.~~ not be considered a misdemeanor, but rather an infraction, punishable upon conviction by imprisonment in the county jail for a period not to exceed six (6) months or, but by a fine not exceeding one thousand dollars (\$1,000) or by both such imprisonment and fine. The city attorney, in his or her discretion, may prosecute a violation of this code as an infraction, rather than as a misdemeanor, or ~~reduce or agree to the reduction of a previously filed misdemeanor to an infraction if such reduction would serve the interests of justice. the maximum allowed under state law for such infraction.~~ Each day such violation continues shall be regarded as a new and separate offense.
- B. Each ~~separate offense determined to be an~~ infraction shall be punishable by: (1) ~~a~~A fine not exceeding one hundred dollars (\$100) for a first violation; (2) ~~A~~a fine not exceeding two hundred dollars (\$200) for a second violation by the same person of the same ordinance within one (1) year of the date of the first violation; and (3) ~~a~~a fine not exceeding five hundred dollars (\$500) for a third and each additional violation by the same person of the same ordinance within one (1) year of the date of the first violation.
- C. Notwithstanding the provisions of ~~subsection A of this~~ Section 1.24.010(B), any violations of Title 15 (Buildings and Construction) determined to be an infraction shall be punished by the following code sections and chapters are to be treated as misdemeanors punishable upon conviction by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation by the same person of the same ordinance within one (1) year; and (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation by the same person of the same ordinance within one (1) year of the date of the first violation. or imprisonment in the county jail for a period not to exceed six months or

by both such fine and imprisonment:

1. Section 2.44.130	Civil disaster and emergency organization—Violations—Penalties
2. Chapter 3.24	Transient Occupancy Tax
3. Chapter 5.04	Business Taxes, Licenses and Regulations
4. Chapter 5.12	Bingo Games
5. Chapter 5.20	Community Antenna Television
6. Chapter 5.32	Massage Establishments
7. Section 5.64.040(D)	Minimum age for the purchase of tobacco
8. Chapter 6.24	Animal Restrictions
9. Chapter 6.28	Dangerous Animals
10. Section 6.32.070(B)	Impoundment—Hearing prior to animal deprivation
11. Chapter 6.36	Animals and Land Use
12. Chapter 8.04	Restaurants and Food Establishments
13. Chapter 9.04	Weapons
14. Chapter 9.13	Social Host
15. Chapters 13.20	Sewers and Industrial Waste
16. Chapter 13.30	Urban Storm Water Quality Management and Discharge Control
17. Chapters 15.04—15.24	Administrative, Building, Electrical, Mechanical, Plumbing and Housing Codes
18. Chapter 15.44	Fire Prevention Code
19. Chapter 15.56	Abatement of Dangerous Buildings
20. Chapter 18.42	Flood Damage Prevention
21. Chapter 18.71	Development and Redevelopment Standards for Post Construction Best Management Practices for Stormwater Pollution Prevention and

	Watershed Protection
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D. Notwithstanding any other provision of this code and in addition to the penalties provided by this section, the city may prosecute any violation of this code by issuing an administrative citation pursuant to chapter 1.19. whenever a violation of any section enumerated in Section 1.24.010(C) is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction if prosecution as an infraction would serve the interests of justice. If the defendant objects to the offense being made an infraction the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.

1.24.020 - Violations deemed a nuisance—~~Separate offenses—Abatement liens.~~

In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of any of the provisions of this code, ~~shall be deemed is~~ a public nuisance. ~~Each day such condition continues shall be regarded as a new and separate offense.~~ Any nuisance may be abated as provided in Chapter 1.18 of the Morgan Hill Municipal Code.

1.24.030 - Separate offenses and violations

Each section of the Morgan Hill Municipal Code violated constitutes a separate violation. Each day such violation is committed, continued, or permitted to continue, shall be regarded as a new and separate offense. Every person continuing, committing, or permitting any violation of any of the provisions of this chapter is deemed guilty of a separate offense for each and every day of such violation of this code.

1.24.040 - Power of Arrest for Violations

Any employee authorized to enforce the provisions of this code shall have the power of arrest as provided in California Penal Code Section 836.5.

1.24.050 - Remedies Cumulative

The provisions and remedies of this Chapter or any other provision of this Code are cumulative and in addition to any other remedies available under federal, state, or local law. Nothing in this Code bars any legal, equitable, administrative, or summary remedy to which any aggrieved person, the County, or any official may otherwise be entitled. Paying a fine or serving a jail sentence shall not relieve any person from the responsibility for correcting any condition which violates any provision of this Code.

1.24.060 -Definitions.

For the purpose of this Chapter, the following terms shall have the meanings as defined in this Section:

- A. “Administrative Costs” shall mean costs incurred by the City for enforcement of any provision of this code, including costs of inspection or investigation and costs of abatement.
- B. “Person” shall mean any natural person, firm, partnership, association, company,

corporation or organization of any kind.

C. "Responsible person" shall mean the person responsible for violation of the code.

1.24.070 - Interference with enforcing officers.

A. Interference or Obstruction. It is unlawful for any person to interfere or obstruct, or to attempt to interfere or obstruct, any official in the performance of such official's duties as specified in this Code or as may otherwise be received pursuant to the rules, regulations, or policies of the City of Morgan Hill.

B. False Information. No person shall give, either orally or in writing, information to an enforcement officer that the person knows or has reason to know is false.

1.24.080 - Administrative Costs

City shall have the authority to recover administrative costs from responsible persons. Such administrative costs shall consist of the total direct and indirect costs of enforcement that are reasonably and necessarily incurred by the City to investigate, inspect, or cure any violation or monitor the recurrence of any violation.

SECTION 3. Section 2.44.130 of Chapter 2.44 (Civil Disaster and Emergency Organization) of Title 2 (Administration and Personnel) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

2.44.130 - Violations—Penalties.

It is ~~a misdemeanor, punishable by a fine of not to exceed one thousand dollars, or by imprisonment in the county jail not to exceed six months, or both,~~unlawful for any person during an emergency to:

- A. ~~Willfully~~ obstruct, hinder, or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter;
- B. Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter;
or
- C. Wear, carry, or display, without authority, any means of identification specified by the emergency agency of the state.

SECTION 4. Section 3.20.200 of Chapter 3.20 (Sales and Use Tax) of Title 3 (Revenue and Finance) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

3.20.200 - Violation—Penalty.

It is unlawful for aAny person to violate~~ing~~ any of the provisions of this chapter. ~~is guilty of an infraction, and upon conviction thereof, shall be punishable by:~~

- A. ~~A fine of not more than one hundred dollars for a first violation;~~

~~B. A fine not exceeding two hundred dollars for a second violation of the same provision within one year;~~

~~C. A fine not exceeding five hundred dollars for each additional violation of the same provision within one year.~~

SECTION 5. Sections 3.24.190 and 3.24.200 of Chapter 3.24 (Transient Occupancy Tax) of Title 3 (Revenue and Finance) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

3.24.190 - Unlawful acts.

A. It is unlawful for Any operator or other person to do any of the following:

1. who Fails or refuses to register as required in this chapter;
 2. , or to Fail to furnish any return required to be made;
 3. , or who Fails or refuses to furnish a supplemental return or other data required by the tax administrator;
 4. , or who Renders a false or fraudulent return or claim; or
 5. , or who Fails to remit the full amount of tax collected.
- ~~, is guilty of a misdemeanor, and is punishable as set forth in this chapter.~~

B. It is unlawful for Any person required to make, render, sign, or verify any report or claim as required by this chapter who to makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due ~~required by this chapter to be made,~~ is guilty of a misdemeanor and is punishable as set forth in this chapter.

~~3.24.200 - Violation - Penalty.~~

~~Any person violating any of the provisions of this chapter is guilty of a misdemeanor punishable upon conviction by a fine not exceeding one thousand dollars or by imprisonment in the county jail not to exceed six months; or by both such fine and imprisonment.~~

SECTION 6. Section 5.04.090 of Chapter 5.04 (Business Taxes, Licenses and Regulations) of Title 5 (Business Licenses Generally) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.04.090 - Violation—Penalty.

It is unlawful for Any person to violateing any of the provisions of this chapter ~~is deemed guilty of a misdemeanor punishable upon conviction of a fine not exceeding one thousand dollars or by imprisonment in the county jail for a period of not more than six months; or by both such fine and imprisonment. Every person continuing, committing or permitting any violation of any of the provisions of this chapter is~~

~~deemed guilty of a separate offense for each and every day of such violation of this chapter.~~

SECTION 7. Section 5.08.220 of Chapter 5.08 (Ambulances) of Title 5 (Business Licenses Generally) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.08.220 - Violation—Penalty.

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. ~~In addition to—~~The provisions of this chapter providing for suspension, revocation, amendment, or change of permits, as the case may be, of any person violating any of the provisions of this chapter are not exclusive remedies and the City reserves all other remedies available~~is guilty of an infraction and shall be punished in accordance with Section 1.24.010B of this code. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by such person and shall be punishable accordingly.~~

SECTION 8. Sections 5.12.150 and 5.12.320 of Chapter 5.12 (Bingo Games) of Title 5 (Business Licenses Generally) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.12.150 - Suspension and revocation procedures.

- A. Whenever it appears to the chief of police that a permittee is conducting a bingo game in violation of any of the provisions of this chapter, the chief of police has the authority to summarily suspend ~~summarily~~ the permit and to order the permittee to cease and desist immediately conducting bingo games.
- B. It is unlawful for ~~Any person who to~~ continues to conduct a bingo game after notification of a summary suspension of a permit under the provisions of subsection A of this section ~~is guilty of a misdemeanor~~.
- C. The order issued under subsection A of this section shall also inform the permittee that ~~it~~ he or she has five (5) days from the date of knowledge of the order to request, in writing, a hearing to determine whether the permit will be revoked. Failure to deliver a written request for such hearing ~~before to~~ the chief of police within the five (5)-day period shall result in revocation of the permit.
- D. Within ten (10) days of receipt of a proper request for a hearing by a permittee whose license has been suspended, the chief of police shall conduct a hearing of the issue of whether the permit should be revoked. The suspended permittee may appear before the chief of police for the purpose of presenting evidence why the license should not be revoked. No permit shall be revoked under this section unless notice of the time and place of the hearing is given at least five (5) days before the hearing by depositing, in the United States mail, a notice directed to such suspended licensee at the address given in the application. The notice shall set forth a summary of the

ground advanced as the basis for the suspension and revocation. At the hearing, proof of facts in support of suspension and revocation action shall be made before the permittee is required to respond.

- E. ~~It is unlawful for~~ Any permittee whose permit is revoked ~~shall to not~~ conduct any bingo game unless and until the city council, on appeal, determines to overrule the decision of the chief of police.

5.12.320 - Violation—Penalty.

~~It is unlawful for any person to violate any provisions of this chapter. A. A violation of Section 5.12.300 of this chapter is punishable by a fine not to exceed ten thousand dollars, which fine shall be deposited in the city's general fund.~~

~~B. Any person who violates any other provisions of this chapter is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.~~

SECTION 9. Sections 5.16.010, 5.16.040, and 5.16.180 of Chapter 5.16 (Gaming and Betting) of Title 5 (Business Licenses Generally) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.16.010 - Illegal card and dice games.

- A. ~~It is unlawful for any~~ Every person, firm, corporation, or association ~~who~~, for profit, ~~or for anything of value, or for commercial purpose of any nature, to~~ keeps, operates, conducts or maintains, either directly or indirectly, within the city, any house, room, apartment, dwelling place, building, premises, or other place where any game, gambling, or gaming not mentioned or included in Section 330 or 330a of the Penal Code of the state is played, conducted, dealt, or carried on, whether with cards, dice, or any other device of whatsoever nature, for money, checks, credit, merchandise, or other representative of value, ~~shall be guilty of an infraction.~~
- B. Every person, firm, corporation or association, either as owner, lessor, lessee, principal, agent, employee, ~~or~~ participant, or otherwise, who maintains, ~~or keeps, or~~ operates, or conducts, directly or indirectly, in whole or in part, or who directly or indirectly is in possession in whole or in part of any house, room, apartment, dwelling place, building, premises, or other place upon or in which any gambling, games, or gaming prohibited in this chapter are played, conducted, dealt, or carried on, and who imposes or collects a fee or anything of value for the privilege of participating, in any way whatsoever, in any such games, gambling, or gaming, or who directly or indirectly gains or receives anything of value or any financial profit from playing, conducting, or dealing of any such games, gambling, or gaming shall, for the purposes of this chapter, be deemed to be keeping, conducting, operating and maintaining the same for profit or commercial purposes.

5.16.040 - Betting on illegal games.

~~Every~~ It is unlawful for a person ~~who to gamble by placing or bettings~~ at or against any of the games, ~~gambling or gaming which by defined in~~ Sections 5.16.010 or 5.16.020 of this chapter ~~are made unlawful, is guilty of a misdemeanor.~~

5.16.180 - Gambling at dice or pool.

It is unlawful for any ~~Every~~ person ~~to who~~ deals, plays or carries on, opens or causes to be opened, or ~~who~~ conducts, either as owner or employee, whether for hire or not, any game of dice having six (6) faces or less, or any game played with small round balls usually having one (1) flat face and commonly referred to as "pool peas," or any games using pool balls for the purpose of engaging in billiards, snooker, pool, or a similar game, when the aforementioned games are played for money, checks, credit, or other representative of value, ~~and every person who~~ It is unlawful for any person to bets at or against any of the aforementioned and prohibited games, ~~is guilty of an infraction.~~

SECTION 10. Section 5.28.140 of Chapter 5.28 (Amusement and Entertainment Premises) of Title 5 (Business Licenses Generally) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.28.140 - Violation—Penalty.

- A. ~~It is unlawful for Any person who to~~ violates any of the provisions of this chapter ~~shall be guilty of an infraction for the first violation, and for the second and subsequent violation within one year, shall be guilty of a misdemeanor.~~
- B. Any establishment or business providing entertainment or dancing maintained contrary to the provisions of this chapter or without a valid permit shall be declared unlawful and a public nuisance.

SECTION 11. Section 5.32.100 of Chapter 5.32 (Massage Establishments) of Title 5 (Business Licenses Generally) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.32.100 - ~~Criminal penalties~~ Violation.

~~It is unlawful to A violate~~ It is unlawful to ~~ion of any of the provisions of this chapter is a misdemeanor and may be prosecuted in the name of the people of the State of California. The maximum fine or penalty for any violation of this article shall be one thousand dollars, or a term of imprisonment in the county jail for a period not exceeding six months, or both such fine and imprisonment.~~

SECTION 12. Section 5.36.330 of Chapter 5.36 (Mobile Home Park Rents) of Title 5 (Business Licenses Generally) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.36.330 - Violation—Penalty.

- A. ~~No~~ It is unlawful for any person ~~shall to~~ demand, accept, receive, or retain any rent in excess of the amounts allowed under this chapter.

B. Any person may file a complaint regarding an alleged violation of this chapter with the city clerk.

C. The city attorney is authorized to, in his or her discretion, investigate and prosecute those complaints that in his or her determination merit prosecution. ~~Any person found to have demanded, accepted, received or retained any rent in excess of the amounts allowed under this chapter is guilty of an infraction. Unless otherwise stated, the penalty to be imposed upon conviction shall be (1) a fine not exceeding one hundred dollars for a first conviction; (2) a fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars for each additional violation of the same ordinance within one year. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.~~

SECTION 13: Sections 5.52.010B and 5.52.090 of Chapter 5.52 (Tow Car Services) of Title 5 (Business Licenses Generally) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.52.010 - Definitions.

For the purpose of this chapter, the following definitions apply:

B. "Rotation tow program" means a program established and maintained by the chief of police, or designee, containing the names of tow car services authorized by the city to respond to requests for police-generated tows. Tow car services that participate in this program will be summoned by the police department on a rotational basis and comply with program standards to ensure an adequate level of service to the community. This program shall contain a list of tow car services that have entered into a franchise agreement to provide police generated or owner requested tow services with the city. An operator, while participating in the rotation tow program, shall act and be an independent contractor and not an agent or employee of the city of Morgan Hill. The rotation tow program shall have a minimum of ~~three~~ two tow car services, to include at least one each, of the following:

1. A tow car service authorized by the American Automobile Association to provide road service to members.
2. A tow service not authorized by the American Automobile Association.
3. A tow car service capable of towing heavy or large trucks or trailers of other vehicles

5.52.090 - Violation—Penalty.

~~It is unlawful for a~~Any person ~~to violating~~ any provision of this chapter ~~shall be deemed guilty of an infraction and shall be punished in accordance with Section 1.24.010B of this code. As an alternative to all other available remedies, including penalties available pursuant to this section, any person violating any provision of this chapter shall be subject to penalties and fines pursuant to the authorities and procedures set forth in Chapter 1.19.~~

SECTION 14. Section 5.60.010 of Chapter 5.60 (Adult Businesses Permit System and Standards) of Title 5 (Business Licenses Generally) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.60.010 - Police permits.

In order to retain law-abiding management and operation of "adult businesses," as defined in ~~Section 18.04.018.2 et seq. and as regulated in Sections 18.48.170 and 18.48.180 et seq.~~ Title 18, the owners of all such businesses, prior to establishment of their business use, shall obtain "police permits" as defined and described herein. The purpose of issuance of police permits is to protect adult business patrons and the community from management of adult businesses which may have a history of being convicted of one or more specified criminal acts, or may be involved with organized crime, including prostitution, child pornography, or related crimes.

A. Permit—Application.

1. Any person required to obtain a permit pursuant to this chapter shall file a written application therefor, with the chief of police. The term "chief of police" used herein means either the actual chief of police or a person designated by the city manager. The chief of police shall prepare written application forms for such permits which shall require thereon such information as he or she deems necessary to carry out the purposes of this chapter, including, but not limited to, the following:
 - a. The exact nature of the adult business proposed to be conducted;
 - b. The present name and address of each applicant and each owner, ~~or officer,~~ or stockholder with over ten percent (10%) of the stock in a corporation, and previous addresses of each applicant and owner for a period of three (3) years immediately prior to the date of application, and the dates of residence at each;
 - c. Written proof that each applicant and each owner is at least eighteen (18) years of age;
 - d. Sufficient personal description from valid identification for each applicant to verify identity;
 - e. The business, occupation or employment history of each applicant and each owner for three (3) years immediately preceding the date of application; and
 - f. The names and residence addresses of all owners and all persons currently employed or intended to be employed in the place of entertainment, regardless of the nature of employment (including independent contractors), ~~along with the proposed actual nature of the work performed or to be performed, as well as~~ and fingerprints from each applicant and all such employees.
2. A filing and processing fee as established by a resolution of the city council shall be paid contemporaneously with the filing of the permit application.

B. Permit Investigation. The chief of police, upon receipt of a written application for a permit, shall conduct an appropriate investigation to determine whether the permit should be issued in accordance with the provisions of this chapter. Based on his or her investigation, the chief of police shall issue a permit if he or she finds that the operation proposed by the application complies with the applicable laws, including, but not limited to, the building, zoning, and health regulations of the city, and the applicant, and any employee of the applicant, has not been convicted in a court of competent jurisdiction, by final judgment, of any of the following:

1. An offense involving the presentation, exhibition, or performance of an obscene production, motion picture, play, or act;
2. An offense involving lewd conduct or sexual relations on the premises of an adult business or at any other place where such actions may be prohibited by law;
3. An offense involving misconduct with children;
4. Any other "specified criminal act" as defined in this chapter, including, but not limited to, sexual assault, prostitution, pimping or pandering; or
5. An offense under this chapter;

~~C. 6.~~ The chief of police shall not issue a permit if ~~The applicant has not made any false, misleading or fraudulent statement in the permit application or any other document required by the city;~~

~~D.~~ Conformity with Zoning Regulations. No police permit shall be issued to a business which is outside one of the industrial zoning districts identified in ~~Section 18.30.020, Section 18.36.020, Section 18.38.020 or Section 18.40.020 of the municipal code, except as provided by Section 18.58.030(C)~~ Title 18 except for those which are found to be for nonconforming uses.

~~E.~~ Permit Conditions. Permits may be issued conditionally in order to insure compliance with the provisions of this chapter.

~~F.~~ Permit—Denial. If the chief of police finds any of the facts, as set forth in Sections 5.60.010(B), (C), and (D) ~~or 5.60.010(C)~~ of this chapter, are present, he or she shall decline to issue the permit.

~~G.~~ Permit—Notification of Decision. The chief of police shall make a decision with reference to a permit application no later than sixty (60) calendar days following submission of an application containing all information required by this chapter. The chief of police shall give written notice of his or her decision to the applicant and to any other person requesting such notice.

~~H.~~ Permit—Denial—Appeal Procedures.

1. Any person, aggrieved by the decision of the chief of police with reference to the issuance, conditional issuance, or denial of a permit, shall have a right to appeal. An appeal must be filed within fifteen (15) days after the service of notice of

decision to the applicant by the city. A letter of appeal must briefly state therein the basis for such appeal, together with a filing and processing fee as established by a resolution of the city council.

2. Upon receipt of such letter of appeal and fee, the city clerk shall set the matter for consideration by the city council at its next regularly scheduled meeting. The city clerk shall give the appealing party and any other person, including the applicant if the applicant is not also the appealing party, at least five (5) days written notice of the time and place of such hearing.
3. At the time and place set for the hearing upon the appeal from the decision of the chief of police, the council shall give the appealing party, and any other interested party, a reasonable opportunity to be heard in order to show cause why the determination of the chief of police should not be upheld. In all such cases, the burden of proof to show that the action taken was arbitrary, capricious, or in excess of the chief's authority, shall be upon the appealing party. The determination of the city council shall be final and conclusive.

IH. Permit—Suspension or Revocation.

1. The chief of police shall suspend any permit issued under this chapter, if he or she finds any fact that would require an application for permit to be denied under Section 5.60.010 of this chapter, or for any other violation of this chapter. In the case of such suspension, the chief of police shall serve the permittee with a written order of suspension, which shall state the reasons therefor. The order shall be effective immediately if personally served, or forty-eight (48) hours after the same has been deposited in the course of transmission in the United States Postal Service. Immediately upon such order becoming effective, the permittee shall cease all operations under the permit.
2. The order of suspension shall be deemed a revocation of the permit to which it relates, unless the permittee, within fifteen (15) days after its effective date, files an appeal from the order, in the manner set forth in this chapter. Where an appeal is taken, the order shall be stayed pending a determination thereon by the city council. The determination shall be final and conclusive.

IJ. Permit—Posting Required. Permits issued pursuant to this chapter shall be posted on the premises where the business or enterprise for which the permit is issued is conducted, and shall remain so posted during the period the permit shall be in force.

IK. Changes of Operation After the Permit Issuance.

1. Permits issued under this chapter shall be in force and effect for a period of three (3) years following issuance.
2. A permittee shall provide, to the chief of police, any and all information required under Section 5.60.010 of this chapter, as to any employee five (5) days prior to employment.

3. No permit issued ~~to~~ under the provisions of this chapter shall be assigned or transferred in any manner, nor shall any person, other than those therein mentioned, engage in the enterprise for which the permit is issued. As used in this chapter, "transfer" includes, but is not limited to, any modification of a business entity operating an adult business or otherwise required to be disclosed pursuant to Section 5.60.010(A) of this chapter, including the transfer of ten percent (10%) or more of the stock of any corporation.

~~KL. Violation—Penalty. It is unlawful to violate~~ any provision of this chapter is an infraction. Each day that the violation is repeated constitutes a separate infraction.

SECTION 15. Section 5.64.130 of Chapter 5.64 (Tobacco Retailer's License) of Title 5 (Business Licenses Generally) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

5.64.130 - Penalties and enforcement.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained, in any part, through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- ~~C. Violations of this chapter are subject to a civil action brought by the city attorney, punishable by a civil fine payable to the city not less than two hundred fifty dollars and not exceeding one thousand dollars per violation.~~
- ~~CD. It is unlawful for Any person who to violates~~ Section 5.64.040(D) is guilty of a misdemeanor. The city attorney, at his or her discretion, may prosecute a violation as an infraction pursuant to Chapter 1.24 of the Morgan Hill Municipal Code.
- ~~DE. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.~~
- ~~EF. Violations of this chapter are hereby declared to be public nuisances pursuant to Morgan Hill Municipal Code. Any nuisance may be abated as provided in Chapter 1.18 of the Morgan Hill Municipal Code.~~
- ~~G. Each day that a violation of this chapter exists constitutes a new and separate offense.~~

SECTION 16. Subsection C of Section 6.04.010 of Chapter 6.04 (General Provisions) of Title 6 (Animals) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

- C. "Animal ~~control~~ service officer" means any person authorized to act on behalf of the ~~director of public works~~ chief of police in the enforcement of this title, and on behalf of the county health officer in the enforcement of rabies control laws.

SECTION 17. Sections 6.08.010, 6.08.020 and 6.08.030 of Chapter 6.08 (Administration and Enforcement) of Title 6 (Animals) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.08.010 - Administrator and animal ~~control~~service officer—Powers and duties.

The administrator, any peace officer, and any animal ~~control~~service officer acting in and for the city shall have the following powers and authority:

- A. To enforce the provisions of Chapter 6.04 through 6.32 of this title and state laws relating to the care, treatment, impounding and destruction of animals;
- B. To arrest or issue citations to any person who violates any provision of Chapter 6.04 through 6.32 of this title and state laws relating to the care, treatment, impounding and destruction of animals in the manner provided by Section 836.5 of the Penal Code of the state;
- C. To collect fees as authorized by implementing resolution in an amount sufficient to defray the costs of various services required for the execution of animal control services beyond licensing fees and which shall be paid by the owner or person in charge thereof, if known;
- D. To act as a public officer pursuant to Food and Agricultural Code, Section 7;
- E. The administrator, pursuant to Section 14503 of the California Corporations Code of the state, may deputize as animal ~~control~~service officer any humane officer of the Humane Society of Santa Clara County;
- F. The administrator may formulate rules and regulations in conformity with and for the purpose of carrying out the intent of Chapters 6.04 through 6.32 of this title.

6.08.020 - Inspection—Authority—Procedure.

- A. The administrator, animal ~~control~~service officer or any peace officer shall have the power to enter upon and inspect any premises where any animal is kept or harbored when the administrator, animal ~~control~~service officer or any peace officer has probable cause to believe there has been a violation of the provisions of Chapters 6.04 through 6.32 of this title.
- B. Such entry and inspection shall be made only after the occupant of the premises has been given written and oral notice of the inspection by the administrator, animal ~~control~~service officer or peace officer. If the land is unoccupied, the administrator, animal ~~control~~service officer or peace officer shall make a reasonable effort to locate the owner or other person having control of the property before making entry.
- C. Notwithstanding the foregoing, if the administrator, animal ~~control~~service officer or peace officer has reasonable cause to believe the keeping or maintaining of any animal is so hazardous as to require an immediate inspection to save the animal or protect public health or safety, he or she shall have the power to immediately enter and inspect

the property without the use of unreasonable force. If the property is occupied, the administrator, animal ~~control~~service officer or peace officer shall first attempt to notify the occupant and demand entry.

6.08.030 - Violation—Penalty.

- A. ~~It is unlawful to violate or permit the v~~Violation of any of the provisions of Chapters 6.24, 6.28, 6.36 and Section 6.32.070~~Title 6 of this title constitutes a misdemeanor. Each day a violation continues shall be regarded as a new and separate offense. The punishment upon conviction shall be: a fine not exceeding one thousand dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.~~
- B. ~~Violation of any of the other provisions of this title constitutes an infraction. The punishment upon conviction shall be:~~
1. ~~A fine not exceeding one hundred dollars for a first violation;~~
 2. ~~A fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; or~~
 3. ~~A fine not exceeding five hundred dollars for each additional violation of the same ordinance within one year.~~C.—For purposes of this section~~Title~~, a bail forfeiture shall be deemed to be a conviction of the offense charged.
- ~~DC.~~ Violation of Section 6.12.020 or Section 6.24.030 by the owner of an unsterilized dog shall be twice the fine for a sterilized dog. However, if an owner voluntarily sterilizes such dog within fifteen days of receiving a citation, and provides veterinary evidence to the animal ~~control~~service officer that such surgery was successfully performed, the enhanced fine shall be waived and the owner shall only remit the fine for a sterilized animal.
- ~~ED.~~ In addition to any other relief, any reasonable costs incurred by the city in seizing, impounding and for confining any dangerous animal shall be a charge against the owner. Such charge shall be in addition to any fine or penalty provided for violations of this chapter.
- ~~FA~~~~s an alternative to all other available remedies, including penalties available pursuant to this section, any person violating or causing or permitting to be violated any provision of Chapters 6.12, 6.24, 6.28, 6.32 or 6.36 shall be subject to the following penalties and fines pursuant to the authorities and procedures set forth in Chapter 1.19:~~
1. ~~First Violation: The City of Morgan Hill will issue a written warning and deliver a copy of this ordinance by mail.~~
 2. ~~Second Violation: A second violation within any consecutive twelve months period is punishable by a fine not to exceed one hundred dollars.~~
 3. ~~Third Violation: A third violation within any consecutive twelve months period is punishable by a fine not to exceed two hundred dollars.~~

~~4. Subsequent Violations: Any subsequent violations within any consecutive twelve months period are punishable by a fine not to exceed five hundred.~~

~~5. Separate Offenses: Each day that a person violated provisions of Chapters 6.12, 6.24, 6.28, 6.32 or 6.36 shall constitute a separate violation or offense.~~ **SECTION 18.** Sections 6.12.110, 6.12.180D, and 6.12.190 of Chapter 6.12 (Dogs and Cats) of Title 6 (Animals) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.12.110 - Dog licenses—Presentation of license on request.

Upon request of any authorized animal ~~control~~ service employee or any peace officer, the owner or person having control of a dog shall present the dog's license to that person.

6.12.180 - Potentially dangerous dogs—Classified.

- D. ~~Notwithstanding~~ Notwithstanding subsections A through C of this section, the administrator shall have discretionary authority to refrain from classifying a dog as potentially dangerous, even if the dog has engaged in the behaviors specified in subsections A through C of this section, if the administrator determines that the behavior was the result of one or more of the following circumstances:

6.12.190 - Potentially dangerous dogs—Classification procedure.

- A. The administrator or his/her designate shall have authority to determine whether any dog has engaged in the behaviors or exhibits any of the characteristics specified in Section 6.12.180. This determination shall be based upon an investigation that includes the observations of and testimony about the dog's behavior or characteristics, including, but not limited to, the dog's upbringing and the owner's control of the dog. These observations and testimony can be provided by animal ~~control~~ service officers or other witnesses who personally observed the animal's behavior or characteristics. The witnesses shall sign a written statement attesting to this behavior.
- B. The administrator or animal ~~control~~ service officer shall give the dog's owner written notice by certified mail or personal service of the dog's specified behavior or characteristics and the dog's classification as a potentially dangerous dog with the additional restrictions, as outlined in Section 6.12.200 of this title, applicable to that dog by reason of its classification. If the owner denies that the behavior in question occurred, the owner may request a hearing before the administrator which shall be conducted in accordance with the provisions of Section 6.32.080. The owner and any other persons having relevant evidence concerning the dog's behavior as specified in the written notice shall be allowed to present testimony. The administrator shall determine whether behavior or characteristics specified in Section 6.12.180 were exhibited or possessed by the dog in question. The administrator shall issue an order containing its determination, which shall be final.
- C. Once the owner has received notice of the dog's classification as a Level 1, 2 or 3 potentially dangerous dog pursuant to subsection B of this section, the owner shall

comply with restrictions specified in the notice until such time as the administrator's final decision is issued. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this chapter. Additionally, the administrator shall have authority to impound the dog pending completion of all appeals.

- D. If the administrator finds that a dog has engaged in Level 3 behavior, the dog may be impounded pending completion of all appeals. If the administrator's final decision is that the dog engaged in Level 3 behavior, the dog's owner shall be liable for the cost of the dog's impoundment.
- E. If there are no additional instances of behavior described in Section 6.12.180 within a thirty-six month period from the date of final designation as a Level 2 potentially dangerous dog, the owner may petition the administrator to remove or reclassify the dog's designation as a potentially dangerous dog Level 2.
- F. The imposition of regulations pursuant to this section shall not prevent the administrator from also issuing a citation pursuant to Section 6.08.030.
- G. Upon a conviction for a second violation of any provision of this title, the administrator or animal ~~control~~service officer may order impoundment of the dog.

SECTION 19. Sections 6.20.050 of Chapter 6.20 (Animal Establishments) of Title 6 (Animals) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.20.050 - Permit—Denial or revocation—Conditions.

The administrator may deny or revoke any permit issued pursuant to this chapter in the following situations:

- A. Whenever he determines by inspection that any animal facility fails to meet any of the conditions of the permit, this title or applicable state law;
- B. Whenever he has reason to believe that the applicant or permit holder has ~~willfully~~willfully withheld or falsified any information required for a permit;
- C. If the applicant or permit holder has been convicted by a court of law of more than two violations in a twelve-month period of this title, or state laws relating to animals or public nuisance caused by animals, or has been convicted of cruelty to animals in this or any other state within the previous five years. For the purposes of this chapter, a bail forfeiture shall be deemed to be a conviction of the offense charged.

SECTION 20. Sections 6.24.020, 6.24.040, 6.24.060, 6.24.070, 6.24.090, and 6.24.100 of Chapter 6.24 (Animal Restrictions) of Title 6 (Animals) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.24.020 - Public nuisances.

- A. No person owning or having control of any animal shall permit such animal to do any of the following:
- ~~1. Defecate or urinate on private properties in the neighborhood or community, other than that of the owner or the person having control of the animal;~~
 - ~~21. Defecate or urinate on public or private property without immediately cleaning and/or removing the excrement to a proper receptacle;~~
 - ~~23. Permit an animal to obstruct the reasonable and comfortable use of property in any neighborhood or community by urinating or defecating on private property, chasing vehicles, molesting, or biting passersby;~~
 - ~~43. Permit unsanitary conditions to exist on the premises where the animal is kept which would cause odors, attract flies or vermin, or otherwise be injurious to public health and safety, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by the neighborhood, community or persons;~~
 - ~~54. Keep, maintain, cause or permit to be kept or maintained any dog, cat or other animal or fowl, whether licensed or not, that interferes with the reasonable and comfortable use of property in any neighborhood or community which by habitual howling, yelping, barking or other noise, frequently or for extended periods of time, disturbs or annoys a number of persons in any neighborhood, and, e~~Each day that such disturbance is permitted to continue shall constitute a separate offense.
- B. The animal ~~control~~service officer, or any peace officer, may seize and impound any animal causing a public nuisance.
- C. A violation of this section is declared to be a public nuisance.
- D. Any private person may maintain an action under Civil Code Section 3493 for enforcement of this chapter declaring certain acts a public nuisance, if such acts are specially injurious to such person.

6.24.040 - Animal ~~control~~service seizure—Conditions.

Except as provided in Section 6.24.080(B), an animal ~~control~~service officer shall not seize or impound a dog for running at-large under the provisions of this title when the dog has not strayed from and is upon the private property of the dog owner or the person who has a right to control the dog, or upon private property to which the dog owner or person who has a right to control the dog has a right of possession, nor shall the animal ~~control~~service officer seize or impound a dog which has strayed from but then returned to the enclosed portion of private property of his owner or the person who has a right to control the dog as required in this section, but in such a case, a citation may be issued; provided, however, that if the owner or person who has a right to control the dog is not at home, the dog may be impounded, but the officer shall post a notice of such impoundment on the front door of the residence of the owner or person who has a right to control the dog. The notice shall state the following: that the dog has been impounded, where the dog is being held, the

name, address and telephone number of the agency or person to be contacted regarding release of the dog, and an indication of the ultimate disposition of the dog if no action to regain it is taken within a specified period of time by its owner or by the person who has a right to control the dog.

6.24.060 - Disposal of deceased animals.

- A. Upon the death of any animal, the owner or person in charge thereof shall provide for the burial, incineration or other disposition of the body of such animal. If the owner or person in charge of any dead animal is unable to provide for burial or other disposition, he may request the animal ~~control~~ service officer to dispose of the body of such animal.
- B. Upon learning that the body of a dead animal has not been disposed of in a safe and sanitary manner, the animal ~~control~~ service officer shall dispose of such body immediately; provided, however, that the animal ~~control~~ service officer shall not be required to remove and dispose of bodies of dead animals on state highways or on state property.
- C. The administrator shall collect a fee sufficient to defray the costs incident to removal and disposal of dead animals which shall be paid by the owner or person in charge thereof, if known.

6.24.070 - Animal bites—Quarantine—Examination—Violation.

- A. It is unlawful for ~~A~~any person having knowledge that any animal is known to have or is suspected of having bitten any person ~~shall to fail to~~ immediately report that fact to city animal control services, the administrator, or health officer with full information in regard to the incident.
- B. Upon receipt of such a report, an animal ~~control~~ services officer shall seize and quarantine such animal for a period of fourteen (14) days or such other period as may be prescribed by the State Department of Health. The animal services or health officer may order the owner to quarantine the animal on his or her premises.
- C. It is unlawful for ~~A~~any person ~~who to~~ fails, refuses, or neglects to quarantine any animal as ordered by the animal services or health officer, or ~~who to~~ refuses to allow the animal services or health officer to inspect any private premises where the animal is kept, ~~is guilty of an infraction. No~~ It is unlawful for an animal ~~shall to~~ be removed or released during the quarantine period without written permission of the animal services or health officer.
- D. The administrator may charge a fee, as set forth by resolution, for the costs of quarantining dogs and inspections for quarantine of dogs. Any fee charged shall be paid by the owner or person who has legal custody of the dog. Such a fee shall be in addition to the actual costs of the animal control or health officer in housing, feeding, and otherwise caring for quarantined dog.
- E. ~~The head of a~~Any animal which dies or is destroyed while under quarantine shall be submitted to the laboratory of the county health department for rabies examination.

6.24.080 - Control and seizure of diseased or vicious animals.

- A. No person owning or having charge of any animal which that person knows to be infected with any disease transmittable to humans shall permit such animal to be or remain within the city other than at an approved veterinary hospital unless the administrator/animal ~~control~~service officer or other appropriate authority approves an alternative means of confinement.
- B. The animal ~~control~~service officer or a peace officer shall seize any animal he or she reasonably believes to be infected with disease transmittable to humans, or to be dangerous. The animal ~~control~~service officer shall keep such animal in a safe place for a period sufficient to observe, examine and determine whether it is diseased or dangerous so as to be a menace to public health or safety.
- C. Diseased or vicious animals which are a danger to public health or safety shall be impounded and may be ~~destroyed~~euthanized.

6.24.090 - Poisoning or abusing animals.

In addition to Penal Code Section 596, it is unlawful for any person to ~~wilfully~~willfully administer poison to any dog, cat or other domestic animal or to ~~wilfully~~willfully place, expose or leave poisonous or harmful substances of any kind in any place with intent to injure or kill any dog, cat or other domestic animal. Further, it is unlawful for any person to maliciously kill, maim, wound, mutilate, torment, torture or physically abuse any animal.

6.24.100 - Leg-hold traps.

~~It is unlawful for any~~No person shall to use within the city a leg-hold steel-jawed trap, steel-jawed trap, or steel leg-hold traps; as defined in California Fish and Game Code Section 4004, ~~or as may be amended, within the city. Any violation of the provisions of this section shall be punishable as an infraction.~~

SECTION 21. Sections 6.28.010, 6.28.060 and 6.28.100 of Chapter 6.28 (Dangerous Animals) of Title 6 (Animals) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.28.010 - Permit required.

No person shall keep, have, maintain, sell, trade or let for hire a dangerous and/or vicious animal, including a potentially dangerous dog, Level 1, 2, or 3, without first obtaining a permit from the administrator. Compliance with the rules and regulations set by this title and the administrator shall be prerequisite to the issuance and continued validity of any permit provided pursuant to this title. This section shall not apply to any assistance dog, including guide dogs, signal dogs and service dogs, trained or in training to assist a qualified individual with a disability.

6.28.060 - Violation—Penalty.

~~It is unlawful for Any person to violating any of the provisions of this chapter and any person who or to fails to comply with the requirements of this chapter. , shall Such person is liable for each and every violation thereof, and for each and every day or fractional part thereof during which such violation shall continues. , be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.~~

6.28.100 - Prohibited dog ownership by convicted felons.

- A. ~~It is unlawful for A~~any person who has been convicted of a felony under the laws of the United States, ~~of the state of California, or any other state, government, or country, who to owns, purchases, receives, or hayes~~ in his or her possession or under his or her custody or control a dog that poses a danger to the public's health, safety, or welfare if misused by ~~a such~~ convicted felon ~~is guilty of a misdemeanor, unless the person possesses a current, valid prohibited dog permit for that dog as provided in this chapter. A convicted felon under this title shall not include felons whose convictions were set aside pursuant to Penal Code Section 1203.4.~~
- B. ~~"Misuse"~~ by a convicted felon means use of a dog in a threatening or aggressive manner, or in the commission of a crime.
- ~~B. Any dog whose owner or keeper is in violation of this section shall be impounded, or impounded subject to destruction, at the owner's expense.~~
- C. ~~Additionally, A~~a dog ~~that~~ poses a danger to the public's health, safety, or welfare, if misused by a convicted felon under this section, ~~if means~~ any of the following apply:
1. ~~A The~~ dog weighs ~~ing~~ more than twenty (20) pounds;
 2. ~~A The~~ dog ~~who~~ has been designated a potentially dangerous Level 1, 2, or 3 under Chapter 6.12 of this title; ~~or~~
 3. ~~A The~~ dog ~~is~~ designated by the administrator as posing a danger to the public's health, safety, or welfare if misused by a convicted felon based upon the following factors:
 - a. The nature of any complaints regarding the dog,
 - b. The strength of the dog, including jaw strength,
 - c. The dog's tolerance for pain,
 - d. The dog's tendency to refuse to terminate an attack,
 - e. The dog's potential propensity to bite humans or other domestic animals,
 - f. The dog's potential for unpredictable behavior,
 - g. The dog's aggressiveness, or

h. The likelihood that a bite by the dog will result in serious injury.

D. Any dog whose owner or keeper is in violation of this section shall be impounded, or impounded subject to destruction, at the owner's expense.

SECTION 22. Sections 6.32.010, 6.32.040, 6.32.060, 6.32.070, 6.32.080, and 6.32.090 of Chapter 6.32 (Impoundment) of Title 6 (Animals) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.32.010 - Notification of owners required.

The animal ~~control~~service officer shall give notice of impoundment to the owner of every animal impounded if he is known.

6.32.040 - Redemption.

The administrator or animal ~~control~~service officer may permit an owner or other person entitled to custody of an impounded animal to redeem such animal. No animal may be redeemed without payment of the fees for impounding and keeping the animal, and without compliance with the licensing provisions of this title.

6.32.060 - Summary seizure and post-seizure hearing.

- A. Except as provided in Section 6.24.040 of this title, an animal ~~control~~service officer or peace officer may seize and impound an animal for violation of any provision of this title or state law prior to a hearing in any of the following situations where the officer reasonably believes it is necessary:
1. To protect public health, safety and property;
 2. To protect an animal which is injured, sick or starving and must be cared for; and
 3. Where the owner is not present, to protect an animal from injury which has strayed onto public property or a public right-of-way.

Upon the seizure and impoundment of an animal, the authority responsible for same shall post a notice of such impoundment on the front door of the residence of the owner or person who has a right to control the animal. The notice shall state the following: that the animal has been impounded, where the animal is being held, the name, address and telephone number of the agency or person to be contacted regarding release of the animal, and an indication of the ultimate disposition of the animal if no action to regain it is taken within a specified period of time by its owner or by the person who has a right to control the animal.

- B. If the owner or person who has the right to control the animal wishes to challenge the impoundment, the owner shall personally deliver or mail a written request for a hearing, such that it is received by the administrator within seventy-two hours of the seizure and impoundment.

- C. The administrator shall promptly set the time and place for the hearing and shall cause notice of such hearing to be deposited in the mail to the party requesting a hearing at least five days before the date of the hearing.
- D. The hearing shall be conducted as set forth in Section 6.32.080 of this chapter.

6.32.070 - Hearing prior to animal deprivation.

- A. Except as provided in Sections 6.12.190, 6.24.040, 6.24.080 and 6.32.0680 of this title, the administrator, animal ~~control~~ service officer, or a peace officer may not seize or impound any animal, without the consent of the owner or person entitled to custody of the animal, unless an appeal hearing is held as set forth in Section 6.32.080 of this chapter.
- B. If the owner or person who has a right to control an animal refuses to consent to an impoundment of any animal owned by such person, the animal ~~control~~ service officer may issue a notice commanding the person to appear before the administrator at a set time. Failure of a person to appear at the hearing ~~is a misdemeanor~~ will result in the immediate impoundment of the animal. Such failure to appear will also constitute a waiver of administrative remedies after which the person will have no further recourse regarding the impoundment order.

6.32.080 - Appeal hearing.

At the appeal hearing, petitioner and the animal ~~control~~ service division may be represented by counsel, may present oral and written evidence, and may cross-examine witnesses. Strict rules of evidence need not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The petitioner shall be given written notice of the decision within fifteen days of the hearing. The administrator shall order the animal released without conditions, released with conditions, shall designate the animal vicious, dangerous and/or potentially dangerous Level 1, 2 or 3 and order release with conditions, or as for dogs designated Level 3 shall order the animal destroyed. The decision of the administrator shall be final and shall be supported by the weight of the evidence. Any release conditions imposed by the administrator shall be solely in the interest of protecting public health, safety and property and may include the obligation to inform, along with animal control, any city, county, postal, service utility company, employee, meter reader, and anyone else that comes on the property with implied consent or peaceably and lawfully of the animal's dangerousness.

6.32.090 - Failure to appeal impoundment.

Any person who fails to appeal any seizure or impoundment by the animal ~~control~~ service officer under this title within seventy-two hours from impoundment as specified in Section 6.32.050 of this chapter will forfeit all rights of ownership and control of the animal. All rights of ownership and control shall be transferred to the city. Final disposition of the animal shall be determined by the administrator in accordance with the provisions of this title and state law.

SECTION 23. Sections 6.36.280 and 6.36.300 of Chapter 6.36 (Animals and Land Use) of Title 6 (Animals) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

6.36.280 - Operation without permit prohibited.

It is unlawful for ~~Any person who to~~ commences, conducts, carries on, transacts, engages in, runs, operates or maintains or causes, permits or allows another person to carry on any endeavor wherein sanitation and the preservation of public health are involved, and ~~there is required an animal use permit or a residential private livestock permit is required by this chapter or the laws of the state, without first applying for and securing an animal use permit or a residential private livestock permit, is guilty of a misdemeanor.~~

6.36.300 - Violation—Penalty.

- A. ~~It is unlawful for~~ Any person to violate ~~ing any of the provisions of this chapter, and~~ Any person who fails to comply with the requirements of this chapter shall, for each and every violation thereof, and for each and every day or fractional part thereof during which such violation shall continue, be liable and be deemed guilty of a misdemeanor and upon conviction thereof, shall have his or her permit revoked, or shall be punished in accordance with Section 1.24.010(A) of this code.
- B. Upon the failure, neglect, or refusal of any owner, occupant, ~~or~~ agent, or other person having control of such house, premises, or other place, to comply with the notice given under Section 6.36.290 of this chapter, the animal control administrator or authorized agent, his or her deputies or agents, ~~or~~ any police or peace officer, or the city attorney may abate such nuisance. ~~and~~ The owner, agent, or occupant, or other person having control of such house, or place, in addition to the penalties provided by this chapter, shall be liable to the city for the cost of such abatement, including reasonable attorney's fees to be recovered in a civil action in any court of competent jurisdiction. ~~If no person can be found upon whom to serve such notice, the city clerk, his or her deputies or agents, or any police or peace officer, or the city attorney, duly authorized or empowered for the enforcement of this chapter, shall proceed to abate such nuisance at the expense of the city.~~

SECTION 24. Section 8.04.170 of Chapter 8.04 (Restaurants and Food Establishments) of Title 8 (Health and Safety) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.04.170 - Violation—Penalty.

~~A. It is unlawful and willful violation for~~ Any person, firm, or corporation, or agent or employee of any person, firm, or corporation who to violates any provision of this chapter, or any rules and regulations made under this chapter, ~~is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.~~

~~B. The failure to comply with the provisions of this chapter after written notice of its violation has been given to the person in violation, constitutes a willful violation of this chapter and each day of such violation constitutes a separate offense, punishable as provided for by this chapter.~~

SECTION 25. Section 8.08.380 of Chapter 8.08 (Mobile Home or Trailer Parks) of Title 8 (Heath and Safety) is hereby deleted in its entirety (additions in underline, deletions in ~~strikeout~~).

8.08.380 - Violation—Penalty.

~~It is unlawful for Any person to violateing or to causeing or permit the violation ofing to be violated, any of the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.~~

SECTION 26. Section 8.16.230 of Chapter 8.16 (Litter) of Title 8 (Heath and Safety) is hereby deleted in its entirety (additions in underline, deletions in ~~strikeout~~).

8.16.230 - Violation—Penalty.

~~It is unlawful for Any person to violateing any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.~~

SECTION 27. Section 8.22.140 of Chapter 8.22 (Abandoned and Wrecked Motor Vehicles) of Title 8 (Heath and Safety) is hereby deleted in its entirety (additions in underline, deletions in ~~strikeout~~).

8.22.140 - ~~Penalty~~Violation.

~~It is unlawful for Any person to violateing any of the provisions of this chapter, is guilty of an infraction. The penalty to be imposed upon conviction shall be:~~

- ~~A. A fine not exceeding one hundred dollars for a first violation;~~
- ~~B. A fine not exceeding two hundred dollars for a second violation of the same provision within one year;~~
- ~~C. A fine not exceeding five hundred dollars for each additional violation of the same provision within one year.~~

SECTION 28. Section 8.24.030 of Chapter 8.24 (Junkyards and Auto Wreckers) of Title 8 (Heath and Safety) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.24.030 - Violation—Penalty.

~~It is unlawful to A-violate any provisionion of this chapter, constitutes an infraction, punishable in accordance with Section 1.24.010(B) of this code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punished as such hereunder.~~

SECTION 29. Sections 8.28.020, 8.28.040, and 8.28.050 of Chapter 8.28 (Noise) of Title 8 (Health and Safety) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.28.020 - Unlawful behavior defined.

It is unlawful ~~and a misdemeanor~~ for any person to make or continue, or cause to be made or continued, any loud, disturbing, unnecessary or unusual noise or any noise which annoys, disturbs, injures, or endangers the comfort, health, repose, peace, or safety of another persons within the city.

8.28.040 - Enumeration of unlawful noises.

- A. Animals and Birds. The keeping of any animal or bird which, by causing frequent or long-continued noise, disturbs the comfort or repose of any persons in the vicinity;

8.28.050 - Violation—Penalty.

It is unlawful for Any person to violateing any of the provisions of this chapter ~~shall be deemed guilty of an infraction and shall be punished in accordance with Section 1.24.010(B) of this code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punishable as such hereunder.~~

SECTION 30. Section 8.32.030 of Chapter 8.32 (Fireworks) of Title 8 (Health and Safety) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.32.030 - Violation—Penalty.

It is unlawful for Any person, firm, or corporation who to violates this chapter or any provision thereof ~~is deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.~~

SECTION 31. Section 8.44.100 of Chapter 8.44 (Smoking Pollution Control) of Title 8 (Health and Safety) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.44.100 - ~~Penalties~~Violation.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to comply with its provisions.
- B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.
- ~~C. Any person who violates any provision of this section shall be guilty of an infraction.~~

SECTION 32. Section 8.46.050 of Chapter 8.46 (Shopping Cart Regulations) of Title 8 (Health and Safety) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.46.050 - Penalties~~Violation~~.

~~It is unlawful for a~~Any person ~~who to~~ violates any of the provisions of this chapter ~~is guilty of a infraction pursuant to Section 1.24.010 of the municipal code of the city of Morgan Hill, and of California Business and Professions Code Sections 22435-22435.7.~~ The provisions of this chapter are not intended to preclude the application of any other laws relating to prosecution for theft.

SECTION 33. Section 8.52.080 of Chapter 8.52 (Plastic Carryout Bags) of Title 8 (Health and Safety) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.52.080 - Enforcement and violation—Penalty.

- A. The director of community services or his or her designee has primary responsibility for enforcement of this chapter. The director of community services is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines, and entering the premises of any store during business hours.
- ~~B. If the director of community services determines that a violation of this chapter has occurred, he/she will issue a written warning notice to the operator of a store that a violation has occurred and the potential penalties that will apply for future violations.~~
- BC. ~~It is unlawful for A~~any operator of a store ~~that to~~ violates or fails to comply with any of the requirements of this chapter ~~after a written warning notice has been issued for that violation shall be guilty of an infraction.~~
- ~~D. If a store has subsequent violations of this chapter that are similar in kind to the violation addressed in a written warning notice, the director of community services may issue or cause to be issued an administrative citation imposing the fine for such violation as set forth in chapter 1.19 of the Morgan Hill Municipal Code.~~
- ~~E. A fine shall be imposed for each day a violation occurs or is allowed to continue.~~

SECTION 34. Section 8.56.040 of Chapter 8.56 (Environmentally Acceptable Food Containers and Service Ware) of Title 8 (Health and Safety) is amended to read as follows (additions in underline, deletions in ~~strikeout~~).

8.56.040 - Violations.

- A. The director of community services or his or her designee has primary responsibility for enforcement of this chapter. The director of community services is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating

violations, issuing fines, and entering the premises of any store during business hours.

B. ~~If the director of community services determines that a violation of this chapter has occurred, he or she will issue a written warning notice to the vendor or food provider that a violation has occurred and the potential penalties that will apply for future violations.~~

C. ~~It is unlawful for Any vendor or food provider that to violates or fails to comply with any of the requirements of this chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.~~ D. ~~If a vendor or food provider has subsequent violations of this chapter that are similar in kind to the violation addressed in a written warning notice, the director of community services may issue or cause to be issued an administrative citation imposing the fine for such violation as set forth in chapter 1.19 of the Morgan Hill Municipal Code.~~

E. ~~A fine shall be imposed for each day a violation occurs or is allowed to continue.~~

SECTION 35. Section 9.04.040 of Chapter 9.04 (Imitation Weapons) of Title 9 (Public Peace, Morals and Welfare) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

9.04.040 - Violation—Penalty.

A. ~~It is unlawful for Any person to violateing or causing or permitting to be violated the violation of the provisions of any section of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and be punishable as such under this chapter.~~

B. ~~Notwithstanding any other provision of this code, whenever a violation of Section 9.04.010 of this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 36. Section 9.08.050 of Chapter 9.08 (Drinking in Public) of Title 9 (Public Peace, Morals and Welfare) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

9.08.050 - Violation—Penalty.

It is unlawful for Any person to violateing any of the provisions of this chapter is guilty of an infraction. The penalty to be imposed upon conviction shall be (A) a fine not

~~exceeding one hundred dollars for a first violation; (B) a fine not exceeding two hundred fifty dollars for a second violation of the same provision within one year; (C) a fine not exceeding five hundred dollars for each additional violation of the same provision within one year.~~

SECTION 37. Section 9.13.050 of Chapter 9.13 (Social Host) of Title 9 (Public Peace, Morals and Welfare) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

9.13.050 - ~~Criminal and civil penalties for violation of the ordinance~~Violation.

- A. It is unlawful for any person to violate any of the provisions of this chapter.
Violations of this chapter may be criminally prosecuted if the responsible person knowingly caused or permitted the violation to occur, or reasonably should have known that a violation would occur. ~~A violation of this chapter is a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment for a period not to exceed six months, or by both fine and imprisonment. At the discretion of the charging officer and/or city attorney, violations of this chapter may also be charged as infraction as defined in Section 19(c) of the California Penal Code.~~
- B. In addition to all other available remedies, all responsible persons in violation of this chapter, regardless of whether they knew or should have known that a violation would occur, shall be jointly and severally liable for all response costs ~~and shall be subject to an administrative fine as provided in Chapter 1.19, in the following amounts:~~
- ~~1. Two hundred fifty dollars for the first administrative citation issued to said responsible person;~~
 - ~~2. Five hundred dollars for the second administrative citation issued to said responsible person; and~~
 - ~~3. One thousand dollars for the third and/or any further administrative citations issued to said responsible person~~

SECTION 38. Section 9.14.050 of Chapter 9.14 (Youth Curfew) of Title 9 (Public Peace, Morals and Welfare) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

9.14.050 - Violation—Penalty.

It is unlawful for Any person who to violates any of the provisions of this chapter ~~shall be guilty of an infraction and shall be punished in accordance with Section 1.24.010(B) of this code.~~

SECTION 39. Section 10.12.020 of Chapter 10.12 (Traffic Regulations and Enforcement) of Title 10 (Vehicles and Traffic) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

10.12.020 - Violation ~~deemed~~ infraction.

It is unlawful ~~shall be an infraction~~ for any person to do any act forbidden or fail to perform any act required by this chapter.

SECTION 40. Chapter 10.68 (Violation-Penalty) of Title 10 (Vehicles and Traffic) is hereby repealed in its entirety.

10.68.010 ~~Violation—Penalty.~~

Any person violating any of the provisions of this chapter is ~~guilty of an infraction, and upon conviction thereof shall be punished by a fine as specified in California Vehicle Code sections 42001 and 42001.5, except the maximum fine for bicycle infractions committed within the jurisdiction of the city of Morgan Hill is established at twenty dollars (\$20.00).~~

SECTION 41. Section 12.04.060 of Chapter 12.04 (Sidewalk Encroachment) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.04.060 - Commercial sidewalk encroachment permit ~~—Penalty and citation for~~ violation.

It is unlawful for ~~A~~any person, firm, or corporation to violate ~~ing~~ any provision of this chapter is ~~guilty of a misdemeanor and, upon conviction thereof, shall be punishable as provided by law. The following designated employee positions may enforce the provisions of this chapter by the issuance of citations, pursuant to authority provided in California Penal Code Section 836.5:~~

- ~~A. Chief building official; and~~
- ~~B. Ordinance compliance inspector.~~

SECTION 42. Section 12.08.150 of Chapter 12.08 (Excavations and Encroachments) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.08.150 – Violation ~~—Penalty.~~

~~A. It is unlawful for~~ Aany person to violate ~~ing~~ any provision of this chapter ~~shall be deemed guilty of an infraction and shall be punished in accordance with Section 1.24.010(B) of this code.~~

~~B. The violation of any of the provisions of this chapter is declared to be a public nuisance. The city attorney shall, upon order of the city council, immediately commence action or proceedings for the abatement or removal of the same or injunction thereof in the manner provided by law.~~

~~C. The rights and remedies of the city and the penalties under this chapter shall be cumulative and not exclusive of each other.~~

SECTION 43. Section 12.12.180 of Chapter 12.12 (Underground Utility Districts) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.12.180 - Violation—Penalty.

It is unlawful for any person to violate any provision or to fail to comply with any requirements of this chapter ~~Any person violating any provision of this chapter or failing to comply with any requirements is deemed guilty of an infraction and shall be punished in accordance with Section 1.24.010(B) of this code. Each such person is deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, and shall be punishable as provided for in this chapter~~

SECTION 44. Section 12.16.130 of Chapter 12.16 (Events on Public Property) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.16.130 - Violation—Penalty.

~~It is unlawful for any person to~~ Each violation of any provision of this chapter ~~or to fail to follow and each violation of~~ any of the prescribed terms under which the permit is issued, ~~constitutes an infraction and shall be punished in accordance with Section 1.24.010(B) of this code~~ Each violation of this chapter and each violation of any of the prescribed terms under which the permit is issued constitutes a public nuisance and shall be subject to abatement as such.

SECTION 45. Section 12.20.100 of Chapter 12.20 (City Parks and Recreation Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.20.100 - Violation—Penalty.

- A. ~~It is unlawful for~~ Any person to ~~violating~~ any of the provisions of this chapter ~~shall be guilty of an infraction, and for a first violation shall pay a fine not exceeding one hundred dollars; for a second violation, he/she shall pay a fine not exceeding two hundred dollars; and a fine not exceeding five hundred dollars for each additional violation of this chapter occurring within one year shall be imposed.~~
- B. Anyone violating these provisions will be held financially responsible to the maximum extent provided by law for any and all damage caused.
- C. ~~In addition to all other available remedies, including penalties available pursuant to subsections A or B of this section, any person violating or causing or permitting to~~

~~be violated any provision of this chapter shall be subject to the following fines pursuant to the authorities and procedures set forth in Chapter 1.19. In addition to fines, for~~

- ~~1. First Violation: a first violation shall be subject to a fine payable to the city of one hundred dollars.~~
- ~~2. Second Violation: A second violation within any consecutive twelve months period shall be subject to a fine payable to the city of two hundred dollars.~~
- ~~3. Subsequent Violations: Any subsequent violations within any consecutive twelve (12) months period, the community services director may order shall be subject to a fine payable to the city of five hundred dollars and may result in the exclusion of the violator from the use of any park or skate park facility for a period of time as determined at his or her the reasonable discretion of the director of recreation and community services.~~

SECTION 46. Section 12.28.130 of Chapter 12.28 (Tree Planting Plan) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.28.130 - Violation—Penalty.

It is unlawful for Any person to violateing or to fail to comply with any of the provisions of this chapter.~~or failing to comply with them, shall be deemed guilty of an infraction and shall be punished in accordance with Section 1.24.010(B) of this code~~ In addition, the city ~~can~~ shall assess the costs of removing the tree or ground cover that violates the provisions of this chapter to the person planting or maintaining the shrub or tree.

SECTION 47. Section 12.32.140 of Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

12.32.140 - Removal or trimming without a permit unlawful. ~~deemed a misdemeanor.~~

It is unlawful for Any property owner, lessee, or his or her agent, or representative who to engages in tree cutting or removal or to conspires with another to engage in tree cutting or removal without a valid tree cutting permit~~is guilty of a misdemeanor.~~ In addition, such party shall be liable to the city for a civil penalty in the amount of the cost of replacing the removed tree with a new tree as comparable to the removed tree as is reasonably feasible plus all attorney's fees.

SECTION 48. Sections 13.04.150, 13.04.340, and 13.04.400 of Chapter 13.04 (Water System) of Title 13 (Public Services) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

13.04.150 - Meters—Failure to install.

- A. ~~It is an infraction, punishable by a fine not exceeding one hundred dollars for a first violation; two hundred dollars for a second violation within one year; and five hundred dollars for each additional violation within one year unlawful~~ for any person ~~to violate~~ any of the provisions of Sections 13.04.130, 13.04.140 and 13.04.160 of this chapter.
- B. If any customer fails to pay the charges for meter installation or any installment thereof when due, as set forth in this chapter, the superintendent shall give the customer ten (10) days written notice of the city's intent to cut off water service, and at the end thereof, if the charges remain unpaid and any objections, in writing, claiming overcharges or charges for services not rendered have been overruled by the director of finance or, if no objections have been received, the superintendent shall cut off the water service to that customer. Before reconnecting to the water system, the customer shall pay a penalty of ten dollars (\$10) in addition to all other charges due the city for water services. The notice required by this subsection shall be provided by mailing the notice by certified mail to the customer's service address as shown on the customer records of the city.

13.04.340 - Unlawful connections.

It is unlawful for any person to make connections with any fixtures or connect any pipe with any water main or water pipe belonging to the municipal water supply system, without first obtaining permission so to do from the superintendent. ~~Any person in violation of this section shall be deemed guilty of an infraction and shall be punishable in accordance with Section 1.24.010B of this code.~~ In addition to all other available remedies ~~the foregoing penalties~~, any person in violation of this section shall be held responsible for all past water charges.

13.04.400 - Violation—Penalty.

- A. ~~Penalty. It is unlawful for A~~any person ~~to violate~~ing or causing or permitting to be violated, the violation of any of the provisions of this chapter. ~~, is deemed guilty of a misdemeanor. Upon conviction thereof, such person shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for not more than 30 days. Every such person shall be deemed to be guilty of a separate offense for every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punishable therefor as provided in this section.~~
- B. ~~Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~C. Violation of Section 13.04.330. In addition to all other available remedies, including penalties

~~available pursuant to subsection A or B of this section, any person violating or causing or permitting to be violated any provision of Section 13.04.330 shall be subject to the following penalties and fines pursuant to the authorities and procedures set forth in Chapter 1.19:~~

- ~~1. First Violation: The City of Morgan Hill will issue a written warning and deliver a copy of the ordinance codified in this section by mail.~~
 - ~~2. Second Violation: A second violation within any consecutive twelve months period is punishable by a fine not to exceed one hundred dollars.~~
 - ~~3. Third Violation: A third violation within any consecutive twelve months period is punishable by a fine not to exceed two hundred dollars.~~
 - ~~4. Subsequent Violations: Any subsequent violations within any consecutive twelve (12) months period are punishable by a fine not to exceed five hundred dollars and shall be subject to installation of a water flow restrictor device of approximately one (1) gallon per minute capacity for services up to one and one-half (1 ½) inch size and comparatively sized restrictors for larger services after written notice of intent to install a flow restrictor for a minimum of forty-eight (48) hours.~~
- C. a. In addition to any other fines or penalties, a person who violates provisions of Section 13.04.330 ~~is shall be~~ responsible for payment of the City of Morgan Hill's charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service per the city's schedule of charges then in effect. The charge for installing and/or removing any flow restricting device must be paid to the city before the device is removed. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.
- D. b. The first installation of a flow-restricting device shall remain in place for a minimum of three (3) days and shall be removed by the city not more than ten (10) days after installation. The second installation of a flow-restricting device, for continued violation of this chapter, shall remain in place for a minimum period of ten (10) days before being removed by the city no later than thirty (30) days thereafter. Normal water service shall not be restored until all installation and removal costs of flow-restricting devices have been paid.
- F. ~~Separate Offenses: Each day that a person violated provisions of Section 13.04.330 shall constitute a separate violation or offense.~~
- G. ~~All remedies provided for herein shall be cumulative and not exclusive.~~

SECTION 49. Section 13.08.150 of Chapter 13.08 (Water System Backflow Prevention) of Title 13 (Public Services) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

13.08.150 - Violation—Penalty.

~~It is unlawful for Any person or persons, company, corporation or association who to willfully fails to install or to who willfully bypasses, alters, or refuses to maintain a backflow prevention device, shall be guilty of an infraction. Unless otherwise stated, (1) a fine not exceeding fifty dollars for a first violation; (2) a fine not exceeding one hundred dollars for a second violation of the same ordinance within one year; (3) a fine not exceeding two hundred fifty dollars for each additional violation of the same ordinance within one year. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.~~

SECTION 50. Sections 13.20.160, 13.20.440, and 13.20.460 of Chapter 13.20 (Sewers and Industrial Waste) of Title 13 (Public Services) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

13.20.160 - Permit—Contents and conditions.

- A. Wastewater discharge permits shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges, and fees established by the city. Permits may contain the following:
 - ~~A1.~~ The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;
 - ~~B2.~~ Limits on the average and maximum wastewater constituents and characteristics;
 - ~~C3.~~ Limits on average and maximum rate and time of discharge or requirements for flow regulation and equalization;
 - ~~D4.~~ Requirements for installation and maintenance of inspection and sampling facilities;
 - ~~E5.~~ Specifications for monitoring programs which may include sampling, number, types and standards for tests and reporting schedule;
 - ~~F6.~~ Compliance schedules;
 - ~~G7.~~ Requirements for submission of technical reports or discharge reports;
 - ~~H8.~~ Notice that WWhenever the director of public works, health officer, or any authorized representative of the city shall have cause to conduct a routine inspection or to suspect that a nuisance or violation of this chapter exists in any house, cellar, enclosure, or building, within the city limits or discharging into the sewerage system; or, for the purpose of inspecting and monitoring industrial waste discharges for general compliance, the director or representative may demand entry therein at all reasonable times in order to take independent samples. ~~Unreasonable refusal or delay by the owners or occupants to open said buildings or enclosures and to admit a free examination or sampling, shall constitute a violation of this chapter and shall be punishable as a misdemeanor;~~

~~9.~~ Requirements for notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;

~~10.~~ Requirements for notification of slug discharges; and

~~11.~~ Other conditions as deemed appropriate by the city to ensure compliance with this chapter.

B. Unreasonable refusal or delay by the owners or occupants to open said buildings or enclosures and to admit a free examination or sampling is unlawful.

13.20.440 - Falsifying information—Penalty unlawful.

It is unlawful for ~~Any person who to~~ knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or the permit, or ~~who to~~ falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter, ~~shall, upon conviction, be guilty of an infraction and shall be punished by a fine not to exceed one hundred dollars for the first violation; not to exceed two hundred dollars for the second violation within one year; and not to exceed five hundred dollars for the third and any subsequent violations within one year.~~

13.20.460 - Violation—~~Misdemeanor~~ penalty.

- A. It is unlawful for ~~Any person to~~ violate~~ing~~, or cause~~ing~~ or permitting to be violated~~the violation of~~, any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.
- B. Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss, or damage occasioned to the city by reason of such violation.
- C. ~~The failure to comply with the provisions of this chapter after due notice of its violation has been given shall constitute a willful violation of this chapter and each day of such violation shall constitute a separate offense, punishable as provided for by this chapter.~~

SECTION 51. Section 13.24.210 of Chapter 13.24 (Septic Tanks) of Title 13 (Public Services) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

13.24.210 - Violation—Penalty.

It is unlawful for ~~Any person, firm or corporation who to~~ violates, or refuses or fails to comply with any of the provisions of this chapter ~~is deemed guilty of an infraction and shall be punished upon conviction by a fine of not more than (A) one hundred dollars for a first violation, (B) two hundred dollars for a second violation of the same provision within one year, or (C) five~~

~~hundred dollars for each additional violation of the same provision within one year; or by imprisonment in the county jail for not more than six months; or by both such fine and imprisonment.~~

SECTION 52. Section 13.30.350 of Chapter 13.30 (Urban Storm Water Quality Management and Discharge Control) of Title 13 (Public Services) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

13.30.350 - Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. ~~A violation of or failure to comply with any of the requirements of this chapter shall constitute a misdemeanor and shall be punished as set forth in Chapter 1.24 of this code.~~

SECTION 53. Section 15.08.110 of Chapter 15.08 (Building Code) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.08.110 - Violation—Penalty.

- A. ~~Any person who~~ violation ~~es any of the provisions~~ of the code adopted by this chapter occurs when a person:
- ~~1. or f~~ 1. F fails to comply with ~~that~~ this code;
 - ~~2. or who v~~ 2. Violates or fails to comply with any order made under ~~that~~ this code;
 - ~~3. or who b~~ 3. Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder; or any certificate or permit issued thereunder and from which no appeal has been taken; or
 - ~~4. or who f~~ 4. Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter, ~~is severally and for each and every such violation and noncompliance respectively, guilty of a misdemeanor, punishable by a fine of not exceeding one thousand dollars or imprisonment not exceeding six months, or by both such fine and imprisonment~~
- B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. ~~When not otherwise specified, each ten days that prohibited conditions are maintained constitutes a separate offense.~~
- ~~B~~C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
- C. ~~Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction pursuant to Section 1.24.010(D), and~~

~~proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 54. Section 15.12.060 of Chapter 15.12 (Electrical Code) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.12.060 - Violation—Penalty.

A. ~~Any person who~~ violations any of the provisions of the code adopted by this chapter occurs when a person:

1. ~~or f~~ Fails to comply with that this code;
2. ~~or who v~~ Violates or fails to comply with any order made under that this code;
3. ~~, or who B~~ uilds in violation of any detailed statement of specifications or plan submitted and approved thereunder; or any certificate or permit issued thereunder and from which no appeal has been taken; or ~~who~~
4. ~~f~~ Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.

B. ~~Such person, is shall be liable severally and for each and every violation and noncompliance respectively, guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.~~

C. ~~The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten days that prohibited conditions are maintained constitutes a separate offense.~~

~~B~~D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

C. ~~Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction pursuant to Section 1.24.010(D), and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 55. Section 15.16.040 of Chapter 15.16 (Mechanical Code) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.16.040 - Violation—Penalty.

- A. ~~Any person who violation es any of the provisions~~ of the code adopted by this chapter occurs when a person:
1. ~~or F~~fails to comply with ~~that~~this code;
 2. ~~, or who v~~Violates or fails to comply with any order made under ~~that~~this code;
 3. ~~, or who b~~Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder; or any certificate or permit issued thereunder and from which no appeal has been taken; or
 4. ~~, or who f~~Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- B. ~~Such person, is shall be liable~~ severally and for each and every such violation and noncompliance respectively. ~~, guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.~~
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. ~~When not otherwise specified, each ten days that prohibited conditions are maintained constitutes a separate offense.~~
- ~~B~~D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
- C. ~~Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the pursuant to Section 1.24.010(D) defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 56. Section 15.20.100 of Chapter 15.12 (Plumbing Code) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.20.100 - Violation—Penalty.

- A. ~~Any person who violations any of the provisions~~ of the code adopted by this chapter or occurs when a person:
1. ~~f~~Fails to comply with ~~that~~this code;
 2. ~~, or who v~~Violates or fails to comply with any order made under ~~that~~this code;

- ~~3. , or who b~~Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder; or any certificate or permit issued thereunder and from which no appeal has been taken; or
- ~~4. , or who f~~Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- B. ~~Such person, is shall be liable~~ severally and for each and every such violation and noncompliance respectively, ~~guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.~~
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. ~~When not otherwise specified, each ten days that prohibited conditions are maintained constitutes a separate offense.~~
- ~~B~~D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
- C. ~~Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction pursuant to Section 1.24.010(D), and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 57. Section 15.24.050 of Chapter 15.24 (Housing Code) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.24.050 - Violation—Penalty.

- A. ~~Any person who~~ violations any of the provisions of the code adopted by this chapter or occurs when a person:
- ~~1. f~~Fails to comply with ~~that this~~ code;
 - ~~2. , or who v~~Violates or fails to comply with any order made under ~~that this~~ code;
 - ~~3. , or who b~~Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder; or any certificate or permit issued thereunder and from which no appeal has been taken; or
 - ~~4. , or who f~~Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.

- B. Such person, ~~is may be liable~~ severally and for each and every such violation and noncompliance respectively, ~~guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.~~
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time ~~and when not otherwise specified, each ten days that prohibited conditions are maintained constitutes a separate offense.~~
- BD. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
- C. ~~Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 58. Section 15.25.040 of Chapter 15.25 (Property Management) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.25.040 - Violation—Penalty.

- A. ~~Any person who violations any of the provisions of the Code adopted by this chapter or occurs when a person:~~
1. fFails to comply with that this Code;
 2. or who v Violates or fails to comply with any order made under that this Code;
 3. , or who b Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder; or any certificate or permit issued thereunder and from which no appeal has been taken; or
 - ~~who~~ 4. fFails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- B. Such person, ~~is may be liable~~ severally and for each and every such violation and noncompliance respectively, ~~guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.~~
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. ~~When not otherwise specified, each ten days that prohibited conditions are maintained constitutes a separate offense.~~

~~B~~D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

~~C. Notwithstanding any other provision of this Code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction pursuant to subsection 1.24.010(D), and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.~~

SECTION 59. Sections 15.30.100 of Chapter 15.30 (Replacement Housing) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.30.100 - Violation—Penalty.

~~It is unlawful to V~~violate any provisionsions of this chapter ~~shall be punished as provided for in Chapter 18.68 of this code.~~

SECTION 60. Sections 15.40.110 and 15.40.130 of Chapter 15.40 (Building Security) of Title 15 (Buildings and Construction) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.40.110 - Right of entry.

The enforcing authority shall have the right, and is hereby authorized and empowered, to enter or go on or about any building or premises between eight (8) a.m. and five (5) p.m. for the purpose of inspecting the physical security of such buildings or premises, or for any other purposes consistent with this chapter. The enforcing authority shall be given access to any area of the building or premises upon oral notification to the responsible person, and upon exhibiting suitable evidence of their identity and authority; provided, however, that except in an emergency situation, an inspection warrant issued pursuant to Title 13, Part 3 of the Code of Civil Procedures (Sections 1322.50 to 1322.57, inclusive) shall first be secured when entry or access thereto is refused. It is unlawful to r~~Refuse~~a to admit such member when an inspection warrant is not required ~~is a misdemeanor.~~

15.40.130 - Violation—Penalty.

~~A.~~It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, move, improve, convert or demolish, equip, use, occupy or maintain any building or structure in the city, or cause those things to be done, contrary to or in violation of any of the provisions of this chapter.

~~B. Any person, firm or corporation violating any of the provisions of this chapter is guilty of an infraction and shall be punishable for each offense in the following manner:~~

~~1. A fine not exceeding fifty dollars for a first violation;~~

~~2. A fine not exceeding one hundred dollars for a second violation of this chapter within one year;~~

~~3. A fine not exceeding two hundred fifty dollars for each additional violation of this chapter within one year.~~

SECTION 61. Section 15.52.170 of Chapter 15.52 (Moving Buildings) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.52.170 - Violation—Penalty.

~~It is unlawful for Any person to violateing, or causeing or permitting to be violatedthe violation of; any of the provisions of this chapter is guilty of an infraction, and upon conviction shall be punished by a fine of not more than (A) one hundred dollars for a first violation, (B) two hundred dollars for a second violation of the same provision within one year, or (C) five hundred dollars for each additional violation of the same provision within one year; or by imprisonment for not more than six months; or by both such fine and imprisonment.~~

SECTION 62. Section 15.65.075 of Chapter 15.65 (Sustainable Building Regulations) of Title 15 (Buildings and Construction) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.65.075 - Enforcement.

~~It is unlawful and a vViolation of theany provisions of this chapter due to thefor an applicant to's failure to plan or build the project in accordance with the terms of this chapter shall be punishable as a misdemeanor defined in Chapter 15, Section 15.08.220 of the Morgan Hill Municipal Code.~~

SECTION 63. Sections 15.66.050, 15.66.070, and 15.66.090 of Chapter 15.66 (Swimming Pools) of Title 15 (Buildings and Construction) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

15.66.050 - Enclosure protection required—Exception.

Any person who is required by the terms of this chapter to provide an adequate enclosure for his or her swimming or wading pool, may elect to provide an adequate cover for the pool. An adequate cover is one which covers the entire surface of the swimming pool so as to prevent access by a small child and which will support seventy-five (75) pounds of weight at any point of its surface. The person who elects to provide a cover for his or her pool as provided in this chapter shall keep the cover in place at all times when the pool is not in use. It is unlawful to fail to keep the cover in place at all times when the pool is not in use., and ~~failure to do so shall constitute a misdemeanor and be punishable as provided in this chapter.~~

15.66.070 - Existing installations—Determination and conformance to chapter provisions.

- A. From and after the effective date of the ordinance codified in this chapter, the city building inspector or his or her authorized representative shall determine whether any existing swimming or wading pool which was constructed, installed, or placed within any premises in the city prior to the effective date of the ordinance codified in this chapter constitutes a health or safety hazard by virtue of such pool not being completely enclosed by a fence, wall, or other structure as provided in Section 15.66.040 of this chapter or by an adequate cover as provided in Section 15.66.050 of this chapter.
- B. Should the building inspector determine that a hazard exists as defined in this chapter, he or she may order the person legally responsible for the premises to comply with the provisions of this chapter in order to alleviate the unsafe or unhealthful condition. The building inspector shall in his or her order specify a reasonable time not to exceed thirty (30) days for compliance with the order. It is unlawful to fail to so comply shall constitute a misdemeanor punishable as provided in this chapter with such order.

15.66.090 - Violation—Penalty.

It is unlawful for Any person to violateing any of the provisions of this chapter or to ~~and any person who fails to comply with the proper order of the building inspector as provided for in this chapter, shall for each and every violation thereof be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.~~

SECTION 64. Section 18.71.260 of Chapter 18.71 (Post Construction Stormwater Pollution Prevention) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout).

18.71.260 – Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. ~~A violation of or failure to comply with any of the requirements of this chapter shall constitute a misdemeanor and shall be punished as set forth in Chapter 1.24 of this code.~~

SECTION 65. Section 18.73.220 of Chapter 18.73 (Water Conservation in Landscaping) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout).

18.73.220 – Penalties

It is unlawful for Any person to violateing any provision of this chapter shall be deemed ~~guilty of an infraction and shall be punished in accordance with Section 1.24.010.B. of this code. As an alternative to all other available remedies, including penalties available pursuant to this~~

~~section, any person violating any provision of this chapter shall be subject to administrative penalties and fines pursuant to the authorities and procedures set forth in Chapter 1.19.~~

SECTION 66. Severability. Should any provision of this Ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the Ordinance.

SECTION 67. Effective Date; Posting. This ordinance shall take effect on ____ ____, 2018. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Morgan Hill held on the ____ of ____, 2018 and was finally adopted at a meeting of said Council on the ____ day of ____, 2018 and said Ordinance was duly passed and adopted in accordance with law by the following vote:

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

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Steve Tate, Mayor

☐ **CERTIFICATE OF THE CITY CLERK** ☐

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. ____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of ____, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

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 SO-CALLED "MOBILITY PARTNERSHIP"-----SHAFTING MOTORISTS TO PAY FOR POLITICIANS' TRANSIT BOONDOGGLES, A MALIG
Date: Saturday, April 14, 2018 5:23:15 PM

Public Comment next council meeting on HSR item

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Saturday, April 14, 2018 12:50 PM
To: Barry Holtzclaw; Senator Cannella; Marty Richman; Ignacio Velazquez; SBC Board of Supervisors; Sbccog; Benito Chapter; Jim Gillio; Mary Dinkuhn; cityclerk@hollister.ca.gov; City Council Members City of Gilroy; Sally Bettencourt; Gary Walton; Eric Howard; Tammy Brownlow; Sbcrc Balers; Steve Tate; areli.rios@mail.house.gov; Eddie Mendoza; Mike Wasserman; John Lang
Subject: PUBLIC COMMENT: NEXT MEETING: REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"-----SHAFTING MOTORISTS TO PAY FOR POLITICIANS' TRANSIT BOONDOGGLES, A MALIGN...

Dear Editor,

Please let your readers know about the Petition being circulated to repeal the new Gas Tax Increase, and DMV Registration Fee Increase, that the Legislature has hung around our necks, without even a vote of the electorate. What happened to the Right to Vote for Taxes Act in California? As your long-time Columnist and long-time Gilroy City Councilman, Hon. Bob Dillon said at City Hall during debate on the Bullet Train: We already have high speed transport---- it's called "airlines."

We voted for self-sufficient high speed rail, not a supersized Amtrak. The day before the Prop. 1A Election in Nov. 2008, we could have purchased all of the outstanding common stock of PSA for less than the \$10B bonds authorized by Prop. 1A, and had a profit-making high speed transport system in California, without condemning any houses, businesses or farms.

It is time to end the Supermassive Black Hole Bullet Train, just as it is time to privatize public sector transit, and end the blood-letting we are witnessing at the public sector transit agencies, unelected governance in California without the consent of the voters ("Directors" are appointed; not elected) at the berserk out-of-control transit agencies, where local leaders divert money from gas taxes paid by motorists to fund bankrupt transit fiascoes.

Caveat viator.

Joseph P. Thompson, Esq.
Past-Chair, Legislation Committee, Transportation Lawyers Assn.

cc: Hon. Jeff Denham, Chair, Rail Subcommittee, Transportation & Infrastructure Committee

On Friday, April 13, 2018 3:12 PM, Jeff Denham <CA10JDima@mail.house.gov> wrote:

[Click here to open this e-mail in its own browser window](#) [Click here to open a plain text version of this email](#)



April 13, 2018

Dear friend,

This week the Office of Inspector General at the U.S. Department of Transportation agreed to my requested audit on the California High-Speed Rail Project. The chronic mismanagement by the state and skyrocketing costs are unacceptable.

This out-of-control project was sold to voters at a cost of \$33 billion. Since then the project has been scaled back dramatically by lopping off the Sacramento and San Diego segments while ballooning to \$77 billion. The State's Legislative Analyst's Office recently released a report detailing how project costs will continue to rise while there are "significant uncertainties regarding funding to complete" the initial operating segment. Furthermore the report concludes "it is crucial for the high-speed rail project to have a complete and viable funding plan (and) at this time, no such funding plan exists."

Taxpayers deserve to know how their money is being spent. I will continue to provide aggressive oversight and stop all federal funding.

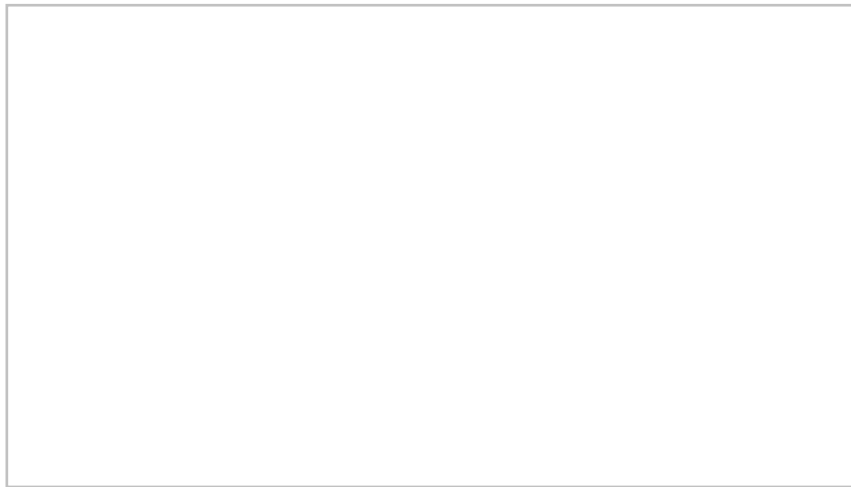
Fighting human trafficking on the web

Last week, President Trump signed into law H.R. 1865, the *Allow States and Victims to Fight Online Sex Trafficking Act* (FOSTA), which I supported. This new law will give law enforcement the necessary tools to fight websites that facilitate sex trafficking, like Backpage.com, and hold them accountable.

Human trafficking is reprehensible and anyone who facilitates these atrocities needs to be held accountable. Websites, like Backpage.com, can't continue to hide behind a loophole in the law while they enable these crimes for their own profit. This bill fixes that, making it easier to take legal action against websites that knowingly enable human trafficking and enhancing penalties for people who promote sex trafficking through reckless disregard. This new law is a start, but there is still more to be done in the fight against human trafficking, and I look forward to continuing to work with my colleagues in Congress to put an end to human trafficking.

Talking tax reform on the House floor

This week I spoke on the House floor about the positive impacts the *Tax Cuts and Jobs Act* has had on our Central Valley small businesses, agriculture industry, communities and families. The bill has cut rates for individuals and families across the board, doubled the standard deduction, doubled the value of the Child Tax Credit, and implemented changes to help keep more money in people's pockets and paychecks. At home in the district, I've spoken to several people who are already seeing the difference in their paychecks: \$50 a week, \$100 a paycheck, \$200 a month; it's real money adding up. I'm proud to have supported this bill for the expansion it's going to bring to our businesses, for the new jobs it's going to create, and for the people who are going to see it in their paycheck, every paycheck. Watch my speech [here](#).



2018 Farm Bill released

The U.S. House of Representatives Committee on Agriculture released H.R. 2, the *Agriculture and Nutrition Act of 2018*, yesterday. The bill includes provisions to strengthen existing agriculture programs, target resources towards rural development and pest and disease prevention, encourage conservation efforts, and provide a reliable safety net for America's farmers and ranchers. It also facilitates agricultural trade by supporting the development of new international markets for U.S. agricultural exports. I look forward to working with my colleagues in the House Agriculture Committee as the bill proceeds.

Ways and Means approves my privacy protection bill

My bill to protect U.S. citizens and armed service members from identity theft, H.R. 4403, the *Moving Americans Privacy Protection Act*, was approved by the House Committee on Ways and Means this week. The bill would prevent the U.S. Customs and Border Protection Agency (CBP) from providing personally identifiable information to third-party data brokers; such information can include names, social security numbers, and passport numbers collected as part of required documents for shipments into the United States. Currently, the agency sells this information to third-party data brokers, where it can be made available online or deliberately stolen, putting people at risk for easy identity theft, credit card fraud, and unwanted advertising solicitations. Exposing American citizens to identity theft cannot be tolerated, and federal agencies in particular, must protect the identities of U.S. citizens and armed service members at all costs. I look forward to bringing this bill to the floor for a vote in the near future to make sure we stop the blatant misuse of personally identifiable data.

2018 Congressional Art Competition entries due Tuesday

There are just a few more days to submit your artwork for the 2018 10th District Congressional Art Competition, open to high school students across the 10th congressional district. Submissions will be judged by a local panel of judges for the chance to be displayed in the United States Capitol. *All artwork and release forms must be delivered to my Modesto office at 4701 Sisk Road, Ste. 202 no later than 5 p.m. PDT THIS Tuesday, April 17, 2018.* Submissions will also be featured on my official Facebook and Instagram pages (@RepJeffDenham), along with an artist profile. The winning student and one guest will also be invited to the annual awards ceremony hosted on Capitol Hill on June 27, 2018. A scholarship may also be offered to the winner to fly to D.C. for the reception and announcement of the national winner.

For more information, including a list of official guidelines, [visit my website](#), and to request release forms or for detailed inquiries, please contact Alex Tolman at (209) 579-5458.

Subscribe to my quarterly veterans newsletter

Each quarter I distribute a special edition newsletter with the latest veterans news out of Washington to local VFW Halls and on my website; but now you can subscribe to receive this special edition newsletter directly in your inbox by visiting www.Denham.house.gov/vets and filling

out the form at the top of the page. Topics include French Camp, legislation affecting vets (such as my recent *Veterans Treatment Court Coordination Act*) and much more. [If you missed the last edition, click here to view it online.](#)

Upcoming Mobile District Office Hours

I have six Mobile District Office Hours (MDOs) in the next week where constituents can meet with representatives from my district staff for assistance with variety of services and issues, including Medicare, Veterans Affairs, Social Security and the Internal Revenue Services (to name a few). For a full list of scheduled MDOs, visit the [Upcoming Events](#) section of my website. Casework assistance is always available through my Modesto office as well by calling 209-579-5458.

Wednesday, April 18 – Tracy

1-2 p.m.

Tracy City Hall

333 Civic Center Plaza, Rm 216, Tracy, CA 95376

Thursday, April 19 – Riverbank

4-5 p.m.

Riverbank City Hall

6707 3rd Street, Riverbank, CA 95367

Friday, April 20 – Ceres

10-11 a.m.

State Senator Anthony Cannella's Office

2561 Third Street, Suite A, Ceres, CA 95307

*Held in conjunction with Senator Anthony Cannella & Assemblyman Adam Gray's offices.

Friday, April 20 – Manteca

10-11 a.m.

Manteca Chamber of Commerce

183 W. North Street #6, Manteca, CA 95336

*Held in conjunction with Assemblyman Heath Flora's office.

In the News

April 12, 2018

[California GOP Rep. Jeff Denham says he has the votes to force party leaders to consider bills to protect 'Dreamers'](#)

By Sarah Wire, LA Times

April 12, 2018

[OPINION: Day Zero...for California?](#)

By Rep. Jeff Denham, Opinion to The Patterson Irrigator

April 11, 2018

[Immigration votes finally coming to the House floor?](#)

By Nolan McCaskill, Politico Huddle

April 11, 2018

[House Passes Two Rail Data Security Bills](#)

By The American Journal of Transportation

April 11, 2018

[Government property database 'a win for transparency,' says GOP lawmaker](#)

By Jory Heckman, Federal News Radio

April 11, 2018

[House passes rail data security bills](#)

By Progressive Railroading

April 11, 2018

[Riverbank Mayor featured in Thank-a-Vet video](#)

By The Oakdale Leader

April 10, 2018

[GOP lawmaker says he has enough support to force immigration votes](#)

By Scott Wong and Rafael Bernal, The Hill

Sincerely,



Jeff Denham

Member of Congress

Washington, DC Office

1730 Longworth HOB

Washington, DC 20515

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From: [John Lang](#)
To: [Michelle Bigelow](#)
Subject: FW: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR PRIVATE RETREAT: -----Fw: High Speed Rail Business Plan- Item #12 @ Morgan Hill City Council April 18th
Date: Monday, April 16, 2018 2:20:34 PM

Public comment for item #12 City Council agenda

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Monday, April 16, 2018 12:12 PM
To: John Lang <John.Lang@morganhill.ca.gov>; Steve Tate <Steve.Tate@morganhill.ca.gov>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Senator Cannella <senator.cannella@senate.ca.gov>; SBC Board of Supervisors <sbcsuper@supervisor.co.sanbenito.ca.us>; Sbccog <info@sanbenitocog.org>; Ignacio Velazquez <ignaciovelazquez@hotmail.com>; Marty Richman <mgr42@charter.net>; Benito Chapter <sanbenitochapter@yahoo.com>; Mary Dinkuhn <mary@sanbenitocog.org>; Jim Gillio <jim.gillio@hollister.ca.gov>; Barry Holtzclaw <bholtzclaw@newsmedia.com>; cityclerk@hollister.ca.gov; Sally Bettencourt <sallybettencourt@gmail.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; Tammy Brownlow <president@gilroyedc.org>; Carl DeMaio <carl@reformcalifornia.org>; Mike Wasserman <askmike@garlic.com>; Sbcrcc Balers <onemorejones@yahoo.com>; areli.rios@mail.house.gov; Eddie Mendoza <eddie.mendoza@mail.house.gov>
Subject: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR PRIVATE RETREAT: -----Fw: High Speed Rail Business Plan- Item #12 @ Morgan Hill City Council April 18th

Dear Mr. Holtzclaw,

Please let your readers of all three newspapers, ***Gilroy Dispatch, Hollister Free Lance, and Morgan Hill Times***, know the truth about the CAHSRA's "Business Plan," which worse than Amtrak's "business plan," is to gang-rape taxpayers to divert gas & diesel taxes to keep bankrupt public sector transit boondoggles running. COG, VTA, Caltrain, Amtrak, Bullet Train, etc., were conceived insolvent, and born bankrupt, thanks to unremunerative fares charged their patrons. This socialist transit adds to government deficits, planned deficits, intentional deficits, and is the result of having unaccountable and nontransparent transit agencies governing us without the consent of the voters. Our local leaders at the unconstitutional transit agencies have us on the Road to Serfdom. Please use the public speaking Exhibits that I gave to you are your Office in Gilroy, and have them updated to show the growth of the malignant tumor our local leaders are so proud to hang around taxpayers' necks. To their eternal shame, they call it "success." In truth, their boondoggles are unsound, and unsustainable, and unfair to the taxpayers forced to pay 99% of the costs of the transit systems' riders' rides. Caveat viator.
Joseph P. Thompson
(408) 848-5506
Charter Member, SBCCOG Citizens Transit Task Force
Charter Member, SBCCOG Citizens Rail Advisory Committee

On Monday, April 16, 2018 8:32 AM, John Lang <John.Lang@morganhill.ca.gov> wrote:

Hello

I am sending this information to you as someone who is interested in information about High Speed Rail plans for the South County.

At the regularly scheduled April 18th City Council meeting (7:00 pm), Council will hear item #12 which is too:

1. Receive update on High Speed Rail's 2018 Business Draft Plan (Draft Plan);
2. Direct the City Manager to prepare formal comments regarding the Draft Plan on behalf of the City of Morgan Hill.

Link to Agenda

http://morganhillca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1724 Once viewing the Agenda go to Item #12 and click on "Provide Comments and Direction Regarding High Speed Rail Business Plan" to view the staff report

Link to High Speed Rail's 2018 Draft Business Plan

https://www.hsr.ca.gov/docs/about/business_plans/Draft_2018_Business_Plan.pdf

Sincerely,

John

John Lang

Economic Development Coordinator

17575 Peak Avenue

Morgan Hill, CA 95037

408.310.4652

john.lang@morganhill.ca.gov

@CityofMorganHil @408jlang

February 5, 2018

Dan Richard, Chair
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

Dear Chair Richard,

Since last April, our collective teams have made progress working together to refine the High-Speed Rail (HSR) project within the City of San José. I would like to thank the Authority for your efforts in working with City staff to enhance the Community Working Group process in San José, for continuing to evaluate the existing HSR alternatives, and in reviewing the feasibility of the City-Generated Option (CGO) for HSR in San José. To that end, we are seeking at least two feasible, refined alternatives be included in the HSR environmental process for San José. The City continues to support the development of HSR in San José in a way that benefits our entire community, is feasible for HSR, and builds a world class station and destination at Diridon San José Central Station.

At my urging, City staff, along with their rail planning consultants, evaluated options and developed a CGO to address concerns that some residents, stakeholders, and the City have raised about the viaduct and at-grade alternatives being considered by the Authority. The CGO concept aims to include a viable alternative that could have greater appeal to many more residents and stakeholders, and work effectively for all the rail service providers in San José. The CGO aims to do this by resolving the alignment, operational, and cost issues the Authority identified as fatal flaws for the alignment alternatives that were previously studied, and are no longer under review. At our October 19th meeting, it was my understanding that we agreed that our teams would continue to review the CGO, and if proved to be a practicable alternative, to include it in the Authority's environmental review for the San José – Merced segment. A few months back, City, Authority, and Caltrain staff met to review the CGO concept. In terms of feedback from Authority staff, necessary refinements and outstanding issues have been identified, and thus far no fatal flaws have been found. Further, based on preliminary cost estimates, the CGO would cost about the same, or modestly lower, versus the viaduct alternative.

The City recognizes that additional technical, operational and environmental analysis, and refinement is needed on the CGO concept, and we are ready to engage with the Authority and Caltrain on that more detailed review. We also recognize the Caltrain Business Plan and Rail Planning efforts will play an important role in determining the HSR alternatives in the corridor.

The next few months will be crucial for the future of HSR in San José and will establish the tone and direction of the conversation in San José and Santa Clara County among residents and elected officials at all levels.

I cannot emphasize enough the importance of our agencies collaborating to align the various efforts, plans, and projects in San José, including the HSR and Caltrain Business Plans, the HSR environmental process, the Caltrain Rail planning and Diridon terminal study effort, further development of the CGO as an alternative, and the Diridon Integrated Station Concept Plan. It will require that type of collaboration to ensure a seamless, comprehensive and coordinated approach to these major rail improvements within the City and region. In this vein, the City of San José asks that the CGO be included in the Draft 2018 HSR Business Plan as a potential alignment through San José that will get further review and refinement. The northern portion of the baseline CGO design is a refined version of the at-grade blended alternative for Diridon included in the 2016 HSR Business Plan. By including the CGO, the Authority will demonstrate its willingness to consider and incorporate innovative designs from cities to reduce potential project impacts, signaling to the City and the community that HSR is truly seeking the best alternatives in the environmental process.

Furthermore, in the interest of the timely completion of environmental review of the San José – Merced segment, the City has several requests. First, the City asks the Authority to complete its preliminary feasibility review of the CGO in the February/March timeframe and begin the work of incorporating it into and evaluating the CGO as an alternative in the draft HSR Environmental Impact Report/Study (EIR/EIS) document. Second, given the concerns by many stakeholders regarding selection of a preliminary preferred alternative (PPA) prior to the full environmental review of alternatives, we ask the Authority to hold off on the selection of a PPA at this time. Publishing the full draft environmental analysis and providing the public with the opportunity to formally comment, before selecting a preferred alternative as part of the Final EIR/EIS, will build trust in the process. It may also streamline the process, by avoiding delays caused by controversies around a PPA. Third, given the Authority's need to proceed with tunnel construction in the Pacheco Pass area, the City suggests consideration of splitting the EIR/EIS at Gilroy to allow the Pacheco crossing segment to move at its own pace, and to allow sufficient time for review of alternatives within the urbanized portions of the corridor. Given the level of coordination needed on these many efforts, it is time for you and I to meet with Jim Hartnett, and others to determine how these planning and project development efforts will align.

Sincerely,



Sam Liccardo
Mayor
City of San José

cc: Senator Jim Beall
San José City Council
Brian Kelly, CEO, California High-Speed Rail Authority
David Sykes, City Manager, City of San José
Jim Hartnett, CEO, Caltrain
Nuria Fernandez, General Manager, Valley Transportation Authority
Jim Ortbal, Director of Transportation, City of San José
Ben Tripousis, Northern California Regional Director, California High-Speed Rail Authority

From: John K. McKay
To: [Michelle Bigelow](#); [Edith Ramirez](#)
Subject: Public comment regarding April 18, 2018 City Council meeting item 12 - HSR Business Plan
Date: Wednesday, April 18, 2018 6:44:51 PM

Hello,

I would like to address the Mayor and City Councilmembers with a few of my comments regarding the new High Speed Rail business plan report to be accepted and commented upon tonight.

I am writing as a resident of Morgan Hill and member of the Morgan Hill HSR Community Working Group. As you may know I also have a great interest in the continued success of our downtown and the future of tourism in our community.

I have many detailed questions which preclude me from making any detailed comments but I would like to share some basic comments on this very important topic.

First and most important to me is that we do not allow a physical barrier divide our city adjacent the downtown. Even HSR has recognized the so much good development has taken place since the first studies that they do not feel it appropriate to build a barrier adjacent to the downtown.

Second, any construction of the magnitude of that necessary to complete a project like the HSR will be invasive and disruptive for years. A business district may not survive these disruptions.

Next, I do not want to see a project that is not built in a successive manner that cannot sustain itself without the completion of an entire phase of work. The concern being potential loss of funding. Only complete fully operation segments.

Lastly, many communities appear to be getting favored treatment based upon their political influence and I want to see a level playing field with decisions made on the magnitude of disruption to a community.

Thank you.

Best Regards,

John K McKay
(408) 838-5446

Item # 13

**AGENDA DATE: 04/18/18
PRESENTATION**



GODBE RESEARCH
Gain Insight



**City of Morgan Hill:
2018 Cannabis Planning & Revenue Measure Survey**

April 18, 2018

Overview and Research Objectives

The City of Morgan Hill commissioned Godbe Research to conduct a survey of local voters with the following research objectives:

- Gauge the public's perception of the sale of recreational and medical marijuana in Morgan Hill;
- Gauge perception of recreational marijuana activities and dispensary locations;
- Assess potential voter support for a gross receipts business tax on cannabis sales and increasing the current transient occupancy tax to support City services with funding that cannot be taken by the State;
- Prioritize projects and programs to be funded with the proceeds;
- Test the influence of informational and critical statements;
- Identify the rate at which respondents support the transient occupancy tax measure; and
- Use demographic and/or voter behavioral characteristics to validate the representativeness of the sample.

Methodology Overview

- Data Collection Landline (23), text to online (607), and email to online (81) interviewing
- Universe 22,543 likely June 2016 voters in the City of Morgan Hill, with a subsample of those likely to vote in the November 2018 election (15,909)
- Fielding Dates March 30 through April 4, 2018
- Interview Length 20 minutes
- Sample Size
711 All registered voters
526 Likely November 2018 voters
- Margin of Error
± 3.62% All registered voters
± 4.2% Likely November 2018 voters



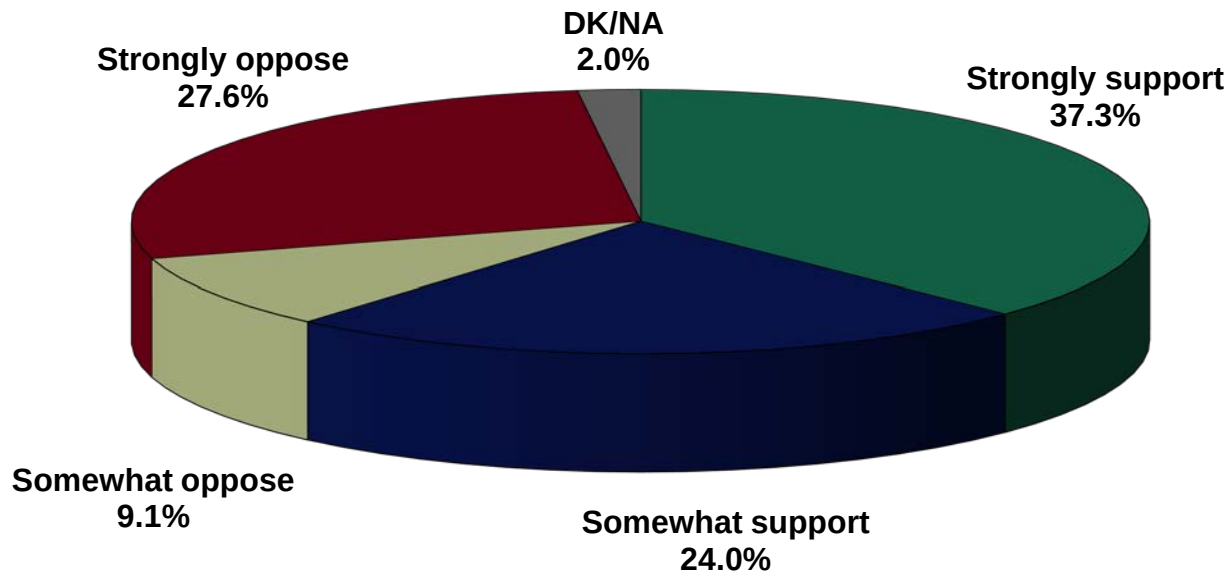
GODBE RESEARCH
Gain Insight



Key Findings

Q1. Support for Sale of Medical Marijuana in Morgan Hill

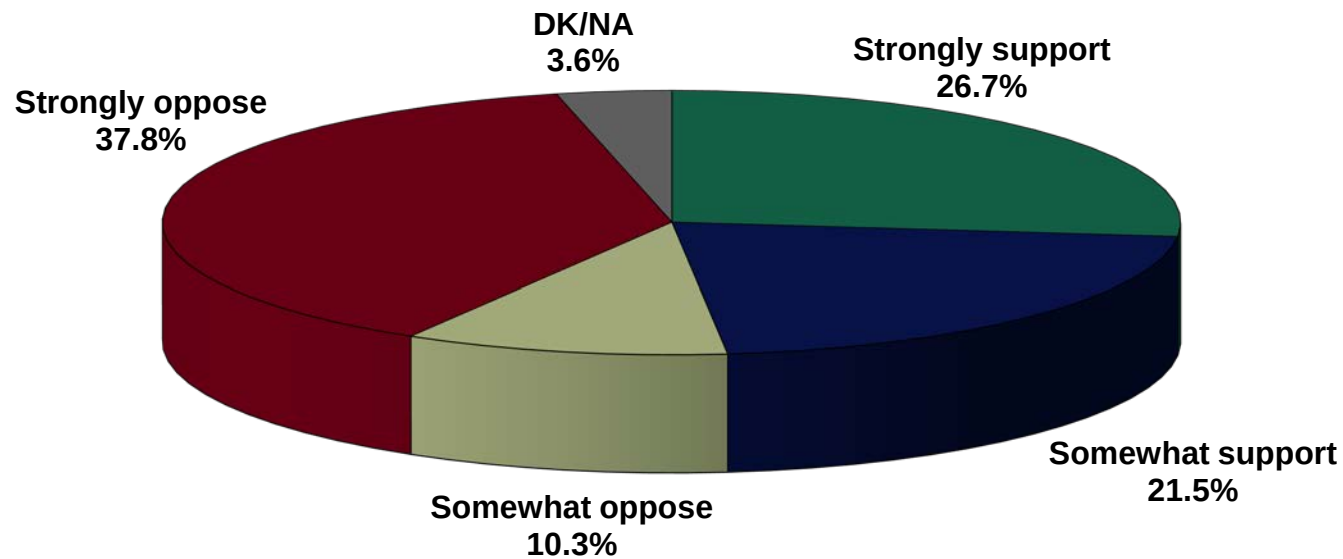
All Registered Voters (n=711)



Total Support	61.3%
Total Oppose	36.7%

Q2. Support for Sale of Recreational Marijuana in Morgan Hill

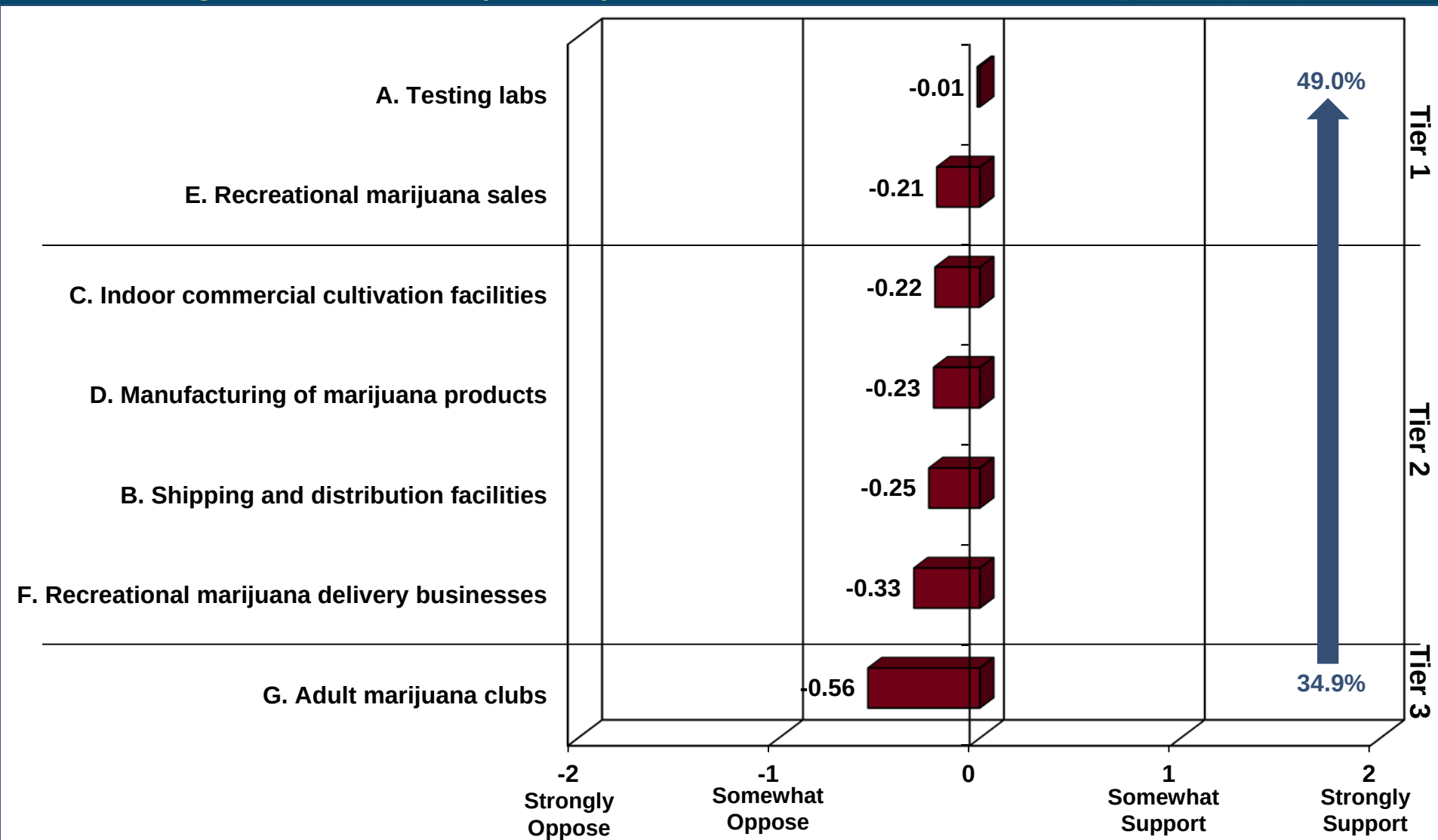
All Registered Voters (n=711)



Total Support	48.3%
Total Oppose	48.1%

Q3. Support for Recreational Marijuana Activities in Morgan Hill

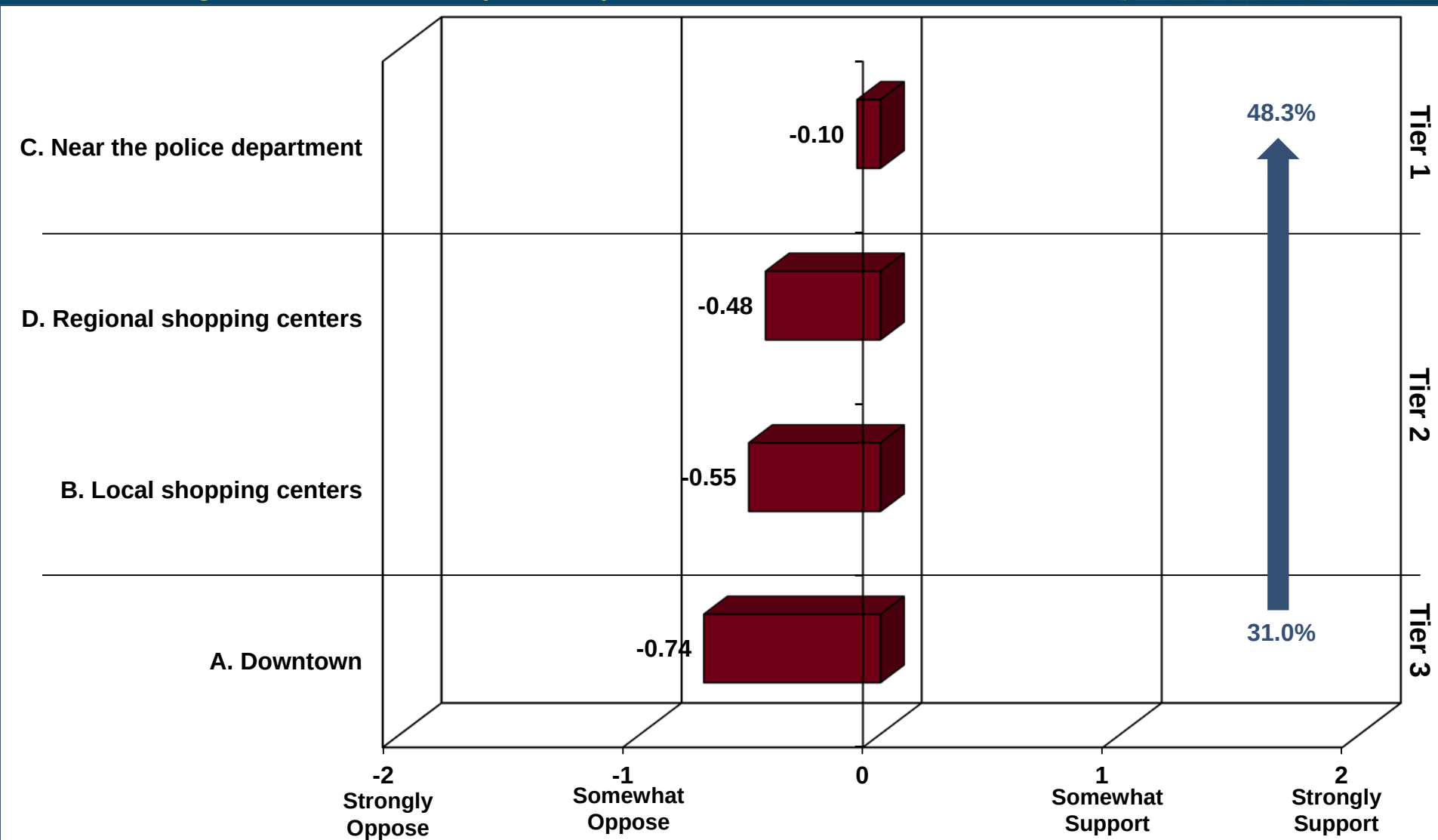
All Registered Voters (n=711)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Strongly Support" = +2, "Somewhat Support" = +1, "Somewhat Oppose" = -1, and "Strongly Oppose" = -2.

Q4. Support for Recreational Marijuana Dispensary Locations in Morgan Hill

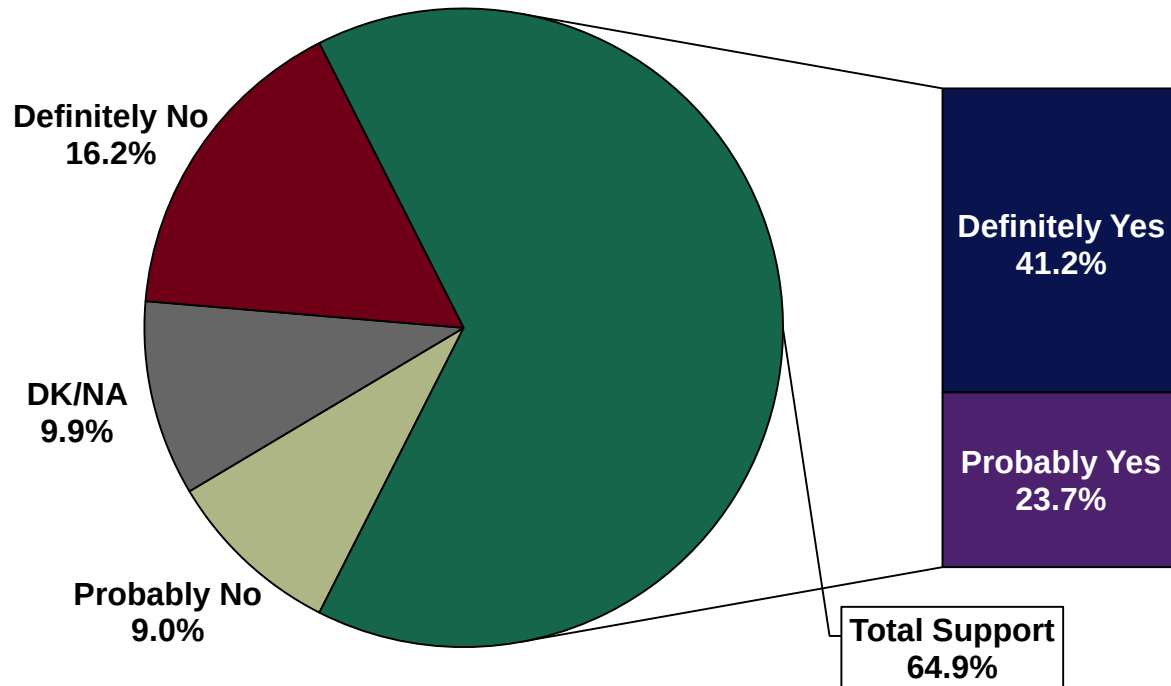
All Registered Voters (n=711)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Strongly Support" = +2, "Somewhat Support" = +1, "Somewhat Oppose" = -1, and "Strongly Oppose" = -2.

Q5. Uninformed Support for Gross Receipts Tax on Cannabis Sales

November 2018 (n=526)



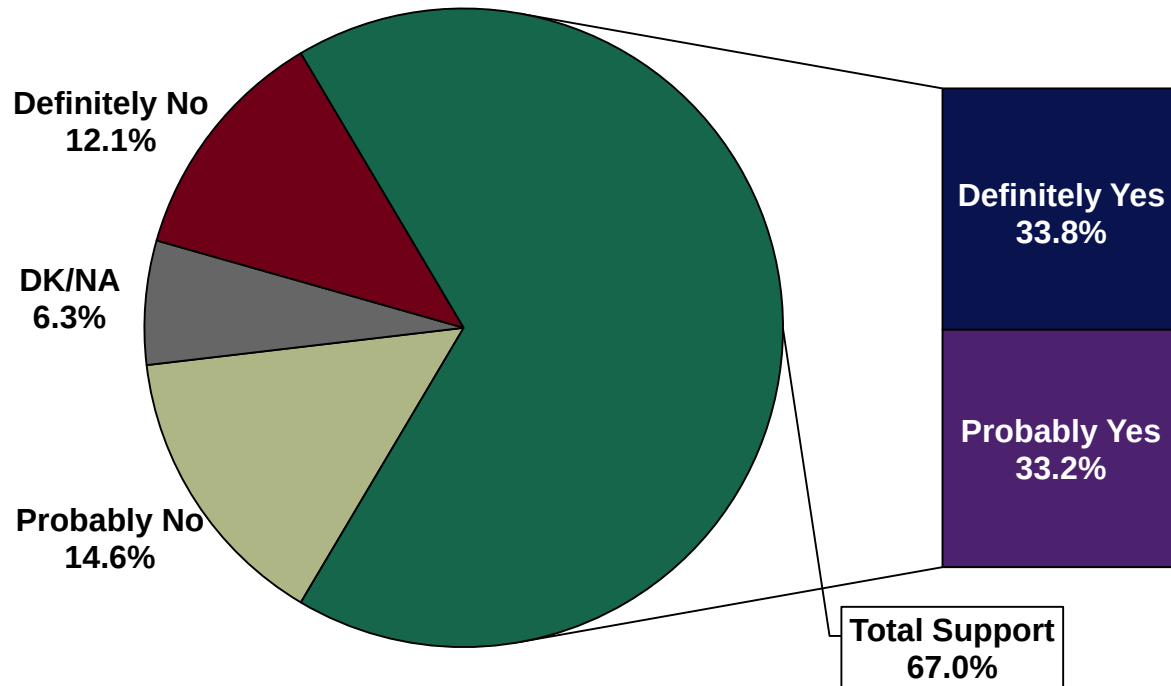
Shall a Morgan Hill ordinance providing funding, that cannot be taken by the State, for city services including:

- neighborhood police patrols and crime prevention;
- drug abuse and prevention education;
- fixing potholes and maintaining city streets; and
- unrestricted general revenue purposes;

by levying an ongoing tax of up to 15% of gross receipts of cannabis (marijuana) businesses in the city, providing up to \$1.6 million dollars annually, requiring independent citizen oversight, financial audits, and that all funds stay in Morgan Hill, be adopted?

Q6. Uninformed Support for Increasing the Transient Occupancy Tax

November 2018 (n=526)



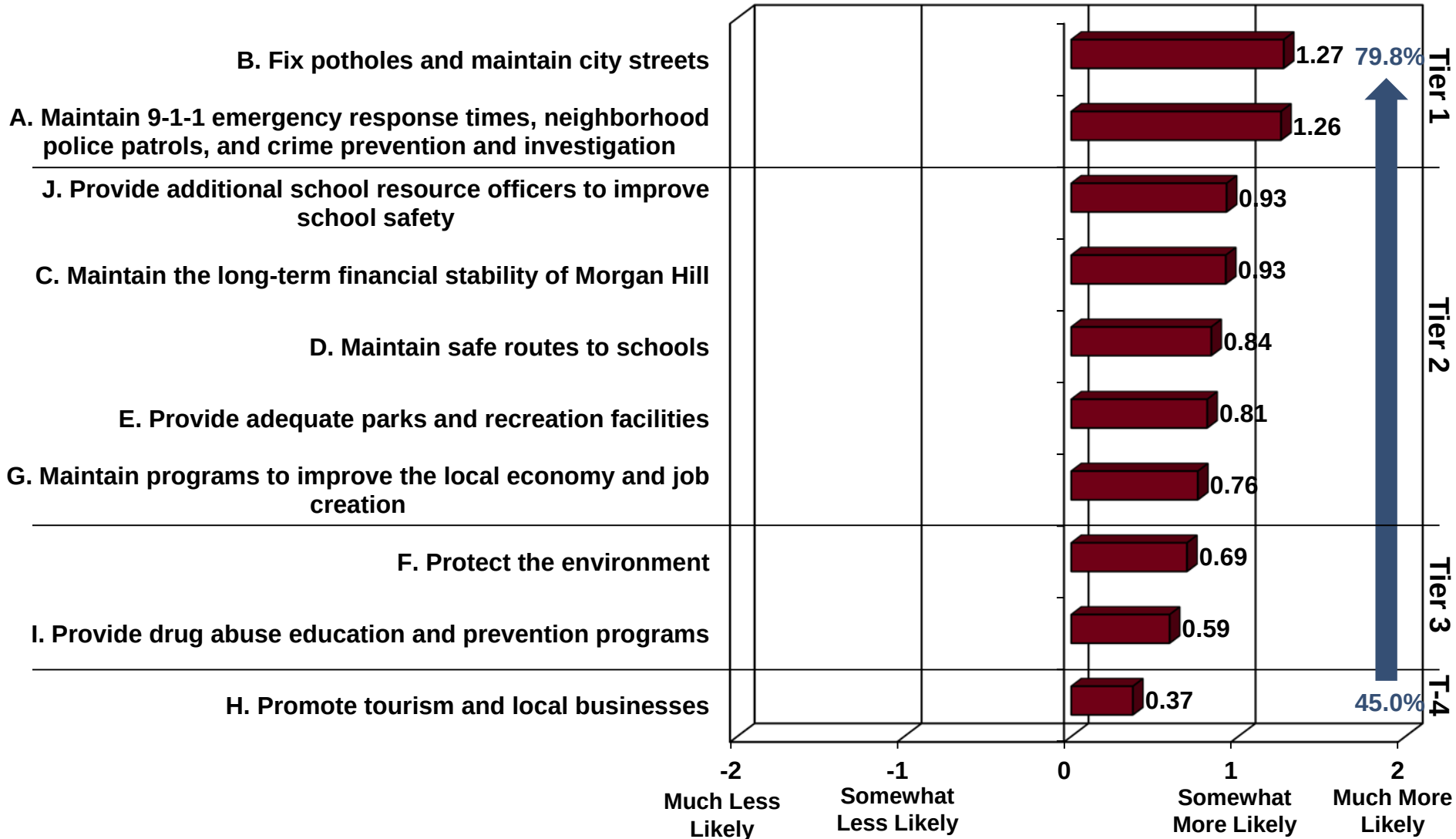
Shall a Morgan Hill ordinance providing funding, that cannot be taken by the State, for city services including:

- 9-1-1 emergency response times, neighborhood police patrols, and crime prevention;
- fixing potholes and maintaining city streets;
- promoting tourism and local businesses; and
- unrestricted general revenue purposes

by increasing the ongoing transient occupancy tax charged to hotel guests from 10% to 14%, providing \$1.2 million dollars annually, requiring independent citizen oversight, financial audits, and all funds staying in Morgan Hill, be adopted?

Q7. Features of the Measure

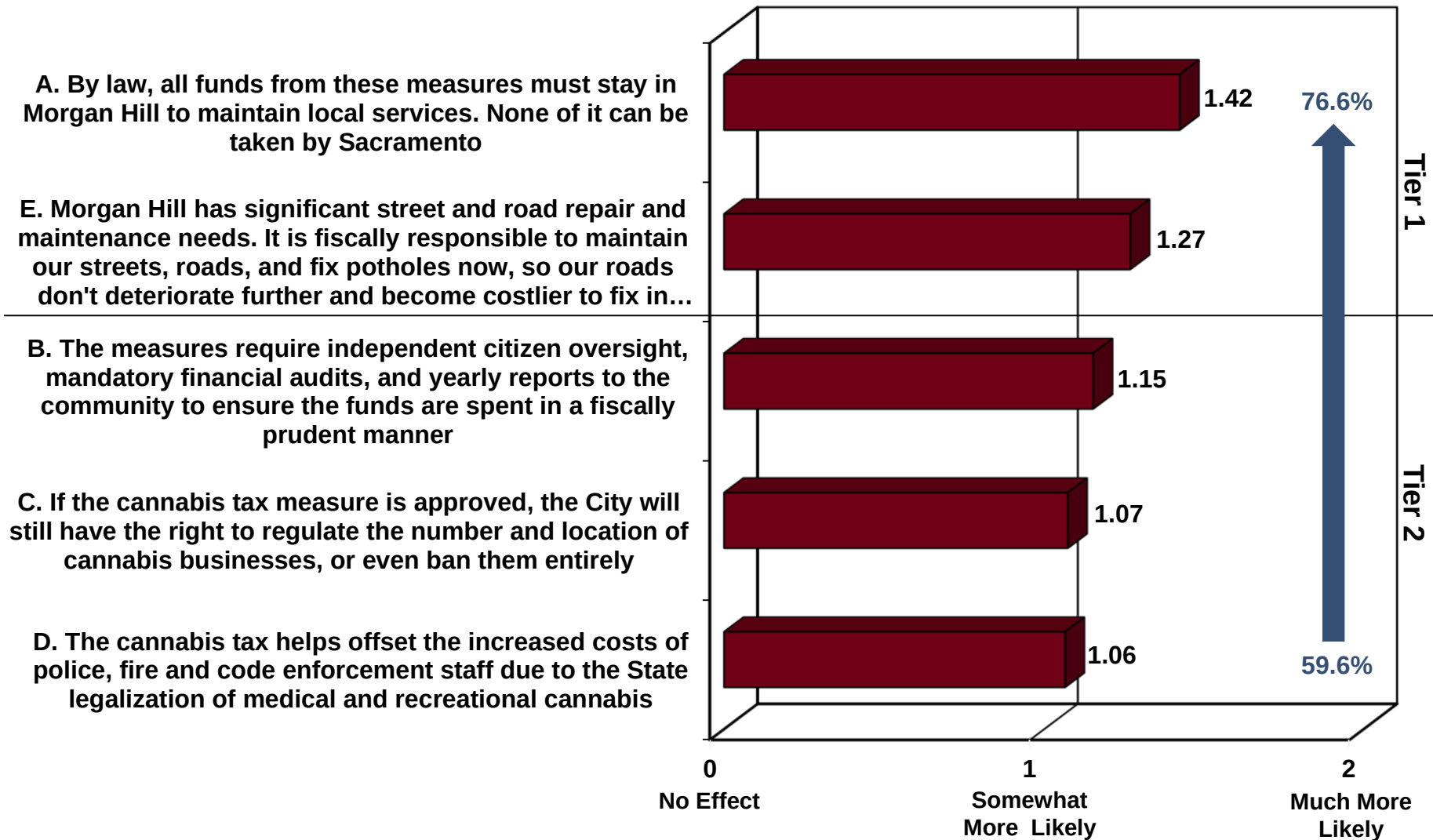
November 2018 (n=526)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0, "Somewhat Less Likely" = -1, and "Much Less Likely" = -2.

Q8. Informational Statements

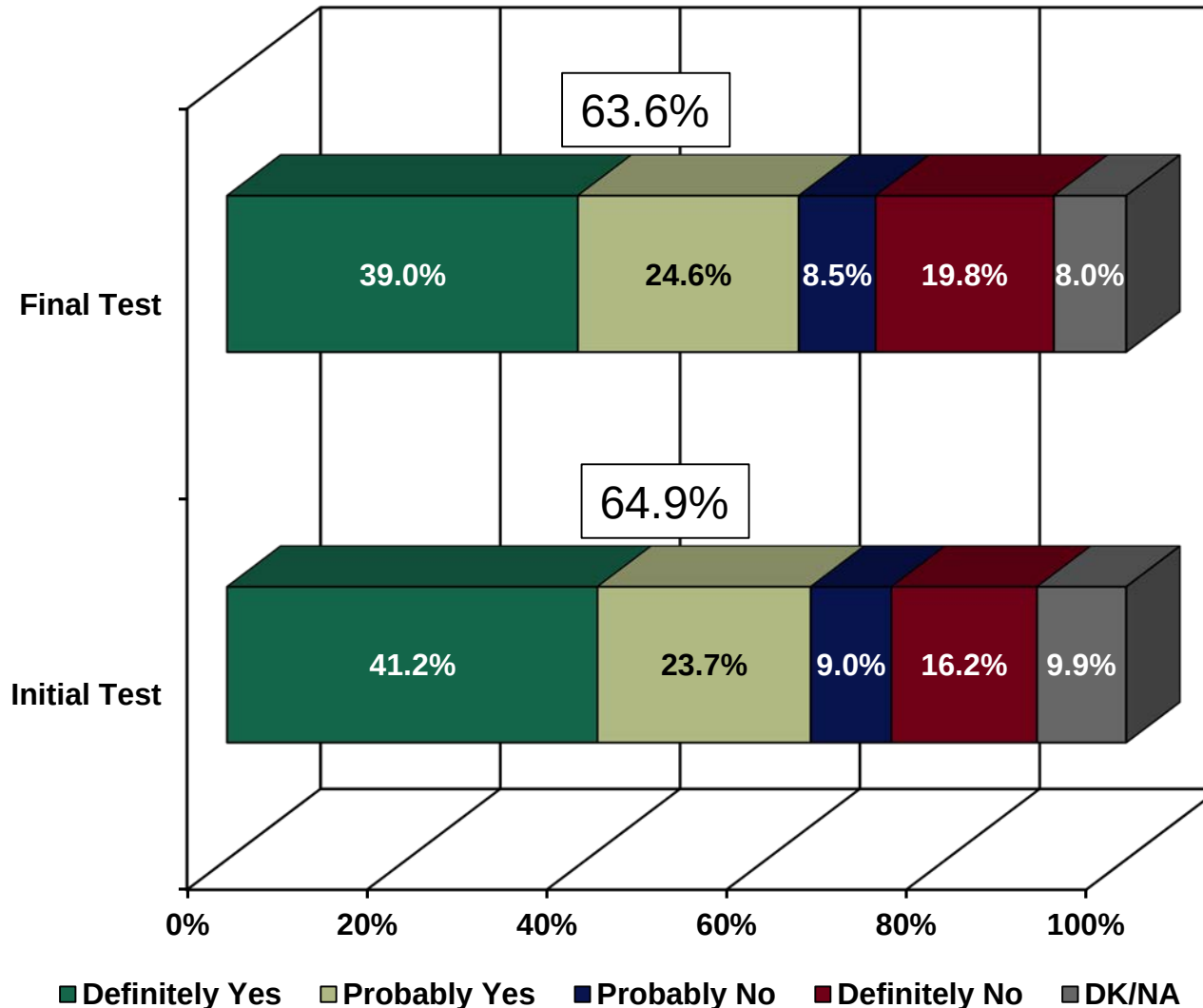
November 2018 (n=526)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, and "No Effect" = 0.

Q10. Informed Support for Gross Receipts Tax on Cannabis Sales

November 2018 (n=526)



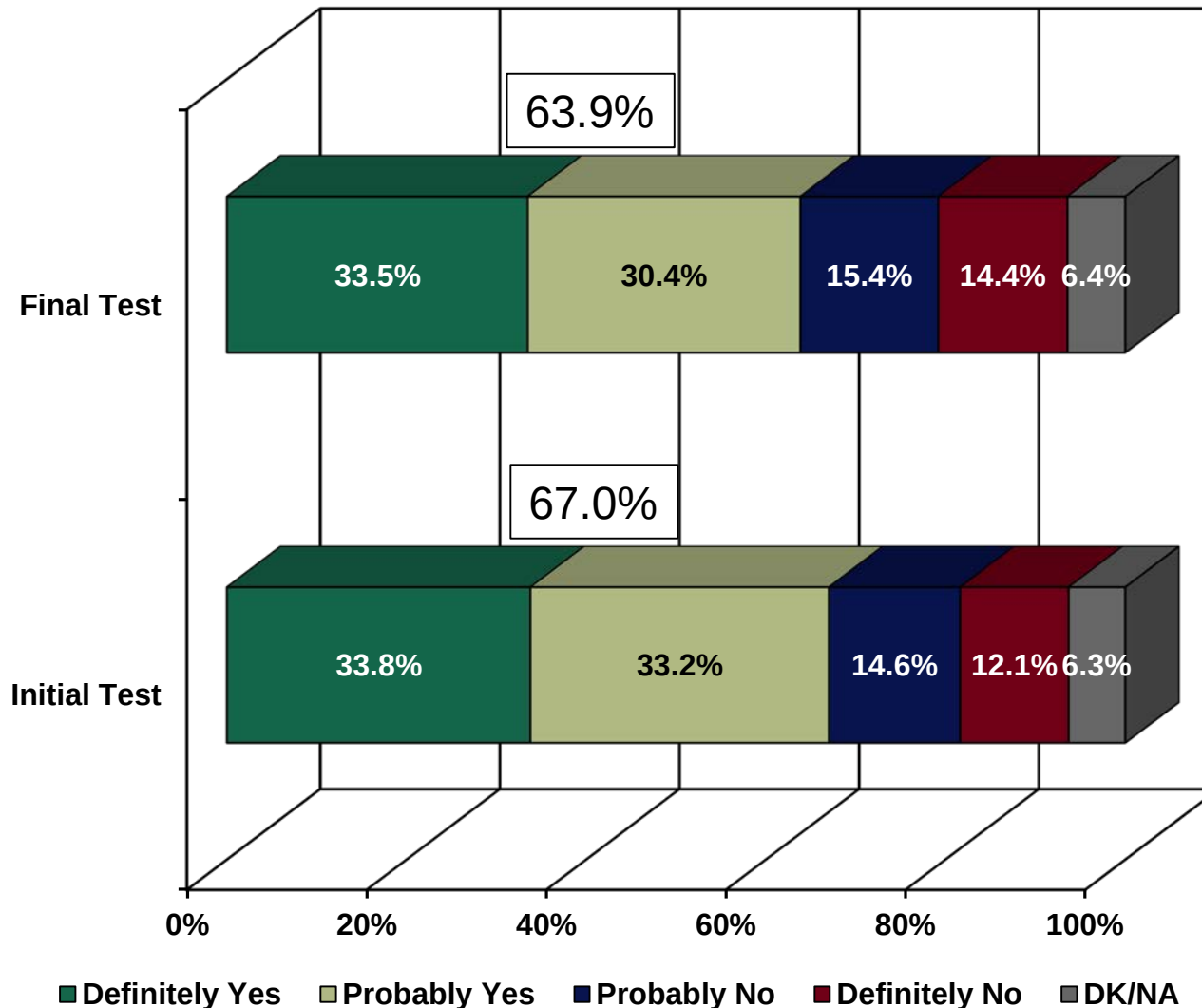
Shall a Morgan Hill ordinance providing funding, that cannot be taken by the State, for city services including:

- neighborhood police patrols and crime prevention;
- drug abuse and prevention education;
- fixing potholes and maintaining city streets; and
- unrestricted general revenue purposes;

by levying an ongoing tax of up to 15% of gross receipts of cannabis (marijuana) businesses in the city, providing up to \$1.6 million dollars annually, requiring independent citizen oversight, financial audits, and that all funds stay in Morgan Hill, be adopted?

Q11. Informed Support for Transient Occupancy Tax

November 2018 (n=526)

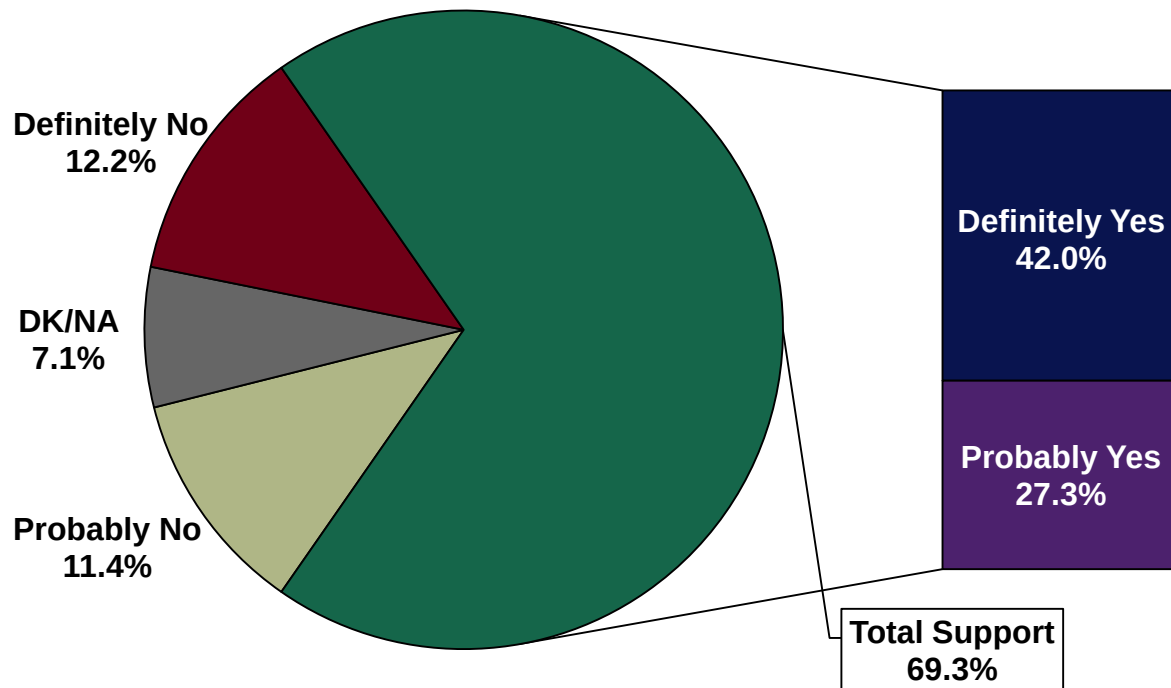


Shall a Morgan Hill ordinance providing funding, that cannot be taken by the State, for city services including:

- 9-1-1 emergency response times, neighborhood police patrols, and crime prevention;
- fixing potholes and maintaining city streets;
- promoting tourism and local businesses; and
- unrestricted general revenue purposes

by increasing the ongoing transient occupancy tax charged to hotel guests from 10% to 14%, providing \$1.2 million dollars annually, requiring independent citizen oversight, financial audits, and all funds staying in Morgan Hill, be adopted?

Q12. Support for Alternative Transient Occupancy Tax of 12% November 2018 (n=526)



Instead of increasing the transient occupancy tax charged to hotel guests from 10% to 14%, what if the measure just increased the tax from 10% to 12%?

- The survey revealed a solid base of voter support for both measures given the simple majority threshold currently required by State law.
 - Support for the cannabis tax measure in the November 2018 election was 64.9% on the uninformed test and 63.6% on the informed test.
 - Similarly, support for the TOT measure in the November 2018 election was 67.0% on the uninformed test and 63.9% on the informed test.
- Top features of the measures (listed below) suggest that some of the items in the ballot questions could be revised to increase support.
 - Fix potholes and maintain city streets.
 - Maintain 9-1-1 emergency response times, neighborhood police patrols, and crime prevention and investigation.
 - Provide additional school resource officers to improve school safety.
 - Maintain the long-term financial stability of Morgan Hill.
 - Maintain safe routes to schools.
 - Provide adequate parks and recreation facilities.
 - Maintain programs to improve the local economy and job creation.

Summary & Recommendations

- The top information items are:
 - By law, all funds from these measures must stay in Morgan Hill to maintain local services. None of it can be taken by Sacramento.
 - Morgan Hill has significant street and road repair and maintenance needs. It is fiscally responsible to maintain our streets, roads, and fix potholes now, so our roads don't deteriorate further and become costlier to fix in the future.
 - The measures require independent citizen oversight, mandatory financial audits, and yearly reports to the community to ensure the funds are spent in a fiscally prudent manner.
- Given the survey findings and the simple majority currently required for approval, Godbe Research recommends that the City of Morgan Hill continue the process to prepare for a November 2018 election.



GODBE RESEARCH
Gain Insight



www.godberesearch.com

California and Corporate Offices
1575 Old Bayshore Highway, Suite 102
Burlingame, CA 94010

Nevada Office

59 Damonte Ranch Parkway, Suite B309
Reno, NV 89521

Pacific Northwest Office

601 108th Avenue NE, Suite 1900
Bellevue, WA 98004

From: [Christina Turner](#)
To: [Michelle Bigelow](#)
Cc: [Leslie Little](#); [Edith Ramirez](#); [John Horner](#)
Subject: FW: Input regarding Transient Occupancy Tax item and associated TBID work
Date: Wednesday, April 18, 2018 2:29:40 PM

Please supplement this for item #13.

From: John Horner <john@morganhill.org>
Sent: Wednesday, April 18, 2018 2:10 PM
To: Steve Tate <Steve.Tate@morganhill.ca.gov>; Caitlin Jachimowicz <Caitlin.Jachimowicz@Morgan-Hill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>; board-of-directors@morganhill.chambermaster.com; staff@morganhill.chambermaster.com
Subject: Input regarding Transient Occupancy Tax item and associated TBID work

Dear Mayor Tate and Council Members,

This evening you will be receiving a report of polling on Cannabis issues and a potential increase in the local Transient Occupancy Tax (TOT). We are writing to address an issue which is directly related to the TOT aspect, which is the potential formation of a Tourism Business Improvement District (TBID).

Briefly stated, a TBID is a mechanism through which hotels vote to approve an additional fee (% of room rate) in order to fund activities which are expected to provide more customers and more revenues. Establishing a TBID requires official actions from the City of Morgan Hill and agreement by a majority of the affected hotels. Many communities throughout California have paved the way with such structures, including San Jose and Gilroy.

The purpose of a TBID is to provide long term dedicated revenue to make ongoing efforts which promote the area for corporate, group and individual tourism. Such efforts typically focus on marketing, coordination and local resource improvements which attract more visitors and the private investments in facilities for those visitors to utilize. This results in benefits to both the local businesses and the city in the form of tax revenues from visitor spending.

Detailed discussions about the potential to form a Morgan Hill TBID have been ongoing for a considerable period of time. Earlier this year regular planning meetings were begun to work out the many details of a proposal to put in front of the City Council for action. The council's decision to survey the public regarding support for an increased TOT put the TBID related planning work on hold pending future council direction. The Morgan Hill Chamber of Commerce strongly recommends that you take the TBID proposal development off the back burner in order to get a plan in front of you and the hotel group for a decision as rapidly as possible. It would be most advantageous to start growing the tourism pie now prior to asking voters that the pie be taxed more heavily.

Many communities have demonstrated that the public-private partnership TBID model is the most

effective way to provide long-term, consistently funded visitor attraction efforts. This evening we are asking that you ask city staff to continue working with the hotels on a detailed TBID proposal to bring back to you whilst the longer term question of a potential TOT increase occurs at its own pace.

Thank you,
John Horner
President & CEO
Morgan Hill Chamber of Commerce



Item # 18
AGENDA DATE: 04/18/18
SUPPLEMENT # 1

April 18, 2018

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

Re: April 18, 2018 City Council Meeting Agenda item 18
Exclusive Right to Negotiate Depot/Hale Lumber Site Development

Mayor Tate and Councilmembers,

The Morgan Hill Downtown Association is in support of residential development that will help create an expanded customer base to bring economic and social vitality to the downtown district.

We are in support of responsible residential development that is sensitive to the existing and future needs of downtown businesses and residents including, but not limited, to the following goals:

1. Create safe walkways and paths to the downtown for pedestrians, bicyclists and those using personal mobility devices.
2. Architectural design that complements the district.
3. Supports efficient vehicular circulation around the district.
4. Encourages landscaping and open space areas.
5. Addresses resident and visitor parking.
6. Improves existing conditions to better complement the current and planned uses, design, and circulation of the downtown district.

As stated in a past position letter supporting the exclusive negotiations in developing the Hale Lumber site and realignment of Depot Street we, again, support the City of Morgan Hill in this opportunity to negotiate exclusively for the private development of the identified site and street improvements.

We are not in support of any particular design, number of dwelling units, or developer but desire an outcome that is in alignment with our stated goals.

Thank you for your time and attention.

Sincerely,
Board of Directors
Morgan Hill Downtown Association