



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Rich Constantine - Mayor Pro Tem

Larry Carr - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, May 2, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

(Deputy City Clerk Bigelow)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Tate

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming the week of May 7-13, 2018 as Wildfire Awareness Week

Proclaiming the Month of May as Aquatics Month

PRESENTATIONS

1. AMGEN TOUR OF CALIFORNIA UPDATE

Recommendation:

Receive update on Amgen Tour of California activities.

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

2. APPROVE FIFTH AMENDMENT TO FIRATO SERVICE COMPANY, INC. MAINTENANCE SERVICE AGREEMENT

Recommendation:

Approve the fifth amendment to the maintenance service agreement with Firato Service Company for \$928,950 for four years of service.

3. APPROVE AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT FOR LANDS OF AHMADI (APN 817-59-066,067,068)

Recommendation:

1. Approve the Amended Subdivision Improvements Agreement with Rahmatollah Ahmadi;
2. Authorize the City Manager to execute the Amended Subdivision Improvements Agreement; and
3. Authorize the recordation of the Amended Subdivision Improvements Agreement.

4. APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR MONTEREY AND THIRD DEVELOPMENT AT 17270 AND 17290 MONTEREY ROAD (APN: 726-13-056 & 057)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Monterey & Third development at 17270 and 17290 at Monterey Road (APN: 726-13-056 & 057); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

5. APPROVAL OF A CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR)

Recommendation:

Adopt resolution approving and authorizing the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Annexation Environmental Impact Report (Annexation EIR) and approving an amendment to the City's Fiscal Year 2017-2018 budget in the long range planning fund (Fund 207) to appropriate \$219,000.

6. APPROVAL OF COUNTYWIDE AB 939 AND HOUSEHOLD HAZARDOUS WASTE COLLECTION AGREEMENTS

Recommendation:

Authorize the City Manager to execute the Countywide AB 939 and Household Hazardous Waste Collection agreements.

7. AWARD MONTEREY ROAD SEWER VAULT COATING PROJECT

Recommendation:

1. Approve Monterey Road Sewer Vault Coating Project plans and specifications;
2. Award contract to SoCal Pacific Construction Corp d.b.a. National Coating and Lining Company for the Monterey Road Sewer Vault Coating Project in the amount of \$198,500;
3. Authorize expenditure of construction contingency funds not to exceed \$19,850; and
4. Authorize the City Manager to execute and administer the construction contract with SoCal Pacific Construction Corp d.b.a. National Coating and Lining Company.

8. ADOPT ORDINANCE 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)

Recommendation:

Waive the reading, adopt Ordinance No. 2274, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

9. ADOPT ORDINANCE 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)

Recommendation:

Waive the reading, adopt Ordinance No. 2275, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

10. ADOPT ORDINANCE 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

Recommendation:

Waive the reading, adopt Ordinance No. 2276, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

11. APPROVE THE APRIL 18, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

12. APPROVE CONCEPTUAL DESIGN FOR CENTENNIAL RECREATION CENTER EXPANSION PROJECT

Recommendation:

Approve Conceptual Design for the Centennial Recreation Center Expansion Project.

Estimated Time: 10 Minutes

13. MARCH 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

14. INTRODUCE RECOMMENDED FISCAL YEAR 2018-19 AND 2019-20 OPERATING BUDGET AND FISCAL YEAR 2018-19 THROUGH 2023-24 CAPITAL IMPROVEMENT PROGRAM BUDGET

Recommendation:

Receive Budget Presentation.

Estimated Time: 20 Minutes

15. HOUSING – MEETING THE CALIFORNIA HOUSING ACCOUNTABILITY ACT REQUIREMENTS AND MORGAN HILL’S REGIONAL HOUSING NEED ALLOCATIONS (RHNA)

Recommendation:

1. Receive KMA Report, “Strategy for Increasing the Supply of Affordable Housing”;
2. Discuss menu of options and the implications of modifications to the Residential Development Control System (RDCS) Program; and
3. Direct staff to return with additional information or take steps to prepare recommended actions or preparation of policy documents related to affordable housing accountability and production.

Estimated Time: 45 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.



Sustainable Morgan Hill Vision

Morgan Hill is a safe, inclusive, socially responsible, environmentally conscious, and economically sound community.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage ·
Enhancing Diversity and Inclusiveness

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

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



Economic Development and Telecommunications

The Economic Blueprint will continue to be implemented, with a primary goal of attracting jobs and investment into our community. The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure with private sector partnerships. The plan will be used to signal Morgan Hill's support for business expansion.



Financial Stewardship

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



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for transportation projects and road maintenance. For High Speed Rail, we will strongly advocate for the route with the least impact on Morgan Hill.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. A regional approach will be employed to address many priorities, including but not limited to, homelessness, animal services, teen suicide, High Speed Rail, and land use (Catholic High School, Outdoor Sports Center, agricultural preservation, and city limits). This regional involvement will include partnering with the League of California Cities, Valley Transportation Authority, Caltrain, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

AMGEN TOUR OF CALIFORNIA UPDATE

RECOMMENDATION(S)

Receive update on Amgen Tour of California activities.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint

REPORT NARRATIVE:

On December 20, 2017, the City Council approved Morgan Hill becoming a co-host of the 2018 Amgen Tour of California (TOC) Time-Trial Race, with the Start and Finish line in Downtown Morgan Hill, authorizing \$55,000 for traffic management, marketing, and promotions.

The Amgen Tour of California is the United States' largest and most prestigious annual cycling stage race and one of the largest and most recognizable cycling races in the world. The 2018 Amgen Tour of California race will take place May 13th through the 19th, traveling from Long Beach to Lake Tahoe, with a final day in Sacramento. The cities of San Jose and Morgan Hill are the hosts of the Men's Stage 4 Time-Trial race scheduled for May 16, 2018. The purpose of this report is to provide the Council with an update on the preparations for the Amgen TOC event.

EVENT DETAILS:

ROUTE

The race route is approximately 22 miles. The start will be on the west side (southbound lanes) of Monterey Road, across from the Community and Cultural Center. The route will head west on Dunne Avenue and south on Dewitt before entering the County. The route continues west and then proceeds north in the County. The route will return to Morgan Hill using the north and southbound lanes of Hale Avenue, turn left on Llagas Road and then right on Monterey Road. The Finish will be on Monterey Road at Fourth Street. See Attachment A.

LIFESTYLE FESTIVAL

Amgen Tour of California hosts a lifestyle festival that includes several tents for display of sponsor products and industry related items. The lifestyle festival will also showcase local vendors, sponsors, and local community groups. The festival will take place on Monterey Road between W. 1st and W. 3rd Street. The event stage will be located near the finish line. The City will also have a hospitality tent in front of the Granada Theatre. The San Jose Sports Authority, with the assistance of the Silicon Valley Bike Coalition, will host a bike valet on E. 3rd Street and Depot Street.

RACE DAY SCHEDULE

9:00 AM	Complete road closures
10:30 AM	Amateur race begins, lifestyle festival open
12:30 PM	Ceremonies begin
12:45 PM	Time Trial Race begins
3:15 PM	Begin live broadcast
3:45 PM	Time Trial Race ends

STREET CLOSURES

The course requires street closures for the duration of the race. Most race circuit street closures will begin around 8:30 AM the day of the race, with some flexibility to support traffic needs. Streets can systematically open for traffic after the last rider goes by, around 3:00 PM. To accommodate the placement of necessary fencing, staging, and festival tents, street closures for Downtown begin the day before, Tuesday, May 15th with Northbound Monterey Road between Main Street and Dunne Avenue closing at 10:00 AM. Southbound Monterey Road will close at 8:00 PM.

The City is responsible for managing street closures and traffic control within the City Limits. Working with tour organizers, City staff from Engineering and Police have engaged Statewide traffic control to prepare and implement the traffic control plan on the day of the event. The traffic plan is now complete. Three key intersections will be used to allow vehicles to cross the course, Peak Avenue & East Dunne Avenue, Monterey Road & Main Avenue, and Monterey Road & Wright Avenue. These intersections as well as other areas of the course will be overseen by Police Officers, tour staff, and volunteers. A coordinated public safety command center is planned for the event, where Morgan Hill Police and Fire will coordinate with other regional public safety entities involved with the event.

PUBLIC WORKS AND ROAD SERVICES

As a host city, Morgan Hill is responsible for providing road closures, course preparation, including police support for traffic control and for ensuring safety along the course. These services include detours and traffic related equipment, barricades, cones, no-parking signage, notice distribution, provision of a “hot-line” for affected residents and businesses, and access to non-potable water for truss water barrel supports.

The host city must support the race with city permits for the operation of the event and related activities, including the community festival, on-street and off-street parking, event signage, and portable toilets. The Community and Cultural Center (CCC) will be used for media and the Grange will be the site of broadcasting.

PARKING

Downtown businesses and visitors will be able to park in the Depot Street parking lots, the VTA/Caltrain lot, and the County Courthouse. Visitors are encouraged to take a shuttle from the Outdoor Sports Center, which will drop guests at the CCC. Visitors are also encouraged to use the bike valet on 3rd Street. The CCC parking lot will be used for team parking and the parking garage will be restricted to the event organizer. The side public lots and on-street parking will be used for construction stage crews and vendors.

COMMUNITY ENGAGEMENT & PROMOTIONS

Several community organizations and businesses have been working closely with City staff to support event planning and promotions. These organizations include the Morgan Hill Chamber of Commerce, the Morgan Hill Downtown Association, the Wineries of Santa Clara Valley, the Morgan Hill Youth Sports Alliance, the Bicycle and Pedestrian Advisory Group, Specialized Bicycle Components, and Bike Therapy. The events include a night time Bike Ride, a Mother’s Day bike ride with the Mayor and pancake breakfast, and a bike rodeo and community concert. Specialized Bicycle Components will also host a community open house at their headquarters facility to showcase their bike museum and Wind Tunnel. The event is open to the community and they will host food trucks and giveaways. In addition, Specialized has visited every-eight elementary schools in Morgan Hill and hosted an assembly to teach kids about bike safety. Through this outreach, Specialized Bicycle Components gave out over 3,500 water bottles. It is important to note that in addition to the school outreach from Specialized Bicycle Components, AEG/Amgen TOC conducted special outreach to El Toro and PA Walsh elementary schools and brought a professional rider to give away a bicycle.

As part of engaging the local community, Amgen Tour of California welcome land art installations along the race route that would be visible from a helicopter filming Stage 4. The land art installations are intended to be playful and fun. A few schools are proposing land art installations. Location coordinates from the art installation will be shared with the event organizer for inclusion in overhead T.V. shots.

Attached is a flyer of the community events (Attachment B).

MARKETING

The race attracts teams and athletes from over 30 countries and thousands of fans that line the route. In addition, the race is broadcast in over 200 countries and territories worldwide. The global audience for the 2017 race was over 16 million viewers. The race has over 5.8 billion online, print, and broadcast media impressions plus extensive social media and website traffic. Hosting the Amgen Tour of California Time-Trial race in Morgan Hill, including a Lifestyle Festival, and the Start and Finish will place Morgan Hill on a national and international stage. The City will receive 2 hours of live broadcast. The media exposure will be significant, especially with the Start and Finish and the Lifestyle Festival being held in Downtown Morgan Hill. Morgan Hill receives a 30 second commercial that will be televised internationally, and a 15 second commercial that will be displayed in the big screen and tour tracker app. Partners2Media has created the commercials that highlight the character of the community, including showcasing the beautiful hillsides, the Downtown, the wineries and the technology being developed in Morgan Hill. Below are the links to both commercials:

30-Second Version: <https://youtu.be/076KtoWjYug>

15-Second Version: <https://youtu.be/4heSDSbmDQs>

EVENT EDUCATION & OUTREACH

Given the impacts of the road closures for the 22-mile route and the impacts to Downtown, staff have developed a robust event education and community outreach plan for the event. Some of the key efforts include creating a website for the event with route closure and an opportunity for people to sign up for alerts. A hotline was created to let residents email, text, or call regarding site-specific questions. On race day, this hotline will be managed by the CHP. Additionally, letters were sent to property owners on the west side of Morgan Hill and businesses within the race perimeter. Letters will be hand-delivered to all Downtown businesses and residents.

From April 7th (the date the City implemented the new Romulus text/call/email line) to April 23rd, the City received 21 calls, 14 emails, and 5 text messages. Staff has responded to the inquires through a range of emails, texts, and call backs. The online Google Map with the race route and street closure has had 504 visitors since launch. The Amgen Tour of California web pages have received 1,193-page views. The City's Weekly 411 has been sharing information about the Amgen TOC event regularly since the week of February 4th. Average Weekly 411 site "open" rates have been about 2,200, with click throughs seeking additional information ranging from 6 to 42. The email about the road closures on April 2nd, had 3,876 "opens" and 620 click throughs. The Nextdoor posting of Road Closure information had 3,802 impressions. Social media posts have had on average about 200 views.

Below is a list of the other event marketing and outreach efforts:

- Activated two billboards with event details
- Coordinated with Morgan Hill Unified School District regarding Race Day logistics

- Coordinated directly with impacted schools within Race Perimeter about the Amgen Tour of California
- Displayed ads in the Morgan Hill Times & Morgan Hill Life
- Posted signs along the race route informing community of the race
- Inserted an advertisement in Water Bills for late April and early May
- Posted information on Facebook and Nextdoor, Instagram, Twitter, and LinkedIn
- Hand delivered marketing flyers to area businesses
- Posted event and community events posters in Downtown Kiosks and Outdoor Sports Center Kiosk's
- Distributed event flyers and community event flyers at City facilities
- Provided, and continue to provide, ongoing updates via website: www.morganhill.ca.gov/atoc
- Supported articles in local papers, including GMH Today, Morgan Hill Times, and Morgan Hill Life
- Created ads to run on KSBW 8 (sponsorship)
- Facilitated and implementing banners (designed by Specialized) throughout Downtown
- Coordinated Bike Week activities (various marketing channels) leading up to Amgen Tour of California
 - May 4th *"May the 4th Be With You"* Bike Party
 - May 8th Bike to School Day
 - May 9th Bike to Work Day
 - May 11th Community Concert at the Community and Cultural Center
 - May 13th Mother's Day Ride with the Mayor and Pancake Breakfast
 - May 15th Specialized Bicycles Open House - Community Invited
- School Assemblies April 23-27th
- Hosting an Open House on May 8th at 6 pm at the Community and Cultural Center for the community to learn more about the Stage 4 time trial

EVENT SPONSORS

The Lifestyle Festival is an opportunity to showcase the best of Morgan Hill and for health based and educational activities to take place to encourage a healthy and active

lifestyle. To actively participate in this significant event, several companies are supporting the event through a variety of sponsorships and partnerships. Here is the list of event partners:

Specialized Bicycle Components	in kind donation for Community Concert and Bike Rodeo, Open House, and School Outreach
Live+Love+Lèal & Granada Theatre	in kind donation for Hospitality Tent & land art activation
KSBW 8, Central Coast ABC, Estrella TV Costa Central	in kind donation of event promotion with a :30 second TV commercial and story in homepage and social media posts
SAP	\$10,000 cash donation
Santa Clara Valley Water District (SCVWD)	\$2,500 cash donation and water truck
DivcoWest	\$2,500 cash donation
Costco Wholesale at Great Oaks	In kind donation for set up crew breakfast
Cinnabar Hills Golf Club	Race route collaboration
Guglielmo Winery	In kind donation for "Taste of" activation
Maurizio's Restaurant	In kind donation for "Taste of" activation
GVA Café	In kind donation for "Taste of" activation
Flower Cottage	In kind donation for flower bouquets

In addition to these partnerships, four businesses bought booth space at the Lifestyle Festival (\$200 each for a total of \$800). The remainder of the booths given to the City were offered to event sponsors or community organizations at no charge.

COMMUNITY ENGAGEMENT: Collaborate

Staff have reached out to the Hotels, Tourism Alliance, Chamber of Commerce, Downtown Association, Specialized, and event organizers. Many of these groups are sponsoring the re-print of the Meet Morgan Hill marketing brochure that promotes the wineries, the farms, and open spaces. Staff met with the Morgan Hill Unified School District and discussed the significant impacts that the event would have on parent and bus pick up for both Britton Middle School and PA Walsh Elementary School. Staff is also reaching out to Gavilan College and other CCC users to plan for event impacts. An extensive community outreach and marketing campaign is underway (listed above). Many community partners (as previously indicated) and businesses are actively engaging in implementing numerous cycling events, community events, and school outreach efforts.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 20, 2017, the City approved becoming a co-host of the 2018 Amgen Tour of California (TOC) Time Trial Race with the Start and Finish line in Downtown Morgan Hill and approved \$55,000 for traffic management and marketing and promotions.

FISCAL AND RESOURCE IMPACT:

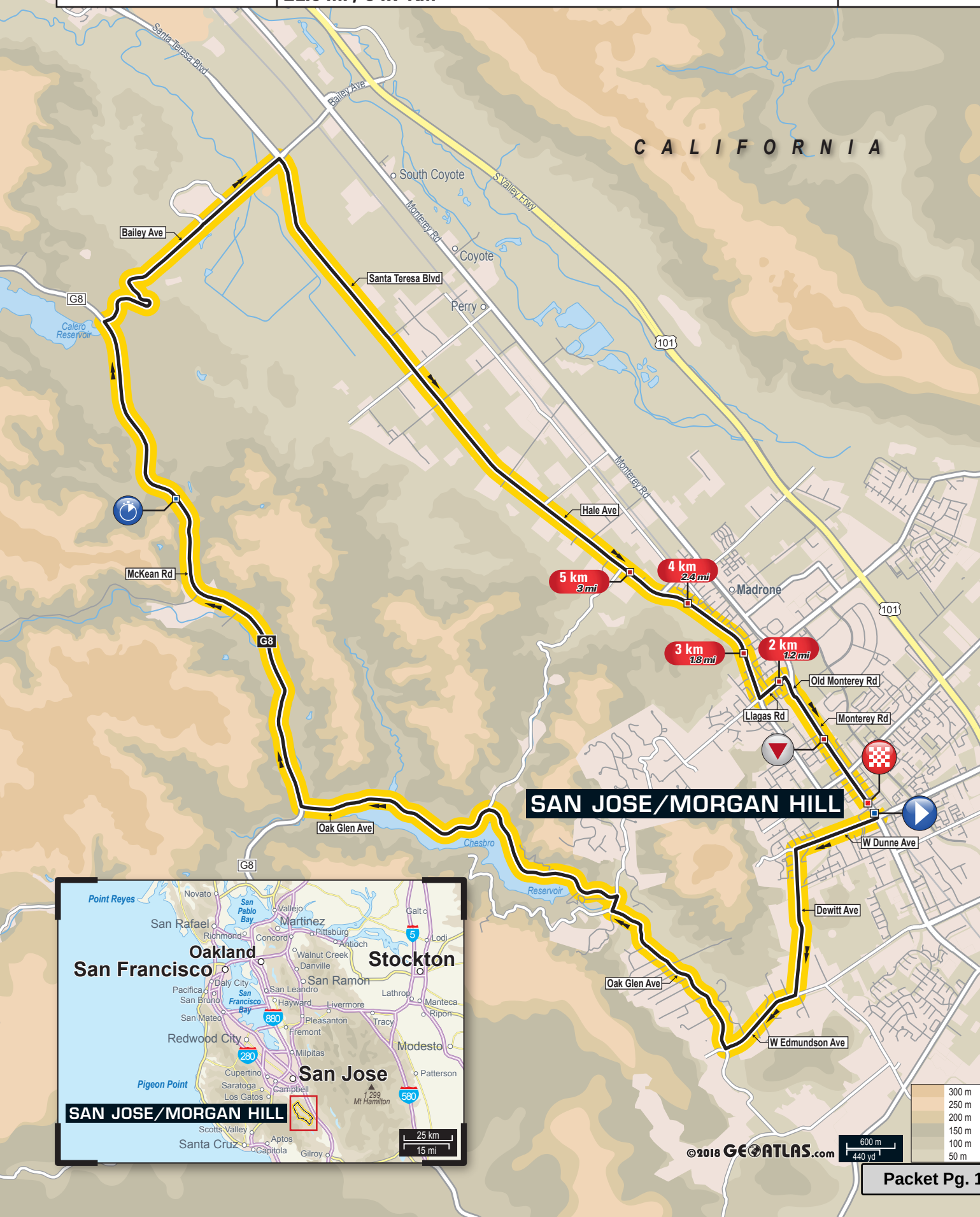
The fiscal impact is anticipated to be up to \$55,000 to cover up to \$40,000 toward street closures and traffic management and an additional \$15,000 for marketing. Staff has secured several in kind donations to support event activities and raised an additional \$15,000 in cash donations (\$10,000 from SAP, \$2,500 from DivcoWest, and \$2,500 from the SCVWD). The SAP donation was split between San Jose and Morgan Hill to cover event costs. The City also raised \$800 from booth purchases. The raised funds have been used to finance the community outreach and marketing efforts.

CEQA (California Environmental Quality Act): Categorical Exemption

The planned management of City facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities. Additionally, use of public facilities for special events falls within the categorical exemption of Class 23, Normal Operations of Facilities for Public Gatherings.

LINKS/ATTACHMENTS:

1. Attachment A: Stage 4 Tour Route
2. Attachment B Community Engagement



SAN JOSE/MORGAN HILL



AMGEN TOUR
OF CALIFORNIACA  MH

EVENTS & ACTIVITIES

AMGEN TOUR OF CALIFORNIA MORGAN HILL MAY 2018

MAY 4 – BIKE PARTY

Morgan Hill Bike Party

Friday, May 4th 7:30pm
Start and Finish at Bike Therapy,
17540 Depot St, Morgan Hill
facebook.com/events/206335884393268

MAY 9 – BIKE TO SCHOOL DAY

Wednesday, May 9th
Contact your school administrator
to see if your school is participating!

MAY 10 – BIKE TO WORK DAY

Thursday, May 10th 6:00am - 9:00am
Energizer station at Community
and Cultural Center, 17000 Monterey Road,
Morgan Hill

MAY 11 – AMGEN TOUR OF CALIFORNIA KICK OFF CONCERT

Community Concert featuring Isaiah Pickett,
Local Bike Shops, and Specialized Bicycles

Friday, May 11th 6:00pm - 9:30pm
Morgan Hill Downtown Amphitheater, 17000
Monterey Road, Morgan Hill

MAY 13 – MOTHER'S DAY RIDE & PANCAKE BREAKFAST

Mother's Day Ride with the Mayor, followed
by a Pancake Breakfast hosted
by Bike Therapy

Sunday, May 13th 9:00am
The Grange, 40 E 4th Street, Morgan Hill
Register on City of Morgan Hill website.

MAY 15 – SPECIALIZED BICYCLES OPEN HOUSE

Specialized Open House
Food trucks, tours of the Wintunnel,
Bike Museum

Tuesday, May 15th 5:30pm - 8:00pm
Specialized HQ, 15130 Concord Circle,
Morgan Hill

MAY 16 – AMGEN TOUR OF CALIFORNIA TIME TRIAL

Stage 4 Amgen Tour of California Time Trial

Wednesday, May 16th 12:45pm
Start and finish in Downtown Morgan Hill

**For more information and registration
links, please visit
www.morganhill.ca.gov/1679/Events-and-Activities**



SPECIALIZED





CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

APPROVE FIFTH AMENDMENT TO FIRATO SERVICE COMPANY, INC. MAINTENANCE SERVICE AGREEMENT

RECOMMENDATION(S)

Approve the fifth amendment to the maintenance service agreement with Firato Service Company for \$928,950 for four years of service.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The City contracted with Firato Service Company in 2014 for janitorial services at key public facilities. Since 2014, the agreement has been amended four times to address required changes in services and to extend the agreement for an additional year. The current dollar amount of the agreement is \$923,400 for four years of service at the City's major recreation facilities.

The Downtown Parking Structure is maintained regularly by Firato Janitorial, however the current contract does not include the annual major cleaning of the Structure. This contract amendment would fund this necessary cleaning that would include steam cleaning, washing stairwells, handrails and walls. Dusting of all overhead pillars would also occur. The proposed one-time cost for these additional services is \$5,550. This will result in a revised total dollar amount of the agreement to \$928,950.

The City is currently in the process of reviewing proposals for citywide janitorial service, as the current contract concludes in June 2018. The new contract with the selected firm will include this work annually.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommended contract amendment.

ALTERNATIVE ACTIONS:

The Council could reject this Fifth Amendment and direct city maintenance staff to perform this work. This is not recommended, as this would require other routine maintenance activities to be delayed or eliminated.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the Original Agreement with Firato Service Company on June 4, 2014. The First Amendment to Agreement was approved on June 1, 2016 to add additional needed services. The Second Amendment to Agreement was approved on August 24, 2016 to add some strategically needed services at the Aquatics Center. The Third Amendment to Agreement was approved on May 17, 2017 to extend Firato's services for another year and to increase costs by 4% to adjust for inflation. The Fourth Amendment was approved on November 1, 2017 to add additional services related to the new Railroad Park and the Downtown Parking Garage.

FISCAL AND RESOURCE IMPACT:

While the recommended action increases the total amount of the agreement, no budget adjustment is required because the City's adopted budget for Fiscal Year 2017-18 has already included funding for this work in the City's Downtown Maintenance Budget in the General Fund (010.5460). If approved, the annual amended amount will be \$273,882 for FY 2017-2018, and the revised total amount of the Firato Service Agreement will be \$928,950 for four years of service. Administering the agreement for janitorial services is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Fifth Amendment to Firato MSA

**FIFTH AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY, INC.**

This FIFTH AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fifth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 16, 2014, for services for a maximum compensation of FOUR HUNDRED NINE THOUSAND ONE HUNDRED NINETY-FIVE AND NO/100 DOLLARS (\$409,195.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 9, 2016, under which the term of the agreement was extended to June 30, 2017, additional services were added to the scope of services and the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to SIX HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED FOURTEEN AND NO/100 DOLLARS (\$636,114.00).
4. The CITY and MAINTENANCE SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of August 28, 2016, under which additional services were added to the scope of services and the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to SIX HUNDRED FIFTY-FIVE THOUSAND SIXTY-EIGHT AND NO/100 DOLLARS (\$655,068.00).
5. The CITY and MAINTENANCE SERVICE PROVIDER entered into a "Third Amendment to Agreement" made as of May 25, 2017, under which the term of the Agreement was extended to June 30, 2018, and the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to NINE HUNDRED THOUSAND NINE HUNDRED TWENTY AND NO/100 DOLLARS (\$900,920.00)
6. The CITY and MAINTENANCE SERVICE PROVIDER entered into a "Fourth Amendment to Agreement" made as of November 17, 2017, under which additional services were added to the scope of services and the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to NINE HUNDRED TWENTY-THREE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$923,400.00). The MAINTENANCE SERVICE AGREEMENT, and the First, Second, Third and Fourth Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"In addition to the services stated in the original MAINTENANCE SERVICE AGREEMENT and the First, Second, Third and Fourth Amendments to the Agreement, the services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "2" dated April 9, 2018 and incorporated herein by this reference."

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

"4.1. Amount. Compensation under this Agreement shall not exceed NINE HUNDRED TWENTY-EIGHT THOUSAND NINE HUNDRED FIFTY AND NO/100 DOLLARS (\$928,950.00) and shall be billed based on the rate and basis set forth in Exhibit C to the Fourth Amendment to Agreement dated October 19, 2017, and at the rate and basis set forth in Exhibit "2" dated April 9, 2018, incorporated herein by this reference."

C. Paragraph 6 shall be amended by adding the following:

"Work to be performed pursuant to Amendment 5 shall be performed within the time specified in Exhibit "2" dated April 9, 2018."

[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Fifth Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Fifth 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:

FIRATO SERVICE COMPANY, INC.

City Attorney

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

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

Date: _____

Firato Service Company
Fifth Amendment to the Original Maintenance Service Agreement
Exhibit 2- Revised Scope of Services
Schedule of Compensation and Schedule of Performance
April 9, 2018

Scope to include all of the services specified in the original agreement dated June 16, 2014; First Amendment to the Agreement dated June 9, 2016; Second Amendment to the Agreement dated August 28, 2016; Third Amendment to the Agreement dated May 25, 2017; Fourth Amendment to the Agreement dated November 17, 2017, and the following additional services to be provided on a one time basis at the Downtown Parking Garage located at 50 East Third Street in Morgan Hill no later than May 13, 2018 and in the amount as stated below:

1. Steam pressure wash the two (2) sets of stairwells, landings and handrails in the Downtown Parking Garage in the amount of \$1,000.
2. Steam pressure wash all the walls of the Downtown Parking Garage in the amount of \$2,750.
3. Dust all of the overhead pillars in the Downtown Parking Garage in the amount of \$1,800.

128-04-1A-009

Exhibit "1"**FOURTH AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY**

This FOURTH AMENDMENT TO AGREEMENT is entered into and becomes effective on November 17, 2017 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fourth Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on November 1, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 16, 2014, for services for a maximum compensation of Four Hundred Nine Thousand One Hundred Ninety-Five Dollars (\$409,195) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 9, 2016, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six Hundred Thirty-Six Thousand One Hundred Fourteen Dollars (\$636,114).
4. The CITY and MAINTENANCE SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of August 28, 2016, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six Hundred Fifty-Five Thousand Sixty-Eight Dollars (\$655,068) and a "Third Amendment to Agreement" to again increase the maximum compensation to Nine Hundred Thousand Nine Hundred Twenty Dollars (\$900,920). The MAINTENANCE SERVICE AGREEMENT, and the First, Second and Third Amendments thereto are attached as Exhibit A to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"In addition to the services stated in the original MAINTENANCE SERVICE AGREEMENT and the First, Second, and Third Amendments to the Agreement, the services to be performed by SERVICE PROVIDER shall consist of the additional services set forth in Exhibit B to this Fourth Amendment."

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 Nine Hundred Twenty-Three Thousand Four Hundred Dollars (\$923,400), and shall be billed based on the rate and

basis set forth in Exhibit C to this Fourth Amendment."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Fourth Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Fourth 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 Clerk

Date: 11/20/17

APPROVED AS TO FORM:

City Attorney, Assistant

Date: 11-13-17

CITY OF MORGAN HILL

City Manager

Date: 11-17-17

FIRATO SERVICE COMPANY, INC.

By:

Title: Richard G. Firato CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 10-25-17

By:

Title: CFO Julie M. Firato

Print Name and Title of Signer.

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

Date: 10/25/17

128-04-14-009

**THIRD AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on MAY 25, 2017 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on May 17, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 16, 2014, for services for a maximum compensation of Four hundred nine thousand one hundred ninety-five dollars (\$409,195) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 9, 2016, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six hundred thirty-six thousand one hundred fourteen dollars (\$636,114).
4. The CITY and SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of August 28, 2016, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six hundred fifty-five thousand sixty-eight dollars (\$655,068). The MAINTENANCE SERVICE AGREEMENT, and the First and Second Amendments thereto are attached as Exhibit "A" to this Agreement.

AGREEMENT**THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

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

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 June 16, 2014, until June 30, 2018."

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

"4.1 **Amount.** Compensation under this Agreement shall not exceed Nine hundred thousand nine hundred twenty Dollars (\$900,920). Compensation is based on SERVICE PROVIDER'S annual compensation rates. Effective July 1, 2017, SERVICE PROVIDER'S annual compensation rates have increased and are set forth in the revised Exhibit "B" dated July 1, 2017, approved by CITY and attached hereto and incorporated herein by reference."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Third Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

[Signature]
 Deputy City Clerk
 Date: 5/25/17

APPROVED AS TO FORM:

[Signature]
 City Attorney
 Date: 5-24-17

CITY OF MORGAN HILL

[Signature]
 City Manager

Date: 5/25/17

FIRATO SERVICE COMPANY, INC.

By:

Title: CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 5-16-17

By:

Title: CFO

Print Name and Title of Signer.

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

Date: 5/16/17

128 04-14-009

**SECOND AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on August 28, 2016 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC, a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on August 24, 2016.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 16, 2014, for services for a maximum compensation of Four hundred nine thousand one Hundred Ninety-five dollars (\$409,195) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 9, 2016, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six Hundred Thirty-Six Thousand One Hundred Fourteen dollars (\$636,114). The MAINTENANCE SERVICE AGREEMENT and the First Amendment to Agreement are attached collectively as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "B":

Cleaning of the large locker rooms will be completed six (6) days per week during the slow season at the Aquatics Center.

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed six hundred fifty-five thousand sixty-eight Dollars (\$655,068).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

Exhibit A to the Fourth Amendment

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EXHIBIT A
Page 2 of 15

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

ATTEST:

Deputy

City Clerk

Date:

8/28/16

APPROVED AS TO FORM:

City Attorney

Date:

08/25/16

CITY OF MORGAN HILL

City Manager

Date:

8/26/16

FIRATO SERVICE COMPANY, INC.

By:

Title:

CEO Rich Firato

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date:

By:

Title:

CFO JULIENE M. FIRATO

Print Name and Title of Signer.

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

Date:

8/11/16

Exhibit A to the Fourth Amendment

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EXHIBIT A

Page 3 of 15

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Exhibit A 1 of 12

128-0A-1A 009

**FIRST AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 9, 2016 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on June 1, 2016.
2. The CITY and CONSULTANT entered into that "Maintenance Services Agreement" made as of June 4, 2014, for consultant services for a maximum compensation of four hundred nine thousand one hundred ninety-five dollars ("AGREEMENT"). The AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 1, 2014, until June 30, 2017. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "D":

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 six hundred thirty-six thousand one hundred fourteen Dollars (\$636,114).

Attachment: Fifth Amendment to Firato MSA (1733 : Approve Fifth Amendment to Firato Maintenance Service Agreement)

Exhibit A to the Fourth Amendment

Page 6 of 19

EXHIBIT A
Page 4 of 15

8/25

Exhibit A 2 of 12

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:

Dimmy
 City Clerk
 Date: 6/9/16

APPROVED AS TO FORM:

for
 City Attorney
 Date: 06/08/16

CITY OF MORGAN HILL

City Manager

Date:

FIRATO SERVICE COMPANY, INC.

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

By:

Title:

Print Name and Title of Signer.

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

Date:

8/25

Exhibit A 3 of 12

Exhibit A

128-04-14-009

MAINTENANCE SERVICE AGREEMENT FIRATO SERVICE COMPANY, INC.

THIS AGREEMENT is entered into and becomes effective on June 11, 2014 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Firato Service Company, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on June 4, 2014.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2016 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for two additional one year periods. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Janitorial Services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$409,195.00. Total compensation under this Agreement shall not exceed four hundred nine thousand one hundred ninety five dollars and shall be billed based on the rate and basis set forth in Exhibit B.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER.
6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work.

Exhibit A to the Fourth Amendment

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EXHIBIT A

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Exhibit A 4 of 12

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.

7. Insurance Requirements.

7.1. Commencement of Work. SERVICE PROVIDER shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability insurance policies, SERVICE PROVIDER shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- Insurance shall be primary non-contributing.

SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY.

7.2. Workers' Compensation Insurance. SERVICE PROVIDER and all subcontractors shall maintain Workers' Compensation Insurance, as required by law.

7.3. Insurance Types and Amounts. SERVICE PROVIDER shall maintain comprehensive general liability insurance; professional errors and omissions liability insurance (required for professional and technical service consultants only); and automobile insurance each with policy limits of at least \$1,000,000 per occurrence for general liability, \$1,000,000 per accident for automobile liability and \$1,000,000 per claim for professional errors or omissions (for professional and technical service consultants only).

7.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed and admitted, or otherwise legally authorized to carry out insurance business, in California with a current A.M. Best's rating of no less than A:VII.

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

9. Compliance with Law.

9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national

2.

Attachment: Fifth Amendment to Firato MSA (1733 : Approve Fifth Amendment to Firato Maintenance Service Agreement)

Exhibit A to the Fourth Amendment

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Exhibit A 5 of 12

origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

- 9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Firato Service Company, Inc.
17485 Monterey Rd, Suite 200
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

15. **Maintenance of Records.**

15.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to

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Attachment: Fifth Amendment to Firato MSA (1733 : Approve Fifth Amendment to Firato Maintenance Service Agreement)

8/25

Exhibit A 6 of 12

services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

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

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

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

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

18. No Assignment. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY.

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

20. Defense and Indemnification.

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

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

Exhibit A to the Fourth Amendment

Page 11 of 19

EXHIBIT A
Page 9 of 15

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Exhibit A 7 of 12

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

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

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

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

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

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

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

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5

Attachment: Fifth Amendment to Firato MSA (1733 : Approve Fifth Amendment to Firato Maintenance Service Agreement)

Exhibit A to the Fourth Amendment

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EXHIBIT A

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Exhibit A 8 of 12

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

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

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

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

ATTEST:

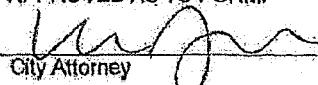

City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date:

10/23/14

APPROVED AS TO FORM:

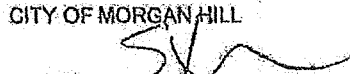

City Attorney

for Renee Gurza
Print Name

Date:

06/12/14

CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

Date:

6/16/14

Firato Service Company, Inc.

By:

Title:

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

Date:

6-3-14

By:

Title:

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

Date:

6/3/14

8/25

Exhibit A 9 of 12

**EXHIBIT A
SCOPE OF SERVICES**

SERVICE PROVIDER agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. SERVICE PROVIDER shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. SERVICE PROVIDER also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

The Contract Documents are comprised of the Request for Proposals (Issued by the CITY in April, 2014); the Instructions to Bidders; attachments, addenda, if any; the Proposal submitted by the SERVICE PROVIDER (with the changes noted below,) and attachments thereto; and this Contract.

Changes to Firato Services' Base Bid as mutually agreed upon:

Community and Cultural Center service frequencies will be as indicated in the bid except:

1. Kitchen shall be serviced 5 days per week
2. Staff office areas shall be serviced 3 days per week
3. Day porter services will be limited to Wednesdays year round from 2 pm to 4 pm with service provided by a single staff member.

Exhibit A to the Fourth Amendment

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Exhibit A 10 of 12

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Firato Cost Summary

Group 1

CGC and Playhouse	\$50,449.96
Friendly Inn	\$11,171.04
CGC Day Porter	\$4,716.00
Subtotal	\$66,337.00
Discounts @ 2%	(\$1,326.74)
Group 1 Total	\$65,010.26

Group 2

CRC	\$60,538.32
CRC Day Porter Weekdays	\$23,606.88
CRC Day Porter Weekends	\$6,295.20
Aquatics Center	\$19,347.36
Aquatics Day Porter	\$12,810.00
Aquatics Swim Meet	\$6,386.25
Subtotal	\$128,983.01
Discounts @ 2%	(\$2,679.66)
Group 2 Total	\$126,403.35

Group 3

Public Works Corporation Yard	\$13,316.69
Subtotal	\$13,316.69
Discounts @ 1%	(\$133.17)
Group 3 Total	\$13,183.52
Total	\$204,597.13

Exhibit A to the Fourth Amendment

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EXHIBIT A

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Exhibit A 11 of 12

EXHIBIT C
SCHEDULE OF PERFORMANCE

As indicated in contract documents

Attachment: Fifth Amendment to Firato MSA (1733 : Approve Fifth Amendment to Firato Maintenance Service Agreement)

Exhibit A to the Fourth Amendment

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EXHIBIT A

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Exhibit A 12 of 12

Exhibit D - Revised Scope of Services

Scope to include all of the services specified in the original agreement dated June 4, 2014 and the following additional services and clarifications:

1. Concrete floors at the Centennial Recreation Center to be stripped and waxed annually using approved materials and methods.
2. Replace air fresheners in the locker rooms and lobby of the Centennial Recreation Center monthly.
3. At the Centennial Recreation Center, clean lifeguard room and restroom weekly.
4. For wall cleaning activities at all facilities, the term "spot clean" is understood to include the removal of all fingerprints and marks.
5. Section 1-5 of the Special Conditions of the Request for Proposals (as issued April, 2014) is replaced in its entirety with the following:
 "1-5. **CORRECTIVE WORK** The Contractor shall perform the work to the satisfaction, of the Maintenance Manager or designated representative. Inspections may be made by the City any time and request from the Contractor corrective work. If corrective work is required, the City will provide a written list of items or will provide photos documenting the conditions requiring corrective work. The Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, as determined by the Maintenance Manager, the City may perform the work using others and deduct the cost from the Contractor's payment. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection."
6. For the quality assurance inspections required per section 1-8 of the Special Conditions of the Request for Proposals (as issued April, 2014); contractor understands the importance of its quality assurance inspections. Failure to turn in inspections and corrective action plan by the Contractor by the 10th of the following month will result in monthly payment being withheld until inspections are turned in and a \$100 deduction from the monthly payment per facility.

Exhibit A to the Fourth Amendment

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EXHIBIT A

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Exhibit B - Revised Scope of Services

Scope to include all of the services specified in the original agreement dated June 4, 2014 and the following additional services and clarifications:

1. Concrete floors at the Centennial Recreation Center to be stripped and waxed annually using approved materials and methods.
2. Replace air fresheners in the locker rooms and lobby of the Centennial Recreation Center monthly.
3. At the Centennial Recreation Center, clean lifeguard room and restroom weekly.
4. For wall cleaning activities at all facilities, the term "spot clean" is understood to include the removal of all fingerprints and marks.
5. Section 1-5 of the Special Conditions of the Request for Proposals (as issued April, 2014) is replaced in its entirety with the following:
 "1-5. **CORRECTIVE WORK** The Contractor shall perform the work to the satisfaction, of the Maintenance Manager or designated representative. Inspections may be made by the City any time and request from the Contractor corrective work. If corrective work is required, the City will provide a written list of items or will provide photos documenting the conditions requiring corrective work. The Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, as determined by the Maintenance Manager, the City may perform the work using others and deduct the cost from the Contractor's payment. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection."
6. For the quality assurance inspections required per section 1-8 of the Special Conditions of the Request for Proposals (as issued April, 2014), contractor understands the importance of its quality assurance inspections. Failure to turn in inspections and corrective action plan by the Contractor by the 10th of the following month will result in monthly payment being withheld until inspections are turned in and a \$100 deduction from the monthly payment per facility.
7. Cleaning of the large locker rooms will be completed six (6) days per week during the slow season at the Aquatics Center.

EXHIBIT B
REVISED SCHEDULE OF COMPENSATION RATES
Dated July 1, 2017

FIRATO SERVICE COMPANY

Firato Contract Pricing

FY 17-18

Group 1 -

CCC and Playhouse	\$52,467.96
Friendly Inn	\$11,617.88
CCC Day Porter	\$4,904.64
Discounts @ 2%	\$(1,379.81)

Group 1 Total - Current for FY 17-18	\$67,610.67
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Group 2 -

CRC	\$62,959.85
CRC Day Porter Weekdays	\$24,551.16
CRC Day Porter Weekends	\$6,547.01
Aquatics Center	\$20,121.25
Aquatics Day Porter	\$13,322.40
Aquatics Swim Meet	\$6,640.66
Discounts @ 2%	\$(2,682.85)
Total - Original Base	\$131,459.48

First Amendment (executed 6/9/16)

CRC - Increase 1.5 hours to base	\$9,862.32
AC - Increase 1 hour to base	\$6,573.84
CRC Strip Wax Concrete Floors Yearly	\$4,363.63
CRC Lifeguard Room/Restroom Weekly Summer/Monthly	
Other	\$2,414.88
First Amendment Increase to Base	\$23,214.67

Second Amendment (began 1/1/15)

AC - Add AC Large Locker Rooms Off-Season	\$9,856.08
Second Amendment Increase to Base	

Group 2- Current for FY 17-18	\$164,530.24
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Group 3- Base Pricing - FY 14-15

Public Works Corporation Yard	\$13,849.36
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Exhibit A to the Fourth Amendment

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Discounts @ 1%	\$(138.50)
Group 3 Total- Current for FY17-18	\$13,710.86
Annual Total for FY17-18 Contract	\$245,851.77
Contract Amount Rounded Up to	\$245,852.00

Firato Service Company, Inc.
Fourth Amendment to Maintenance Service Agreement

**Exhibit B-
Additional Scope of Work**

Work Hours: All work is to be performed between 5:00 am and 7:00 am; Seven days a week

Railroad Park (formerly Depot Park) located at Depot Street between 3rd and 4th Streets.

Restrooms – Day Porter Services 7 days/week

- a. Empty trash cans and replace plastic liners as needed. Take trash to the parking structure dumpster.
- b. Clean all mirrors and surrounding stainless steel/chrome with disinfectant
- c. Wash out basin with approved cleanser, rinse and dry; damp dry basin traps
- d. Clean/disinfect all toilets, damp dry all external surfaces; clean all stainless steel/chrome
- e. Clean all counters, fixtures, and dispensers
- f. Clean door handles
- g. Replenish all paper supplies and soap dispensers
- h. Damp wipe doors, walls
- i. Hose/mop floors with disinfectant
- j. Spot clean and remove any gum, residue or stains from all areas with approved methods
- k. Check lights and report outages to the Maintenance Coordinator or designated representative same day
- l. Dust ceiling, fixtures and walls as needed
- m. Report all graffiti to Maintenance Coordinator or designated representative same day

Park/Parking Lot – Services 7 days/week

- a. Litter pick up throughout entire park and parking lot
- b. Empty trash/recycling if ½ full or more and take trash to the parking structure dumpster.
- c. Clean and wipe down all drinking fountains
- d. Clean all body fluids and spills anywhere in the park/parking lot
- e. Report all graffiti to Maintenance Coordinator or designated representative same day

Downtown Parking Garage located at 50 East Third Street

- a. Daily
 - a. Litter pick up throughout the garage (including stairwells and underneath)
 - b. Empty trash/recycling if ½ full or more and put in the parking structure dumpster.

- c. Inspect elevator function and report any problems same day
 - d. Inspect elevator for damage or graffiti and report any problems same day
 - e. Clean all body fluids and spills anywhere in the garage and elevator
 - f. Clean elevator floors
 - g. Wipe down the entire inside of the elevator
 - h. Remove any postings, tape, string, etc
 - i. Check lights and report outages to the Maintenance Coordinator or designated representative same day
- b. Weekly
- a. Clean elevator doors (inside and out) with stainless steel cleaner
 - b. Dust and clean the handrails, maps, EV chargers, phones and trash/recycle receptacles

EXHIBIT C - REVISED COMPENSATION SCHEDULE

Fourth Amendment to the Maintenance Service Agmt

Dated October 19, 2017

Firato Service Co.

	FY 17-18		
Group 1 -	Base Price	2%	Discounted Price
CCC and Playhouse	\$ 52,467.96	1,049.36	51,418.60
Friendly Inn	\$ 11,617.88	232.36	11,385.52
CCC Day Porter	\$ 4,904.64	98.09	4,806.55
Discounts @ 2%	\$ (1,379.81)		
Group 1 Total - Current for FY 17-18	\$ 67,610.67	<i>Check</i>	67,610.67

Group 2 -

CRC	\$ 62,959.85	\$ 1,259.20	\$ 61,700.66
CRC Day Porter Weekdays	\$ 24,551.16	\$ 491.02	\$ 24,060.13
CRC Day Porter Weekends	\$ 6,547.01	\$ 130.94	\$ 6,416.07
Aquatics Center	\$ 20,121.25	\$ 402.43	\$ 19,718.83
Aquatics Day Porter	\$ 13,322.40	\$ 266.45	\$ 13,055.95
Aquatics Swim Meet	\$ 6,640.66	\$ 132.81	\$ 6,507.85
Discounts @ 2%	\$ (2,682.85)		
Total - Original Base	\$ 131,459.48	<i>Check</i>	\$ 131,459.48

First Amendment (executed 6/9/16)

CRC - Increase 1.5 hours to base	\$ 9,862.32	\$ 9,862.32
AC - Increase 1 hour to base	\$ 6,573.84	\$ 6,573.84
CRC Strip Wax Concrete Floors Yearly	\$ 4,363.63	\$ 4,363.63
CRC Lifeguard Room/Restroom Weekly Surr	\$ 2,414.88	\$ 2,414.88
First Amendment Increase to Base		\$ -

Second Amendment (began 1/1/15)

AC - Add AC Large Locker Rooms Off-Season	\$ 9,856.08	\$ 9,856.08
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Second Amendment Increase to Base

Group 2- Current for FY 17-18	\$ 164,530.24	\$ 164,530.24
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Group 3- Base Pricing - FY 14-15

Public Works Corporation Yard	\$ 13,849.36	\$ 138.49	\$ 13,710.86
Discounts @ 1%	\$ (138.50)		
Group 3 Total- Current for FY17-18	\$ 13,710.86	<i>Check</i>	178,241.10

Attachment: Fifth Amendment to Firato MSA (1733 : Approve Fifth Amendment to Firato Maintenance Service Agreement)

Group 6 - Nov. 2017 to June 2018	\$	22,480.00
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Downtown Garage and Parks @ \$2,810

22,480.00

Annual Total for FY17-18 Contract \$ 268,331.77 rounded up

\$ 268,332.00



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

PREPARED BY: Mario Jimenez, Associate Engineer
APPROVED BY: City Manager

APPROVE AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT FOR LANDS OF AHMADI (APN 817-59-066,067,068)

RECOMMENDATION(S)

1. Approve the Amended Subdivision Improvements Agreement with Rahmatollah Ahmadi;
2. Authorize the City Manager to execute the Amended Subdivision Improvements Agreement; and
3. Authorize the recordation of the Amended Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On August 2, 2007, City Council approved a Subdivision Improvements Agreement with Rahmatollah Ahmadi (Developer), for a 3-lot subdivision located on the southeast corner of San Pedro Avenue and Cory Lane (see attached site map).

The project commenced construction in 2007, completing 40 percent of the required public improvements. Due to the 2007 Recession, the Developer experienced a financial hardship which halted the work. The Subdivision Improvements Agreement expired, however, to retain RDCS allocations, the developer continuously applied and obtained extensions to his building permits with the intent to complete the project.

The developer is now moving forward to complete the remaining 60 percent of the public improvements which will require the approval of an Amended Subdivision Improvements Agreement. The developer has furnished the City with the necessary documents to complete the processing of the Amended Subdivision Improvements Agreement by providing surety bonds and insurance for the remaining public improvements for this project.

Staff recommends that City Council authorize the City Manager to execute the Amended Subdivision Improvements Agreement between the developer and the City of Morgan Hill.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

City Council may choose not to enter into an Amended Subdivision Improvements Agreement with Rahmatollah Ahmadi. This will halt the project from moving forward and will prevent three new single-family dwellings from being constructed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On August 2, 2007, City Council approved the Parcel Map and original Subdivision Improvements Agreement with Rahmatollah Ahmadi.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

This project is categorically exempt from CEQA under Section 15315, Minor Land Division.

LINKS/ATTACHMENTS:

1. Site Map
2. Amended Subdivision Improvements Agreement



CITY OF MORGAN HILL

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

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

SITE MAP LANDS OF AHMADI



0 62.5 125 250 375 500
Feet

Attachment: Site Map (1652 : Approve Amended Subdivision Improvements Agreement for Lands of Ahmadi (APN 817-59-066,067,068))

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT

Rahmatollah Ahmadi

Lands of Ahmadi

This Amended Subdivision Improvements Agreement ("Amended Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and Rahmatollah Ahmadi, a joint tenant ("Subdivider"), is entered into this _____ day of _____, 20___. City and Subdivider hereby acknowledge the following:

1. Subdivider filed a Tentative Subdivision Map and supporting documents for, the subdivision known as Lands of Ahmadi ("Map").
2. City required, as part of the conditions of approval ("Conditions") of the Parcel Map ("Parcel Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "Improvement Plans for Lands of Ahmadi." ("Plans").
3. Subdivider was unable to complete, prior to filing of the Parcel Map, all of the Improvements required by City to the satisfaction of the City Engineer; therefore, City and Subdivider entered into a Subdivision Improvement Agreement.
4. A Subdivision Improvement Agreement ("Agreement") between City and Subdivider was recorded on August 10, 2007 as Document Number 19546790. A Parcel Map was recorded on August 10, 2007 as Document Number 19546791.
5. Subdivider was unable to complete the Improvements as required by the Agreement, but now desires to proceed with construction of the Improvements. Construction of certain Improvements was commenced, but no Improvements have been accepted by the City.
6. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain

securities to secure the completion of the Improvements.

7. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Amended Agreement.

8. This Amended Agreement is executed pursuant to California Government Code Section 66410, et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

NOW, THEREFORE, and in consideration of the approval of the Parcel Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

Section 1. Incorporation by Reference

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Amended Agreement, this Amended Agreement shall govern.

Section 2. Construction of Improvements

(a) Subdivider shall construct to the approval of City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans for Lands of Ahmadi".

(b) Acquire and dedicate, or pay the cost of acquisition by City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of City.

Section 3. Modification of Plans

Subdivider agrees that, if during the construction of the Improvements, it is determined by City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by City. Said changes, if any, shall be confined to the premises owned by Subdivider.

Section 4. Security

(a) Pursuant to California Government Code Section 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Amended Agreement ("Performance Bond").

Improvements and the Engineer's Estimated Costs of Improvements as of March 6, 2018 are attached hereto as Exhibit "A".

The Performance Bond shall be in the amount of **\$70,618.63 (seventy thousand six hundred eighteen dollars and sixty three cents)** and shall be in a form substantially the same as Exhibit "B".

(b) Pursuant to California Government Code Section 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Amended Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be in the amount of **\$70,618.63 (seventy thousand six hundred eighteen dollars and sixty three cents)** and in a form substantially the same as Exhibit "C".

(c) Subdivider shall, upon completion of the Improvements, furnish a surety bond in an amount equal to fifty percent (50%) of the current estimated construction cost of the Improvements (as listed in Section 4(a) above) to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof by the City Council ("Warranty Period") against any defective work or labor performed, or defective materials furnished by Subdivider in connection with this Amended Agreement ("Warranty Bond"). The Warranty Bond shall be in a form substantially the same as Exhibit "D".

(d) Pursuant to Government Code Section 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the Amended Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work; provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished in the performance of the Agreement or Amended Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(e) The surety on each bond and the form thereof shall be satisfactory to City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by the City's risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside the City's jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

Section 5. Inspections

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify City in writing of the fixed start date of construction so that City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of this Amended Subdivision Improvements Agreement; provided however, the City Manager may extend the deadline for completion by not more than six (6) months in his or reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between Subdivider and City that any extension granted shall in no way affect the validity of this Amended Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Amended Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of City, including any changes required by City which in City's opinion are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to

this Amended Agreement, Subdivider agrees to complete the Improvements in accordance with this Amended Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Amended Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City Council.

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

(f) Subdivider guarantees and warrants the work required by the Agreement and this Amended Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within one year after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to City, plus fifteen percent (15%); and City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

Section 8. Acquisition and Dedication of Easements or Rights-of-Way

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by the Agreement or this Amended Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Parcel Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of

the Improvements called for in this Amended Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, as amended or otherwise, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless the City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of the City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code Section 66499.37.

City shall promptly notify Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Subsection (9) will survive termination of this Amended Agreement.

Section 10. Insurance

Concurrent with the execution of this Amended Agreement, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Amended Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Amended Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the

requirements outlined in this Amended Agreement City shall issue a stop work order, or terminate the Amended Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

(a) Policies and Limits. The following insurance policies and limits are required for this Amended Agreement:

(1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) 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 two million dollars (\$2,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CGL coverage is being provided by Subdivider's General Contractor pursuant to Section 10, General Contractor may elect to insure the CGL exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which the City is included as an additional insured.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

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

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

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

(b) **Required Endorsements.** Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below. Further, if coverages are being provided by Subdivider's General Contractor pursuant to Section 10, endorsements may not be restricted to work performed "under a written contract" (i.e. "blanket endorsements")

(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) **ALL Policies except Workers Compensation:**

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.

(3) **General Liability:**

a. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;

b. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) **Subcontractors.** Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10 as appropriate based on each subcontractor's scope of work, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

(e) **Certificates.** Subdivider shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Subdivider's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$75,371** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

- (1) **\$21,640** was paid at the time of recording of the Parcel Map in August 2007, and
- (2) **\$75,371** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for City's approval of the Parcel Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City of Morgan Hill Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside the City's jurisdiction.

Section 12. On-Site Supervision

Subdivider shall designate an on-site supervisor, satisfactory to City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of Subdivider when communicating with City personnel.

Section 13. Waiver

Waiver by City or Subdivider of any breach of any of the provisions of the Amended Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Amended Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Amended Agreement.

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

- a. Address of Subdivider is as follows:

Rahmatollah Ahmadi
3629 Bercaw Lane
San Jose, CA 95124-2831

- b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Amended Agreement, it may issue a cease and desist order, stop work order, or other action City deems necessary.

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Amended Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.

(e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Amended Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

(a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.

(b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Amended Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore to complete the Improvements.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to City damages. The right of City to draw upon or utilize the security is additional and not in lieu of any other remedy available to City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Amended Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) are in addition to and not in lieu of other remedies available to City.

(e) In the event that Subdivider fails to perform any obligation under this Amended Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

Section 18. Successors in Interest

This Amended Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County within ten days after approval by the City and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Amended Agreement to be recorded.

Section 19. Effective Date

This Amended Agreement shall be effective as of the date and year first above written.

Section 20. Amendment of Agreement

This Amended Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby.

Section 21. Execution

By signing this Amended Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Amended Agreement.

Section 22. 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 Amended Agreement.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this Amended Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

Section 24. Limitations Upon Subcontracting and Assignment.

Neither this Amended Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

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Section 25. Miscellaneous

- (a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
- (b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Amended Agreement.
- (c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Amended Agreement.
- (d) Time of Essence. Time is of the essence in the performance of this Amended Agreement.
- (e) Interpretation. This Amended Agreement shall be interpreted as though prepared by both parties.
- (f) Preservation of Agreement. Should any provision of this Amended Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

CITY OF MORGAN HILL

By: _____

Christina J. Turner, City Manager

Date: _____

ATTEST:

By: _____

Michelle Wilson, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

Rahmatollah Ahmadi

By: Rahmatollah Ahmadi

Print Name

(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: 4/18/18

By: _____

Print Name

(If Corporation, must be Secretary, Assistant Secretary, CFO, or Assistant Treasurer)

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

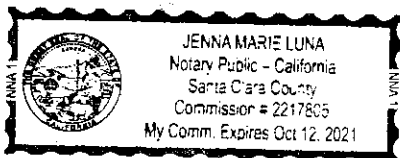
State of California)

County of Santa Clara)On 4/18/18 before me, Jenna Marie Luna, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Rahmatollah Ahmadi
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jenna Marie Luna
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Amended Subdivision Improvements AgreementDocument Date: 4/18/18 Number of Pages: 26

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)Signer's Name: Rahmatollah Ahmadi☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☒ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF MARCH 6, 2018

MH 24007

3/6/18

**Engineers Cost Estimate
for
Ahmadi**

Item	Description	Quantity	Unit	Unit Price	Total	% Complete	Remaining
ONSITE							
1	Clearing and Grubbing	1	LS	\$ 3,000.00	\$ 3,000.00	100%	\$ -
2	Import	325	CY	\$ 10.00	\$ 3,250.00	100%	\$ -
3	Lot Grading	3	EA	\$ 2,062.00	\$ 6,186.00	100%	\$ -
4	2"x12" Pressure treated Douglas Fir	75	LF	\$ 15.00	\$ 1,125.00	100%	\$ -
5	Max. 18" Bulkhead Retaining Wall	115	LF	\$ 75.00	\$ 8,625.00	100%	\$ -
6	City Standard 1" Water Services	2	EA	\$ 1,340.00	\$ 2,680.00	100%	\$ -
7	City Standard 4" Sewer Laterals	3	EA	\$ 1,500.00	\$ 4,500.00	100%	\$ -
Subtotal Onsite					\$ 29,366.00		\$ -
OFF SITE							
1	Remove Existing Driveway	114	SF	\$ 10.00	\$ 1,140.00	0%	\$ 1,140.00
2	Remove Ex. SW /Incl Ex. Handicap Ramp	297	SF	\$ 10.00	\$ 2,970.00	0%	\$ 2,970.00
2	Remove Ex. & Install City Std. Curb & Gutter	180	LF	\$ 32.00	\$ 5,760.00	0%	\$ 5,760.00
3	City Standard Sidewalk/ Incl Dwy Approaches & Handicap Ramp	949	SF	\$ 10.00	\$ 9,490.00	0%	\$ 9,490.00
4	City Standard Trench Restoration	233	SF	\$ 10.00	\$ 2,330.00	0%	\$ 2,330.00
5	Relocate Existing Water Meter	1	EA	\$ 1,000.00	\$ 1,000.00	100%	\$ -
6	Relocate Ex. Electroliner	1	EA	\$ 1,500.00	\$ 1,500.00	0%	\$ 1,500.00
7	1 1/2" Grind and Overlay	2096	SF	\$ 4.00	\$ 8,384.00	0%	\$ 8,384.00
8	New Electroliner (San Pedro Ave.)	1	EA	\$ 3,600.00	\$ 3,600.00	0%	\$ 3,600.00
9	City Std. SDMH	1	EA	\$ 3,000.00	\$ 3,000.00	0%	\$ 3,000.00
10	Cty. Std. Sidewalk incl 11' Dwy (Westside of Cory Lane)	549	SF	\$ 10.00	\$ 5,490.00	0%	\$ 5,490.00
11	Relocate Ex. Mail Boxes (Westside of Cory Lane)	1	LS	\$ 500.00	\$ 500.00	100%	\$ -
12	Raise or Lower Water Meters According to Finish Grade (West side of Cory Lane)	2	EA	\$ 500.00	\$ 1,000.00	100%	\$ -
Subtotal Offsite					\$ 46,164.00		\$ 43,664.00
Subtotal					\$ 75,530.00		\$ 43,664.00
10% Contingency					\$ 7,553.00	10% Contingency	\$ 4,366.40
Total Cost Estimate					\$ 83,083.00	Total	\$ 48,030.40

F:\exam\clerk\cost estimates\24007CES030618.xls



EXHIBIT "B"
PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and _____ (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

Rahmatollah Ahmadi
Lands of Ahmadi

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Lands of Ahmadi**, is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: _____

Address: _____

Telephone No.: _____

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident _____

agent:

Non-resident agent's office
address:

Telephone
No.:

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this _____ day of _____ 20____.

Principal

Principal

By:

Surety

By:

Attorney-in Fact

By:

California Resident Agent

By:

Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "C"
LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and _____ (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

Rahmatollah Ahmadi
Lands of Ahmadi

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Lands of Ahmadi**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of _____ dollars (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.:

Address:

Telephone No.:

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: _____,

Non-resident agent's office address:

Telephone No.:

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this _____ day of _____, 20____.

Principal

Principal

By:

Surety

By:

Attorney-in Fact

By:

California Resident Agent

By:

Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "D"
WARRANTY BOND
(50% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and _____
(hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement (hereinafter "Agreement"):

Rahmatollah Ahmadi
Lands of Ahmadi

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____,
20_____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, the Principal is required to furnish a bond to guarantee and warrant the work required by said Agreement for a period of one year following the completion and acceptance by the City of the Improvements, against any defective work or labor performed, or defective materials furnished by Principal.

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of _____ dollars (\$____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If Principal faithfully carries out and performs its guarantee and warranty under the Agreement, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Principal promptly reimburses City for all loss and damage that City sustains because of Principal's failure to makes such repairs in accordance with the Agreement requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Any notice to Surety may be given in the manner specified in the Agreement and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

In witness whereof, this instrument has been duly executed by the principal and surety above named.

SURETY

Date: _____

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

PRINCIPAL:

Date: _____

s/ _____

Name: _____

Title: _____

APPROVED:

By: _____
Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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State of **California**
County of **Santa Clara**

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR MONTEREY AND THIRD DEVELOPMENT AT 17270 AND 17290 MONTEREY ROAD (APN: 726-13-056 & 057)

RECOMMENDATION(S)

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Monterey & Third development at 17270 and 17290 at Monterey Road (APN: 726-13-056 & 057); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

The Monterey & Third development is located at 17270 and 17290 Monterey Road (APN: 726-13-056 & 057) within the Downtown core (see attached Site Map). The project consists of two commercial shell buildings each on a separate lot of record.

The development has constructed onsite private storm drain detention and retention facilities to improve the quality of stormwater runoff within the project as required by City Municipal Code Chapter 18.71, Post-Construction Stormwater Pollution Prevention, and the project's site review approval (SR-15-23). The private stormwater facilities will require regular maintenance and inspection by the owner, Monterey & Third Associates, LLC. To ensure proper maintenance and inspection, staff recommends that the City Council authorize the City Manager to sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Monterey & Third development.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 29, 2016 the Community Development Department approved the site review (SR-15-23) for the Monterey & Third development.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Statutory Exemption

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

LINKS/ATTACHMENTS:

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



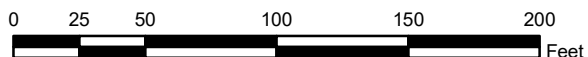
Attachment: Site Map (1746 : APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE



CITY OF MORGAN HILL
Department of Public Works
Engineering and Utilities Division

G:\R-14\Proj\GIS\Charlie\3rd_Mont.mxd

SITE MAP Monterey & Third Development



RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

726-13-056 & 726-13-057

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

**STORMWATER BEST MANAGEMENT PRACTICES,
OPERATION, AND MAINTENANCE AGREEMENT**

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 2018, by **MONTEREY & THIRD ASSOCIATES, LLC, a California limited liability company**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

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

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **STORMWATER RUNOFF MANAGEMENT PLAN (SWRMP)** prepared by **SANDIS, 1700 S. WINCHESTER BLVD, SUITE 200, CAMPBELL, CA 95008** and dated **APRIL 2016**, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by COVENANTOR, its successors, and assigns, as a result of CITY's approval of the Stormwater Runoff Management Plan, COVENANTOR, hereby covenants and agrees with CITY as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.
2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.

7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.
8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.
16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its

successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, it successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: 

Name: Kenneth Rodrigues, SE VP.

Title: Manager

CITY OF MORGAN HILL:

By: _____

Name: CHRISTINA J. TURNER

Title: CITY MANAGER, CITY OF MORGAN HILL

APPROVED AS TO FORM:

By: _____

Name: DONALD A. LARKIN

Title: CITY ATTORNEY, CITY OF MORGAN HILL

Attachment: Stormwater BMP Operation and Maintenance Agreement (1746 : APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES

EXHIBIT "A"**LEGAL DESCRIPTION****PARCEL A**

All that certain Real Property situate in the City of Morgan Hill, County of Santa Clara, State of California, being all of PARCEL A as shown on that certain Certificate of Compliance Lot Line Adjustment filed April 14, 2016 in Document No. 23277103 Santa Clara County.

PARCEL B

All that certain Real Property situate in the City of Morgan Hill, County of Santa Clara, State of California, being all of PARCEL B as shown on that certain Certificate of Compliance Lot Line Adjustment filed April 14, 2016 in Document No. 23277103 Santa Clara County.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On 25th day of April, 2018, before me, Michelle J. Choi a Notary Public in and for said County and State, personally appeared Kenneth Rodriguez proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Michelle J. Choi
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____, 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

APPROVAL OF A CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR)

RECOMMENDATION(S)

Adopt resolution approving and authorizing the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Annexation Environmental Impact Report (Annexation EIR) and approving an amendment to the City's Fiscal Year 2017-2018 budget in the long range planning fund (Fund 207) to appropriate \$219,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element
Sewer System Master Plan
Water System Master Plan

REPORT NARRATIVE:

The purpose of the proposed consultant agreement with David J. Powers & Associates, Inc. (DJPA) is to fulfill the City's obligation, under the attached February 1, 2017 Settlement Agreement with the Santa Clara County Local Agency Formation Commission (LAFCO), to prepare and certify an Environmental Impact Report (EIR) prior to any decision to initiate a project that includes an amendment to the City's Urban Service Area (USA).

Background on Settlement Agreement

On July 27, 2016, after considering and responding to all comments received, the City Council certified the Morgan Hill 2035 Environmental Impact Report (MH2035 EIR) and adopted the Morgan Hill 2035 General Plan.

On August 2, 2016, the City filed a Notice of Determination (NOD) regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the MH2035 EIR. Filing the

NOD started a 30-day statute of limitations for bringing an action to set aside certification of the MH2035 EIR.

On August 25, 2016, LAFCO and the City of Morgan Hill entered, and subsequently extended, a tolling agreement to toll the statute of limitations for LAFCO to bring a challenge to the MH2035 EIR.

On February 1, 2017, LAFCO and the City entered into a Settlement Agreement to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the MH2035 EIR.

Under the terms of the Settlement Agreement the City is obligated to conduct environmental review under the California Environmental Quality Act (CEQA) resulting in the preparation and certification of an Environmental Impact Report (Annexation EIR) prior to any decision as to whether to initiate and carry-out a project concerning Urban Service Area (USA) amendments and/or annexation of property located within the City's Urban Growth Boundary (UGB) as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan.

Projects within the USA (e.g., City conducted annexations) may rely on and tier off of the MH2035 EIR.

The Settlement Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR (e.g., Citywide Agriculture Preservation Program and Southeast Quadrant Land Use Plan EIR) as the basis for submitting an annexation application to LAFCO.

In order to show good faith compliance with the Settlement Agreement, we recommend moving forward with the Annexation EIR. There are no anticipated or pending projects that require certification of the Annexation EIR, but its completion will serve to ratify the UGB shown in the 2035 General Plan.

Consultant Agreement

Although the City has, since September 2010, an existing master environmental consulting contract with DJPA for general environmental review services associated with private development applications (Fund 206) and capital projects (Fund 308), staff recommends that the City retain the services of DJPA for preparation of the Annexation EIR through a separate agreement funded from the City's Long Range Planning Fund (Fund 207).

Attached for Council's consideration is a consultant agreement with DJPA in an amount not to exceed \$219,000. The scope and schedule for the preparation of the Annexation EIR is attached to the consultant agreement.

COMMUNITY ENGAGEMENT: Inform

Throughout the Environmental Impact Report (EIR) process there are several opportunities for formal and informal community participation beginning with the Notice of Preparation (NOP) and EIR public Scoping Meeting; followed by posting of a Notice of Completion (NOC) and public circulation of the Draft EIR; and, concluding with noticed Planning Commission and City Council public hearings, and posting of a Notice of Determination (NOD).

ALTERNATIVE ACTIONS:

The Council may choose to not approve the proposed consultant agreement and direct staff to bring back a proposed consultant agreement for preparation of the Annexation EIR at a future time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

N/A

FISCAL AND RESOURCE IMPACT:

The contract will be an expenditure of the Long Range Planning Fund (Fund 207). The expenditure was not anticipated in the FY 17/18 budget and therefore necessitates a budget scorecard (attached). The contract work is intended to satisfy the terms of the Settlement Agreement between the City of Morgan Hill and LAFCO and shall not exceed \$219,000.

CEQA (California Environmental Quality Act):

Not a Project

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378, the selection of a consultant to prepare the Annexation EIR, which does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, does not qualify as a “project”.

The following activities are specifically listed as not a project under Section 15378:

- (b)(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making;
- (b)(4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.
- (b)(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. SCC LAFCO and City of Morgan Hill Settlement Agreement
2. Resolution
3. Budget Scorecard
4. David J Powers Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of February 1, 2017 ("Effective Date") by and between the Local Agency Formation Commission of Santa Clara County ("LAFCO") and the City of Morgan Hill ("City"). LAFCO and City are collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA") the City prepared an Environmental Impact Report for its proposed 2035 General Plan Update ("General Plan EIR").

B. Consistent with LAFCO's duties as a responsible agency, LAFCO submitted extensive comments to the City regarding the adequacy of the General Plan EIR under CEQA.

C. On or about July 27, 2016, after considering and responding to all of the comments on the General Plan EIR, City adopted the Morgan Hill 2035 General Plan pursuant to the General Plan EIR.

D. On or about August 2, 2016, City filed a Notice of Determination regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the General Plan EIR. Pursuant to Public Resources Code section 21167, this Notice of Determination began a 30-day statute of limitations for bringing an action to set aside certification of the General Plan EIR.

E. On August 25, 2016, the Parties entered into a Tolling Agreement ("Tolling Agreement") to toll the statute of limitations for LAFCO to bring a challenge to the General Plan EIR.

F. On September 29, 2016, the Parties entered into the First Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until December 31, 2016.

G. On December 19, 2016, the Parties entered into the Second Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until February 15, 2017.

H. During this tolling period, the Parties have been engaged in discussions regarding the means by which to address LAFCO's concerns with the EIR without proceeding with litigation.

I. LAFCO and City have now agreed to compromise and settle all matters and disputes between themselves in order to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the General Plan EIR.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, promise, and covenant as follows:

1. Recitals and Definitions Incorporated. Each recital and definition set forth above is incorporated herein by reference and is made part of this Agreement.
2. No Admission. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission of error or wrongdoing by any Party or of any inadequacy or impropriety in connection with City's certification of the EIR.
3. City Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Agreement, City shall implement the following terms and actions:
 - 3.1. The City shall conduct environmental review under CEQA prior to any decision as to whether to initiate and carry-out a project (as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378) concerning Urban Service Area ("USA") amendments and/or annexation of property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan attached as "Exhibit A" and incorporated herein by reference.
 - 3.2. The nature of the project to be carried out by the City may be developed at the discretion of the City, but shall, in any event, result in the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan ("Annexation EIR") and shall not tier from, or rely in any way (e.g., pursuant to CEQA, including but not limited to Public Resources Code sections 21094, 21083.3 and 21166 and/or CEQA Guidelines sections 15152, 15153, 15162, 15168, 15183, and 15385), on the General Plan EIR.
 - 3.2.1. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System until the year 2035 by amending the General Plan and Chapter 18.78 of the Municipal Code, also known as "Measure S."
 - 3.2.2. The Annexation EIR will include:
 - 3.2.2.1. A full water supply assessment; and

3.2.2.2. An assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan.

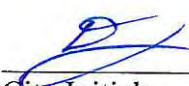
- 3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.
- 3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as it exists as of the Effective Date of this Agreement may rely on and tier off of the General Plan EIR.
- 3.5. This Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR as the basis for submitting an annexation application to LAFCO.
4. LAFCO Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Settlement Agreement LAFCO shall implement the following terms and actions:
 - 4.1. LAFCO will not to file any lawsuit challenging the General Plan EIR.
 - 4.2. LAFCO will not to seek any fees or costs from City associated with LAFCO's participation in the administrative process for the General Plan EIR or associated with LAFCO's contemplated litigation regarding the General Plan EIR.
 - 4.3. LAFCO reserves its rights, as a responsible agency, with regard to its review and consideration of the adequacy of the Annexation EIR and any CEQA documents that City may approve, adopt, or certify in support of any future application it may submit to LAFCO.
5. Joint Obligations. The City and LAFCO will work together to ensure preparation of adequate CEQA documents for any proposed annexation application.
6. Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights or benefits under or by reason of this Agreement.
7. Enforcement of Agreement. No action for breach of this Agreement shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

8. Mutual Release. LAFCO and the City mutually release each other's affiliates, members, directors, officers, employees, agents, assigns, and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that the City and LAFCO have as of the effective date of this Agreement arising out of, or connected to, the General Plan EIR, whether known, unknown or suspected. Upon the Effective Date of this Agreement, the City and LAFCO have read and have otherwise been informed of the meaning of Section 1542 of the California Civil Code, and have consulted with their respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. The City and LAFCO hereby expressly waive the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."



LAFCO Initials



City Initials

9. Damages. The Parties agree that (i) the performance of the obligations of this Agreement are paramount; (ii) in the event of a breach, monetary damages will provide inadequate relief; and (iii) that each may seek equitable relief to enforce such obligations. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees.
10. Miscellaneous Provisions.
- 10.1. Notices. Any notice, request, or communication required to be given to either Party under this Agreement shall be given in writing and shall be personally delivered or mailed by prepaid registered or certified mail to the addresses below:

If to LAFCO:

Neelima Palacherla, Executive Officer
70 W. Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Telephone: (408) 993-4713
Email: Neelima.Palacherla@ceo.sccgov.org

With copies sent to:

Mala Subramanian
Best Best & Krieger LLP

2001 N. Main Street, Suite 390
 Walnut Creek, CA 94596
 Telephone: (925) 977-3303
 Email: msubramanian@bbklaw.com

If to City:

City Manager
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 city.manager@morganhill.ca.gov

With copies sent to:

City Attorney
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 city.attorney@morganhill.ca.gov

In the event that any Party's address or contact information changes, that Party shall be responsible for notifying the other Party within five (5) working days of the change.

- 10.2. Entire Agreement. The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties, or representations made by either Party or by any representative of any Party, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.
- 10.3. Amendments and Modifications. This Agreement may only be amended or modified through writing executed by all the Parties.
- 10.4. Choice of Law and Choice of Forum. This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed, and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Santa Clara.
- 10.5. Authorized Signatory. Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

- 10.6. Counterparts. This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.
- 10.7. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 10.8. Effective Date. This Agreement is effective as of the Effective Date written in the first paragraph.

IN WITNESS WHEREOF, this Agreement is executed and agreed to by the following:

**LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY**

By: 

Date: 2/1/2017

Name: Malathy Subramanian

Title: General Counsel

CITY OF MORGAN HILL

By: 

Date: 1/23/2017

Name: Donald A. Larkin

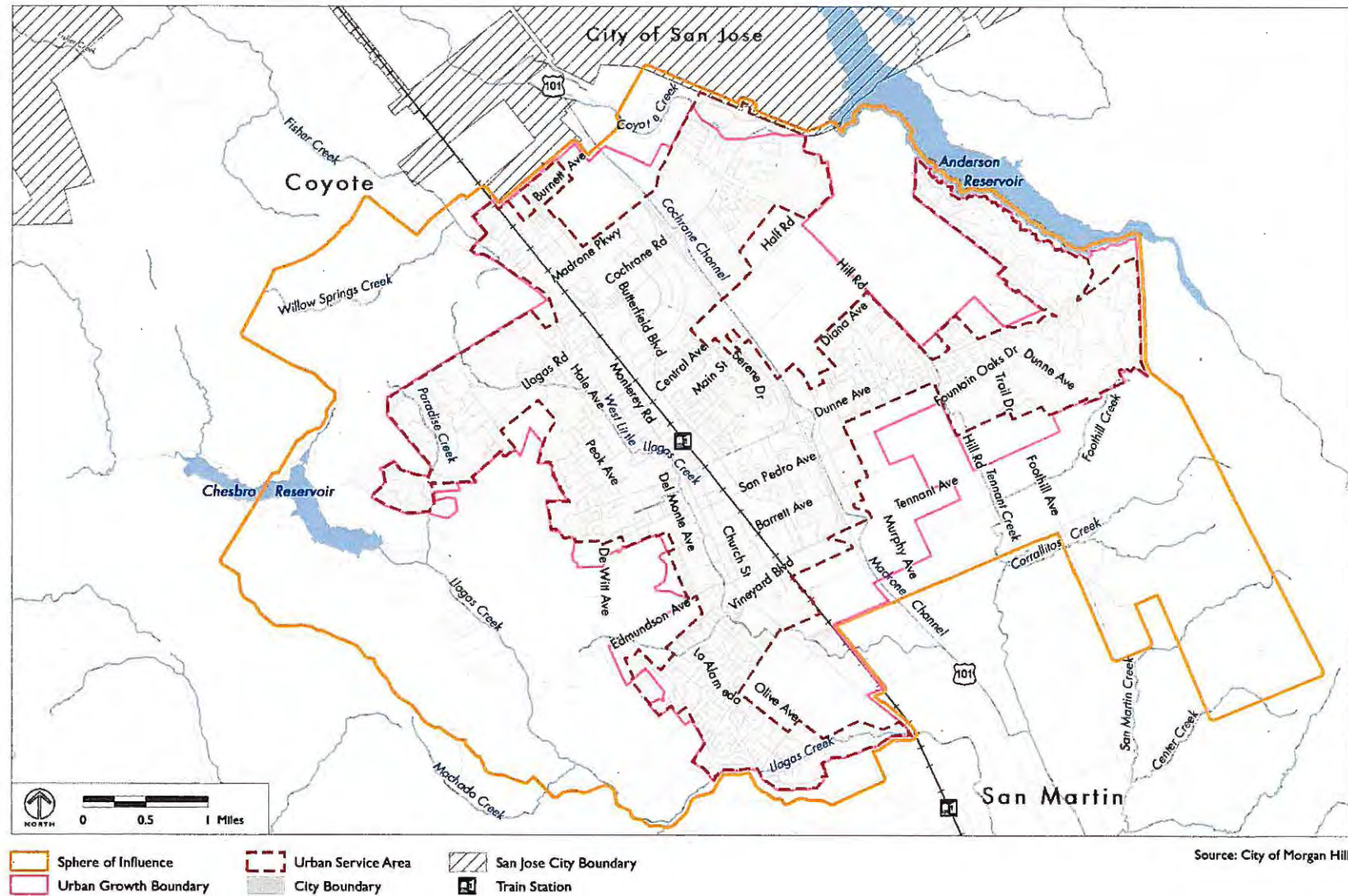
Title: City Attorney

EXHIBIT A

Figure CNF-1 of the Morgan Hill 2035 General Plan

[Attached behind this page]

Figure CNF-1 City Boundaries



RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR) AND APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-2018 BUDGET IN THE LONG RANGE PLANNING FUND (FUND NO. 207) TO APPROPRIATE \$219,000 THEREFOR**

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the 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 "Approval of a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for Preparation of the Annexation Environmental Impact Report (Annexation EIR)" submitted for City Council consideration at its meeting of May 2, 2018, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

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

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

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

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

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

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

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

- a. That the Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for the preparation of the Annexation EIR substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the "Agreement") is hereby approved; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to further negotiate and execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit B; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed Two Hundred and Nineteen Thousand Dollars (\$219,000); and
- c. 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
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2017-2018 Budget of the City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 2nd day of May 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Steve Tate, MAYOR

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on May 2, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (1737 : Annexation EIR Consultant Agreement with DJPA)

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

038

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

207	Long Range Planning Fund
5170	Long Range Planning Fund
42231	CONTRACT SERVICES

AGENDA DATE:**AGENDA ITEM TITLE:**

05/02/18
Annexation EIR

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	1,170,077	706,212	988,643	887,646
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	323,019	(323,019)
RECOMMENDED ACTION	-	-	219,000	(219,000)
RESULT OF RECOMMENDED ACTION	<u>1,170,077</u>	<u>706,212</u>	<u>1,530,662</u>	<u>345,627</u>

**CONSULTANT AGREEMENT
DAVID J. POWERS & ASSOCIATES, 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 DAVID J. POWERS & ASSOCIATES, 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 June 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 preparation of the Annexation EIR as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$219,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Nineteen Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

Attachment: David J Powers Agreement (1737 : Annexation EIR Consultant Agreement with DJPA)

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 A, "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:

David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Address of CITY is as follows:

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

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

performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

20. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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Attachment: David J Powers Agreement (1737 : Annexation EIR Consultant Agreement with DJPA)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

DAVID J. POWERS & ASSOCIATES, INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

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

Date: _____

Date: _____

By: _____

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

Date: _____

EXHIBIT A

Rough EIR Cost Estimate and Schedule for Morgan Hill Annexation EIR

April 26, 2018

Project: Preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary (UGB) as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System (RDCS) until the year 2035. The Annexation EIR will include a full water supply assessment and an assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan. The geographic scope of the EIR includes unincorporated lands outside of the USA and within the UGB, but not including areas covered by the SEQ/Ag Preservation Certified EIR.

Scope of Work: DJP&A will prepare a program-level EIR for the proposed project that complies with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, and will meet the requirements of the City of Morgan Hill. The work elements will include preparation of a Notice of Preparation, an Administrative Draft EIR, a Draft EIR, a Mitigation, and a Final EIR.

Schedule: Assume approximately ten months from project definition and initiation of technical studies to City Council hearing to certify EIR and act on project.

Consistency with Plans and Policies: This section will discuss whether or not the proposed project is consistent with applicable land use controls, including local, regional, and statewide plans and policies, including LAFCO policies. Particular attention will be given to inconsistencies, if any are identified, and the likelihood that such inconsistencies might result in significant adverse environmental effects.

Environmental Setting, Impacts and Mitigation: In accordance with CEQA Guidelines Section 15125, the EIR will clearly describe the development history and environmental setting for the proposed annexation sites and surrounding areas, and will emphasize any particularly sensitive environmental characteristics. The EIR will identify the thresholds/criteria for significance for each technical subject area. The technical reports described below will be attached as appendices to the EIR.

The EIR will assess the potential for the proposed project to result in significant impacts. All significant environmental impacts resulting from the project will be identified and illustrated graphically where appropriate (CEQA Guidelines Section 15126.2). The EIR will identify proposed and/or feasible mitigation and avoidance measures for all significant impacts resulting from the project. Mitigation measures included in the EIR will be monitorable, in accordance with the AB 3180 legislation pertaining to the monitoring or reporting of project mitigation.

A brief description of the primary issues to be addressed in the EIR is provided below.

Aesthetics: The EIR will qualitatively discuss the change in visual character for the areas proposed for annexation and USA expansion, based on foreseeable future growth according to the General Plan land use designations for those areas.

Agricultural Resources: The project would convert farmland to residential or other non-agricultural uses. The EIR will evaluate the significance of this loss of farmland and identify program-level mitigation

EXHIBIT A

measures to reduce potential impacts. The EIR will review the programs and mitigations for the preservation of agricultural lands contained in the City's Southeast Quadrant project, as well as the Land Evaluation and Site Assessment (LESA) system, which is a point-based approach to rate the relative value of agricultural land resources. The LESA system is acknowledged by CEQA Statute 21095. The EIR will address LAFCO's previously stated concerns, including recognizing their definition of farmland, which is more expansive than defined in CEQA.

Air Quality: *Illingworth and Rodkin, Inc.* will prepare a report addressing consistency with the City's Clean Air Plan, and operational criteria pollutants from new growth in the proposed annexation areas. The EIR will discuss the location of proposed residential uses in relation to existing toxic air contaminant sources and odor sources based on existing information from the General Plan EIR, however, this is no longer considered a CEQA issue (per the *BIA v. BAAQMD* case), but is a planning/policy issue.

Biology: The EIR will include a program-level analysis of existing biological resources within the proposed annexation areas. No site-specific surveys are proposed. The analysis of loss of habitats will be based on available Santa Clara Valley Habitat Plan land cover mapping and information in the General Plan EIR. Parcel-specific surveys would be necessary in the future as individual projects are proposed for development.

Cultural: As with Biological Resources, the EIR will include a program-level analysis of existing cultural resources within the proposed annexation areas, with no site-specific surveys proposed. The analysis of potential archaeological and historic impacts from development upon annexation to the City will be based on available cultural sensitivity mapping, the Santa Clara County Heritage Resource Inventory (South County), and information contained in the General Plan EIR. Parcel-specific literature searches, site investigations and cultural surveys would be necessary in the future as individual projects are proposed for development. In addition, the City will need to consult with interested tribes pursuant to SB 18 and AB 52.

Geology: The EIR's discussion of existing geologic issues affecting areas to be annexed will be based on existing available information, including from GP EIR.

GHGs: *Illingworth & Rodkin* included in scope to model operational GHGs from new growth in annexation areas. It is anticipated new development in the areas proposed for annexation will generate GHG emissions per service population at a slightly higher rate than development within existing City limit.

Hazmat/Hazards: The EIR's discussion of existing hazards and hazardous materials issues affecting areas to be annexed will be based on existing available information, including from GP EIR.

Hydrology/Water Quality: The majority of the proposed annexation areas (areas south of Cochran Road) drain to Monterey Bay and future new development within the watershed would be subject to applicable requirements of the Central Coast Regional Water Quality Control Board. For the remaining properties, which drain north to San Francisco Bay, future development would be subject to the San Francisco Bay Regional Water Quality Control Board regulations. New development will result in increased stormwater runoff generated by impervious surfaces, the effects of which would be addressed by local, regional and statewide regulatory programs. New development that occurs within floodplains must comply with established local and federal (FEMA) flood hazard requirements. No

EXHIBIT A

hydrology or hydraulic modeling is proposed for the EIR's program-level analysis; future annexation projects located within flood zones may be subject to flood studies.

Land Use: The annexation of the proposed areas would not physically divide an established community. The EIR will address the land use implications of future development on those parcels, including conformance with General Plan goals and policies. The EIR will also address potential impacts of the annexation areas related to the City's growth management policies such as Measure S.

Noise/Vibration: The EIR will discuss future roadway noise from new growth in annexation areas in combination with increased roadway volumes from growth within the existing City limits, relying upon roadway noise modeling completed for the GP EIR. Many of the annexation areas are exposed to elevated noise from US101 or high volume local roadways, but that is no longer a CEQA issue, but City noise policies still require that new housing be protected from significant noise sources. The EIR will discuss the exposure of future residents in proposed annexation areas based on modeling completed for the GP EIR.

Population/Housing: The EIR will address the proposed project's potential impacts with respect to directly or indirectly inducing substantial population growth in the City, displacement of substantial numbers of existing housing units or people, and the resulting construction of replacement housing elsewhere. It is assumed that growth within the proposed annexation areas would be subject to the limitations of Measure S, and that the project would therefore not induce an increased rate of growth, but would instead facilitate substantial overall levels of growth compared to what is planned within the City limits.

Public Services: The EIR will address the potential need to construct new schools, parks, libraries, etc. to serve the proposed annexation areas or expand existing public facilities.

Transportation: The EIR, based on a traffic impact analysis prepared by *Hexagon Transportation Consultants, Inc.*, will discuss traffic impacts to study intersections and freeway segments from new growth in the proposed annexation areas, as well as in combination with increased roadway volumes from planned growth within existing City limits. The traffic analysis will follow guidelines set forth by the City of Morgan Hill and the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA), and will include a near-term (Year 2025) and long-term (General Plan Year 2035) evaluation of the potential traffic impacts due to the proposed land use growth of each of the subject annexation properties on the transportation system. Because the City of Morgan Hill currently uses Level of Service (LOS) as the primary analysis metric when evaluating the impacts of land use decisions on the transportation system, and in addition the Morgan Hill 2035 General Plan uses LOS as its primary metric for the projected operation of the City's roadway system, the traffic analysis will be based upon LOS analysis. The evaluation of the effects of the proposed annexations will also be supplemented with an evaluation of their effects on vehicle miles traveled (VMT) within the City.

The traffic analysis will be completed using the City of Morgan Hill traffic demand forecasting (TDF) model that was recently used by Hexagon to complete the General Plan update for the City. The analysis will include the evaluation of intersections and freeway segments during the AM and PM commute hours and average daily traffic (ADT) on roadway segments. Since each of the subject annexation properties are dispersed around the City boundaries, the analysis will study the same

EXHIBIT A

intersections, freeway segments, and roadway segments that were evaluated in the Morgan Hill 2035 General Plan traffic study. *Hexagon* will utilize and update, as needed, the latest City of Morgan Hill TDF model to develop forecasts for *Existing Conditions*, *Year 2025 (Existing Plus Project) Conditions*, and *Year 2035 General Plan Conditions with Annexations* scenarios.

Utilities and Energy: The conversion of the proposed annexation areas from rural residential and farmland to higher density residential, commercial and industrial uses would require the extension of utilities to the site to serve future development. Based on information provided by the City of Morgan Hill, the EIR will evaluate the capacity of utility systems in the project area to serve the annexation sites. A Water Supply Assessment will be prepared for the project by *Akel Engineering*. Mitigation measures will be identified if needed to reduce significant impacts. Additionally, in conformance with Appendix F of the CEQA Guidelines, the EIR will identify the potential for the project to result in significant energy impacts. Potential energy impacts will be assessed based on information provided in the greenhouse gas analysis prepared for the project. Mitigation measures for energy impacts will be identified, as appropriate.

Alternatives to the Proposed Project: As required by CEQA, the EIR will describe alternatives to the project as it is proposed. The emphasis will be on alternatives that might reasonably be assumed to reduce the significant impacts of the project while achieving most of the project objectives. Alternatives will be identified in consultation with City staff and will include a “No Project” alternative that evaluates the effects of not developing the annexation areas and instead assumes that the full General Plan buildout scenario is accommodated within the existing City limits.

Cumulative Impacts: The EIR will include a discussion of cumulative impacts from the project in combination with other past, pending, and reasonably foreseeable future development in the area, in conformance with CEQA Guidelines Section 15130. This list of projects will be based upon information provided by City staff and neighboring jurisdictions, as appropriate.

Other Required Sections: The EIR will include all sections required by the CEQA Guidelines, including Growth Inducing Impacts, Significant Unavoidable Impacts, References, Authors and Consultants, and copies of technical reports.

Rough Cost Estimate *(to be refined/confirmed with additional consultation with sub consultants)*

DJP&A	EIR Preparation	\$84,000
Hexagon	TIA	\$75,000
Illingworth & Rodkin	Criteria Pollutant, TACs	\$15,000
Illingworth & Rodkin	GHGs	\$15,000
Akel Engineering	WSA	\$30,000
Total		\$219,000

EXHIBIT B - SCHEDULE OF COMPENSATION RATES

**CHARGE RATE SCHEDULE¹**

SENIOR PRINCIPAL	\$ 250.00 PER HOUR
PRINCIPAL PROJECT MANAGER	\$ 220.00 PER HOUR
SENIOR ENVIRONMENTAL SPECIALIST	\$ 195.00 PER HOUR
SENIOR PROJECT MANAGER	\$ 175.00 PER HOUR
ENVIRONMENTAL SPECIALIST	\$ 160.00 PER HOUR
PROJECT MANAGER	\$ 150.00 PER HOUR
ASSOCIATE PROJECT MANAGER	\$ 135.00 PER HOUR
ASSISTANT PROJECT MANAGER	\$ 110.00 PER HOUR
RESEARCHER	\$ 95.00 PER HOUR
DRAFTSPERSON/GRAPHIC ARTIST	\$ 85.00 PER HOUR
DOCUMENT PROCESSOR/QUALITY CONTROL	\$ 85.00 PER HOUR
ADMINISTRATIVE MANAGER	\$ 85.00 PER HOUR
OFFICE SUPPORT	\$ 70.00 PER HOUR

MATERIALS, OUTSIDE SERVICES AND SUBCONSULTANTS INCLUDE A 15% ADMINISTRATION FEE.

MILEAGE WILL BE CHARGED PER THE CURRENT IRS STANDARD MILEAGE RATE AT THE TIME COSTS OCCUR.

SUBJECT TO REVISION JANUARY 2012

¹ David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

APPROVAL OF COUNTYWIDE AB 939 AND HOUSEHOLD HAZARDOUS WASTE COLLECTION AGREEMENTS

RECOMMENDATION(S)

Authorize the City Manager to execute the Countywide AB 939 and Household Hazardous Waste Collection agreements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this City Council report is to request authorization for the City Manager to execute the Countywide AB 939 Fee Agreement and the Countywide Household Hazardous Waste (HHW) Collection Agreement.

Countywide AB 939 Fee Agreement

For well over 20 years, Santa Clara County has collected a fee to offset each jurisdiction's solid waste management and HHW management expenses. Named after the State bill that required all jurisdictions to establish recycling programs, the Countywide AB 939 Fee is collected at waste transfer and disposal facilities by facility operators and remitted to the County quarterly. In order for the fee to be practically enforced, every jurisdiction in the County must approve the same agreement.

The AB 939 Fee has two components. The first component, the Program Fee of \$1.50 per ton, is charged to assist in funding integrated waste management activities. The County transfers Program Fee revenues to each jurisdiction quarterly based on the waste tonnage emanating from the jurisdiction. The second component, the HHW Fee of \$2.60 per ton, is held by the County and used to directly offset the HHW program costs associated with the use of the program by each jurisdiction's residents. If HHW Fee revenues exceed a jurisdiction's HHW program costs at the end of the fiscal year, the remaining funds are transferred to the jurisdictions to be used to promote or support HHW management costs.

Countywide HHW Collection Agreement

For decades, the City has met its obligation to provide for HHW management by participating in the Countywide Collection Program. This popular program provides City

residents with the opportunity to participate in several collection events each month. The permanent collection center in San Martin has improved the convenience associated with these services. It is estimated that over 1,400 Morgan Hill households will participate in a collection event in the coming fiscal year.

The HHW Agreement includes a base assumption that 4% of each jurisdiction's households will participate in the program annually. Since nearly 10% of the City's households are anticipated to participate, an augmentation to the 4% base assumption must be specified in Section 17 of the Agreement. Based on the anticipated participation by City residents, an augmentation of \$54,700 is recommended. As discussed below in the fiscal impact section, this amount should be nearly completely offset by the revenues collection by the Countywide AB 939 Fee.

COMMUNITY ENGAGEMENT: Inform

The recommended action is an extension of a long-standing program with no changes proposed so no engagement activities were conducted prior to presenting the amendment for Council consideration. Should the HHW Agreement be approved, staff will continue to inform the public about the availability of the County program.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the HHW Collection Agreement and direct staff to further evaluate the provision of these services. There is not a viable alternative to approving the AB 939 Fee Agreement as this is a single countywide agreement that must be approved by every jurisdiction in the County.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Countywide AB 939 Fee Agreement is typically approved by the Council once every three years and the Agreement currently in place was approved on May 6, 2015. The prior Countywide HHW Agreement was approved by the City Council on May 6, 2015 and was amended on May 4, 2016 and June 7, 2017. The Council has historically acted annually on either an HHW agreement or an amendment to the agreement for over 20 years.

FISCAL AND RESOURCE IMPACT:

AB 939 PROGRAM FEE REVENUES: AB 939 Program Fee revenues of \$130,000 are anticipated for the 2018/2019 Fiscal Year.

HHW FEE REVENUES AND PROGRAM COSTS: It is estimated that providing HHW collection services to Morgan Hill residents participating in the County program will cost approximately \$136,000 in Fiscal Year 2018/19. Since the HHW Fee revenues credited to Morgan Hill for this purpose should total approximately \$134,000, a small subsidy from the Environmental Services budget of the General Fund will be required. Funding for this subsidy will be included in the Fiscal Year 2018/19 Recommended Budget. If City participation is lower than anticipated, any HHW Fee revenues remaining in the City's credit with the County, will be refunded to the City for use in promoting the program.

CEQA (California Environmental Quality Act):
Categorical Exemption

Approval of the Amendment is categorically exempt from environmental review under the Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the CEQA guidelines.

LINKS/ATTACHMENTS:

1. AB 939 Agreement
2. HHW Agreement

AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San José, Santa Clara, Saratoga, and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2018. The term CITIES may refer to Cities collectively or a City individually.

RECITALS

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan;

WHEREAS, the Board of Supervisors established the Countywide AB939 Implementation Fee effective July 1, 1992 to fund local costs of preparing, adopting, and implementing integrated waste management plans and programs;

WHEREAS, the Recycling and Waste Reduction Commission of Santa Clara County ("Commission") has determined that a Countywide AB939 Implementation Fee (Fee) is necessary, pursuant to Public Resource Code 41901, to assist in funding the costs of preparing, adopting and implementing integrated waste management plans and programs in the fifteen cities and the unincorporated area of the county;

WHEREAS, in 2015, the Board of Supervisors approved the Fee for Fiscal Years 2016, 2017, and 2018 at \$4.10 per ton of waste to be disposed;

WHEREAS, the Commission hereby recommends that the Board approve the Fee for Fiscal Years 2019, 2020, and 2021 at \$4.10 per ton of waste to be disposed;

WHEREAS, the Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County; and

WHEREAS, State law requires jurisdictions to plan and implement household hazardous waste (HHW) services; and

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary services to enable jurisdictions to meet the requirements of State law; and

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and batteries; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and the unincorporated area and will apportion the Fee according to the terms of this Agreement.

NOW, THEREFORE, CITIES and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$4.10 per ton in Fiscal Years 2019, 2020 and 2021 of waste to be disposed. The Fee is divided into two parts: 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a Household Hazardous Waste (HHW) Fee of \$2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit C, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and participating jurisdictions as described in Exhibit C, attached hereto and incorporated herein. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-Disposal Facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element) and are listed in Exhibit A, attached hereto and incorporated herein.

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Recycling and Waste Reduction Division. The COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant

amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and within 30 days of receipt shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions.

4. COLLECTION AND USE OF FEE

Each ton of waste will be subject to the Fee. Best efforts will be made to prevent tonnage from being assessed a double fee (once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall assist in funding the costs of each of the CITIES share of HHW operations.

5. INSURANCE

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement. CITIES agree to provide evidence of such insurance to COUNTY via Certificate of Insurance or other documentation acceptable to the COUNTY upon request.

6. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement and as described in Exhibit D.

Additionally, CITIES shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, arising from any misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses,

including attorney fees and court costs, brought by third parties based on COUNTY's sole negligence in the collection or distribution of said Fees.

7. DISTRIBUTION OF FEE

COUNTY shall distribute the Fee to CITIES and the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin December 15, 2018, and continue quarterly through October 15, 2021.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

12. EFFECTIVE DATE OF AGREEMENT

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by a written instrument signed by all fifteen CITIES and the COUNTY.

14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

15. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all funds collected covering the period through June 30, 2021 have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2018. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2021.

16. NOTICES

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of Morgan Hill

Contact: Christina Turner

Title: City Manager

Address: 17575 Peak Ave.
Morgan Hill, CA 95037

County of Santa Clara

Contact: Recycling and Waste Reduction Division Manager
Recycling and Waste Reduction Division

Address: 1555 Berger Drive, Suite 300

City: San Jose, CA 95112

AGREEMENT FOR COUNTYWIDE
AB939 IMPLEMENTATION FEE
FYs 2019 – 2021

Page 5 of 14

Attachment: AB 939 Agreement (1740 : AB 939 & HHW Agreements)

17. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

18. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designees.

19. COUNTERPARTS

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

20. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

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AGREEMENT FOR COUNTYWIDE
AB939 IMPLEMENTATION FEE
FYs 2019 – 2021

Page 6 of 14

Attachment: AB 939 Agreement (1740 : AB 939 & HHW Agreements)

IN WITNESS WHEREOF, the parties have executed this **AGENCY AGREEMENT
FOR COUNTYWIDE AB939 IMPLEMENTATION FEE** on the dates as stated below:

"COUNTY"

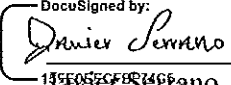
S. Joseph Simitian, President
Board of Supervisors

Date: _____

ATTEST:

Megan Doyle Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by: _____ 3/22/2018


Javier Serrano Date
Deputy County Counsel

"CITY"

CITY/TOWN OF Morgan Hill,
A municipal corporation

By: _____

Title: City Manager

Date: _____

AGREEMENT FOR COUNTYWIDE
AB939 IMPLEMENTATION FEE
FYs 2019 – 2021

Page 7 of 14

Attachment: AB 939 Agreement (1740 : AB 939 & HHW Agreements)

EXHIBIT A**LANDFILLS LOCATED IN SANTA CLARA COUNTY**

Guadalupe Rubbish Disposal Site
 Kirby Canyon Sanitary Landfill
 Newby Island Sanitary Landfill
 Zanker Materials Processing Facility
 Zanker Road Landfill

**NON-DISPOSAL FACILITIES AND TRANSFER STATIONS LOCATED IN
SANTA CLARA COUNTY**

California Waste Solutions Recycling & Transfer Station
 City of Palo Alto Green Composting Facility
 Environmental Resource Recovery, Inc. (Valley Recycling)
 Green Earth Management LLC Kings Row Recycling Facility
 Green Waste Materials Facility and Transfer Station
 Green Waste Recovery Facility
 Guadalupe Landfill
 Lam Hauling Chipping and Grinding
 Lam Hauling Inert Debris Type A
 Leo Recycle
 Material Recovery Systems Facility
 Mission Trail Waste Systems, Inc.
 Newby Island Compost Facility
 Pacheco Pass Transfer Station
 Pacific Coast Recycling, Inc.
 Premier Recycle Facility
 Recology Silicon Valley Processing and Transfer Facility
 The Recyclery at Newby Island
 San Martin Transfer Station
 Smurfit-Stone Recycling San Jose Facility
 South Valley Organics
 Stanford Recycling Center and Direct Transfer Facility
 Sunnyvale Food Materials Transfer/Processing Operations
 Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)
 Valley Recycling San Jose CDI Processing/Transfer Facility
 Wood Processing Facility at Recology Pacheco Pass
 Z-Best Composting Facility
 Zanker Materials Processing Facility
 Zanker Road Class III Landfill
 Zero Waste Energy Development Company Anaerobic Digestion Facility

AGREEMENT FOR COUNTYWIDE
 AB939 IMPLEMENTATION FEE
 FYs 2019 – 2021

Page 8 of 14

Attachment: AB 939 Agreement (1740 : AB 939 & HHW Agreements)

EXHIBIT B**FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE**

As documented in quarterly reports submitted by the County to the State Disposal Reporting System, each jurisdiction located in Santa Clara County (County) will receive \$1.50 per ton of solid waste, which originates from their respective jurisdiction, that is:

- a) disposed of in landfills or incinerated within the County,
- b) received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County,
- c) collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County, or
- d) removed from any location in the County by any person or business for disposal or incineration outside the County.”

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

EXHIBIT C**COUNTYWIDE HOUSEHOLD HAZARDOUS
WASTE PROGRAM FEE (HHW Fee)****1. PROGRAM FUNDING SOURCE**

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for Countywide Household Hazardous Waste (CoHHW) Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

2. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachments A and B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office

supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

3. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

4. SAN JOSÉ FACILITY USE SURCHARGE

The San José Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San José Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José. Estimated San José Facility Use Surcharges are projected in Attachment A of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

5. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs and San Jose Facility Use Surcharge are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

6. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

7. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all County jurisdictions. CITIES, at their option, may participate in the Countywide Household Hazardous Waste Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. CITIES not participating in the Agency Agreement will receive their pro-rata share of funding received by the COUNTY from the HHW Fee.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to permit residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators (CESQG) will be billed to the CITIES. A CITY'S representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. The pro-rata share of liability will be shared as defined in Section 27 of AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM and as described in Exhibit D.

EXHIBIT D**SECTION 27 OF AGENCY AGREEMENT
FOR COUNTYWIDE HOUSEHOLD HAZARDOUS
WASTE COLLECTION PROGRAM****HOLD HARMLESS AND INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 24 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

This Agreement is made by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2018.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring HHW to any Household Hazardous Waste Collection Event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.60 in FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021) on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected from any location within the county by a solid waste hauler operating

pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose, CA 95133.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

The projected AB939 HHW Implementation Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A, attached hereto and incorporated herein.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose. Estimated San Jose Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs are allocated on a per household basis and San Jose Facility Use Surcharge is allocated on a participation basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of locally produced materials; and,
- Conducting and supporting outreach and publicity to attain the 4% goal of household participation.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ♦ *San Martin, 13055 Murphy Avenue, San Martin*
- ♦ *San Jose, 1608 Las Plumas, San Jose*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. This program may, at the sole discretion of CITY, be subsidized by participating jurisdictions using outside funding not associated with AB939 HHW Fee. For purposes of definition, CESQG as defined is equivalent to Very Small Quantity Generator (VSQG) in 40 CFR 262.14.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

B) NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization as established in Public Resources Code Section 41904, is a nonprofit as defined in Section 501(c) (3) of the United States Internal Revenue Code, or a distinct operating unit or

division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218, as amended from time to time, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$_____ to the Countywide HHW Program during Fiscal Year 2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2019 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this agreement, COUNTY may seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, retail take-back collection and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants and the Oil Payment Program, from the California Department of Resources Recycling and Recovery (CalRecycle). The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, County Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15, 2019. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or

arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of <u>Morgan Hill</u>	City Representative	<u>Christina Turner</u>
	Representative's Title	<u>City Manager</u>
	City Address	<u>City of Morgan Hill</u>
		<u>17575 Peak Ave.</u>
		<u>Morgan Hill, CA 95037</u>

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

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Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)

Santa Clara County

Director
Consumer and Environmental Protection Agency
1553 Berger Drive
San Jose, CA 95112

34. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

Attachments:

- A Projected Fiscal Years 2019, 2020, and 2021 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021
- C HHW Schedule of Collection Events for Fiscal Year 2019
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR
COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION
PROGRAM on the dates as stated below:

“COUNTY”

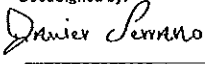
S. Joseph Simitian, President
Board of Supervisors

Date: _____

ATTEST:

MEGAN DOYLE Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
 3/22/2018
15FE0EECF8E74C5...
Javier Serrano Date
Deputy County Counsel

“CITY”

CITY/TOWN OF Morgan Hill,
A municipal corporation

By: _____

Title: City Manager

Date: _____

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

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Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)

Attachment A: Projected Fiscal Years 2019-2021 Annual HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$2.99 per HH	SJ Facility \$6.83 Surcharge	Variable Cost \$62 per Car	Abandoned Waste Disposal Cost \$0.5 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	17,832	713.28	38,979.51	\$ 101,346.73	\$ 53,317.68	\$ 6,718.88	\$ 44,223.36	\$ 891.60	\$ (3,804.80)	\$ 26,104.34	1,073	984
Cupertino	21,064	842.56	44,875.46	\$ 116,676.20	\$ 62,981.36	\$ 3,06.12	\$ 3,720.00	\$ 1,053.20	\$ 48,615.52	\$	60	45
Gilroy	16,258	650.32	49,766.41	\$ 129,392.67	\$ 48,611.42	\$ 1,075.34	\$ 40,319.84	\$ 812.90	\$ 38,573.17	\$ 15,294.16	897	158
Los Altos	11,660	466.40	18,006.34	\$ 46,816.48	\$ 34,863.40	\$ 4,937.12	\$ 28,916.80	\$ 583.00	\$ (22,483.84)	\$ 70,143.24	1,235	723
Los Altos Hills	3,108	124.32	3,164.89	\$ 8,228.71	\$ 9,292.92	\$ 871.26	\$ 7,707.84	\$ 155.40	\$ (9,798.70)	\$ 15,780.46	221	128
Los Gatos	13,289	531.56	25,570.37	\$ 66,482.96	\$ 39,734.11	\$ 7,974.75	\$ 32,956.72	\$ 664.45	\$ (14,847.07)	\$ 57,896.15	1,226	1,168
Milpitas	21,532	861.28	74,523.39	\$ 193,760.81	\$ 64,380.68	\$ 3,987.38	\$ 53,399.36	\$ 1,076.60	\$ 70,916.80	\$ 5,351.84	948	584
Monte Sereno	1,311	52.44	1,207.90	\$ 3,140.54	\$ 3,919.89	\$ 957.60	\$ 3,251.28	\$ 65.55	\$ (5,053.78)	\$ 11,285.40	153	140
Morgan Hill	14,415	576.60	51,502.27	\$ 133,905.90	\$ 43,100.85	\$ 1,875.95	\$ 35,749.20	\$ 720.75	\$ 52,459.15	\$ 54,659.20	1,458	275
Mountain View	35,595	1,423.80	54,389.71	\$ 141,413.25	\$ 106,429.05	\$ 5,572.91	\$ 88,275.60	\$ 1,779.75	\$ (60,644.06)	\$ 73,899.66	1,638	817
Palo Alto	29,124	0.00	43,478.06	\$ 113,042.96				\$ 1,456.20	\$ 111,586.76			
San Jose	332,574	13,302.96	683,263.56	\$ 1,776,485.26	\$ 994,396.26	\$ 116,026.35	\$ 824,783.52	\$ 16,628.70	\$ (175,349.57)	\$ 436,037.25	17,508	16,999
Santa Clara	46,535	1,861.40	166,527.00	\$ 432,970.20	\$ 139,139.65	\$ 10,062.63	\$ 115,406.80	\$ 2,326.75	\$ 166,034.37	\$ 82,450.70	3,191	1,474
Saratoga	11,226	449.04	19,744.70	\$ 51,336.22	\$ 33,565.74	\$ 5,439.47	\$ 27,840.48	\$ 561.30	\$ (16,070.77)	\$ 42,275.69	872	797
Sunnyvale	58,308	2,332.32	110,483.61	\$ 287,257.39	\$ 174,340.92	\$ 6,687.49	\$ 144,603.84	\$ 2,915.40	\$ (41,290.26)	\$ 63,029.32	2,683	980
Unincorporated	18,538	741.52	42,334.16	\$ 110,068.82	\$ 55,428.62	\$ 2,417.54	\$ 45,974.24	\$ 926.90	\$ 5,321.51	\$ 29.76	742	354
Total	652,369	24,929.80	1,427,817.34	\$ 3,712,325.08	\$ 1,863,502.55	\$ 174,910.78	\$ 1,497,128.88	\$ 32,618.45	\$ 144,164.42	\$ 954,237.18	33,904	25,627

Notes: No of HH based on 1/1/17 estimates. Disposal tonnage is based on FY2016-2017 actual. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2016-2017 actual participation.

Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)

Attachment B: Estimated Annual HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021

FIXED COST		
Staff Salary and Benefits	.5 HMPM, Sr. HMS, 3 HMTs, Acct II, Sr MA, AMA, .8 OSIII,	\$1,210,647
County Admin Overhead		\$242,129
County Counsel		\$13,000
Phones and Communications		\$10,100
Facilities Lease Costs	San Jose	\$174,911
Vehicle Costs		\$32,500
Office Supplies and postage		\$1,825
Maintenance, Software		\$27,000
HHW Hotline		\$38,500
Garbage & Utilities		\$34,750
Membership & Dues		\$10,000
Training & Conference		\$4,600
Safety Wear		\$11,000
Printing		\$5,800
Other Services & Supplies		\$46,500
ESTIMATED ANNUAL TOTAL		\$1,863,262

Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2018-2019***

2018/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Saturday	21	Sunnyvale	Temporary	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
August	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Mountain View	Temporary	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
September	Thurs,Fri,Sat	30,31,1	No Event	No Event	LABOR DAY WEEKEND
	Fri,Sat	7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
	Saturday	29	Santa Clara	Temporary	
October	Fri,Sat	5,6	San Martin	Permanent	
	Saturday	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
November	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	No Event	No Event	THANKSGIVING
December	Fri,Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	No Event	No Event	

Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION
EVENTS FOR FISCAL YEAR 2018-2019 (Continued)**

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri,Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	San Jose	
	Thurs,Fri,Sat	17,18,19	San Jose	San Jose	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
February	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
March	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	28,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs	28	San Jose	Permanent	
	Fri & Sat	29 & 30	No Event	No Event	Caser Chavez Day
April	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Saturday	TBD	Los Altos	Temporary	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Saturday	27	Santa Clara	Temporary	
May	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri	23,24	San Jose	Permanent	
	Saturday	27	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Saturday	22	Milpitas	Temporary	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	

*SUBJECT TO CHANGE

11/16/2017

Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)

ATTACHMENT D: COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. Purpose

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a

centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 13 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2D (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

Attachment: HHW Agreement (1740 : AB 939 & HHW Agreements)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

AWARD MONTEREY ROAD SEWER VAULT COATING PROJECT

RECOMMENDATION(S)

1. Approve Monterey Road Sewer Vault Coating Project plans and specifications;
2. Award contract to SoCal Pacific Construction Corp d.b.a. National Coating and Lining Company for the Monterey Road Sewer Vault Coating Project in the amount of \$198,500;
3. Authorize expenditure of construction contingency funds not to exceed \$19,850; and
4. Authorize the City Manager to execute and administer the construction contract with SoCal Pacific Construction Corp d.b.a. National Coating and Lining Company.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

The Monterey Road Sewer Vault Coating Project is a maintenance project designed to repair and prevent deterioration of the concrete vaults caused by sewer gasses. The sewer vaults are part of the City's sewer trunk line on the easterly side of Monterey Road near California Avenue (see location map). The scope of work to be performed on the vaults includes cleaning and sandblasting the interior walls, patching pitted areas, and applying a chemical resistant epoxy coating to the concrete. Other work includes mobilization, temporary sewer bypass system, traffic control, storm water pollution control, and site clean-up.

The bid opening for the project was held on April 12, 2018. One bid was received from SoCal Pacific Construction Corporation d.b.a. National Coating and Lining Company in the amount of \$198,500. The lack of bids received on the project is primarily due to the limited number of contractors that are able to perform the type of work identified in the project scope. SoCal Pacific Construction Corporation d.b.a. National Coating and Lining Company is an experienced contractor and performs this type of work on a regular basis but has not worked for the City previously. Staff contacted references and found SoCal Pacific Construction Corporation d.b.a. National Coating and Lining Company to be both responsible and qualified to perform the work.

SoCal Pacific Construction Corporation d.b.a. National Coating and Lining Company's bid amount of \$198,500 came in slightly below the engineer's estimate of \$200,000. Staff recommends award of the contract to SoCal Pacific Construction Corporation d.b.a. National Coating and Lining Company in the amount of \$198,500 so that the work can be completed this summer. The project is scheduled to begin in June 2018 and be completed by September 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 Monterey Road Sewer Vault Coating Project is located between Monterey Road and the Union Pacific railroad tracks and therefore does not impact any businesses or residences. Staff will however, provide email notifications prior to construction activities. Staff will also provide updated project 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 repair work and may not result in a lower amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On October 7, 2015, the City Council awarded the Monterey Road Sewer Vault Coating Project to Ellison Environmental, Inc. (DBA) Fluid Resource Management which did not include the bypass work.
- On April 5, 2017, the City Council terminated the contract with Ellison Environmental, Inc. (DBA) Fluid Resource Management and staff proposed to repackage and rebid the project at a later date.

FISCAL AND RESOURCE IMPACT:

The total authorization for this project would be \$218,350, which includes a 10% contingency of \$19,850. This project is included in the 2017-18 Capital Improvement Program Budget and is sufficiently funded utilizing sewer bond proceeds.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Project Location Map

2. Plans & Specifications (weblink)



Attachment: Project Location Map (1729 : Award Monterey Vault Coating Project)



CITY OF MORGAN HILL
Public Works Department
Engineering and Utilities Division

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

PROJECT LOCATION MAP MONTEREY ROAD SEWER VAULT COATING PROJECT

0 250 500 1,000 1,500 2,000 Feet





CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

ADOPT ORDINANCE 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)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2274, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

REPORT NARRATIVE:

On April 18, 2018, the City Council introduced Ordinance No. 2274 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Tate; NOES: Spring; ABSTAIN: None; ABSENT: None.

The City Council requested clarification regarding the Residential Development Control System (RDCS) substitution of public benefit point commitments and site circulation. Due to neighborhood concerns and the need to plan for future connections, the site circulation plan was changed to resolve all issues. With these changes, the RDCS score was initially reduced by seven points; however, the project was able to substitute public benefit commitments and retain the original RDCS score.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill Community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

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:

Not Applicable

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.

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

LINKS/ATTACHMENTS:

1. 2274 Dunne-Kyono Zoning Amendment Ordinance

ORDINANCE NO. 2274, 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 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 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 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 2ND DAY OF MAY 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 June 2, 2018

⌘ CERTIFICATION ⌘

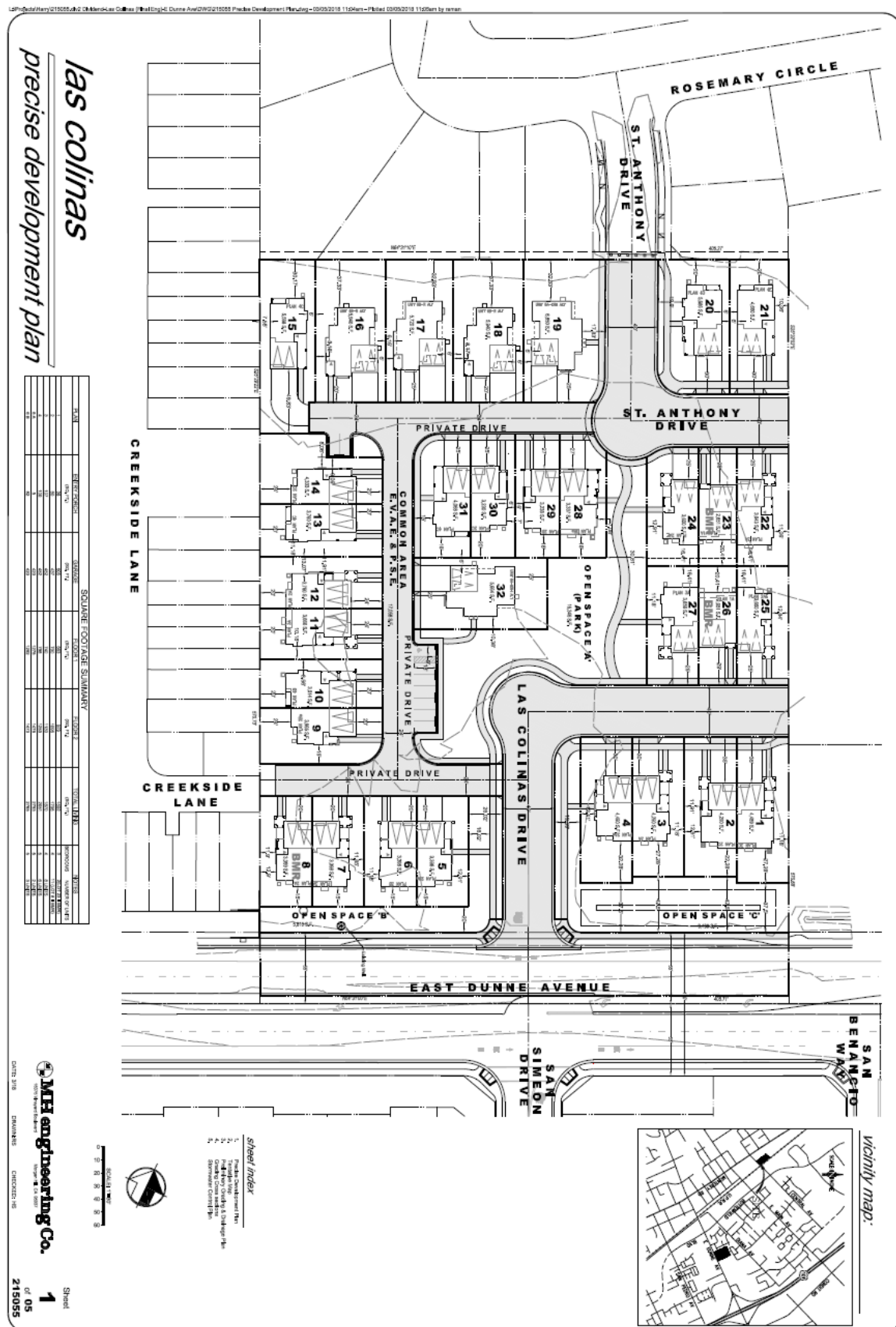
I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2274, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 2nd day of May 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A





CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

ADOPT ORDINANCE 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)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2275, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

REPORT NARRATIVE:

On April 18, 2018, the City Council introduced Ordinance No. 2275 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Tate; NOES: Spring; ABSTAIN: None; ABSENT: None.

The City Council requested clarification regarding the Residential Development Control System (RDSCS) substitution of public benefit point commitments and site circulation. Due to neighborhood concerns and the need to plan for future connections, the site circulation plan was changed to resolve all issues. With these changes, the RDSCS score was initially reduced by seven points; however, the project was able to substitute public benefit commitments and retain the original RDSCS score.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill Community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

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:

Not Applicable

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.

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

LINKS/ATTACHMENTS:

1. 2275 Dunne-Kyono Development Agreement Ordinance
2. Dunne-Kyono Development Agreement

ORDINANCE NO. 2275, 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 2ND DAY OF MAY 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 June 2, 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. 2275, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 2nd day of May 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

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/ Barbara S. Oliver

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: Dunne-Kyono Development Agreement (1744 : Adopt Ordinance 2275 Dunne-Kyono Development Agreement)

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)

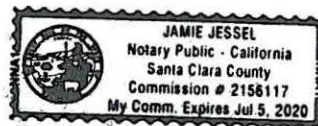


EXHIBIT "A"

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.

Title No.: FWPS-4475170040-KF
Amendment: B

EXHIBIT "A"
Legal Description
(continued)

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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
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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.

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

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>

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 31 st 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.e	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: May 2, 2018

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

ADOPT ORDINANCE 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

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2276, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

REPORT NARRATIVE:

On April 18, 2018, the City Council introduced Ordinance No. 2276 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This Ordinance revises the Morgan Hill Municipal Code sections related to code violation administration and enforcement in order to provide greater clarity and flexibility in obtaining compliance with City laws. All offenses of the Morgan Hill Municipal Code, except for traffic violations in Title 10, will be prosecutable as misdemeanors unless made infractions at the discretion of the City Attorney. Various grammatical changes,

including consistency with phrasing and capitalization, were made at the request of Council at the introduction hearing.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community regarding the proposed amendments to the Morgan Hill Municipal Code.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council Introduced Ordinance No. 2276 N.S. on April 18, 2018.

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. 2276 Ordinance Amending 1.19 and 1.24 and penalty provisionsFINAL

ORDINANCE NO. 2276, 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.

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.
- 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.

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 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.

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 an enforcement officer determines that 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.

1.19.060 - Amount of fines.

- 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. 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:
 - 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

1.19.070 - 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 1.19.110 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 were 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 are the subject of the administrative citation.

1.19.080 - 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 1.19.080.
- B. A request for hearing form may be obtained from the department specified on the administrative citation.

1.19.090 - 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 1.19.080(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 1.19.080(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 1.19.080(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 reason 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.

1.19.100 - Hearing officer.

The City Manager shall designate the hearing officer for the administrative citation hearing.

1.19.110 - 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 1.19.080 or an advance deposit hardship waiver has been issued in accordance with Section 1.19.090.
- 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.

- 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. At the hearing, the City and the party contesting the administrative citation shall be given the opportunity to testify, to present evidence, and to call and examine witnesses concerning the administrative citation.
- 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. 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.

1.19.120 - 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.
- C. 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.
- D. 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.
- E. 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.
- G. 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.

- H. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.
- I. 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.

1.19.130 - 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.

1.19.140 - 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.

1.19.150 - 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.

1.19.160 - Service.

- 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.
- 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 Sections 1.24.030 through 1.24.050 are added to read as follows.

1.24.010 - Violations deemed a misdemeanor—Penalty.

- A. Except as provided in 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 , the violation of any such provision of this Code shall be considered a misdemeanor punishable upon conviction by imprisonment in the county jail for a period not to exceed six (6) months or 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 a previously filed misdemeanor to an infraction if such reduction would serve the interests of justice. Each day such violation continues shall be regarded as a new and separate offense.
- B. Each infraction shall be punishable by: (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) 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 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 Section 1.24.010(B), any violation of Title 15 (Buildings and Construction) determined to be an infraction shall be punished 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.
- 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.

1.24.020 - Violations deemed a nuisance.

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, is a public nuisance. 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 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.

2.44.130 - Violations.

It is 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.

3.20.200 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

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.

3.24.190 - Unlawful acts.

- A. It is unlawful for any operator or other person to do any of the following:
 - 1. Fail or refuse to register as required in this Chapter;
 - 2. Fail to furnish any return required to be made;
 - 3. Fail or refuse to furnish a supplemental return or other data required by the tax administrator;
 - 4. Render a false or fraudulent return or claim; or
 - 5. Fail to remit the full amount of tax collected.
- B. It is unlawful for any person required to make, render, sign, or verify any report or claim as required by this Chapter to make any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due.

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.

5.04.090 - Violation.

It is unlawful for any person to violate any of the provisions 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.

5.08.220 - Violation.

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. 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.

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.

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 the permit and to order the permittee to cease and desist immediately conducting bingo games.
- B. It is unlawful for any person to continue to conduct a bingo game after notification of a summary suspension of a permit under the provisions of subsection A of this Section.
- C. The order issued under subsection A of this Section shall also inform the permittee that 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 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 to 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.

It is unlawful for any person to violate any provisions of this Chapter.

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.

5.16.010 - Illegal card and dice games.

- A. It is unlawful for any person, firm, corporation, or association, for profit, for anything of value, or for commercial purpose of any nature, to keep, operate, conduct or maintain, 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.
- B. Every person, firm, corporation or association, either as owner, lessor, lessee, principal, agent, employee, participant, or otherwise, who maintains, keeps, 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.

It is unlawful for a person to gamble by placing or betting at or against any of the games defined in Sections 5.16.010 or 5.16.020 of this Chapter.

5.16.180 - Gambling at dice or pool.

It is unlawful for any person to deal, play or carry on, open or cause to be opened, or conduct, 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. It is unlawful for any person to bet at or against any of the aforementioned and prohibited games.

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.

5.28.140 - Violation.

- A. It is unlawful for any person to violate any of the provisions of this Chapter.
- 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.

5.32.100 - Violation.

It is unlawful to violate any of the provisions of this Chapter

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.

5.36.330 - Violation.

- A. It is unlawful for any person 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.

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.

5.52.010 - Definitions.

For the purpose of this Chapter, the following definitions apply:

- A. "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 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.

It is unlawful for any person to violate any provision of this Chapter.

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.

5.60.010 - Police permits.

In order to retain law-abiding management and operation of "adult businesses," as defined 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, 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), the proposed actual nature of the work performed or to be performed, 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. The chief of police shall not issue a permit if the applicant has 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 Title 18 except for those which are found to be 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) 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.
- I. 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.
- J. 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.
- K. 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 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.

L. Violation—Penalty. It is unlawful to violate any provision of this Chapter.

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.

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. It is unlawful for any person to violate Section 5.64.040(D).
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- E. 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.

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.

- A. "Animal service officer" means any person authorized to act on behalf of the 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.

6.08.010 - Administrator and animal service officer—Powers and duties.

The administrator, any peace officer, and any animal 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 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 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 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 service officer or peace officer. If the land is unoccupied, the administrator, animal 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 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 service officer or peace officer shall first attempt to notify the occupant and demand entry.

6.08.030 - Violation.

- A. It is unlawful to violate or permit the violation of any of the provisions of Title 6.
- B. For purposes of this Title, a bail forfeiture shall be deemed to be a conviction of the offense charged.
- C. 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 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.
- D. 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.

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.

6.12.110 - Dog licenses—Presentation of license on request.

Upon request of any authorized animal 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.

- A. 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 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 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 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.

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 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.

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 on public or private property without immediately cleaning and removing the excrement to a proper receptacle;
 - 2. 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;

3. 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;
 4. 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 by howling, yelping, barking or other noise, frequently or for extended periods of time. Each day that such disturbance is permitted to continue shall constitute a separate offense.
- B. The animal 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 service seizure—Conditions.

Except as provided in Section 6.24.080(B), an animal 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 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 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 service officer shall dispose of such body immediately; provided, however, that the animal 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 any person having knowledge that any animal is known to have or is suspected of having bitten any person 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 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 any person to fail, refuse, or neglect to quarantine any animal as ordered by the animal services or health officer, or to refuse to allow the animal services or health officer to inspect any private premises where the animal is kept. It is unlawful for an animal 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. 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 service officer or other appropriate authority approves an alternative means of confinement.
- B. The animal 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 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 euthanized.

6.24.090 - Poisoning or abusing animals.

In addition to Penal Code Section 596, it is unlawful for any person to willfully administer poison to any dog, cat or other domestic animal or to 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 person 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, as may be amended.

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.

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.

It is unlawful for any person to violate any of the provisions of this Chapter or to fail to comply with the requirements of this Chapter. Such person is liable for each and every violation thereof, and for each and every day or fractional part thereof during which such violation continues.

6.28.100 - Prohibited dog ownership by convicted felons.

- A. It is unlawful for any person who has been convicted of a felony under the laws of the United States, the state of California, or any other state, government, or country, to own, purchase, receive, or have 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 such convicted felon, 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.
- C. Additionally, a dog poses a danger to the public's health, safety, or welfare, if misused by a convicted felon under this Section, if any of the following apply:
 1. The dog weighs more than twenty (20) pounds;
 2. The dog has been designated a potentially dangerous Level 1, 2, or 3 under Chapter 6.12 of this title; or

3. 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.

6.32.010 - Notification of owners required.

The animal 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 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 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 6.32.060 of this title, the administrator, animal 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 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 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 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 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.

6.36.280 - Operation without permit prohibited.

It is unlawful for any person to commence, conduct, carry on, transact, engage in, run, operate or maintain or cause, permit or allow another person to carry on any endeavor wherein sanitation and the preservation of public health are involved, and 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.

6.36.300 - Violation.

- A. It is unlawful for any person to violate any of the provisions of this Chapter. 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 shall have his or her permit revoked.
- B. Upon the failure, neglect, or refusal of any owner, occupant, 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, any police or peace officer, or the City Attorney may abate such nuisance. The owner, agent, 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, 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.

8.04.170 - Violation.

It is unlawful and a willful violation for any person, firm, corporation, or agent or employee of any person, firm, or corporation to violate any provision of this Chapter or any rules and regulations made under this Chapter

SECTION 25. Section 8.08.380 of Chapter 8.08 (Mobile Home or Trailer Parks) of Title 8 (Health and Safety) is hereby deleted in its entirety.

8.08.380 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

SECTION 26. Section 8.16.230 of Chapter 8.16 (Litter) of Title 8 (Health and Safety) is hereby deleted in its entirety.

8.16.230 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

SECTION 27. Section 8.22.140 of Chapter 8.22 (Abandoned and Wrecked Motor Vehicles) of Title 8 (Health and Safety) is hereby deleted in its entirety.

8.22.140 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

SECTION 28. Section 8.24.030 of Chapter 8.24 (Junkyards and Auto Wreckers) of Title 8 (Health and Safety) is hereby amended to read as follows.

8.24.030 - Violation.

It is unlawful to violate any provision of this Chapter.

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.

8.28.020 - Unlawful behavior defined.

It is unlawful 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 person 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 person in the vicinity;

8.28.050 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

SECTION 30. Section 8.32.030 of Chapter 8.32 (Fireworks) of Title 8 (Health and Safety) is amended to read as follows.

8.32.030 - Violation.

It is unlawful for any person, firm, or corporation to violate this Chapter or any provision thereof.

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.

8.44.100 - 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.

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.

8.46.050 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter. 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.

8.52.080 - Enforcement and violation.

- 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. It is unlawful for any operator of a store to violate or fail to comply with any of the requirements of this Chapter.

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.

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. It is unlawful for any vendor or food provider to violate or fail to comply with any of the requirements of this Chapter.

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.

9.04.040 - Violation.

It is unlawful for any person to violate or cause or permit the violation of the provisions of any Section of this Chapter.

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.

9.08.050 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

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.

9.13.050 - 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.
- 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.

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.

9.14.050 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter.

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.

10.12.020 - Violation.

It is unlawful 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.

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.

12.04.060 - Commercial sidewalk encroachment permit—Violation.

It is unlawful for any person, firm, or corporation to violate any provision of this Chapter.

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.

12.08.150 – Violation.

It is unlawful for any person to violate any provision of this Chapter.

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.

12.12.180 - Violation.

It is unlawful for any person to violate any provision or to fail to comply with any requirements of 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.

12.16.130 - Violation.

It is unlawful for any person to violate any provision of this Chapter or to fail to follow any of the prescribed terms under which the permit is issued.

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.

12.20.100 - Violation.

- A. It is unlawful for any person to violate any of the provisions of this Chapter
- 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 fines, for any subsequent violations within any consecutive twelve (12) months period, the community services director may order 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 reasonable discretion.

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.

12.28.130 - Violation.

It is unlawful for any person to violate or to fail to comply with any of the provisions of this Chapter. In addition, the City 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.

12.32.140 - Removal or trimming without a permit unlawful.

It is unlawful for any property owner, lessee, his or her agent, or representative to engage in tree cutting or removal or to conspire with another to engage in tree cutting or removal without a valid tree cutting permit. 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.

13.04.150 - Meters—Failure to install.

- A. It is unlawful for any person to violate any of the provisions 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. In addition to all other available remedies, any person in violation of this Section shall be held responsible for all past water charges.

13.04.400 - Violation.

- A. It is unlawful for any person to violate or cause or the violation of any of the provisions of this Chapter.
- B. Any subsequent violations within any consecutive twelve (12) months period 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. In addition to any other fines or penalties, a person who violates provisions of Section 13.04.330 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. 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.

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.

13.08.150 - Violation.

It is unlawful for any person or persons, company, corporation or association to willfully fail to install or to willfully bypass, alter, or refuse to maintain a backflow prevention device.

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.

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:
 1. The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;
 2. Limits on the average and maximum wastewater constituents and characteristics;
 3. Limits on average and maximum rate and time of discharge or requirements for flow regulation and equalization;
 4. Requirements for installation and maintenance of inspection and sampling facilities;
 5. Specifications for monitoring programs which may include sampling, number, types and standards for tests and reporting schedule;
 6. Compliance schedules;
 7. Requirements for submission of technical reports or discharge reports;
 8. Notice that whenever 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.
 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 unlawful.

It is unlawful for any person to knowingly make 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 to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required under this Chapter.

13.20.460 - Violation.

- A. It is unlawful for any person to violate, or cause or permit the violation of, any of the provisions of this Chapter.
- 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.

SECTION 51. Section 13.24.210 of Chapter 13.24 (Septic Tanks) of Title 13 (Public Services) is hereby amended to read as follows.

13.24.210 - Violation.

It is unlawful for any person, firm or corporation to violate, or refuse or fail to comply with any of the provisions of this Chapter.

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.

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.

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.

15.08.110 - Violation.

- A. A violation of the Code adopted by this Chapter occurs when a person:
1. Fails to comply with this Code;
 2. Violates or fails to comply with any order made under this Code;
 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. 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. 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.
- C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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.

15.12.060 - Violation.

- A. A violation of the Code adopted by this Chapter occurs when a person:
 1. Fails to comply with this Code;
 2. Violates or fails to comply with any order made under this Code;
 3. Builds 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
 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.
- B. Such person shall be liable severally and for each and every violation and noncompliance respectively.
- 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.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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.

15.16.040 - Violation.

- A. A violation of the Code adopted by this Chapter occurs when a person:
 1. Fails to comply with this Code;
 2. Violates or fails to comply with any order made under this Code;
 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. 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 shall be liable severally and for each and every such violation and noncompliance respectively.
- 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.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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.

15.20.100 - Violation.

- A. A violation of the Code adopted by this Chapter occurs when a person:
 - 1. Fails to comply with this Code;
 - 2. Violates or fails to comply with any order made under this Code;
 - 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. 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 shall be liable severally and for each and every such violation and noncompliance respectively.
- 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.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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.

15.24.050 - Violation.

- A. A violation of the Code adopted by this Chapter occurs when a person:
 - 1. Fails to comply with this Code;
 - 2. Violates or fails to comply with any order made under this Code;
 - 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. 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 may be liable severally and for each and every such violation and noncompliance respectively.
- 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.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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.

15.25.040 - Violation.

- A. A violation of the Code adopted by this Chapter occurs when a person:
 - 1. Fails to comply with this Code;
 - 2. Violates or fails to comply with any order made under this Code;
 - 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. 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 may be liable severally and for each and every such violation and noncompliance respectively.
- 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.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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.

15.30.100 - Violation.

It is unlawful to violate any provisions of this Chapter.

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.

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 refuse to admit such member when an inspection warrant is not required.

15.40.130 - Violation.

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.

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.

15.52.170 - Violation.

It is unlawful for any person to violate, or cause or permit to the violation of any of the provisions of this Chapter.

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.

15.65.075 - Enforcement.

It is unlawful and a violation of the provisions of this Chapter for an applicant to fail to plan or build the project in accordance with the terms of this Chapter.

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.

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.

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 comply with such order.

15.66.090 - Violation.

It is unlawful for any person to violate any of the provisions of this Chapter or to fail to comply with the proper order of the building inspector as provided for in this Chapter.

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.

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.

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.

18.73.220 – Penalties

It is unlawful for any person to violate any provision of this Chapter.

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 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 Government Code Section 36933.

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 2ND DAY OF MAY 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 June 2, 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. 2276, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 2nd day of May 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

DRAFT



Meeting Minutes City Council

Steve Tate - Mayor
Rich Constantine - Mayor Pro Tem
Larry Carr - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, 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)

SPECIAL MEETING

6:00 pm

CALL TO ORDER

Mayor Tate called the special meeting to order at 6:00 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Present	
Rich Constantine	Mayor Pro Tem	Present	
Larry Carr	Council Member	Late	6:12 PM
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

CLOSED SESSION

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced the closed session item.

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Tate opened the public comment at 6:01 pm.

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

ADJOURN TO CLOSED SESSION

The special meeting adjourned to closed session at 6:01 pm.

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

REGULAR MEETING

7:00 pm

The regular meeting was convened at 7:00 pm.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Constantine spoke about his work on the Policy Advisory Committee for the Valley Transportation Authority (VTA). He shared that at their monthly meeting members representing Morgan Hill, Gilroy, and the VTA met at Morgan Hill City Hall to discuss transportation issues that affect South County. Caltrain staff members also attended the meeting to discuss their business plan and electrification of the rails south of San Jose. He also shared that Caltrain is looking at having two-way train service all day rather than one direction in the mornings and the other direction in the evenings.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She announced

that in honor of Earth Day, the City will hold a celebration tomorrow at the Community and Cultural Center from 4:00 to 7:00 pm. The festivities will include games, activities, and arts and crafts. On April 28, the City will hold its Annual Art a la Carte which is a free community wide event designed for kids age 2 to 10 years old. It promotes art, culture, and creative development through a variety of art projects, entertainment, and activities. This year's theme is the environment, "It's easy being green." She also announced the upcoming City Council Budget Workshop on May 18 at 9:00 am in the Council Chamber. She concluded by recapping the morning's multi-agency traffic enforcement operation. There were 33 traffic officers from multiple organizations in town from 7:00 to 10:30 am targeting people speeding, on their cell phones, and those not yielding to pedestrians. Over 100 citations and 25 warnings were issued. This was all in the spirit of safe driving.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that the City Council met in closed session prior to the regular 7:00 pm City Council meeting and that there was no reportable action from the closed session. He also announced that Uvas County Park has re-opened, however, you can only visit the park if you have a reservation.

OTHER REPORTS

Mayor Tate shared that he will be holding a coffee with the Mayor on May 5 from 10:00 to 11:30 am at GVA Coffee Shop downtown.

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

Mayor Tate opened the public comment at 7:28 pm. The following people were called to speak:

Malisha Kumar

Brian Faircloth

Roland Lebrun

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

CONSENT CALENDAR**MOTION:**

Approving Consent Calendar items 1 through 6 and 8 through 10.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rich Constantine, Mayor Pro Tem
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

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. ITEM PULLED FOR DISCUSSION

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.

ITEM PULLED FOR DISCUSSION

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.

Mayor Tate opened the public comment at 7:36 pm.

Brian Faircloth was called to speak.

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

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

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.

Interim Deputy City Manager Chris Ghione presented the report.

The public comment was opened at 7:46 pm.

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

MOTION:

Approving the recommended action.

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

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.

Council Member Carr excused himself from the dais.

Economic Development Director Edith Ramirez presented the report. She introduced Boris Lipkin with the High Speed Rail Authority who provided the update.

The meeting went into recess at 8:07 pm.
The meeting was reconvened at 8:18 pm.

The public comment was opened at 8:27 pm. The following people were called to speak:

Swanee Edwards
Brian Faircloth
Roland Lebrun
John Sanders
Lesley Miles

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

MOTION:

Approving the recommended action.

RESULT:	DIRECTED [4 TO 0]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Jachimowicz, Spring
RECUSED:	Carr

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.

Council Member Carr resumed his seat at the dais.

City Manager Christina Turner presented the report. She introduced Brian Godbe with Godbe Research who presented the survey results.

The public comment was opened at 9:27 pm. The following people were called to speak:

John Horner
Asit Panwala
Brian Faircloth

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

RESULT:	NO ACTION TAKEN
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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.

Associate Planner Tiffany Brown along with Development Services Director Jennifer Carman presented the report.

Mayor Tate called a recess at 10:05 pm.
The meeting was reconvened at 10:21 pm.

The public comment was opened at 10:22 pm. The following people were called to speak:

Paul Latala
Rocke Garcia
Brian Sullivan
John Horner
Jeff Dixon

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

MOTION:

Approving the recommended action.

RESULT:	APPROVED [4 TO 1]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz
NAYS:	Spring

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.

Program Administrator Tony Eulo presented the report.

The public comment was opened at 10:48 pm.
There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended actions.

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

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

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.

Program Administrator Tony Eulo presented the report.

The public hearing was opened at 10:50 pm.

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

The Council heard item 17 while the ballots were being tabulated.

MOTION:

Adopting resolution A certifying the ballot proceeding results.

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

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 reading of Zoning Amendment Ordinance;
3. Introduce Zoning Amendment Ordinance;
4. Waive first and second reading of Development Agreement Ordinance;
and
5. Introduce Development Agreement Ordinance.

Principal Planner Gina Paolini presented the report.

The public hearing was opened at 11:03 pm.

Dick Oliver was called to speak.

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

MOTION:

Waiving the first and second reading of the Zoning Amendment ordinance.

RESULT:	WAIVED [4 TO 1]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz
NAYS:	Spring

MOTION:

Introducing the Zoning Amendment Ordinance.

RESULT:	INTRODUCED [4 TO 1]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz
NAYS:	Spring

MOTION:

Waiving the first and second reading of the Development Agreement Ordinance.

RESULT:	WAIVED [4 TO 1]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz
NAYS:	Spring

MOTION:

Introducing the Development Agreement Ordinance.

RESULT:	INTRODUCED [4 TO 1]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz
NAYS:	Spring

OTHER BUSINESS

18. 2018 INFRASTRUCTURE UPDATE REPORT

Recommendation:

Receive the updated 2018 Report on City Infrastructure.

Interim Deputy City Manager Chris Ghione, along with Deputy Director of Engineering Scott Creer and Deputy Director of Utilities Dan Repp presented the report.

The public comment was opened at 11:26 pm.

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

MOTION:

Extending the meeting to 12:00 am.

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

19. FIRE RESOURCES REPORT

Recommendation:

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

City Manager Christina Turner introduced the item. Division Chiefs Nick Ciardella, Michael Borelli, and Michael Marcucchi, along with Battalion Chief Dwight Good presented the report.

The public comment was opened at 11:43 pm.

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

RESULT:	NO ACTION TAKEN
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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.

Assistant City Attorney Cynthia Hasson presented the report.

The public comment was opened at 11:59 pm.

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

MOTION:

Waive the first and second reading of the ordinance incorporating the changes that Council Member Jachimowicz identified.

RESULT: WAIVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Rene Spring, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:00 am.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

APPROVE CONCEPTUAL DESIGN FOR CENTENNIAL RECREATION CENTER EXPANSION PROJECT

RECOMMENDATION(S)

Approve Conceptual Design for the Centennial Recreation Center Expansion Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

The Centennial Recreation Center (CRC) opened in October 2006 and is currently operated by the City of Morgan Hill in partnership with the YMCA of Silicon Valley. The initial constructed facility was anticipated to accommodate 2,250 membership units (8,000 Members). By 2009, the facility had nearly 3,200 membership units (over 10,000 members). As the popularity of the CRC increased, it necessitated the first expansion in 2010. This resulted in the addition of over 2,000 square feet of useable fitness space and a variety of additional fitness equipment.

Since the completion of the first CRC expansion, facility membership has continued to rise, with the current facility membership base now at 5,100 units (over 16,000 members). While creative use of programming and space have been used, another facility expansion is necessary to accommodate future programming needs and membership growth.

From June through August 2017, staff conducted a needs assessment to determine the expansion areas of health, wellness, and recreation. Staff collected feedback on the proposed expansion from facility users and staff through customer comment cards, annual SEER Customer Satisfactory Survey, Online Survey for Member Use and Expansion, and Focus Groups. The feedback came back with suggestions of additional

group exercise space, added parking, and larger fitness center space being the largest priorities.

With the above information, staff issued a Request for Proposal (RFP) to firms for design services to expand the CRC. On October 27, 2017, the City received proposals from Noll & Tam Architects and Weston Miles Architects. Upon reviewing the two proposals, Weston Miles Architects showed a clearer understanding of the CRC expansion project.

On December 6, 2017, the City Council awarded the design agreement for the CRC expansion to Weston Miles Architects. Once the agreement was executed, Weston Miles Architects began work to further understand the City and user needs for this phase of the expansion. With a construction budget of \$1.8 million, Weston Miles Architect, Inc.'s design and estimate includes additional parking spaces as well as a 4,000 square foot expansion specifically for additional group exercise and storage space. Depending on construction costs, add alternates to the project may include additional parking and office space restructuring for an expanded fitness area.

The conceptual plan for the CRC expansion was reviewed by the Park and Recreation Commission on April 17, 2018. The Commission recommended approval of the conceptual plan by the Council. Should the City Council approve the conceptual design, staff and Weston Miles Architects will continue with design and construction document completion. Design and construction documents shall be completed in 2018 with a construction start date of Spring, 2019.

This project is identified as a high priority in the Bikeways, Trails, Parks and Recreation Master Plan and will be funded by Recreation Center Impact Fees.

COMMUNITY ENGAGEMENT: Involve

From June through August of 2017, staff conducted a needs assessment to determine the expansion areas of health, wellness, and recreation. Staff collected feedback on the proposed expansion from facility users and staff, using four data points: review of customer comment cards, results of the annual customer satisfaction survey conducted by SEER Analytics, a separate online survey for member use and expansion, and staff and member focus groups.

Staff shall continue to provide information on this project with additional design information and sketches at the CRC.

ALTERNATIVE ACTIONS:

The Council could elect to approve the conceptual plan, while providing specific additional direction. The Council could also choose to not approve the conceptual plan and direct staff to return with a revised plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

December 6, 2017 – Approved an agreement with Weston Miles Architects, Inc. for design and construction support services for the Centennial Recreation Center Expansion Project.

April 17, 2018 – The Parks and Recreation Commission reviewed the conceptual plan for the Centennial Recreation Center Expansion Project and recommended approval by the City Council.

FISCAL AND RESOURCE IMPACT:

This project is funded in the current adopted budget (FY17-18) and is budgeted under Project No. 138016. The project is funded through the Recreation Center Impact Fund (360).

CEQA (California Environmental Quality Act):

Categorical Exemption

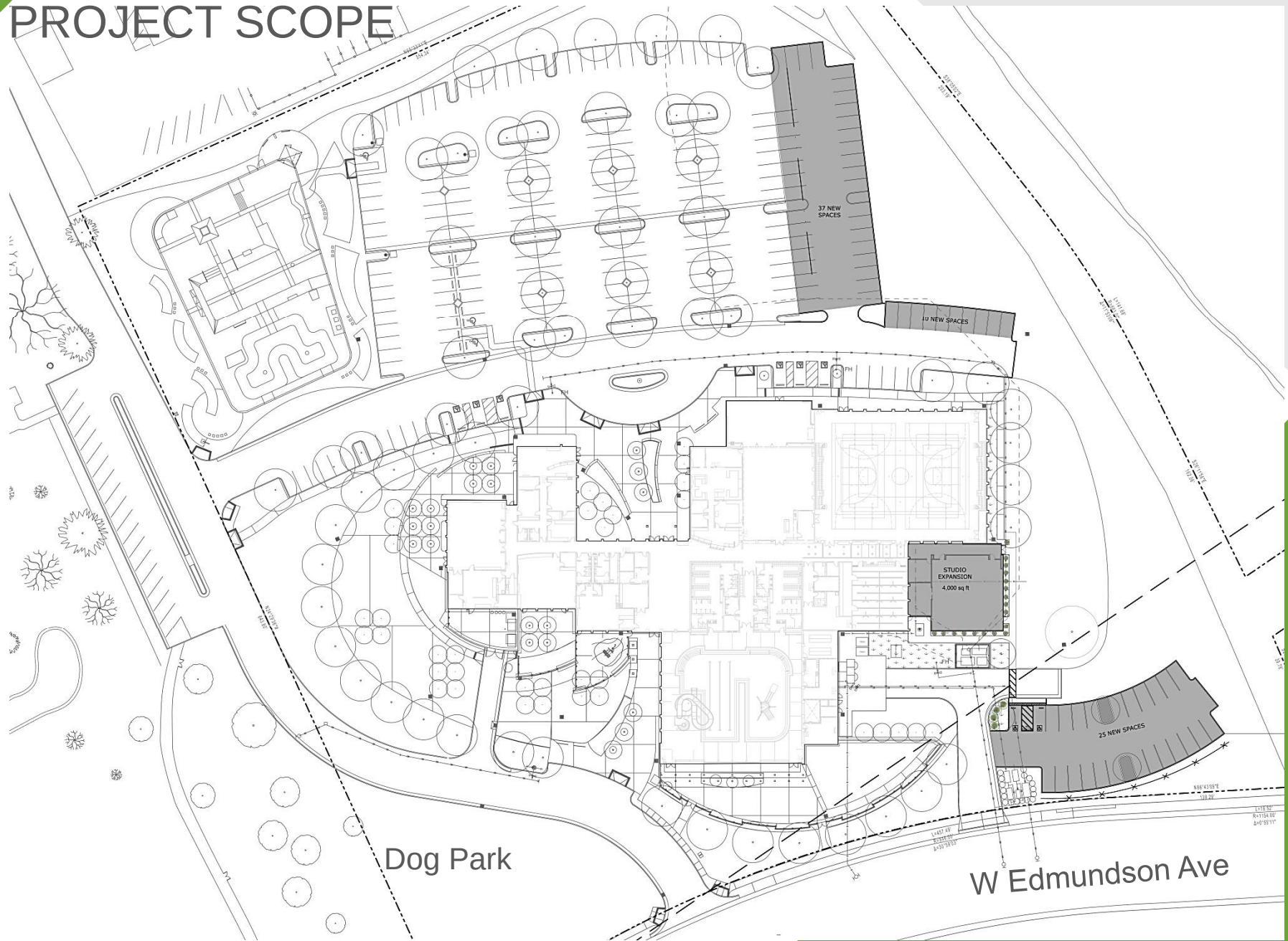
The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of CEQA Guidelines (Existing Facilities, Section E2), as this project will be an addition to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if:

- (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
- (B) The area in which the project is located is not environmentally sensitive.

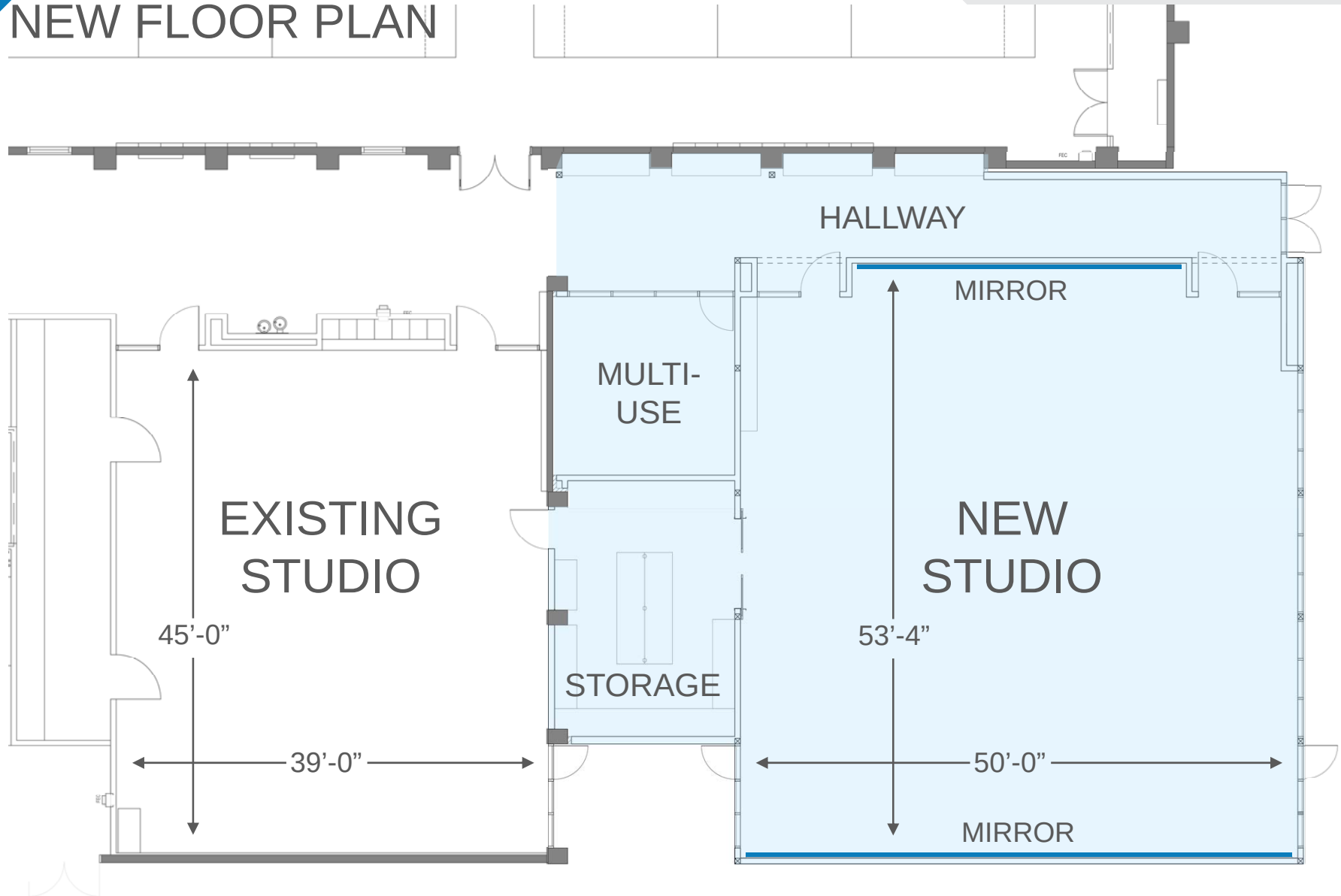
LINKS/ATTACHMENTS:

1. Conceptual Design 5-2-18

PROJECT SCOPE



NEW FLOOR PLAN





Attachment: Conceptual Design 5-2-18 (1727 : Approve Conceptual Design for Centennial Recreation

NEW



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

MARCH 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 nine months ended March 31, 2018 or 75% of the year completed. A Year-to-Date Revenue and Expense Summary is included on the first page. Overall, the City received 77% of the budgeted revenues for all funds, an increase of \$8.3 million or 10% compared to prior year at this time. The increase was mainly attributable to an increase in General Fund revenues of approximately \$3.3 million, and development impact fee revenues in Water and Wastewater Enterprise Funds of \$2.3 million.

As mentioned above, the increase was partially led by an overall increase in General Fund revenues of \$3.3 million compared to prior year at this time. General Fund revenues totaled \$28.0 million, \$3.3 million or 13% higher than a year ago at this time mainly due to the repayment of the former City Manager's home loan of approximately \$929,000 and increases in sales tax and property tax collection of approximately \$1.5 million. The increase in property tax collection was partially due to homeowners making early April 10, 2018 property tax payment before December 31, 2017 as a result of the recently enacted tax reform that would cap the federal tax deductions on state and local taxes of \$10,000 effective in the 2018 tax year. Expenditures in the General Fund, including encumbrances, amounted to \$33.1 million or 77% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers, such as Cal-West Lighting and Signal Maintenance for the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

Community Development Fund revenues totaled \$3.3 million or 90% of the budget, a

decrease of 8% from prior fiscal year at this time of \$3.6 million. Expenditures in the Community Development Fund, including encumbrances totaled \$4.2 million or 75% of the budget. The fund was budgeted to end the fiscal year with an operating deficit of approximately \$1.8 million, however, the amount is anticipated to come in less due to the fee increase that went into effect January 1, 2018.

Enterprise Funds revenues which comprised of Water and Sewer totaled \$24.8 million or 75% of the budget, an increase of \$4.6 million or 23% from a year ago at this time primarily due to higher development impact fees collected and water sales. Revenues from water sales are expected to come in slightly better than budget due to higher water consumption than estimated. However, revenues from sewer operations are projected to come in lower than the original budget of \$10.8 million due to lower water consumption as a result of wet winter months (which was based upon the quarter January through March 2017). Sewer bills are based on the lowest three consecutive months of water consumption from the prior fiscal year. Expenditures in the Enterprise Funds, including encumbrances amounted to \$26.1 million or just 46% of the budget mainly due to the timing of capital improvement program expenditures.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

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



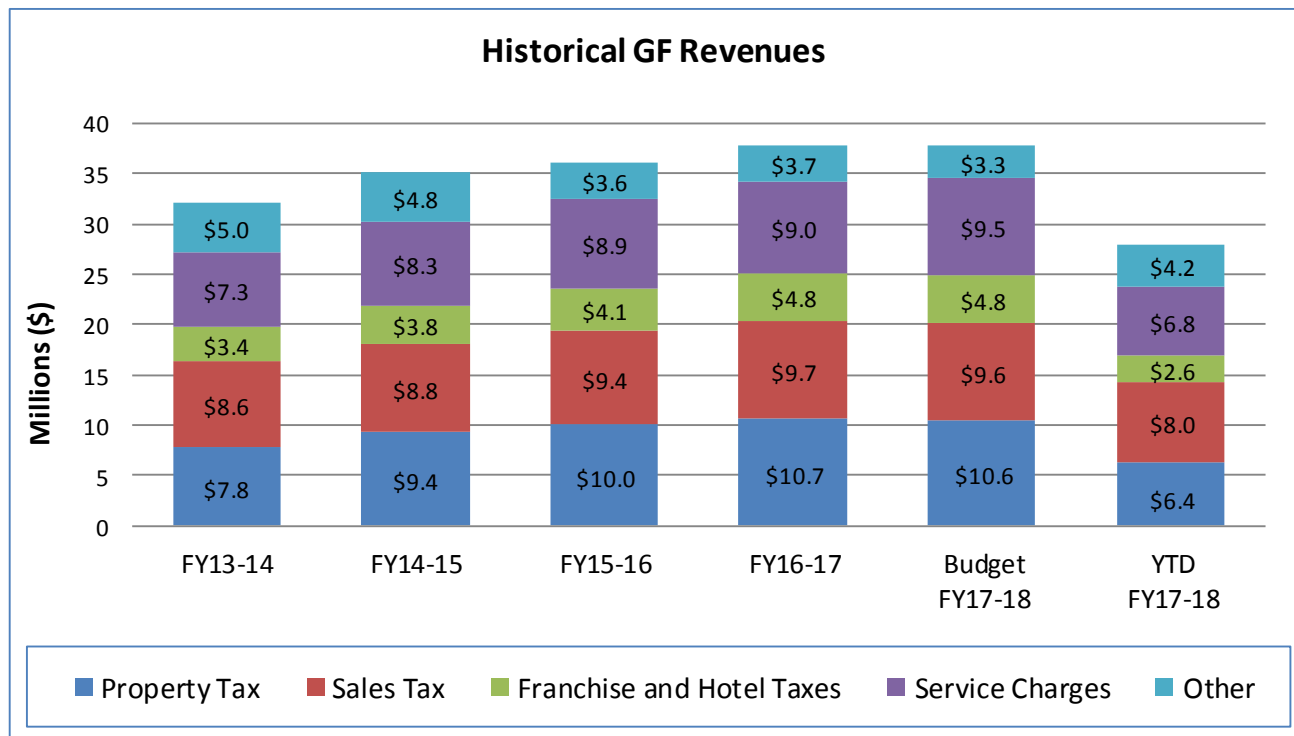
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED MARCH 2018 – 75% OF YEAR COMPLETE

- **General Fund** – Overall, revenues received through March totaled \$28.0 million, or 74% of the budgeted revenues. The amount received is 13% or \$3.4 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 \$607,000. As for property tax revenues, the first two advances for the April 10, 2018 secured and unsecured property tax installment have been received and are 19% or approximately \$931,000 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 92% 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 March 31, 2018.

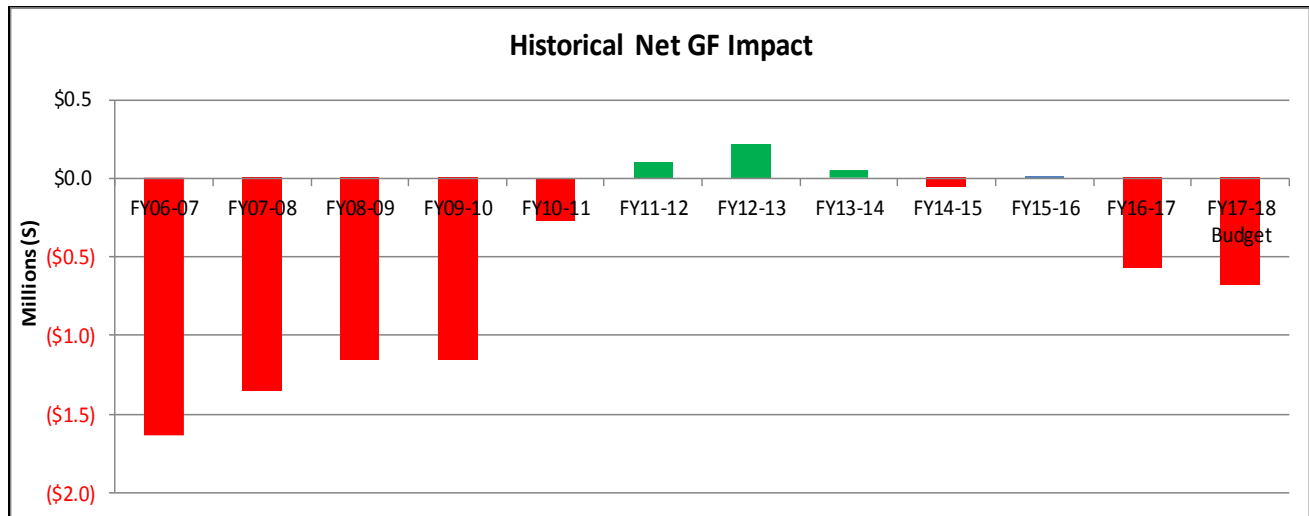


General Fund expenditures and encumbrances as of March 31, 2018 totaled \$33.1 million, of which approximately \$2.7 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED MARCH 2018 – 75% 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 \$1.1 million through the month of March. Without the encumbrances, year to date operations resulted in a smaller negative impact to the general fund of approximately \$450,000. 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 March totaled \$3.3 million, or approximately 90% of the budget. The amount received to date is approximately \$293,000 or 8% less than prior year. Expenditures, including encumbrances totaled \$4.2 million or 75% of the budget. The fund was budgeted to end the fiscal year with an operating deficit of approximately \$1.8 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 March 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 MARCH 2018 – 75% OF YEAR COMPLETE

- **Sewer Operations** – Revenues from Sewer Service Fees through March totaled \$7.5 million, 3% or \$197,000 higher than a year ago at this time. However, revenues are projected to come in lower than the original budget of \$10.8 million 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 \$7.7 million or 71% 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 March 31, 2018.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	9.4	10.3	10.2	9.7	10.3	7.5
Expenditures	8.6	8.8	12.0	9.8	10.8	7.7
Operating Margin	0.8	1.5	(1.8)	(0.1)	(0.5)	(0.2)
Operating Margin without Encumbrances	0.8	1.5	(1.8)	(0.0)	(0.5)	0.1

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through March totaled \$9.7 million, approximately \$1.6 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 March totaled \$9.0 million. Without the encumbrances, however, the expenditures amounted to \$8.2 million. The table below shows Water Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of March 31, 2018.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	12.2	8.8	8.5	10.9	12.2	9.7
Expenditures	12.1	9.3	9.7	10.8	12.1	9.0
Operating Margin	0.1	(0.5)	(1.2)	0.1	0.1	0.7
Operating Margin without Encumbrances	0.1	(0.5)	(1.2)	0.3	0.1	1.5

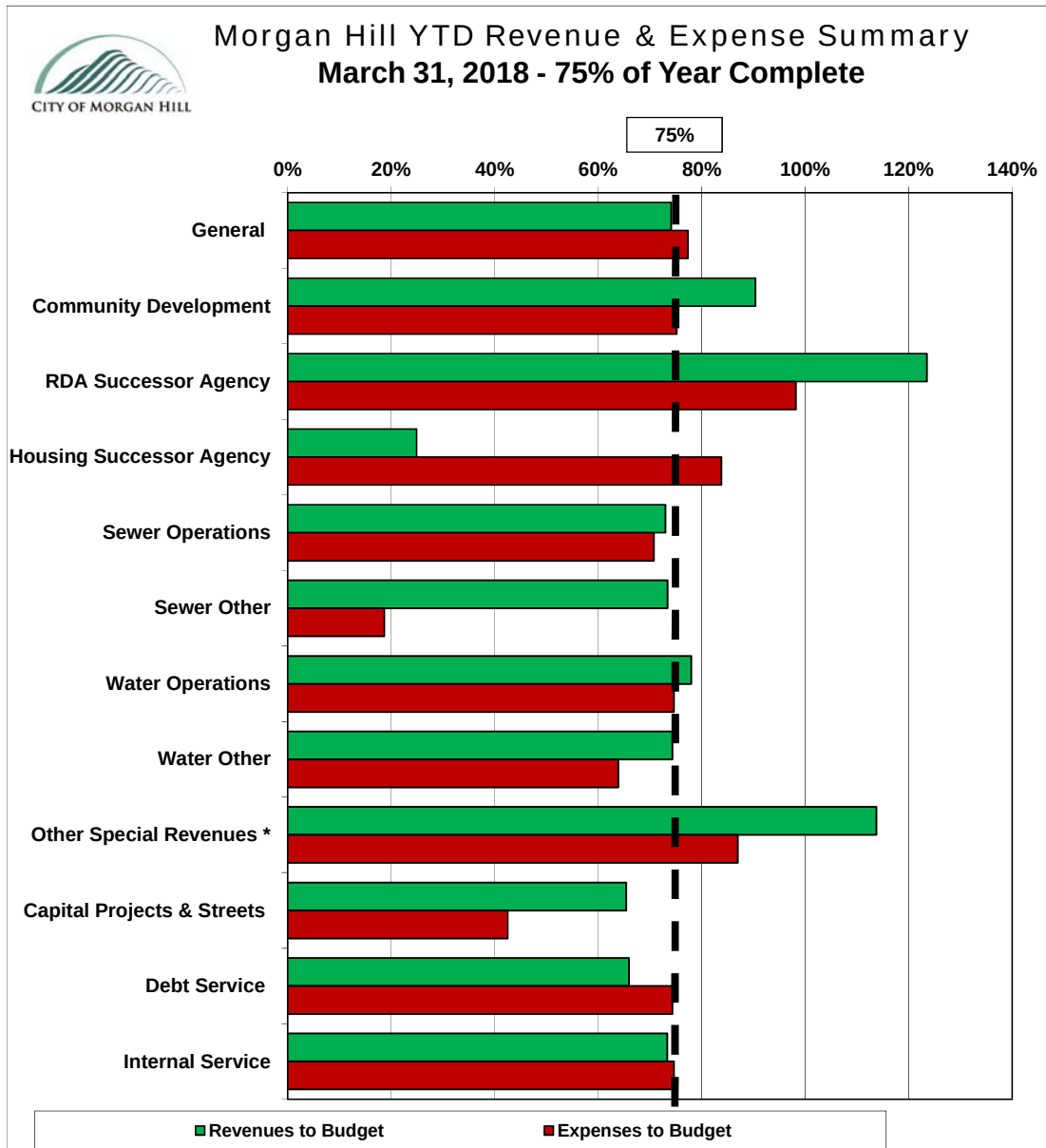
- **Investments** – One security was called during the month of March 2018. Total interest earnings received on investments were \$72,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
March 31, 2018 - 75% of Year Complete



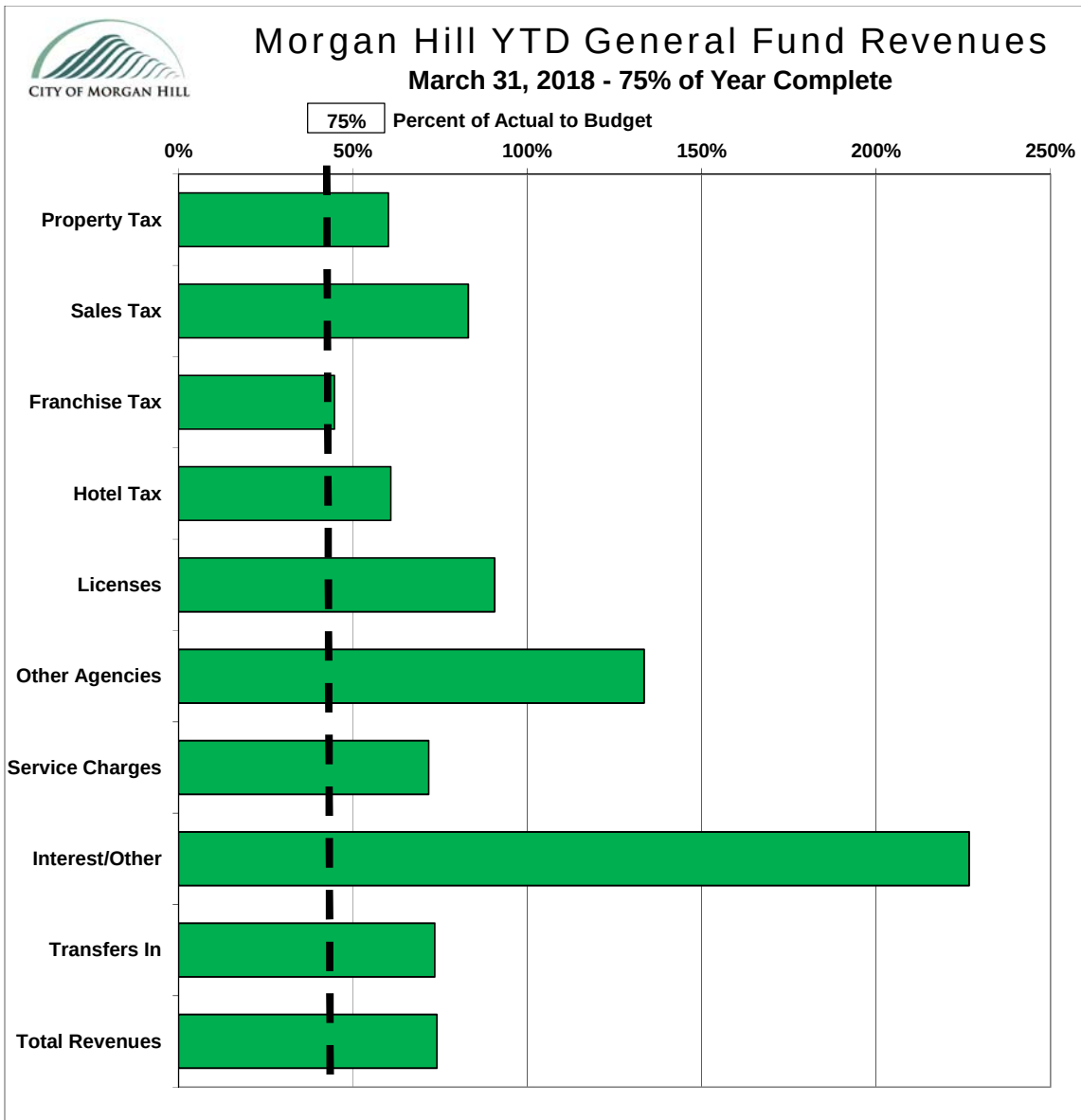
CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 27,976,312	74%	\$ 33,086,538	77%
Community Development	3,325,535	90%	4,168,701	75%
RDA Successor Agency	8,810,850	124%	7,049,852	98%
Housing Successor Agency	320,460	25%	1,630,741	84%
Sewer Operations	7,540,685	73%	7,677,781	71%
Sewer Other	5,306,408	73%	5,167,871	19%
Water Operations	9,690,074	78%	8,996,140	75%
Water Other	2,272,521	74%	4,294,819	64%
Other Special Revenues *	3,062,231	114%	2,130,964	87%
Capital Projects & Streets	11,393,562	65%	14,028,383	43%
Debt Service	450,345	66%	506,259	74%
Internal Service	7,633,034	73%	8,358,502	75%
TOTAL FOR ALL FUNDS	\$ 87,782,017	77%	\$ 97,096,549	60%

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

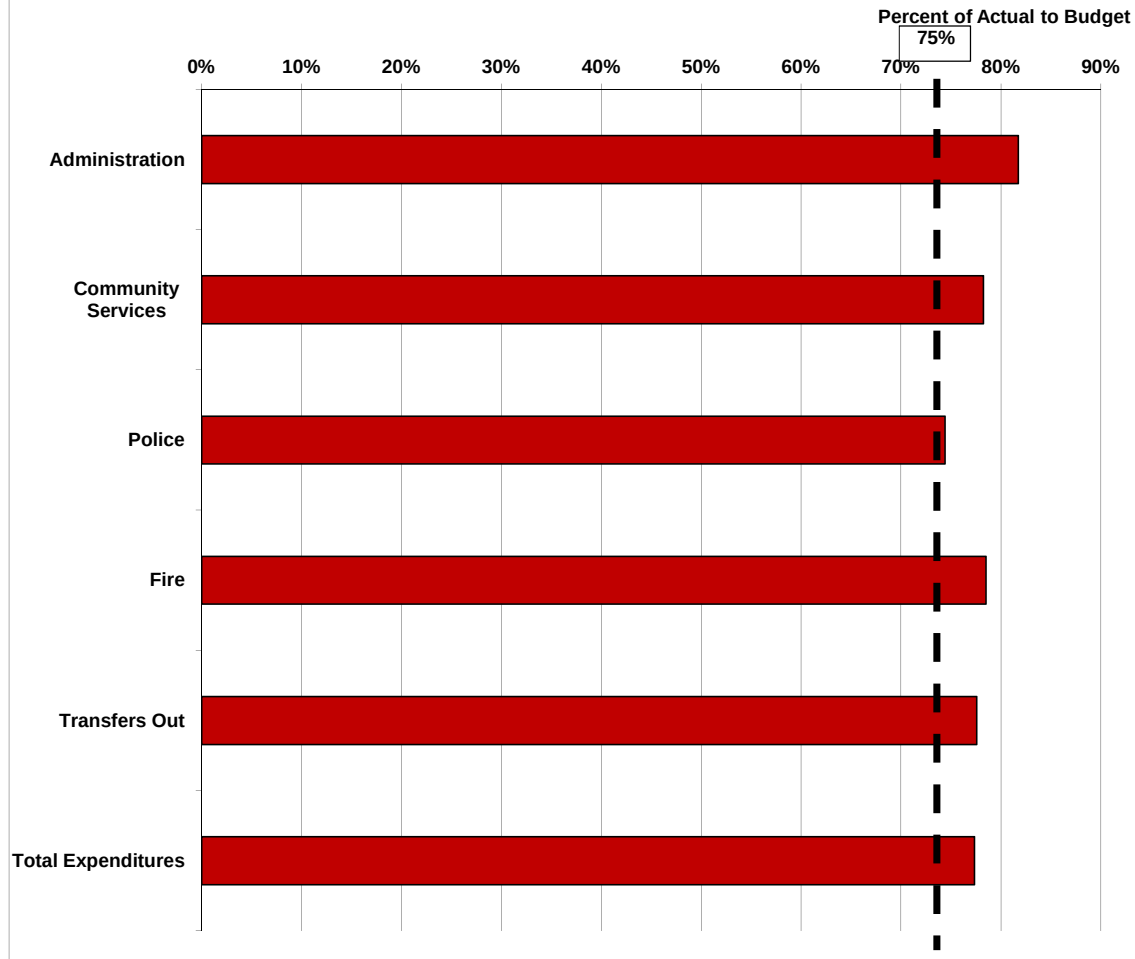


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$10,566,000	\$ 6,359,687	60%	\$ 5,547,216	15%
Sales Tax	9,588,502	7,955,114	83%	7,333,536	8%
Franchise Tax	1,981,796	886,218	45%	836,001	6%
Hotel Tax	2,827,050	1,722,424	61%	1,753,096	-2%
Licenses	210,621	190,815	91%	183,985	4%
Other Agencies	319,875	427,186	134%	395,450	8%
Service Charges	9,536,644	6,834,389	72%	6,512,011	5%
Interest/Other	1,042,760	2,363,939	227%	1,129,996	109%
Transfers In	1,682,103	1,236,539	74%	967,460	28%
TOTAL REVENUES	\$37,755,351	\$27,976,312	74%	\$ 24,658,751	13%



Morgan Hill YTD General Fund Expenditures

March 31, 2018 - 75% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 7,443,327	\$ 6,082,864	82%	\$ 4,831,109	26%
Community Services	11,050,226	8,647,720	78%	8,046,172	7%
Police	16,585,805	12,338,243	74%	11,388,352	8%
Fire	5,785,389	4,542,134	79%	4,267,316	6%
Transfers Out	1,901,915	1,475,577	78%	1,638,885	-10%
TOTAL EXPENDITURES	\$ 42,766,662	\$ 33,086,538	77%	\$ 30,171,834	10%

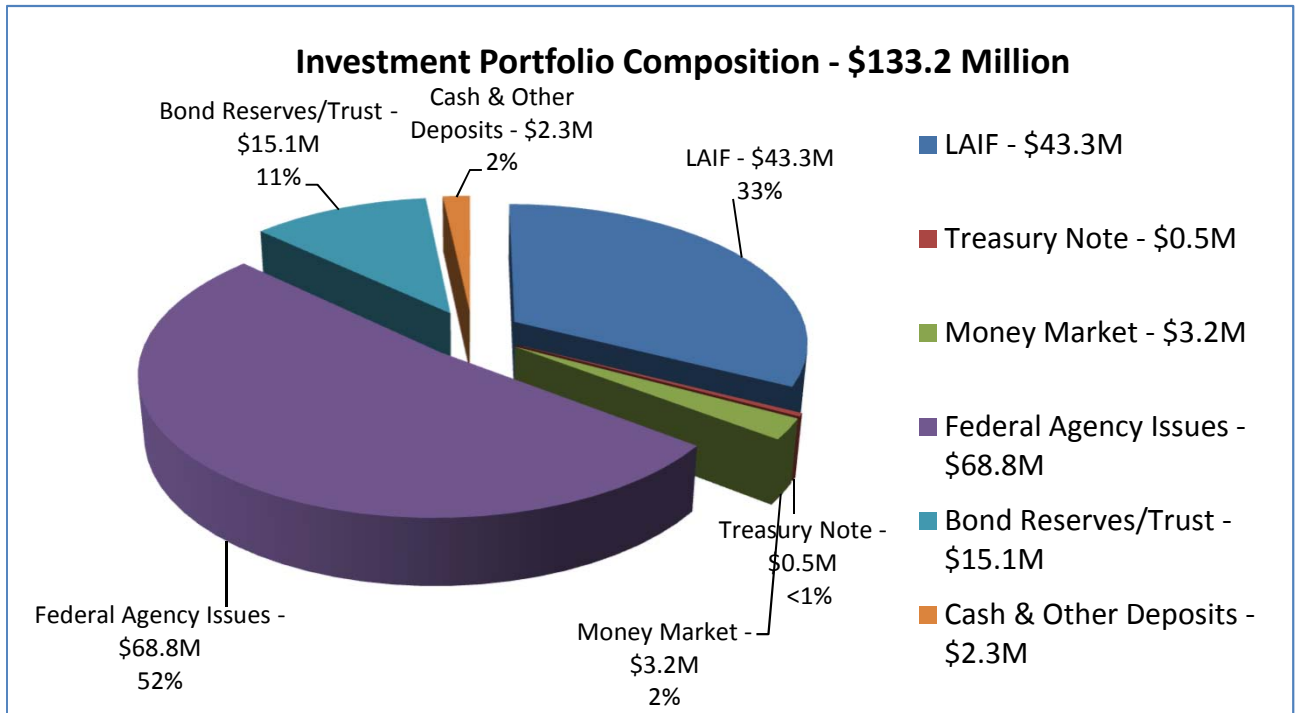


**City of Morgan Hill
Recreation Report - Fiscal Year 2017-18
For the Month and Nine Months Ended March 31, 2018
75% of Year Complete**

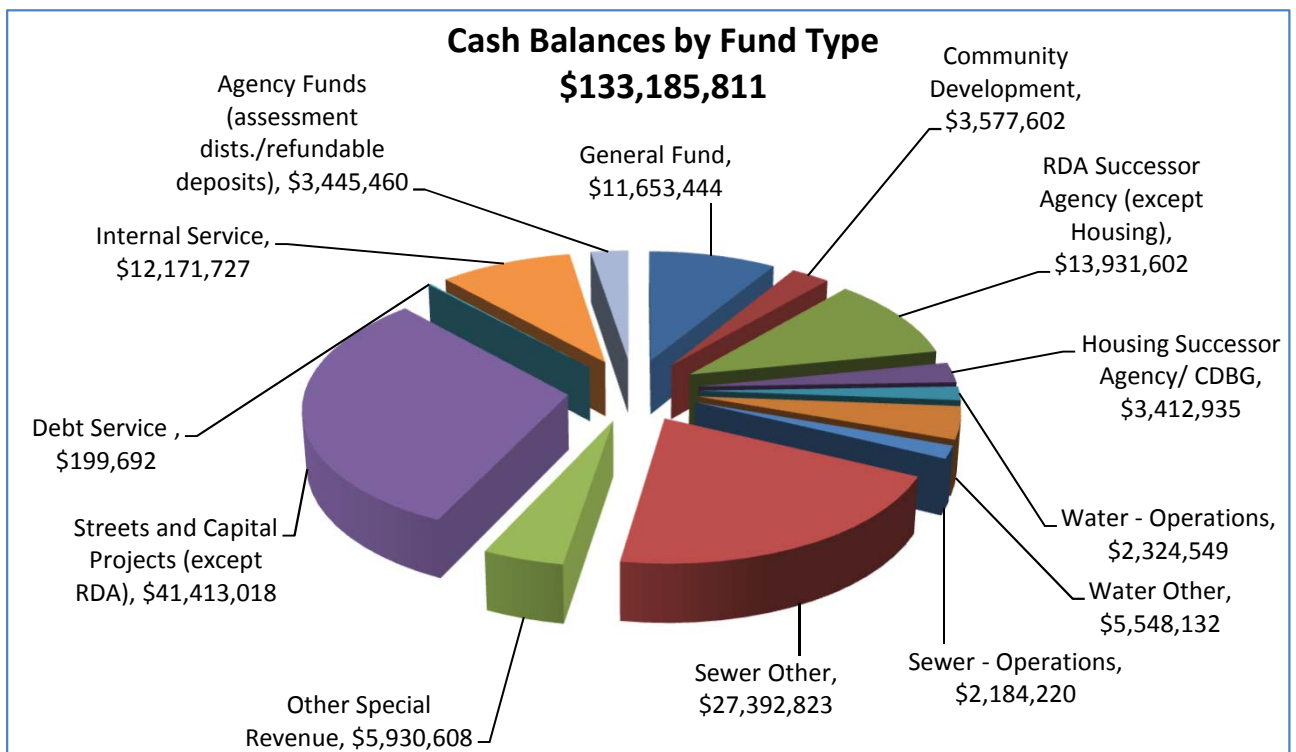
	<u>Budget</u>	<u>March 2018</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,197,036	\$ 496,649	\$ 4,377,697	
Facility Rentals	904,666	83,225	744,425	
Community Services	139,190	45,810	118,078	
Transfers in	75,000	6,250	56,250	
Total Revenues	\$ 7,315,892	\$ 631,934	\$ 5,296,450	72%
Less: Expenditures				
Membership & Program Services	\$ 5,914,430	\$ 753,444	\$ 4,246,678	
Facility Rentals	1,299,185	120,607	975,764	
Community Services	768,671	80,944	523,962	
Total Expenditures	\$ 7,982,287	\$ 954,995	\$ 5,746,404	72%
Net Impact without encumbrances	\$ (666,395)	\$ (323,061)	\$ (449,954)	
Encumbrances	-	-	614,634	
Net Impact with encumbrances	\$ (666,395)	\$ (323,061)	\$ (1,064,588)	

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

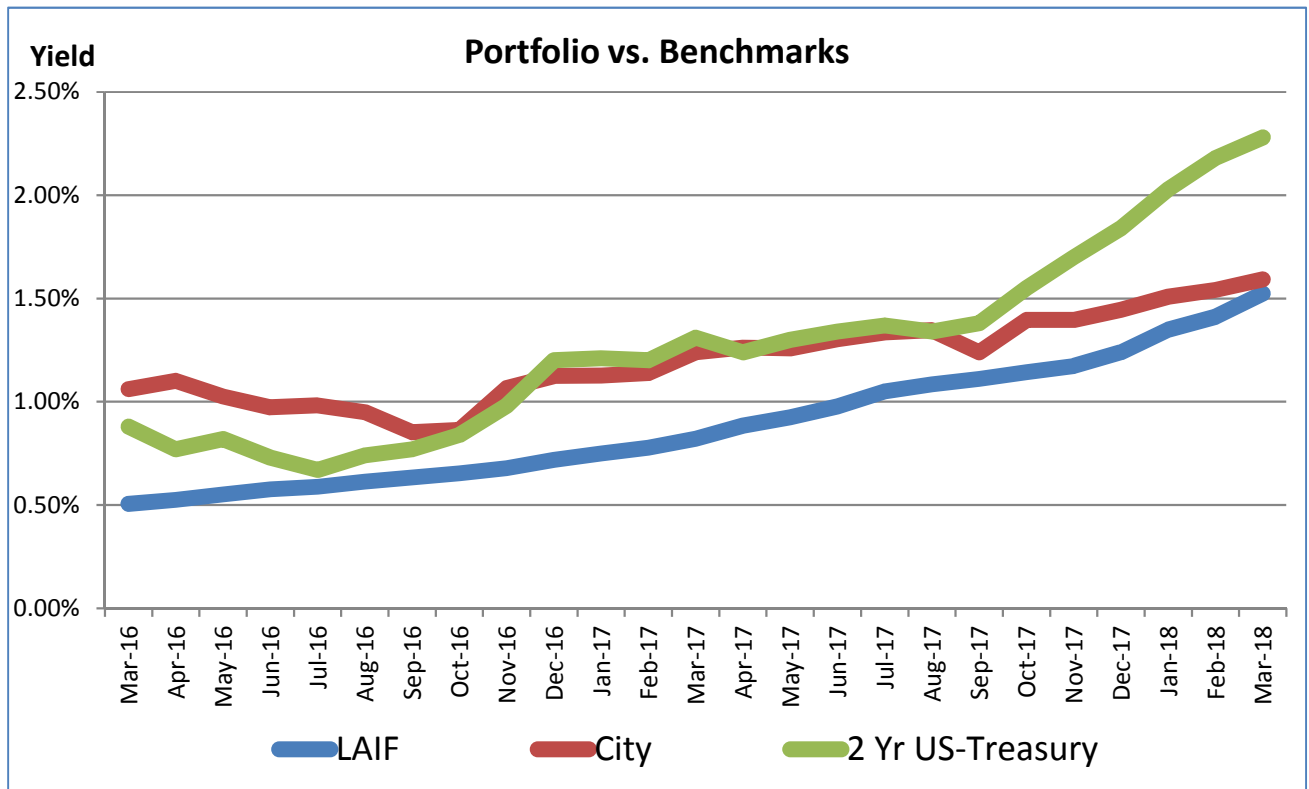
The following are the snapshots of City's investment portfolio as of March 31, 2018. The first chart shows the portfolio composition by investment type:



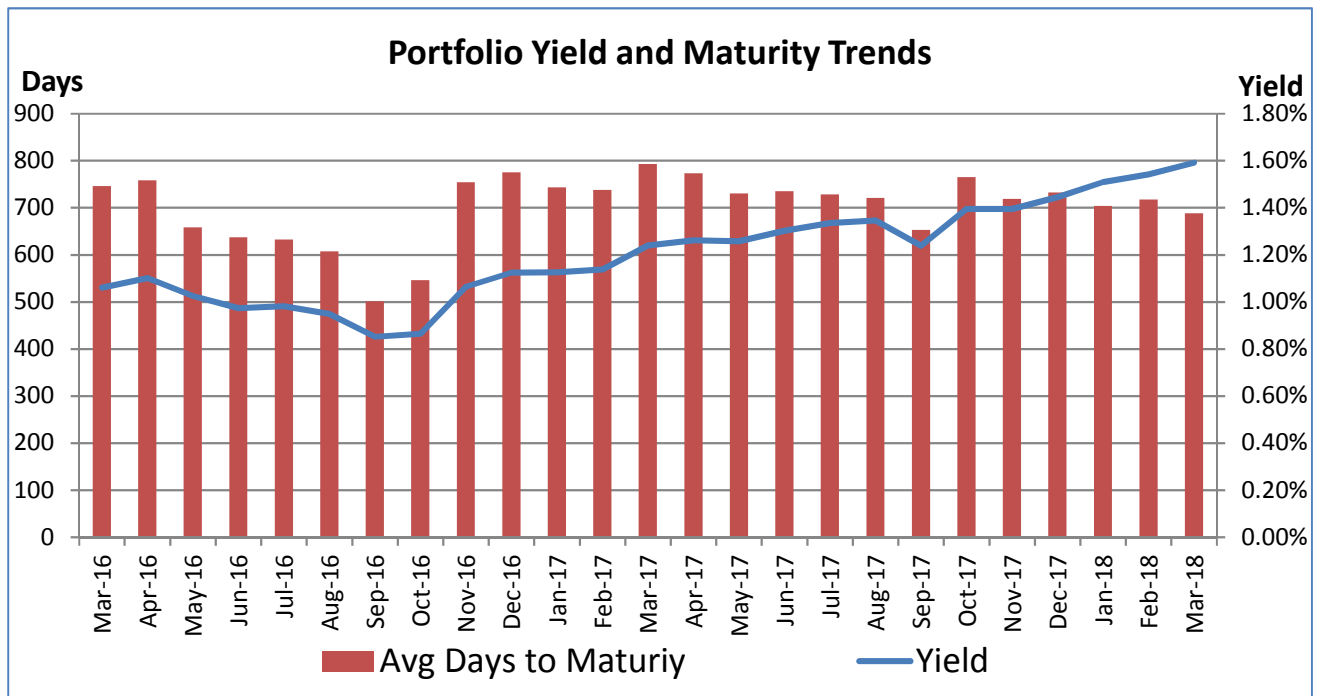
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





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

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 43,318,968	32.53%	\$ 43,212,317	1.52%		
City Managed							
Treasury Note	6/12/2015	500,000	0.38%	500,000	1.06%	3/31/2018	3/31/2018
Fed Home Loan Bank	9/30/2015	1,000,034	0.75%	999,550	0.95%	4/24/2018	4/24/2018
Fed Home Loan Bank	10/19/2015	4,000,000	3.00%	3,919,320	1.70%	4/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	3.00%	3,850,280	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	3.00%	3,856,800	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.50%	1,939,040	1.65%	6/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	3.00%	3,840,560	1.60%	6/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	3.00%	3,822,320	1.60%	4/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	3.00%	3,821,320	1.55%	4/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.50%	1,913,360	1.65%	4/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	3.00%	3,850,520	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.25%	2,892,420	1.65%	4/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	3.00%	3,856,440	1.63%	4/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	3.00%	3,884,600	1.88%	4/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.98%	1,270,516	2.15%	9/29/2018	6/29/2022
Fed Home Loan Bank	10/19/17	3,850,000	2.89%	3,757,061	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/17	4,150,000	3.12%	4,046,541	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	01/30/18	3,000,000	2.25%	2,963,100	2.50%	1/30/2019	1/30/2023
Sub Total/Average		\$ 56,800,034	42.65%	\$ 54,983,748	1.73%		
Money Market		\$ 2,986,579	2.24%	\$ 2,986,579	1.50%		
Total City Managed/Average		\$ 103,105,581	77.41%	\$ 101,182,642	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,628	0.56%	\$ 742,823	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,724	0.56%	739,545	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,965	0.56%	739,853	1.25%	5/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.56%	739,845	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.56%	747,278	1.10%	6/13/2018	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.56%	748,770	1.00%	6/15/2018	6/15/2018
Fed Home Loan Bank	9/21/2016	749,929	0.56%	746,828	1.12%	6/21/2018	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,833	0.56%	738,750	1.29%	6/12/2018	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,869	0.56%	741,683	1.22%	5/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,504	0.56%	732,570	1.03%	7/30/2018	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,962	0.56%	738,810	1.25%	6/30/2018	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,803	0.56%	745,965	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,004,598	0.75%	995,340	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,840	0.75%	993,260	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	748,142	0.56%	742,013	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	743,187	0.56%	736,211	1.39%	6/20/2019	6/20/2019
Money Market		208,394	0.16%	208,394	1.50%		
Sub Total/Average		\$ 12,692,378	9.53%	\$ 12,577,935	1.21%		
Bond Reserve Accounts - Held By Trustees		\$ 13,290,897	9.98%	\$ 13,283,999			
Cash/Deposits		\$ 2,309,551	1.73%	\$ 2,309,551			
PARS Trust		\$ 1,787,404	1.34%	\$ 1,996,229	*Value as of 2/28/18		
GRAND TOTAL/AVERAGE		\$ 133,185,811	100.00%	\$ 131,350,357			

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)



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

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.52%	\$ 36,022,245	27.05%	\$ 35,933,559
2014 Water Rev Bonds - Water Impact	Water Fund	1.52%	522,420	0.39%	521,134
2014 Water Rev Bonds - Water CIP	Water Fund	1.52%	1,088,114	0.82%	1,085,435
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.52%	5,686,188	4.27%	5,672,189
Federal Issues	All Funds Pooled	1.47%	68,784,019	51.65%	66,853,289
US Treasury Notes	All Funds Pooled	1.06%	500,000	0.38%	500,000
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.50%	3,194,973	2.40%	3,194,973
	SUBTOTAL		\$ 115,797,959	86.94%	\$ 113,760,578
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	1.31%	63	0.00%	63
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.31%	80	0.00%	80
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.50%	234,578	0.18%	234,578
US Treasury Notes - Revenue Acct.	Successor Fund	1.33%	6,862,871	5.15%	6,850,621
US Treasury Notes - Reserve Acct.	Successor Fund	0.08%	5,056,795	3.80%	5,062,147
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.31%	570,858	0.43%	570,858
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.31%	565,651	0.42%	565,651
	SUBTOTAL		13,290,897	9.98%	13,283,999
Other Cash/Deposits					
General Checking	All Funds		2,272,439	1.71%	2,272,439
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%	1,135,122 *
PARS - PENSION Trust			800,000	0.60%	861,107 *
	SUBTOTAL		4,096,955	3.08%	4,305,780
Total Cash and Investments			\$ 133,185,811	100.00%	\$ 131,350,357

CASH ACTIVITY SUMMARY
FY 2017-18

Fund Type	07/01/17 Balance	Change in Cash Balance	3/31/2018 Balance
General Fund	\$ 13,850,210	\$ (2,196,766)	\$ 11,653,444
Community Development	4,641,472	(1,063,870)	3,577,602
RDA Successor Agency (except Housing)	12,149,330	1,782,272	13,931,602
Housing Successor Agency/ CDBG	4,732,509	(1,319,574)	3,412,935
Water - Operations	1,512,329	812,220	2,324,549
Water Other	5,507,256	40,876	5,548,132
Sewer - Operations	2,085,815	98,404	2,184,220
Sewer Other	26,927,307	465,516	27,392,823
Other Special Revenue	4,381,840	1,548,768	5,930,608
Streets and Capital Projects (except RDA)	42,727,410	(1,314,391)	41,413,018
Debt Service	256,088	(56,396)	199,692
Internal Service	12,201,454	(29,727)	12,171,727
Agency Funds (assessment dists./refundable deposits)	4,008,713	(563,253)	3,445,460
Total	\$ 134,981,732	\$ (1,795,921)	\$ 133,185,811

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

* Values as of March 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



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Nine Months Ended March 31, 2018
75% 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	\$ 5,924,302	65%	\$ 4,993,103	\$ 931,198	19%
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	169,512	60%	141,135	28,377	20%
Sales Tax	9,151,500	9,226,502	7,711,806	84%	7,105,126	606,680	9%
Public Safety Sales Tax	362,000	362,000	243,308	67%	228,410	14,898	7%
Transient Occupancy Taxes	2,827,050	2,827,050	1,722,424	61%	1,753,096	(30,672)	-2%
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	355,627	74%	280,603	75,025	27%
TOTAL TAXES	24,917,346	25,444,348	17,279,070	68%	15,750,452	1,528,618	10%
LICENSES/PERMITS							
Business License	202,878	202,878	187,532	92%	181,679	5,853	3%
Other Permits	7,743	7,743	3,283	42%	2,305	978	42%
TOTAL LICENSES/PERMITS	210,621	210,621	190,815	91%	183,985	6,830	4%
FINES AND PENALTIES							
Parking Enforcement	12,240	12,240	5,880	48%	6,429	(548)	-9%
Bails & Fines	65,280	65,280	50,254	77%	39,829	10,425	26%
Administrative Citations	-	-	12,900	n/a	700	12,200	1743%
TOTAL FINES AND PENALTIES	77,520	77,520	69,034	89%	46,957	22,077	47%
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	427,186	134%	395,450	31,737	8%
TOTAL OTHER AGENCIES	424,413	337,413	450,424	133%	415,002	35,422	9%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,640	32,640	23,735	73%	39,425	(15,690)	-40%
Business License Application Review	36,633	36,633	27,988	76%	31,742	(3,754)	-12%
Membership Services & Rec Programs	6,023,650	6,197,036	4,377,697	71%	4,185,166	192,532	5%
Facility Rentals	932,986	904,666	744,425	82%	683,517	60,908	9%
Community Services	139,190	139,190	118,078	85%	104,607	13,471	13%
General Administration Overhead	1,323,077	1,323,077	990,216	75%	943,065	47,151	5%
Other Charges Current Services	903,402	903,402	552,250	61%	524,490	27,760	5%
TOTAL CURRENT SERVICES	9,391,578	9,536,644	6,834,389	72%	6,512,011	322,378	5%
OTHER REVENUE							
Use of money/property	309,396	309,396	259,461	84%	216,485	42,976	20%
Other Revenues	151,306	157,306	1,656,580	1053%	566,399	1,090,181	192%
TOTAL OTHER REVENUE	460,702	466,702	1,916,041	411%	782,883	1,133,157	145%
TRANSFERS IN							
One Time Transfer	-	26,595	-	0%	-	-	0%
Public Safety	100,000	100,000	106,000	106%	54,501	51,499	94%
Streets	761,458	761,458	535,000	70%	339,209	195,791	58%
Police Impact	25,000	25,000	18,747	75%	-	18,747	n/a
Sewer Operations	347,025	347,025	260,271	75%	258,750	1,521	1%
Water Operations	347,025	347,025	260,271	75%	258,750	1,521	1%
Park Development	75,000	75,000	56,250	75%	56,250	-	n/a
TOTAL TRANSFERS IN	1,655,508	1,682,103	1,236,539	74%	967,460	269,079	28%
TOTAL GENERAL FUND	37,137,688	37,755,351	27,976,312	74%	24,658,751	3,317,562	13%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	536,443	70%	504,564	31,880	6%
Interest / Other Revenue/Other Charges	72	72	753	1046%	776	(23)	-3%
202 STREET MAINTENANCE	761,530	761,530	537,196	71%	505,340	31,856	6%

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Nine Months Ended March 31, 2018
75% 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	202	51%	267	(65)	-24%
Police Grant/SLEF/JAG	100,000	100,000	89,416	89%	79,324	10,093	13%
205 PUBLIC SAFETY TRUST	100,395	100,395	89,619	89%	79,591	10,028	13%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,937,862	1,937,862	1,788,596	92%	1,804,014	(15,418)	-1%
Planning Fees	1,131,051	1,131,051	835,121	74%	637,076	198,045	31%
Engineering Fees	601,640	601,640	667,742	111%	939,423	(271,681)	-29%
Other Revenue/Current Charges	9,417	9,417	34,075	362%	237,559	(203,483)	-86%
206 COMMUNITY DEVELOPMENT	3,679,970	3,679,970	3,325,535	90%	3,618,071	(292,537)	-8%
207 LONG RANGE PLANNING	706,212	706,212	457,008	65%	576,352	(119,344)	-21%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	417	120,417	1,771	1%	7,814	(6,043)	-77%
215 and 216 HCD BLOCK GRANT	417	120,417	1,771	1%	7,814	(6,043)	-77%
225 ASSET SEIZURE	250	250	1,197	479%	66,437	(65,241)	-98%
229 LIGHTING AND LANDSCAPE	187,321	187,321	95,393	51%	99,680	(4,287)	-4%
230 COMMUNITY FACILITIES DISTRICT	43,340	43,340	23,505	54%	21,437	2,068	10%
232 ENVIRONMENTAL PROGRAMS	382,164	382,164	367,795	96%	290,092	77,703	27%
234 MOBILE HOME PARK RENT STAB.	3,931	3,931	2,832	72%	3,832	(1,001)	-26%
235 SENIOR HOUSING	1,633	1,633	1,792	110%	1,356	436	32%
236 HOUSING MITIGATION	842,443	842,443	1,998,457	237%	2,532,185	(533,728)	-21%
240 EMPLOYEE ASSISTANCE	30,966	30,966	21,724	70%	20,497	1,227	6%
247 ENVIRONMENT REMEDIATION	1,104	1,104	1,139	103%	917	222	24%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,131,889	7,131,889	8,810,850	124%	9,077,975	(267,125)	-3%
255 HOUSING SUCCESSOR AGENCY	1,285,374	1,285,374	320,460	25%	436,934	(116,473)	-27%
TOTAL SPECIAL REVENUE FUNDS	15,158,940	15,278,940	16,056,272	105%	17,338,509	(1,282,237)	-7%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,439,640	3,693,620	1,959,681	53%	1,966,832	(7,151)	0%
302 PARK MAINTENANCE	888,026	905,061	1,192,562	132%	771,849	420,713	55%
303 LOCAL DRAINAGE	1,822,884	1,822,884	1,950,231	107%	1,178,376	771,854	66%
304 LOCAL DRAINAGE/NON AB1600	70,894	70,894	149,944	212%	155,324	(5,380)	-3%
306 AGRICULTURE & OPEN SPACE PRESERVATION	1,539,970	1,539,970	742,831	48%	180,116	562,715	312%
308 STREET CIP	1,357,235	3,308,862	2,241,254	68%	1,134,513	1,106,741	98%
309 TRAFFIC IMPACT	1,348,287	1,348,287	469,489	35%	495,338	(25,849)	-5%
311 POLICE IMPACT	256,218	256,218	218,622	85%	83,967	134,655	160%
313 FIRE IMPACT	94,577	94,577	66,081	70%	95,999	(29,918)	-31%
346 PUBLIC FACILITIES NON-AB1600	617,956	617,956	77,253	13%	730,163	(652,910)	-89%
347 PUBLIC FACILITIES IMPACT	171,217	171,217	148,870	87%	53,740	95,130	177%
348 LIBRARY	1,250,509	1,250,509	505,701	40%	171,365	334,336	195%
350 UNDERGROUNDING	53,236	53,236	201,332	378%	895,661	(694,329)	-78%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	544,341	544,341	94,076	17%	798,150	(704,074)	-88%
360 COMMUNITY/REC IMPACT FUND	985,274	985,274	838,440	85%	132,502	705,938	533%
TOTAL CAPITAL PROJECTS FUNDS	12,440,264	16,662,906	10,856,365	65%	8,843,895	2,012,470	23%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	297,408	297,408	221,469	74%	224,792	(3,323)	-1%
441 POLICE FACILITY BOND	385,373	385,373	228,876	59%	187,949	40,927	22%
TOTAL DEBT SERVICE FUNDS	682,781	682,781	450,345	66%	412,741	37,604	9%

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Nine Months Ended March 31, 2018
75% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,602,695	10,102,695	7,284,299	72%	6,996,806	287,493	4%
Interest Income/Transfers	48,461	48,461	17,833	37%	13,297	4,535	34%
Other Revenue/Current Charges	183,354	183,354	238,554	130%	333,454	(94,899)	-28%
640 SEWER OPERATION	10,834,510	10,334,510	7,540,685	73%	7,343,557	197,128	3%
641 SEWER EXPANSION							
Interest Income	59,474	59,474	119,076	200%	89,405	29,671	33%
Development Impact Fee	4,727,753	4,727,753	3,003,137	64%	1,167,666	1,835,471	157%
Transfers/Other	-	-	-	0%	600	(600)	-100%
641 SEWER EXPANSION	4,787,227	4,787,227	3,122,213	65%	1,257,671	1,864,542	148%
642 SEWER RATE STABILIZATION	15,702	15,702	327,525	2086%	51,709	275,816	533%
643 SEWER-CAPITAL PROJECT	2,424,509	2,424,509	1,856,670	77%	2,019,870	(163,200)	-8%
TOTAL SEWER FUNDS	18,061,948	17,561,948	12,847,093	73%	10,672,807	2,174,286	20%
650 WATER OPERATION							
Water Sales	11,201,856	11,401,856	8,556,408	75%	7,010,245	1,546,164	22%
Meter Install & Service	120,575	120,575	233,628	194%	132,613	101,015	76%
Transfers-In / Interest Income	424,507	424,507	327,879	77%	310,576	17,303	6%
Other Revenue/Current Charges	475,784	475,784	572,159	120%	614,833	(42,674)	-7%
650 WATER OPERATION	12,222,722	12,422,722	9,690,074	78%	8,068,266	1,621,808	20%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	1,944	1,944	29,153	1500%	22,089	7,064	32%
Development Impact Fee	1,196,984	1,196,984	840,793	70%	366,466	474,327	129%
651 WATER EXPANSION	1,198,928	1,198,928	869,946	73%	388,555	481,391	124%
652 Water Rate Stabilization	505,618	505,618	380,573	75%	376,194	4,379	1%
653 Water Capital Project	1,351,992	1,351,992	1,022,003	76%	725,267	296,736	41%
TOTAL WATER FUNDS	15,279,260	15,479,260	11,962,596	77%	9,558,282	2,404,313	25%
TOTAL ENTERPRISE FUNDS	33,341,208	33,041,208	24,809,689	75%	20,231,089	4,578,599	23%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,812	1,592,812	1,205,352	76%	1,209,344	(3,992)	0%
740 BUILDING MAINTENANCE	3,066,615	3,149,985	2,331,595	74%	2,312,604	18,991	1%
741 BUILDING REPLACEMENT	487,008	487,008	371,147	76%	354,706	16,441	5%
745 CIP ADMINISTRATION	1,869,109	1,869,109	1,019,578	55%	1,020,730	(1,152)	0%
760 UNEMPLOYMENT INSURANCE	1,094	1,094	1,330	122%	1,060	270	26%
770 WORKERS COMPENSATION	763,390	763,390	781,423	102%	593,355	188,068	32%
790 EQUIPMENT REPLACEMENT	974,418	974,418	748,590	77%	791,734	(43,144)	-5%
791 EMPLOYEE BENEFITS	624,676	624,676	460,343	74%	1,068,911	(608,568)	-57%
793 CORPORATION YARD COMMISSION	-	-	1,850	0%	547	1,302	238%
795 GENERAL LIABILITY INSURANCE	941,342	941,342	711,826	76%	644,394	67,432	10%
TOTAL INTERNAL SERVICE FUNDS	10,320,464	10,403,834	7,633,034	73%	7,997,385	(364,351)	-5%
TOTAL FOR ALL FUNDS	\$ 109,081,345	\$ 113,825,020	\$ 87,782,017	77%	\$ 79,482,371	\$ 8,299,646	10%

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Nine Months Ended March 31, 2018
 75% 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	\$ 76,288	\$ 401,865	\$ 262,855	\$ 21,500	\$ 284,355	71%	\$ 250,000
	CITY ATTORNEY	61,454	836,813	549,656	121,328	670,984	80%	500,000
	CITY MANAGER/ATTORNEY LOAN	-	1,300,000	1,300,000	-	1,300,000	100%	830,000
	CITY MANAGER	125,872	1,901,979	854,249	668,515	1,522,764	80%	640,000
	HUMAN RESOURCES	53,013	757,742	518,228	8,430	526,658	70%	500,000
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	61,256	601,195	441,300	11,200	452,500	75%	420,000
	Elections	3,174	30,669	68,178	-	68,178	222%	130,000
	COUNCIL SVCS & RECORDS MGMT	64,429	631,864	509,479	11,200	520,679	82%	550,000
	FINANCE	160,633	1,613,065	1,217,317	40,107	1,257,424	78%	1,240,000
	TOTAL ADMINISTRATION	541,689	7,443,327	5,211,784	871,080	6,082,864	82%	4,540,000
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	753,444	5,914,430	4,246,678	586,433	4,833,112	82%	4,020,000
	Recreation Facility Rentals	120,607	1,299,185	975,764	-	975,764	75%	940,000
	Community Services	80,944	768,671	523,962	28,201	552,163	72%	490,000
	Solid Waste Management	19,347	277,104	141,758	-	141,758	51%	130,000
	Street Maintenance	181,561	2,225,954	1,440,963	270,396	1,711,359	77%	1,400,000
	Downtown Maintenance	21,789	296,241	196,616	72,422	269,038	91%	120,000
	Cable Television	2,114	49,443	14,850	-	14,850	30%	20,000
	COMMUNITY SERVICES	1,179,806	10,831,028	7,540,591	957,452	8,498,043	78%	7,160,000
	CODE COMPLIANCE	13,585	141,628	92,666	-	92,666	65%	90,000
	CONGESTION MANAGEMENT	1,815	77,570	57,011	-	57,011	73%	60,000
	TOTAL COMMUNITY SERVICES	1,195,207	11,050,226	7,690,267	957,452	8,647,720	78%	7,310,000
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	98,722	1,185,166	851,865	21,812	873,677	74%	830,000
	Field Operations	826,384	8,618,921	5,803,238	840,165	6,643,402	77%	5,660,000
	Support Services	201,575	2,089,756	1,543,009	3,536	1,546,545	74%	1,540,000
	Emergency Services/Haz Mat	20,055	217,012	138,726	4,166	142,891	66%	140,000
	Special Operations	205,299	2,779,972	1,942,196	-	1,942,196	70%	1,990,000
	Dispatch Services	168,200	1,694,978	1,189,532	-	1,189,532	70%	1,160,000
	POLICE	1,520,236	16,585,805	11,468,565	869,679	12,338,243	74%	11,330,000
	FIRE	625,217	5,785,389	4,539,525	2,609	4,542,134	79%	4,240,000
	TOTAL PUBLIC SAFETY	2,145,453	22,371,194	16,008,090	872,288	16,880,377	75%	15,570,000
IV. TRANSFERS								
	Other	145,443	1,901,915	1,475,577	-	1,475,577	78%	1,630,000
	TOTAL TRANSFERS	145,443	1,901,915	1,475,577	-	1,475,577	78%	1,630,000
	TOTAL GENERAL FUND	4,027,792	42,766,662	30,385,718	2,700,820	33,086,538	77%	29,070,000

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Nine Months Ended March 31, 2018
75% 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	212,169	763,480	536,571	-	536,571	70%	34%
205	PUBLIC SAFETY/SUPP.LAW	25,000	100,000	106,000	-	106,000	106%	5%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	193,357	2,241,307	1,410,446	372,476	1,782,923	80%	1,47%
	Building	162,111	1,864,823	1,293,648	21,709	1,315,357	71%	1,28%
	Engineering	176,064	1,437,702	999,053	71,368	1,070,421	74%	75%
206	COMMUNITY DEVELOPMENT FUND	531,531	5,543,832	3,703,147	465,554	4,168,701	75%	3,52%
207	LONG RANGE PLANNING	68,593	988,643	450,382	208,732	659,114	67%	40%
215/216	CDBG	40,219	165,331	181,500	23,476	204,976	124%	2%
225	ASSET SEIZURE	-	26,595	-	-	-	0%	
229	LIGHTING AND LANDSCAPE	15,798	205,430	126,780	46,088	172,868	84%	11%
230	COMMUNITY FACILITIES DISTRICT	2,483	45,100	14,168	1,356	15,524	34%	1%
232	ENVIRONMENT PROGRAMS	33,276	345,422	296,841	19,900	316,741	92%	46%
234	MOBILE HOME PARK	71	880	639	-	639	73%	
236	HOUSING MITIGATION	57,163	1,320,091	464,134	168,309	632,444	48%	2,91%
240	EMPLOYEE ASSISTANCE	7,254	41,247	22,659	-	22,659	55%	2%
250	COMH-SUCCESSOR AGENCY-MHRDA	1,877,633	7,178,310	7,025,962	23,890	7,049,852	98%	8,55%
255	HOUSING SUCCESSOR AGENCY	44,065	1,945,760	1,480,741	150,000	1,630,741	84%	68%
TOTAL SPECIAL REVENUE FUNDS		2,915,255	18,670,121	14,409,523	1,107,305	15,516,828	83%	17,11%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	98,608	9,252,699	3,775,591	660,693	4,436,284	48%	86%
302	PARK MAINTENANCE	99,964	2,688,257	2,221,434	263,175	2,484,608	92%	71%
303	LOCAL DRAINAGE	2,059	47,010	11,736	5,579	17,315	37%	1%
304	LOCAL DRAIN. NON-AB1600	384	189,171	51,711	-	n/a		1%
306	AGRICULTURE & OPEN SPACE PRESERVATION	62,149	2,441,696	93,239	86,451	179,689	7%	81%
308	STREET CIP	912	5,335,964	2,102,415	307,692	2,410,108	45%	11%
309	TRAFFIC IMPACT	332,273	3,913,053	1,920,881	140,076	2,060,958	53%	95%
311	POLICE IMPACT	3,265	237,117	143,738	5,579	149,317	63%	15%
313	FIRE IMPACT	1,188	623,735	3,682	5,579	9,261	1%	
346	PUBLIC FAC.NON AB1600	311	1,020,977	517,903	115,797	633,700	62%	51%
347	PUBLIC FACILITIES IMPACT	1,175	439,481	3,463	5,579	9,042	2%	
348	LIBRARY IMPACT	145,385	3,824,836	363,303	127,979	491,282	13%	31%
350	UNDERGROUNDING	45	55,539	405	-	405	1%	70%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	449	1,809,032	238,085	78,189	316,273	17%	
360	COMM/REC CENTER IMPACT	16,404	309,400	34,379	259,192	293,571	0%	
TOTAL CAPITAL PROJECTS FUNDS		764,571	32,187,966	11,481,964	2,061,559	13,491,812	42%	5,19%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	97	297,423	210,065	-	210,065	71%	21%
441	POLICE FACILITY BOND DEBT	198	383,610	296,194	-	296,194	77%	28%
TOTAL DEBT SERVICE FUNDS		295	681,033	506,259	-	506,259	74%	50%

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Nine Months Ended March 31, 2018
 75% 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	851,295	10,846,377	7,370,142	307,639	7,677,781	71%	7,251
641	SEWER CAPITAL EXPANSION	151,935	19,130,592	1,127,862	656,535	1,784,397	9%	1,241
642	SEWER RATE STABILIZATION	325	3,900	2,925	-	2,925	75%	1,241
643	SEWER-CAPITAL PROJECTS	385,743	8,453,383	3,040,845	339,704	3,380,549	40%	3,191
TOTAL SEWER FUND(S)		1,389,299	38,434,252	11,541,774	1,303,878	12,845,652	33%	11,701
WATER								
	Water Operations	1,018,496	11,005,629	7,541,516	728,363	8,269,879	75%	6,591
	Utility Billing	74,441	836,258	553,199	27,481	580,679	69%	521
	Water Conservation	5,385	212,502	60,450	85,133	145,582	69%	81
650	WATER OPERATIONS	1,098,322	12,054,389	8,155,164	840,976	8,996,140	75%	7,201
651	WATER CAPITAL EXPANSION	39,634	3,405,848	334,342	1,840,584	2,174,926	64%	1,341
652	WATER RATE STABILIZATION	51	662	459	-	459	69%	1,341
653	WATER-CAPITAL PROJECTS	300,971	2,991,557	1,776,474	342,960	2,119,434	71%	3,201
TOTAL WATER FUND(S)		1,438,979	18,452,455	10,266,439	3,024,520	13,290,959	72%	11,751
TOTAL ENTERPRISE FUNDS		2,828,278	56,886,707	21,808,213	4,328,398	26,136,611	46%	23,451
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	149,181	1,796,307	1,281,669	27,802	1,309,471	73%	951
740	BUILDING MAINTENANCE	305,246	3,328,743	2,272,615	167,307	2,439,922	73%	2,211
741	BUILDING REPLACEMENT	4,361	524,821	312,375	51,676	364,052	69%	561
745	CIP ADMINISTRATION	145,264	1,872,190	1,040,619	12,228	1,052,847	56%	1,021
760	UNEMPLOYMENT	-	20,400	3,728	-	3,728	18%	1
770	WORKERS COMPENSATION	11,405	808,807	903,506	-	903,506	112%	421
790	EQUIPMENT REPLACEMENT	-	1,225,467	648,889	297,378	946,267	77%	1,281
791	EMPLOYEE BENEFITS FUND	11,220	558,538	541,486	-	541,486	97%	451
793	CORP YARD COMMISSION	103	-	7,557	1,903	9,460	0%	1
795	GEN. LIABILITY INSURANCE	98,716	1,059,920	787,763	-	787,763	74%	801
TOTAL INTERNAL SERVICE FUNDS		725,495	11,195,194	7,800,208	558,293	8,358,502	75%	7,751
REPORT TOTAL		\$ 11,261,686	\$ 162,387,682	\$ 86,391,885	\$ 10,756,375	\$ 97,096,549	60%	\$ 83,101

Attachment: March 2018 Financial and Investment Report (1741 : March 2018 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Nine Months Ended March 31, 2018 75% 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	\$ 27,976,312	74%	\$ 30,385,718	71%	\$ (2,409,406)	\$ 2,700,820	\$ 11,720,391	
TOTAL GENERAL FUND		\$ 16,830,617	\$ 27,976,312	74%	\$ 30,385,718	71%	\$ (2,409,406)	\$ 2,700,820	\$ 11,720,391	
202	STREET MAINTENANCE	440	\$ 537,196	71%	\$ 536,571	69%	\$ 625	\$ -	\$ 1,065	
205	PUBLIC SAFETY/SUPPL. LAW	16,702	89,619	89%	106,000	69%	(16,381)	-	321	
206	COMMUNITY DEVELOPMENT	2,646,685	3,325,535	90%	3,703,147	67%	(377,612)	465,554	1,803,519	
207	LONG RANGE PLANNING	1,170,077	457,008	65%	450,382	46%	6,626	208,732	967,971	
215 / 216	CDBG	95,752	1,771	1%	181,500	0%	(179,729)	23,476	(107,453)	
225	ASSET SEIZURE	136,345	1,197	479%	-	0%	1,197	-	137,542	
229	LIGHTING AND LANDSCAPE	160,594	95,393	51%	126,780	62%	(31,387)	46,088	83,119	
230	COMMUNITY FACILITIES DISTRICT	60,276	23,505	54%	14,168	0%	9,337	1,356	68,257	
232	ENVIRONMENTAL PROGRAMS	157,637	367,795	96%	296,841	86%	70,954	19,900	208,691	
234	MOBILE HOME PK RENT STAB.	41,059	2,832	72%	639	73%	2,193	-	43,252	
235	SENIOR HOUSING	220,710	1,792	110%	-	0%	1,792	-	222,502	
236	HOUSING MITIGATION	2,178,174	1,998,457	237%	464,134	35%	1,534,323	168,309	3,544,188	
240	EMPLOYEE ASSISTANCE	36,302	21,724	70%	22,659	55%	(935)	-	35,367	
247	ENVIRONMENT REMEDIATION	139,723	1,139	103%	-	0%	1,139	-	140,862	
250	COMH-SUCCESSOR AGENCY-MHRDA	4,650,153	8,810,850	124%	7,025,962	98%	1,784,888	12,178,134	(5,743,093)	
255	HOUSING SUCCESSOR AGENCY	3,956,700	320,460	25%	1,480,741	76%	(1,160,281)	2,663,275	133,144	
TOTAL SPECIAL REVENUE FUNDS		\$ 15,667,329	\$ 16,056,272	105%	\$ 14,409,523	77%	\$ 1,646,749	\$ 15,774,824	\$ 1,539,254	
301	PARK DEV. IMPACT FUND	4,850,439	\$ 1,959,681	53%	\$ 3,775,591	41%	(1,815,910)	\$ 660,693	\$ 2,373,837	
302	PARK MAINTENANCE	5,431,371	1,192,562	132%	2,221,434	83%	(1,028,872)	263,175	4,139,324	
303	LOCAL DRAINAGE	8,381,669	1,950,231	107%	11,736	25%	1,938,494	5,579	10,314,584	
304	LOCAL DRAINAGE/NON-AB1600	1,301,563	149,944	212%	51,711	27%	98,233	-	1,399,796	
306	AGRICULTURE AND OPEN SPACE PRESERV	6,014,381	742,831	48%	93,239	4%	649,592	86,451	6,577,522	
308	STREET CIP	1,819,399	2,241,254	68%	2,102,415	39%	138,839	307,692	1,650,545	
309	TRAFFIC IMPACT FUND	4,539,601	469,489	35%	1,920,881	49%	(1,451,392)	140,076	2,948,133	
311	POLICE IMPACT FUND	(778,194)	218,622	85%	143,738	61%	74,884	5,579	(708,889)	
313	FIRE IMPACT FUND	3,818,916	66,081	70%	3,682	1%	62,400	5,579	3,875,737	
346	PUBLIC FACILITIES NON-AB1600	1,117,552	77,253	13%	517,903	51%	(440,651)	5,579	671,322	
347	PUBLIC FACILITIES IMPACT FUND	343,009	148,870	87%	3,463	1%	145,408	127,979	360,437	
348	LIBRARY IMPACT FUND	2,103,639	505,701	40%	363,303	9%	142,398	-	2,246,037	
350	UNDERGROUNDING	510,438	201,332	378%	405	1%	200,927	78,189	633,176	
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,640,864	94,076	17%	238,085	13%	(144,008)	259,192	1,237,664	
360	COMM/REC CTR IMPACT FUND	268,766	838,440	85%	34,379	0%	804,061	-	1,072,827	
TOTAL CAPITAL PROJECT FUNDS		\$ 41,363,413	\$ 10,856,365	65%	\$ 11,481,964	36%	\$ (625,599)	\$ 1,945,762	\$ 38,792,053	
420	CIVIC CENTER DEBT	161,328	\$ 221,469	74%	\$ 210,065	71%	\$ 11,404	\$ 63	\$ 172,669	
441	POLICE FACILITY BOND DEBT	93,903	228,876	59%	296,194	77%	(67,318)	80	26,505	
TOTAL DEBT SERVICE FUNDS		\$ 255,231	\$ 450,345	66%	\$ 506,259	74%	\$ (55,914)	\$ 144	\$ 199,174	

Fund No.	Fund	 City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Nine Months Ended March 31, 2018 75% of Year Complete									
		Fund Balance 06-30-17		Revenues		Expenses		Year to-Date Deficit or Carryover		Ending Fund Balance	
		YTD Actual	% of Budget	YTD Actual	% of Budget	YTD Actual	% of Budget			Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,997,397	73%	\$ 7,540,685	73%	\$ 7,370,142	68%	\$ 170,544	307,639	2,860,301	
641	SEWER IMPACT FUND*	13,739,517	65%	3,122,213	65%	1,127,862	6%	1,994,351	656,535	15,077,333	
642	SEWER RATE STABILIZATION	2,538,125	2086%	327,525	2086%	2,925	75%	324,600	-	2,862,725	
643	SEWER-CAPITAL PROJECTS	8,964,265	77%	1,856,670	77%	3,040,845	36%	(1,184,175)	339,704	7,440,386	
650	WATER OPERATIONS	1,329,683	78%	9,690,074	78%	8,155,164	68%	1,534,910	840,976	2,023,617	
651	WATER IMPACT FUND*	3,153,845	73%	869,946	73%	334,342	10%	535,604	1,840,584	1,848,865	
652	WATER RATE STABILIZATION	539,303	75%	380,573	75%	459	69%	380,114	-	919,416	
653	WATER -CAPITAL PROJECT	613,123	76%	1,022,003	76%	1,776,474	59%	(754,471)	342,960	(484,308)	
TOTAL ENTERPRISE FUNDS		\$ 33,875,258	75%	\$ 24,809,689	75%	\$ 21,808,213	38%	\$ 3,001,476	\$ 4,328,398	\$ 32,548,335	

730	INFORMATION SERVICES	\$ 612,170	76%	\$ 1,205,352	76%	\$ 1,281,669	71%	\$ (76,317)	27,802	\$ 508,051	
740	BUILDING MAINTENANCE	126,409	74%	2,331,595	74%	2,272,615	68%	58,980	167,307	18,083	
741	BUILDING REPLACEMENT	2,063,612	76%	371,147	76%	312,375	60%	58,772	51,676	2,070,707	
745	CIP ENGINEERING	32,485	55%	1,019,578	55%	1,040,619	56%	(21,041)	12,228	(784)	
760	UNEMPLOYMENT	164,584	122%	1,330	122%	3,728	18%	(2,398)	-	162,186	
770	WORKERS COMPENSATION	1,647,992	102%	781,423	102%	903,506	112%	(122,084)	30,000	1,495,908	
790	EQUIPMENT REPLACEMENT	4,110,874	77%	748,590	77%	648,889	53%	99,701	297,378	3,913,197	
791	EMPLOYEE BENEFITS FUNDS	584,228	74%	480,343	74%	541,486	97%	(81,143)	-	503,085	
793	CORP YARD COMMISSION	-	0%	1,850	0%	7,557	0%	(5,708)	1,903	(7,611)	
795	GEN. LIABILITY INSURANCE	1,106,814	76%	711,826	76%	787,763	74%	(75,937)	-	1,030,877	
TOTAL INTERNAL SERVICE FUNDS		\$ 10,449,167	73%	\$ 7,633,034	73%	\$ 7,800,208	70%	\$ (167,174)	\$ 588,293	\$ 9,693,700	

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,830,617	\$ 27,976,312	74%	\$ 30,385,718	71%	\$ (2,409,406)	\$ 2,700,820	\$ 11,720,391
SPECIAL REVENUE GROUP	15,667,329	16,056,272	105%	14,409,523	77%	1,646,749	15,774,824	1,539,254
DEBT SERVICE GROUP	255,231	450,345	66%	506,259	74%	(55,914)	144	199,174
CAPITAL PROJECTS GROUP	41,363,413	10,856,365	65%	11,481,964	36%	(625,599)	1,945,762	38,792,053
ENTERPRISE GROUP	33,875,258	24,809,689	75%	21,808,213	38%	3,001,476	4,328,398	32,548,335
INTERNAL SERVICE GROUP	10,449,167	7,633,034	73%	7,800,208	70%	(167,174)	588,293	9,693,700
TOTAL ALL GROUPS	\$ 118,441,015	\$ 87,782,017	77%	\$ 86,391,885	53%	\$ 1,390,132	\$ 25,338,241	\$ 94,492,907

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: May 2, 2018

PREPARED BY: Monica Delgado, Budget Manager
APPROVED BY: City Manager

INTRODUCE RECOMMENDED FISCAL YEAR 2018-19 AND 2019-20 OPERATING BUDGET AND FISCAL YEAR 2018-19 THROUGH 2023-24 CAPITAL IMPROVEMENT PROGRAM BUDGET

RECOMMENDATION(S)

Receive Budget Presentation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Cultural Heritage
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications
Financial Stewardship
Infrastructure
Regional Initiatives
Telecommunications

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Public Safety Master Plan
Sewer System Master Plan

REPORT NARRATIVE:

On Friday, April 27th, the Recommended FY 2018-19 and FY 2019-20 Operating Budget and FY 2018-19 through FY 2023-24 Capital Improvement Program Budget (CIP) were distributed to the Council and made available for public review. The recommended budget will maintain the high quality of services and facilities the community values. These documents are the team's commitment to carrying out a financial plan which aligns resources with service level delivery recommendations that are consistent with the City Council's goals and priorities, while adhering to the sustainable budget principles.

The total recommended budget for FY 2018-19 and 2019-20 is \$157.0 million and \$135.1 million, respectively. Excluding the City's FY 2018-19 CIP budget of \$50.0 million, the total recommended operating budget is \$107.0 million for FY 2018-19. Excluding the City's FY 2019-20 CIP budget of \$30.5 million, the total recommended operating budget is \$104.6 million for FY 2019-20. The CIP includes all projects for the two-year budget cycle, as well as anticipated projects over the subsequent four years.

Next Steps

The next steps in the budget review and approval process include:

Friday, May 18, 2018
City Council Budget Workshop

Wednesday, June 6, 2018
Operating and CIP Budgets Public Hearing and City Council Budget Adoption

COMMUNITY ENGAGEMENT: Inform

Community engagement will occur through the City Council Budget Workshop and the Public Hearing referenced above. In addition, staff will inform the community about the budget through the City's existing online and social media marketing channels with the opportunity to provide comments.

ALTERNATIVE ACTIONS:

N/A

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Parks and Recreation Commission reviewed the CIP at its April 17, 2018 meeting. The Planning Commission will review the CIP at its May 8, 2018 meeting.

FISCAL AND RESOURCE IMPACT:

The City's recommended FY 2018-19 and 2019-20 Operating and CIP Budgets total \$157.0 million and \$135.1 million, respectively, while the CIP budget totals \$151.5 million over the six-year period. For FY 2018-19, personnel are recommended to increase from 195.0 FTEs to 196.0 FTEs to assist in advancing the Council's priorities.

CEQA (California Environmental Quality Act):

Not a Project: The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 2, 2018

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

HOUSING – MEETING THE CALIFORNIA HOUSING ACCOUNTABILITY ACT REQUIREMENTS AND MORGAN HILL’S REGIONAL HOUSING NEED ALLOCATIONS (RHNA)

RECOMMENDATION(S)

1. Receive KMA Report, “Strategy for Increasing the Supply of Affordable Housing”;
2. Discuss menu of options and the implications of modifications to the Residential Development Control System (RDCS) Program; and
3. Direct staff to return with additional information or take steps to prepare recommended actions or preparation of policy documents related to affordable housing accountability and production.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Infrastructure
Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

- 1a. Should the City place increased priority upon the production of affordable housing units at assigned income levels by increasing affordability goals within the existing Residential Development Control System (RDCS) process, and by making modifications to the current RDCS process?
- 1b. Should the City eliminate RDCS multi-year allotment award consideration until housing affordability can be better aligned to meet State targets and the City can develop a comprehensive approach to satisfying the Housing Accountability Act (HAA).
2. Should the City consider adopting an Inclusionary Housing Ordinance?
3. Should the City consider eliminating/reducing impact fee requirements on Accessory Dwelling Units (ADUs)?

- 4a. Should the City consider locking impact fees for 100% affordable projects at RDCS application, at time application is deemed complete or at construction permit application, as well as exempting all affordable rental housing projects, not just 80% and below, from sub-metering requirements?
- 4b. Should the City develop housing product criteria within the proposed Block level masterplans and the Mixed-Use Flex specific plan/form-based code areas along Monterey Road to assist with construction of Moderate Income workforce housing units and above moderate (120%-150% AMI) units to serve the “missing middle”?
5. Should the City consider adopting a commercial linkage fee on new industrial/commercial projects?

REPORT NARRATIVE:

Silicon Valley has long had an affordable housing challenge, but the latest economic boom has created what many have called a “housing crisis” statewide. Market-rate housing is unattainable for those most in need, and it has become increasingly out of reach for the middle class. This impacts renters and homeowners, service workers and tech employees, homeless individuals and families, and everyone in between. Although the City has various programs and policies designed to obtain affordability, the purpose of this report is to receive input from the City Council about additional ideas which could be considered to build a better strategic framework for achieving the City’s RHNA affordable housing goals. These ideas require specific policy direction. Addressing these policy issues may involve certain trade-offs and updates to existing housing programs. Staff has developed an initial menu of considerations which could potentially increase production and is seeking direction from the Council to confirm approach. Based upon Council input, a framework and future action items may require meetings with the development community as well as housing advocates prior to returning to the City Council for consideration. No formal action is requested at this meeting.

Informing the Discussion: Key Facts and Information

This subsection of the staff report provides key facts and information to help inform the discussion and Council’s deliberation. It may prove helpful to start the discussion by providing a reminder of who it is that affordable housing serves. “Affordable housing” is used to describe housing that is affordable to households in specified income categories, typically from the Extremely Low-Income up to the Moderate-Income categories. Additionally, “affordable housing” is deed-restricted to ensure the housing cost is affordable to families in those income categories, usually for 55 years or more. Table 1 below summarizes the various income categories as well as the maximum housing cost that a household can afford to rent or to buy without experiencing a housing burden, defined as spending no more than 30 percent of household income on housing costs. Table 1 also includes a row for Above Moderate-Income to help inform the discussion on middle-income housing and homeownership often referred to as the “missing middle”.

Table 1—Income Categories and Limits and Associated Maximum Housing Costs

Income Categories	1 Person		2 Persons		3 Persons		4 Persons	
	Income Limit	Max Rent/ Max Price	Income Limit	Max Rent/ Max Price	Income Limit	Max Rent/ Max Price	Income Limit	Max Rent/ Max Price
Extremely Low (ELI) 0% up to 30% AMI	\$23,450	\$585/mo/ \$44,400	\$26,800	\$670/mo/ \$60,400	\$30,150	\$755/mo/ \$76,500	\$33,500	\$840/mo/ \$92,624
Very Low (VLI) 30% up to 50% AMI	\$39,100	\$980/mo/ \$119,000	\$44,650	\$1,115/mo/ \$144,500	\$50,250	\$1,255/mo/ \$171,000	\$55,800	\$1,395/mo/ \$197,400
Low (LI) 50% up to 80% AMI	\$55,500	\$1,390/mo/ \$196,400	\$63,400	\$1,585/mo/ \$233,200	\$71,350	\$1,785/mo/ \$271,000	\$79,250	\$1,980/mo/ \$307,800
Median 100% AMI	\$79,300	\$1,980/mo/ \$307,800	\$90,650	\$2,265/mo/ \$361,600	\$101,950	\$2,550/mo/ \$415,500	\$113,300	\$2,835/mo/ \$469,300
Moderate (MOD) 80% up to 120% AMI	\$89,950	\$2,250/mo/ \$358,800	\$102,800	\$2,570/mo/ \$419,300	\$115,650	\$2,890/mo/ \$479,700	\$128,500	\$3,215/mo/ \$541,200
Above Moderate (MOD) 120% up to 150% AMI	\$118,950	\$2,975/mo/ \$495,700	\$135,975	\$3,400/mo/ \$576,000	\$152,925	\$3,825/mo/ \$656,400	\$169,950	\$4,250/mo/ \$736,600

* 2017 HCD State Income Limits

Santa Clara County (SCC) Area Median Income is \$113,300.00

Data from CoreLogic reports the median price of a home in Santa Clara County is up 27.8 percent since February 2017; \$1.08 million. To afford a median priced home, a purchaser needs an annual income of over \$200,000 assuming a 5% down payment (\$49,425) and minimal debt (using Zillow's affordability calculator). The median price of homes currently listed in Morgan Hill is \$949,000 (as of February 28, 2018) while the median price of homes that sold in February 2018 is \$889,100 for a single-family home. Morgan Hill home values have gone up 15.0% over the past year and Zillow predicts they will rise an additional 7.5% within the next year (Zillow data through March 31, 2018). For apartments, the average rent for a 1-bedroom in Morgan Hill is \$1,770/month, \$2,462/month for a 2-bedroom, \$3,048/month for a 3-bedroom and \$4,135/month for a 4-bedroom (Rentometer). However, these rents are averages for all apartments regardless of age, amenities, or location. New apartments rent for higher prices. As a result, there are more households than ever experiencing a housing burden (e.g., spending more than 30 percent of household income on housing costs), more employees being priced out of the City, more commuters forced to commute in heavier traffic, increased traffic congestion, and more at risk and homeless persons in our community.

Workforce housing is a term that is increasingly being used by employers and organizations concerned with housing policy. Workforce housing can refer to any form of housing, including ownership of single or multi-family homes, as well as occupation of rental units. Workforce housing is generally understood to mean affordable housing for households with earned income that is insufficient to secure quality housing in reasonable proximity to the workplace, which is a commonplace situation in today's market. With each passing year the term "Affordable Housing" continues to morph into a movement that has captured the attention of the community and policy makers at large. Advocacy groups continue to educate the community about the need for housing, and the link between housing and other quality of life outcomes, including education, health, transportation, and the environment. Ultimately, families of all incomes need affordable homes - homes that are decent and accessible to jobs, shopping, and other services, and available at a cost that allows them to provide for life's other necessities, such as food, clothing, and medical care.

The Rise of State Housing Policy

During the February 7, 2018 City Council meeting, the Housing Team provided an update to the City's Housing Program and discussed new 2017 housing legislation impacts. Responding to this crisis statewide, lawmakers introduced more than 130 bills during the 2017 legislative session; many focused on constraining local land use authority or eliminating local discretion to increase supply. In the past decade, there has been an average of 80,000 homes a year built in California, which is 100,000 units below what's needed to keep pace with population growth through 2025, according to a California Department of Housing and Community Development Report (see link).

Fifteen bills were approved as part of a "housing package," and were all subsequently signed by Governor Brown. These bills are intended to make significant changes to the local land-use process and spur the production of housing in the State. In total, these bills reinforce the State's position that the housing crisis requires local cities to create their "fair share of" new housing and should be accountable to create that housing at each designated income level. This represents a shift in State policy, with several mechanisms to incentivize as well as punish cities which fail to produce. As an incentive, for the first-time cities will be able to count "newly" constructed accessory dwelling units towards their affordable inventory goals if a survey of studio rentals in the area demonstrates an "affordable rental" level.

The most notable punitive measure is SB 35, which entitles developments with 50% affordable units (10% in cities not performing as well as Morgan Hill) to streamline permitting if the jurisdiction is failing to meet their affordability numbers in any affordability category. HCD makes its SB 35 determinations annually and while it is unlikely that Morgan Hill projects with 10% affordable units could become eligible for streamlined permitting under current law, given the trend in legislation, it is important that the City establish policies to improve housing production. Historically cities have had authority to reject projects for reasons other than objective standards. Other changes include for example, in the past a city could, and many times would, reject a project because it did not fit the feel or character of the community or felt too dense,

especially after considering neighborhood input. Today a developer could have cause to go to court and compel a City to grant a permit if it meets zoning and objective development standards in the code. In addition, State Housing and Community Development (HCD) has been given a greater auditing and reporting role in measuring local cities affordable production success and can report non-performing communities to the Attorney General for compliance actions.

It is unclear how SB 35 would impact the City's RDCS ordinance. We believe it is most likely that a project would have to meet the minimum Residential Development Growth Control System (RDCS) point score, which is based on objective criteria. However, we may not be able to restrict the timing and number of allotments issued to a 50% affordable project that meets the minimum RDCS score.

The 2017 package also recognized that the State's single greatest source of affordable housing financing was historically provided through redevelopment agencies, which the Governor eliminated in 2011, and some source of state funding is necessary to take its place. Although the legislature understands that the lack of funding for affordable housing is the most critical barrier to building units, cities will continue to be held accountable for producing units. The 2018 legislative year continues this trend with no less than 200 proposed housing bills, with many proposing to increase local production, remove barriers to development and increase accountability (Sample List of Proposed Housing Bills 2018 attached.)

Summary of a Menu of Housing Policies and Programs for Consideration

Consistent with Council's request at the February 7 meeting, this report suggests a menu of strategies to increase the supply of affordable housing including actions which would require changes to the City's RDCS. Keyser Marston Associates, Inc. (KMA) was enlisted to assist the Housing Team identify potential ways to increase the supply of affordable housing (see attached KMA Housing Report 2018). Each of these issues seeks to respond to an important housing need. However, it is important to consider them holistically in order to develop a rational, coherent, affordable housing strategy. Trade-offs may need to be made, as satisfying one policy goal may impact the ability to achieve another policy goal.

1. Should the City place increased priority upon the production of affordable housing units by modifying the RDCS process?

Morgan Hill's Housing Program

The City's Residential Development Control System (RDCS) is Morgan Hill's voter-approved growth management system that limits the total amount of new population as well as the pace of new residential construction and encourages high-quality development that enhances residents' quality of life. The RDCS was first established in 1977 and has been extended and modified multiple times by voters since then. It has continued to serve as a tool to respond to diverse housing needs by implementing various policies to improve, preserve, and create safe quality rental and ownership housing in Morgan Hill for residents at all income levels. The City's housing portfolio consists of 14,415 housing units, of which 1,682 are affordable and deed restricted.

Although the City of Morgan Hill has proudly produced a significant amount of affordability per capita, with one in every eight homes being affordable, it remains challenged to respond to the new legislation that requires deeper levels of affordability be produced in accordance with RHNA goals. The following summarizes the City's RHNA production to date, followed by ideas/strategies to increase production and their impact upon Morgan Hill.

Regional Housing Needs Allocations (RHNA)

State law requires each local government in California to adopt a Housing Element as part of its General Plan demonstrating how the community plans to meet the existing and projected housing needs of people at all income levels. The current Housing Element, focused on 2015-2022, has three strategic goals: (1) provide an adequate supply of housing to meet future needs, (2) preserve the existing housing supply, and (3) provide adequate housing for groups with special needs. The Regional Housing Need Allocation (RHNA) is the number of new dwelling units that a city is "assigned" to produce in a Housing Element cycle. It is determined by state HCD, and in collaboration with the Association of Bay Area Governments (ABAG), the numbers are distributed to individual cities based on State population projections and local conditions.

The City of Morgan Hill has historically met its "gross" housing production numbers but has never been able to meet production as a function of affordability level. For the current eight-year cycle (2015-2022), Morgan Hill's RHNA allocation is a total of 928 units, of which 66% of those units are required to be at Moderate Income levels or below. The City has to-date permitted 1,111 total units during the period and met and exceeded requirements for both market rate and low-income units, producing more than double the number of market rate units required. Measure "S" allows a maximum of 215 units annually or 1,720 total to be permitted citywide during the 8-year cycle.

As of the most recent 2017 annual reporting period, the City needs to produce 402 more affordable units to meet the goals for this RHNA cycle. The 402-unit deficit is distributed as Extremely Low (116 units), Very Low (117 units) and Moderate (169 units). However, it is important to note that there are an additional 71 affordable units pending that have been pledged through RDCS to be permitted in this RHNA cycle, including secondary dwelling units, the recently approved UHC 39-unit project, and the traditional BMR rental and ownership pledges. Although these 71 units have not been reported to the State since permits have not yet been issued, if they are constructed, they will be counted in this 2015-2022 cycle. **If all these projects begin construction of their affordable units, this respectively reduces the total number of affordable units needed in this cycle to 331 units. If the City was to attempt to aggressively pursue all strategies to meet its affordable RHNA goals, significant efforts would need to be made to align the RHNA cycle and RDCS Program with the 331 affordable units being awarded in the 2019 and 2020 RDCS competition years to get the required number of units under construction by 2022.** This projection cautiously includes

projects that have been awarded allotments to date. Any consideration of multi-year allotments is not factored in at this time. To receive credit from State HCD in this housing element cycle, units will need to have construction permits issued by 2022. If the 331 are set aside for affordable projects within the existing RDCS structure it would severely limit the availability of market rate allocations with the Measure S, 215 annual permit cap. As further background, the following tables provide the historical and current cycle status of local housing production (building permits) compared to the City's Regional Housing Needs Allocation (RHNA) obligation.

2007-2014 Regional Housing Needs Allocation (RHNA) Numbers

Income Level	RHNA # Allocated to MH	Total Permits Issued	% Met
Very Low Income up to 50% AMI	317	98	31% (-219)
Low Income 51% to 80% AMI	249	100	40% (-149)
Moderate Income 81%-120% AMI	246	43	17% (-203)
Above Moderate Income more than 120%	500	1286	257% (+786)
Total	1312	1527	Achieved 116% of Total Unit Goal and 30% of Affordable Unit Goal

2015-2020 Regional Housing Needs Allocation (RHNA) Numbers

Income Level	RHNA # Allocated to MH	Permits Issued 2015	Permits Issued 2016	Permits Issued 2017	Total Permits Issued to Date	% Met
Very Low Income up to 50% AMI	273	11	29	0	40	15% (-233)
Low Income 51% to 80% AMI	154	114	30	15	159	103% (+5)
Moderate Income 81%-120% AMI	185	5	5	6	16	9% (-169)
Above Moderate Income more than 120%	316	333	201	361	895	283% (+579)

Total	928	463	265	382	1,110	Achieved 120% of Total Unit Goal to Date Achieved 35% of affordable units to date (215 permitted out of 612 required) An additional 402 needed by 2022
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Note: The Housing Element Planning Period for Bay Area jurisdictions runs from January 31, 2015 through January 31, 2023 (8-years).

As the Council is aware, regional job growth generally factors into the regional housing needs allocation (RHNA) and housing experts expect a larger allocation assignment for the future 2024-2031 cycle because of the regional job growth that has occurred since the recession, the State's ongoing Housing crisis and the relationship to housing the workforce. In addition, recent legislation requires the State Department of Housing and Community Development to conduct a one-time "catch up" assessment of the State's housing needs prior to preparation of numbers for 2024-31 housing allocations statewide. Changes implemented by the City now, will have a direct impact upon future RHNA allocations.

Modifying the RDCS Point Structure

The attached KMA report, makes several recommendations related to modification of the point structure of the RDCS to achieve increased affordability outcomes. The RDCS as a tool, may or may not be able to achieve RHNA affordability goals without significant modification. It is clear however, that the City is faced with the need to increase its affordability levels, whether it is through the RDCS points system, via set-a-side categories or a mix of other tools. These formulas would require some evaluation, and any increase in affordability will similarly require an adjustment to the City's affordable housing impact fee.

Also, the City should consider potentially terminating the "on-going project" allocation award policy and eliminating multi-year RDCS allocation awards until the RDCS can be readjusted to better meet affordability goals and the City can determine whether it

needs to increase affordability goals and/or adopt an inclusionary housing ordinance. As it is, any recommendations will need to navigate projects that are considered “on-going” by policy, which are market rate and not affordable.

Modify the RDCS Program to Permit the Development of Targeted 100% Affordable Units, exempting them from the Annual Building Permit Cap – Voter Initiative Required

Like the Downtown residential exemption, the City could consider eliminating 100% affordable projects from the RDCS annual allocation cap of 215 units. This would require Measure S to return to the voters with an amendment. As affordable projects take significant amounts of time to assemble financing and approvals, this would allow the units to be constructed without timing constraints. In addition, given the right location, it is possible, that 100% affordable projects, should they meet City objective code standards, could build outside of RDCS now, under SB 35 which became effective January 1, 2018. If this occurred, by current policy and action, the City Council would adjust the number of allocations available for market rate in the RDCS competition in ensuing years.

2. Should the City consider adopting an Inclusionary Housing Ordinance?

Inclusionary housing policies require developers to set aside a certain percentage of housing units in newly constructed or rehabilitated projects for low- and moderate-income residents. By creating mixed-income developments, people from different socio-economic backgrounds are given the opportunity to access the same services and amenities. **With the 2017 passage of AB 1505, cities are now allowed to adopt inclusionary housing requirements for rental housing. With the change to State Law, the City could consider immediately adopting inclusionary requirements for future rental housing to meet, at a minimum, moderate and very low-income goals. This change could combine with RDCS or stand alone. In addition, it would be prudent to limit the current year RDCS cycle to single vs. multi-year applications, or to require that multi-year applications comply with new inclusionary standards in place at the time applications for building permits are received.** The attached “Summary of Affordable Housing Inclusionary Policies in Cities in SCC” report summarizes the inclusionary requirements of cities in Santa Clara County. As shown, eleven of the county’s 15 cities have inclusionary programs, with six of the 11 requiring at least 15% of units be affordable.

3. Should the City consider eliminating/reducing impact fee requirements on Accessory Dwelling Units (ADUs)? Encouraging Accessory Dwelling Units “ADUs” (Secondary Units) by Creating a Program and/or Eliminating Fees?

The 2017 Housing Package allows cities to count new accessory dwelling units towards its affordable housing supply for the first time. The law provides credit for newly created units only if a survey of studio rental rates in the city is performed demonstrating that studio rents are serving an identified affordability level. Legislation also relaxed local regulation of accessory dwelling units, including parking requirements, and permitted units in many residential areas with ministerial review only. In addition, cities are now precluded from charging meter and utility connection fees for these units. The City could further encourage development of these housing units by eliminating the payment of impact fees for accessory structures. (SB 831 Wieckowski, currently pending in the Legislature will prohibit cities from imposing fees, impact fees, connection, fees capacity charges or any other fee levied by local agency, school district, special district, or water corporation. It also requires a city to act within 120 days of submission of application or it is deemed approved. The bill allows ADUs on any lot that permits construction of a home.)

4. Should the City consider i) locking impact fees for 100% affordable projects, exempting affordable rental housing projects from sub-metering requirements, and ii) developing housing product criteria for Mixed Use Flex block level masterplans and subsequent specific plan/form-based code areas along Monterey Road to assist with construction of moderate and above moderate-income workforce housing units?

Locking impact fees for 100% affordable projects at the time of allocation competition application, allocation award or construction permit: Locking impact fee amounts at construction permit application rather than at certificate of occupancy would reduce the cost of developing affordable housing. There is pending legislation (AB 3147 Caballero) that would preclude the levying of new or increased fees after housing development applications are deemed complete. This legislation would apply to all housing projects, not just affordable.

Exempting Affordable Rental Housing Projects from Sub-Metering Requirements: Since 100% affordable projects are generally required to complete both CEQA and NEPA review and pay prevailing wages for construction due to the mix of federal, state and local financing, the City could consider eliminating some impediments to the construction and financing of nonprofit affordable housing projects including amending the municipal code to exempt them from sub-metering. Code Section 13.04.130 requires projects to be sub-metered. This is part of the City's water conservation program. Nonprofit projects, however, are required to charge rents, including utilities, as a function of income. Separate metering will not result in an individual being charged beyond their income level and becomes a management problem for the nonprofit housing developer. Exempting nonprofit housing from this requirement would reduce the cost of developing affordable housing and eliminate contradictions in management and practice between business operations.

Developing housing product criteria for block-level masterplans and future Mixed-Use Flex specific plan/form-based code areas along Monterey Road to assist with market construction of Moderate Income and “Missing Middle” workforce housing units; provide environmental clearance as an incentive to development. While moderate income (80 – 120%) unit production does receive credit for RHNA, workforce housing, 121%-150% AMI, does not, but is of critical concern to local employers and consistently mentioned each time that the team meets with existing and prospective businesses in the region to discuss business needs. During the Monterey Corridor Mixed-Use Flex, block level plan and subsequent Specific Plan development process attention could be paid to preparing guidance that would present criteria to induce affordability by density, configuration, size, and design.

5. Should the City consider adopting a commercial linkage fee on new industrial/commercial projects?

A commercial linkage fee is a type of impact fee that can be charged based on an assessment impact which new commercial and/or non-residential development – including offices, hotels, retail stores, and industrial space – market rate housing, generates added demand for affordable housing. The nexus study for a commercial linkage fee must demonstrate that new development will create new jobs, and that some of the new workers will make lower wages and need affordable homes or that the new workers will demand services of lower-wage workers who will need to access affordable housing. Several communities in Santa Clara County have adopted such fees, but generally those cities have seen tremendous office growth from the high-tech industry. In this housing production discussion, all options need to be reviewed. However, as Morgan Hill is a housing rich, not jobs rich community, this fee, in addition to other impact fees would create yet another impediment to the City’s desire and efforts to attract good paying jobs to this community and achieve a greater jobs/housing balance.

COMMUNITY ENGAGEMENT: Inform. This report serves to inform the public about the City’s current housing efforts and potential future impacts.

ALTERNATIVE ACTIONS:

The Council can choose not to move forward with any or all recommendations, and/or direct staff to return with alternatives.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the County Housing Task Force and Cities Association resolution to affirm the City of Morgan Hill's commitment to affordable housing February 3, 2016, and the Santa Clara County Community Plan to End Homelessness June 17, 2015.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact of this report.

CEQA (California Environmental Quality Act):

Not a Project. This report is for information only.

LINKS/ATTACHMENTS:

1. KMA May 2018 Housing Report
2. Sample List of Proposed Housing Bills 2018
3. Summary of Affordable Housing Inclusionary Policies in Cities in SCC
4. Secondary Dwellings in SCC
5. California Department of Housing and Community Development Report (web link)



KEYSER MARSTON ASSOCIATES™
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

To: Rebecca Garcia, Housing Manager
City of Morgan Hill

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
DEBBIE M. KERN
DAVID DOEZEMA

From: Debbie Kern

Date: March 28, 2018

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMEO

Subject: Strategy for Increasing the Supply of Affordable Housing

SAN DIEGO
PAUL C. MARRA

In accordance with your request, Keyser Marston Associates, Inc. (KMA) has identified potential programs to increase the supply of affordable housing. This is an initial list for the City's consideration.

Background

The following chart summarizes the City's RHNA allocation goals and anticipated status through 2022. As shown, it is anticipated that the City will have met its RHNA goals in the Above Moderate and Low Income categories. However, significant deficits are projected for the Very Low and Moderate Income categories, at 233 and 169 units, respectively. Given these projections, the City is exploring programs that it could pursue to increase the production of affordable housing in the City and requested KMA to identify potential options.

Current 2015 – 2022 Regional Housing Needs Allocation (RHNA) Goals

Income Level	RHNA unit Goal	Permits Issued to date (not including 2018)	% of RHNA Met	Units + or -
Very Low (0-50% AMI) <i>includes 30% AMI for reporting purposes</i>	273	40	14.65%	-233
Low (50-80% AMI)	154	158	102.60%	+4
Moderate (80-120% AMI)	185	16	8.65%	-169
Above Moderate (120% +AMI)	316	896	283.54%	+580
TOTAL RHNA	928	1,110	119.61%	+182

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Potential Programs

1. Encouraging Accessory Dwelling Units “ADUs” (Secondary Units)

Many cities are adopting provisions to encourage the development of Accessory Dwelling Units (ADUs). ADUs can count toward RHNA goals, even without deed restrictions provided that the City provides a survey of comparable units demonstrating that ADU rents are affordable to very-low income, low-income and moderate income households. ADUs can be built as free standing units, expansions to existing homes, or the conversion of existing space within a home.

The City of Santa Cruz has adopted a program to encourage the development of ADUs, which has proven to be very successful. In summary, Santa Cruz’s program consists of four components:

- *Zoning incentives* – eliminated covered parking requirements and allowed parking in the front yard setback.
- *“How To” Manual and Design Prototypes* – City prepared a step by step manual to help homeowners through the design, application and construction process. And, the city engaged seven architects to create a range of ADU prototypes, which were then pre-approved by the City’s Planning Department.
- *Financing* – City offers an ADU loan program and a fee waiver program if units will be subject to long term deed restrictions,
- *Community education* – City held five community workshops to inform residents about the program.

Other cities are adopting standards for ADUs, which help homeowners understand the applicable requirements.

Potential strategies for Morgan Hill could include:

- a. Surveying rental rates for studios to determine if market rate rents are naturally consistent with Very Low, Low or Moderate income rents for single person households;
- b. Increasing RDCS points for providing more ADUs. For example, the RDCs currently awards 3 points if more than 30% of the units have ADUs. To incentivize the development of ADUs, the RDCS could provide 1 point for every 8% of units with ADUs. If 80% of the units had ADUs, the project would receive 10 points.

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- c. Reducing / waiving fees and providing incentives for ADUs;
- d. Applying for SB 2 funds from the State to provide financing for ADUs;
- e. Preparing a comprehensive program, similar to the Santa Cruz program (SB 2 funds could potentially be a funding source for preparing a program);
- f. Establishing and publishing requirements for ADUs;

2. Modifying the RDCS Point Structure

- a. *Provide Points for Moderate Income units in Market Rate Rental Projects* – The current point structure only provides points for the inclusion of Extremely Low, Very Low and Low income rental units. A “moderate income” category could be added, with projects receiving points for the inclusion of moderate income units affordable, at say, 100% of AMI.
- b. *For Sale Market Rate Projects – Increase the inclusionary percentage from 8% to 10% or 12% and eliminate the on-site requirement for 70% AMI units.* While increasing the on-site requirement to 10% or 12% will reduce sales proceeds to developers, the impact can be mitigated by eliminating the requirement to provide 70% AMI units and increasing the requirement for Moderate units. For example, the requirements could be as follows:

70% AMI	90% AMI	110% AMI	Points
0%	2%	8%	30
		10%	28
		12%	32

- c. *For Sale Affordable Projects – Eliminate the 70% and 80% AMI Categories.* The program currently incentivizes providing units at 70% AMI and 80% AMI. To increase the supply of Moderate income units, the City could eliminate the Low income categories.
- d. *Rental Affordable Projects – Reduce Percentages for Low Income Units.* In order to create more Very Low Income units, the City could increase the percentage requirements for Very Low Income Units and decrease the percentage requirements for Low Income Units.
- e. *Increasing RDCS points for ADU Units* – As noted above, the RDCs currently awards 3 points if more than 30% of the units have ADUs. To incentivize the development of ADUs, the RDCS could provide 1 point for every 8% of units with ADUs. If 80% of the units had ADUs, the project would receive 10 points.

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- f. Increasing the RDSC Inclusionary Requirement to 15%* – The RDSC program currently provides points for projects that provide up to 10% inclusionary units. This percentage is, in part, driven by the balance of the point system and benefits that must be provided in order to be competitive in the RDSC competition. If the City increases the affordable housing points system so that 15% inclusionary yields the same points as 10% inclusionary currently does, developers will likely try to secure points in other categories because the “cost” of the affordable housing points will have increased. To neutralize this incentive, the City could modify the point system for all categories to maintain the relative cost of different categories. Or, if the City wants to prioritize affordable housing over the other point system categories, the RDSC could be modified to increase the points for providing 15% inclusionary units and reducing the points for other categories. Under either approach, development costs would increase and the number of points of successful projects would likely decrease and community benefits would decrease. To mitigate this impact, the City could seek to identify incentives that would reduce building costs or increase value, such as reducing setback requirements or parking requirements.

3. Sponsor Public/Private Partnerships for Affordable Housing

- a. Development of Surplus City-owned property.* The City could identify a city-owned property that could be developed with affordable housing and issue an RFP for development proposals. The City's participation could be in the form of leasing the site to the development, or selling at a reduced price to enable the private sector to build affordable housing. An ownership project could be targeted to Moderate Income households or a rental project could be targeted toward Very Low income households.
- b. Leveraging Affordable Housing Fee Revenues for New Development.* The City could use housing fee revenues to assist private developers build affordable units. The City could give priority to projects that leverage other funds, such as LIHTC revenue or State funding for Veterans housing.
- c. Dedicating Redevelopment Property Tax Trust Fund (RPTTF) revenues to the development of Affordable Housing.* If available, the City could dedicate a portion of its former Redevelopment funds to the development of affordable housing and use the funds to leverage other funding sources secured by private developers.

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4. Modifying the RDCS Program to Permit the Development of Target Affordable Units to Not Count Against the Annual Building Permit Cap

While the RDCS has been an effective tool for increasing the City's supply of affordable housing, it has not provided a sufficient incentive to meet the City's RHNA production goals. Meeting the goals for Very Low and Moderate Income units will be a serious challenge to the City. One option to consider would be to amend the RDCS program to exclude affordable units from the annual cap on the number of residential building permits. The feasibility of this strategy would require review by the City's legal counsel.

5. Provide cost saving incentives for Projects that Provide Excess Target Affordable Units

The City could study options for reducing the cost of developing Very Low and Moderate Income units. For example, the City could reduce zoning requirements, such as parking requirements or reduce impact fees on projects that provide affordable housing units beyond the percentages provided in the RDCS points system.

2018 HCED Bills of Note

*Highlight Indicates Priority Bill

Planning and Zoning Bills

***SB 827 (Wiener) Planning and Zoning: Transit**

This measure would essentially rezone all land within one-half mile radius of a "major transit stop" to accommodate buildings up to seven stories tall. SB 827 allows private for-profit housing developers to determine housing densities, parking requirements, and limits design review standards. State density bonus law applies.

Position: Oppose

AB 2631 (Allen) Planning and Zoning: Affordable Housing: Streamlined Approval Process

At the request of a developer, requires cities to approve, in a ministerial manner, housing projects that:

Contain fewer than 25 units. The development provides housing to person of low to moderate income. The development is in a public transit corridor. Limits design review. No parking requirements. Prohibits inclusionary requirements.

Position: Oppose – letter coming

***AB 2923 (Chiu, Grayson, Mullin) BART: TOD**

Gives BART land use authority over their property. Requires BART to establish TOD zoning standards – minimum 75 units per acre, no parking requirements, mix use. City must update their zoning within 2 years. Applies to 250 acres at 27 current and planned stations. Applies SB 35 streamlining even in non SB 35 cities. Requires SB 35 labor provisions.

Position: Oppose

Regional Housing Needs Assessment (RHNA)

***SB 828 (Wiener) Land Use: RHNA**

Requires a local jurisdiction to plan and accommodate 200% of RHNA – low and very low-income. Establishes a methodology for the comprehensive assessment for unmet housing need. Communities with high rates of income growth shall also have a high rate of new housing production for households of all income levels.

Position: Pending

***AB 1771 (Bloom) Regional Housing Needs Assessment**

Focuses on the assessment methodology. Jobs housing imbalance. Allocates a higher proportion of housing need to an income category when a jurisdiction already has a disproportionately low share of households in that income category. Increases access to areas of high opportunity for lower-income residents, avoiding displacement and affirmatively furthering fair housing.

Position: Pending

Accessory Dwelling Units

***SB 831 (Wieckowski) Accessory Dwelling Units**

Allows ADUs on any lot that allows for the construction of a home. Local agency must act within 120 days of submitted application or application is deemed approved. No minimum lot size

requirements unless specific findings are made that identify adverse public safety impacts. No fees – impacts fees, connection fees, capacity charges, or ANY other fee levied by a local agency, school district, special district, or water corporation.
Position: Pending

***SB 1469 (Skinner) Accessory Dwelling Units**

Makes significant changes to ADU law.

Position: Pending

AB 2071 (Bloom) Accessory Dwelling Units

Limits a public entity's liability with regard to an owner attempting to bring the ADU into compliance with applicable local agency rules, regulations, or ordinances.

***AB 2890 (Ting) Accessory Dwelling Units**

Makes significant changes to ADU law.

Position: Pending

AB 2939 (Ting) Accessory Dwelling Units

Requires the local agency to ministerially approve an application for a building permit to create within a multifamily zone at least one accessory dwelling unit within an existing multifamily structure with at least 5 residential units.

SB 1226 (Bates) Accessory Dwelling Units

Allows a local ordinance to authorize, when a record of the issuance of a building permit for an accessory dwelling unit does not exist, an enforcement official to make a determination of when the accessory dwelling unit was constructed and apply the State Housing Law, the building standards published in the California Building Standards Code, and other specified rules and regulations in effect when the accessory dwelling unit was determined to be constructed in order to issue a building permit for the accessory dwelling unit.

Position: Pending

Density Bonus

SB 893 (Nguyen) Density Bonus

Deletes existing law that restricts parking requirements for developments that include the maximum percentage of low-income or very low-income units located within ½ mile of a major transit stop.

SB 1227 (Skinner) Density Bonus

Requires a density bonus to be provided if the development includes at least 20% of the total rental beds for students enrolled at an institution of higher education accredited by the Western Association of Schools and Colleges. Requires that these units be subject to a recorded affordability restriction of 55 years and be provided at the same affordability level as very low income units. Sets the density bonus at 35% of the number of these units.

Position: Pending

AB 2372 (Gloria) Density Bonus

Authorizes a city council or county board of supervisors to establish a procedure by ordinance to grant a developer of an eligible housing development a floor area ratio bonus in lieu of a density bonus awarded on the basis of dwelling units per acre. Restricted to multifamily developments.

Position: Pending

AB 2753 (Friedman) Density Bonus

Requires that if a city or county does not determine whether a density bonus application is complete within 30 calendar days after it was submitted, or within 10 days in the case of a resubmitted application, then that application is deemed approved. Requires that a city or county, within 60 calendar days after determining an application is complete, act to approve or disapprove the density bonus, and would provide that if the city or county fails to do so within that time period the application is deemed complete and the requested bonus is granted.

Position: Pending

AB 2797 (Bloom) Density Bonus

Prohibits any density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios from being a basis for finding a project inconsistent with "highly scenic areas" (Public Resources Code 30251).

Parking Restrictions

AB 2263 (Friedman) State Historical Buildings: Parking

For the conversion of a historical structure for residential or mixed use purposes, prohibits a local ordinance from imposing parking standards that exceed the parking standards that applied at the time the historical building was originally constructed.

Homelessness

AB 2161 (Chiu) Housing: Homeless Integrated Data Warehouse

Directs the Department of Housing and Community Development to create a state homeless integrated data warehouse, in coordination with the Homeless Coordinating and Financing Council, to develop a composite portrayal of the homeless population in the state and the services provided to this population or to those at risk of becoming homeless. Data includes: the number of individuals and families experiencing homelessness, their access to benefits, and the stated reasons for their homelessness.

***AB 2162 (Chiu) Planning and Zoning: Supportive Housing**

Requires that supportive housing be a use by right in zones where multiple dwelling uses are permitted, including commercial zones. Projects must: Be subject to recorded affordability restrictions for 55 years. 100% of the units are dedicated to "low-income households" (80%). 35% of the units are restricted to supportive housing.

Position: Pending

***AB 3171 (Ting) Homeless Persons Services Block Grant**

Establishes the Local Homelessness Solutions Program and creates the Local Homelessness Solutions Account for the purpose of providing funding to cities to create innovative and immediate solutions to the problems caused by homelessness. Allocates \$1.5 billion from the General Fund.

Position: Pending

***SB 912 (Beall) Homelessness and Housing**

Appropriates \$2 billion from the General Fund to the Department of Housing and Community Development (HCD) for the following purposes:

- \$1 billion to the Housing Rehabilitation Loan Fund to support the Multifamily Housing Program to assist in the new construction, rehabilitation, and preservation of permanent and transitional rental housing for persons with incomes of up to 60% of the area median income.
- \$1 billion to address homelessness, with emphasis on vulnerable population.

Position: Pending

SB 918 (Wiener) Homeless Youth Act

Establishes the Office of Homeless Youth in the Department of Housing and Community Development. Requires the office to identify funding, policy, and practice gaps across state systems that serve, or hold the potential to serve, young people experiencing homelessness, develop specific recommendations and timelines for addressing these gaps, and report to the Legislature. Appropriates up to \$60 million in General Funds for grants to nonprofits or a continuum of care administrative entity.

Mitigation Fees

SB 1202 (Stone) Land Use: Development Fees

Requires a local agency that does not make the required identifications and determinations in connection with a certain fees but requires the payment of that fee in connection with a development project for 3 consecutive years, to decrease the amount of that fee by 50% and would prohibit the local agency from establishing, increasing, or imposing any other development fees.

SB 1296 (Glazer) Local Fees Database

Requires HCD to collect, publish, and make available a database of fees charged by public agencies to new developments by jurisdiction.

AB 3147 (Caballero) Mitigation Fee Act

Prohibits a housing development project from being subject to a fee, charge, dedication, reservation, or other exaction that is more than that in effect at the time that the application for the housing development project is determined to be complete.

Position: Pending

Housing Accountability Act

AB 3194 (Daly) Housing Accountability Act: Project Approval

Prohibits a housing development project from being found inconsistent, not in compliance, or not in conformity, with the applicable zoning ordinance, and would prohibit a local government from requiring a rezoning of the project site, if the existing zoning ordinance does not allow the maximum residential use, density, and intensity allowable on the site by the land use or housing element of the general plan.

CEQA

SB 1340 (Glazer) CEQA: Expedited Review

Requires a court to complete a CEQA suit against a housing project within 270. Allows the project to proceed during court proceedings.

Miscellaneous

Summary of Affordable Housing Inclusionary Policies in Cities in Santa Clara County

City	Inclusionary Requirement	Project Size Threshold	Affordability Level	In-lieu Fee/Impact Fee	Fee by Right
Campbell	15%	10+ units	Ownership –Lower and Moderate Rental – 6% VL and 9% Lower		Only projects with density of 6 du/acre or less
Cupertino	15%		Ownership – 50% Median / 50% Mod. Rental -	Ownership - \$15.48 - \$20.64 per sf Rental - \$20.64 to \$25.80 per sf	Yes
Gilroy	15% in Neighborhood District only		Very Low, Low and Moderate		
Los Altos	10%	5+ units (ownership)	Moderate		No
Los Altos Hills	No policy				
Los Gatos	10% for projects with 5 to 19 units; 20%: projects with over 100 units	5+ units (ownership)	Moderate		
Milpitas	5%	5+ units	Very Low and Low Income		
Monte Sereno	No policy				
Mountain View	10% (ownership)	3+ units (ownership) 5+ units rental	Moderate (ownership)	Ownership – 3% of sales price; Rental - \$17 per square foot.	Ownership with 3 to 9 units may pay in-lieu fee; rental pays fee
Palo Alto	Ownership - 15% (less than 5 acres); 20% (5+ acres)	3+ units (ownership)	80% to 120% of AMI	Rental - \$20 per square foot; Ownership - \$50 to \$75 per sf	Rental pays fee.
San Jose	15%	20+ units	Ownership – Moderate; Rental 6% VL and 9% Mod.	\$153,426 per inclusionary ownership home; \$125,000 per inclusionary rental	
Santa Clara	15%(ownership)	1 unit	Must avg. 100% AMI	\$20 to \$30 per sq. ft. for ownership in 2019; \$20 per sq. ft. for rental in 2019	May pay a fee if project has fewer than 10 units.
Saratoga	No policy				
Sunnyvale	12.5%	8+ ownership units; 4+ rental units	100% AMI	7% of sales price; \$8.50 per sq. ft. for rental	Payment of fees for rental units is by right.

Accessory Dwelling Units

Campbell

Accessory Dwelling Units (ADUs)

In December 2016, the City of Campbell updated its **ADU ordinance** to comply with SB 1069 and AB 2299, two state bills that passed in September 2016 to facilitate ADU development. ADUs are only permitted on lots 10,000 square feet or greater in area. The maximum ADU unit size ranges from 640 square-feet to 1,200 square-feet, depending on the net site area of the property. There are approximately 1,680 parcels in the City that are over 10,000 square feet in area.

Cupertino

Accessory Dwelling Units (ADUs)

Between 2009 and 2014, the City of Cupertino permitted 36 ADUs, for an average of 7.2 ADUs per year. In November 2016, the City updated its ADU ordinance to comply with state laws SB 1069, AB 2299, and AB 2406 that passed in September 2016 to facilitate ADU development

Gilroy

N/A

Los Altos

Accessory Dwelling Units (ADUs)

Between 2009 and 2014, the City of Los Altos permitted an average of 4 ADUs per year.

Los Altos Hills

N/A

Los Gatos

Accessory Dwelling Units (ADUs)

Between 2007 and 2014, the Town of Los Gatos permitted 14 ADUs, for an average of 2 ADUs per year. Los Gatos estimates that 400 ADUs exist throughout Los Gatos. The Town is currently in the process of updating its ADU ordinance to comply with SB 1069 and AB 2299.

Milpitas

Accessory Dwelling Units (ADUs)

Between 2007 and 2014, the City of Milpitas permitted approximately 6 ADUs, for an average of 0.86 ADUs per year.

Monte Sereno

Accessory Dwelling Units (ADUs)

Between 2007 and 2016, the City of Monte Sereno permitted 19 ADUs, for an average of about 2 ADUs per year.

Mountain View

Accessory Dwelling Units

In past years, Mountain View has permitted few ADUs (3 total ADUs between 2007 and 2014). However, with changes to the City's ADU ordinance in 2016 that eliminated both the minimum lot size requirement and park land dedication in-lieu fee, it is likely that Mountain View's stock of ADUs will increase in future years.

Palo Alto

Accessory Dwelling Units (ADUs)

Between 2007 and 2014, the City of Palo Alto permitted 35 ADUs, for an average of 5 ADUs per year. In May 2017, the City amended its **ADU ordinance** to comply with SB 1069 and AB 2299 and to encourage the development of ADUs.

San Jose

Accessory Dwelling Units (ADUs)

In 2016, the City of San Jose updated its Secondary Dwelling Unit ordinance to comply with the requirements of AB 2299 and SB 1069. Additionally, the San Jose City Council included consideration of a [Second Unit Amnesty Ordinance](#) on its Council Priority List for 2017, as well as [follow up actions](#) that will make it easier for residents to build new units.

Santa Clara

Accessory Dwelling Units (ADUs)

Between 2007 and 2014, the City of Santa Clara permitted 200 ADUs, for an average of about 29 ADUs per year. The City is currently considering revisions to its ADU ordinance.

Santa Clara County

Accessory Dwelling Units (ADUs)

Between 2007 and 2012, the County of Santa Clara permitted 50 ADUs, for an average of 10 ADUs per year.

Saratoga

Accessory Dwelling Units (ADUs)

Between 2007 and 2014, the City of Saratoga constructed 18 ADUs, for an average of 2.57 ADUs per year. In 2017, the City amended its ADU ordinance to comply with SB 1069 and AB 2299 and to encourage the development of ADUs.

Sunnyvale

Accessory Dwelling Units (ADU)

Between 2007 and 2014, the City of Sunnyvale permitted 17 ADUs, for an average of 2.43 ADUs per year. In December 2016, the City updated its ADU ordinance to comply

with SB 1069 and AB 2299, two state bills that passed in September 2016 to facilitate ADU development.



Amgen Tour of California Event Update

City Council Meeting
May 2, 2018



1. Event Details
2. Community Outreach & Education
3. Community Events
4. Marketing & Promotions

EVENT DETAILS

- May 16th
- 21.6 Mile Loop
- Start, Finish & Festival in Downtown
- Course Street Closures begin at 8:30 AM and end after 3:00 PM May 16th
- Downtown Street Closures begin Tuesday, May 15th at 10 AM for NB lanes and 8 PM for SB lanes



Event Details

Start: Monterey Rd. Across CCC

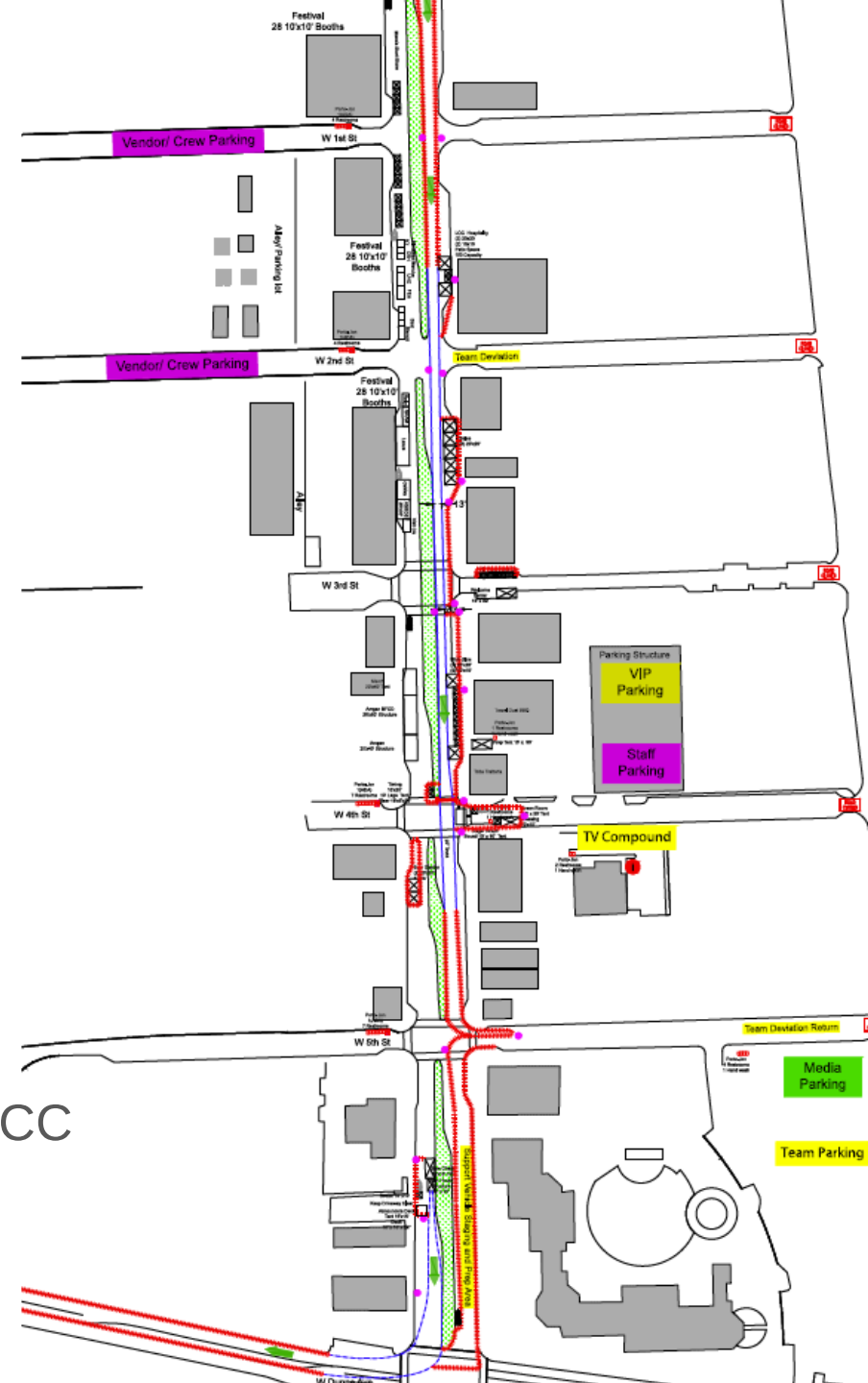
Finish: Monterey Rd. @ 4th Street

Festival: W Monterey Rd. between Main and 3rd Streets

Public Parking: OSC (Shuttle) & Depot, VTA/Caltrain and County Courthouse parking lots

OSC Shuttle Drop Off: Dunne Ave. @ CCC

Bike Valet: 3rd Street @ Depot St.



COMMUNITY OUTREACH

- Mailers
- Water Bills
- Website
- 411 Emails
- Hot Line
- Stories & Advertorials in Local Papers
- Billboards on Monterey Rd.
- Downtown & OSC Kiosks
- VTA Bus Shelters
- Outreach to Schools
- Community Meeting-May 8th
- Social Media



Amgen Tour of California is coming to Morgan Hill! Wednesday, May 16, 2018

Note: Some streets will be closed.
Plan Ahead to avoid delays—or
take the day off and **join the party!**



See back for route map
For more information about upcoming
event festivities and street closures, visit:
www.morganhill.ca.gov/ATOC

AMGEN SCHOOL OUTREACH

PA Walsh & El Toro Schools

- Two Bike Giveaways
- Visit by pro cyclists “Fast Freddy” & Alison Tetrick



SPECIALIZED SCHOOL OUTREACH

- Visited eight (8) schools
- Distributed 3,800 water bottles









COMMUNITY EVENTS

May 4	Bike Party
May 9	Bike to School Day
May 10	Bike to Work Day
May 11	Bike Rodeo & Concert
May 13	Mother's Day Ride & Pancake Breakfast
May 15	Specialized Bicycles Open House

May 16 Race Day!

AMGEN TOUR
OF CALIFORNIA
CA MH

EVENTS & ACTIVITIES

**AMGEN TOUR OF CALIFORNIA
MORGAN HILL MAY 2018**

MAY 4 - BIKE PARTY

Morgan Hill Bike Party hosted by Bike Therapy

Friday, May 4th 7:30pm
Start and Finish at Bike Therapy,
17540 Depot St, Morgan Hill
facebook.com/events/206335884393268

MAY 9 - BIKE TO SCHOOL DAY

Wednesday, May 9th
Contact your school administrator
to see if your school is participating!

MAY 10 - BIKE TO WORK DAY

Thursday, May 10th 6:00am - 9:00am
Energizer station at Community
and Cultural Center, 17000 Monterey Road,
Morgan Hill

MAY 11 - AMGEN TOUR OF CALIFORNIA KICK OFF CONCERT

Community Concert featuring Isaiah Pickett,
Local Bike Shops, and Specialized Bicycles

Friday, May 11th 6:00pm - 9:30pm
Morgan Hill Downtown Amphitheater,
17000 Monterey Road, Morgan Hill

MAY 13 - MOTHER'S DAY RIDE & PANCAKE BREAKFAST

Mother's Day Ride with the Mayor, followed
by a Pancake Breakfast hosted
by Bike Therapy

Sunday, May 13th 9:00am
The Grange, 40 E 4th Street, Morgan Hill
Register on City of Morgan Hill website.

MAY 15 - SPECIALIZED BICYCLES OPEN HOUSE

Specialized Open House
Food trucks, tours of the Wintunnel,
Bike Museum

Tuesday, May 15th 5:30pm - 8:00pm
Specialized HQ, 15130 Concord Circle,
Morgan Hill

MAY 16 - AMGEN TOUR OF CALIFORNIA TIME TRIAL

Stage 4 Amgen Tour of California Time Trial

Wednesday, May 16th 12:45pm
Start and finish in Downtown Morgan Hill

For more information and registration
links, please visit www.morganhill.ca.gov/~1679/Events-and-Activities



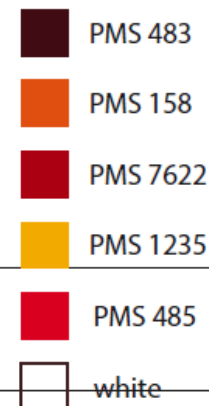
Street Banners



Designer Template

- Use the artwork layer for placing artwork.
- Use guidelines for artwork sizing and placement, any artwork outside of print area will be cropped or resized.
- 2G Big Mouth is limited to an eight color maximum on the body, two on neck.
- Change bottle color on template layer to give a better representation of how art will appear on the bottle.

SPECIALIZED
CUSTOM BOTTLES



Seam of bottle may cause disruptions for wrapping graphics.
Pantone colors are an approximate representation of actual printed colors.
Document Version: 08/31/17

COMMUNITY PARTNERS & SPONSORS



live+love+léal



Marketing & Promotions

- 2 Hours of Live Broadcast
- 190+ Countries
- 16 Million Viewers
- 5.8 Billion online & broadcast media impressions
- 30 Second TV Commercial
- PSA with KSBW





Item # 05
AGENDA DATE: 05/02/18
SUPPLEMENT # 1

From: D. Muirhead
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: lafo@ceo.sccgov.org; info@openspaceauthority.org; Mike.Wasserman@bos.sccgov.org
Subject: Comments on Morgan Hill Council meeting May 2, 2018 Agenda Item #5: Prepare Annexation EIR
Date: Tuesday, May 01, 2018 12:34:17 PM

Dear Morgan Hill City Council,
Comments for your meeting on May 2, 2018 for
Agenda Item #5: Prepare Annexation EIR for \$219,000 from Fund 207

I am confused by the timing of this agreement,
especially since you say
"There are no anticipated or pending projects
that require certification of the Annexation EIR".
You say that your Priorities include
Protecting the Environment
Regional Initiatives
The County just held the first meeting of the
Agricultural Preservation Task Force. I feel you
are sending mixed messages again, just as you did
with the Southeast Quadrant.

In that case, you told our partners at County Planning,
Open Space Authority (OSA), and Local Agency Formation
Commission (LAFCO), that you wanted to work with them
on a framework for agriculture preservation. But to their
dismay, you forged ahead with ordinances and resolutions
to remove land from participation in that framework.

Now you have this annexation activity. You also have the Mayor's
stated intent (at Joint Commissions meeting) to again pursue
locating a sensitive-population private high school in
the Southeast Quadrant. You also have Mr. Ghione's comments
to our Parks Commission and to the Council that City leadership
is pursuing converting actively-farmed land into cricket fields
using a public/private partnership.

On the preservation side, you have the agricultural conservation
easement on Fountain Oaks Ranch.

Does the City have one silo for expanding City limits and
services and another silo for agriculture preservation?

Although it is not clear to me how the County Agricultural
Preservation Task Force will develop an implementation plan
in the next six months, it would be helpful if the City
did not pursue plans at this time to remove land from the
framework area.

Thank you for your consideration, Doug Muirhead, Morgan Hill



CENTENNIAL RECREATION CENTER EXPANSION PROJECT



CRC History



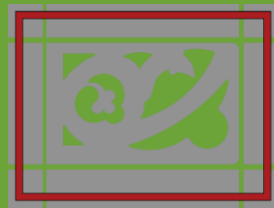
- CRC opened in 2006
- First CRC Expansion in 2010

Need for Expansion

- First priority identified in Bikeways, Trails, Parks and Recreation Master Plan
- Funded by the Community/Recreation Center Impact Fund

Construction Budget and Schedule

- Construction Budget of \$1.8 million
- Design completed by December, 2018
- Construction in Spring, 2019
- Identified Priorities:
 - Group Exercise Space
 - Parking



WESTON MILES
ARCHITECTS

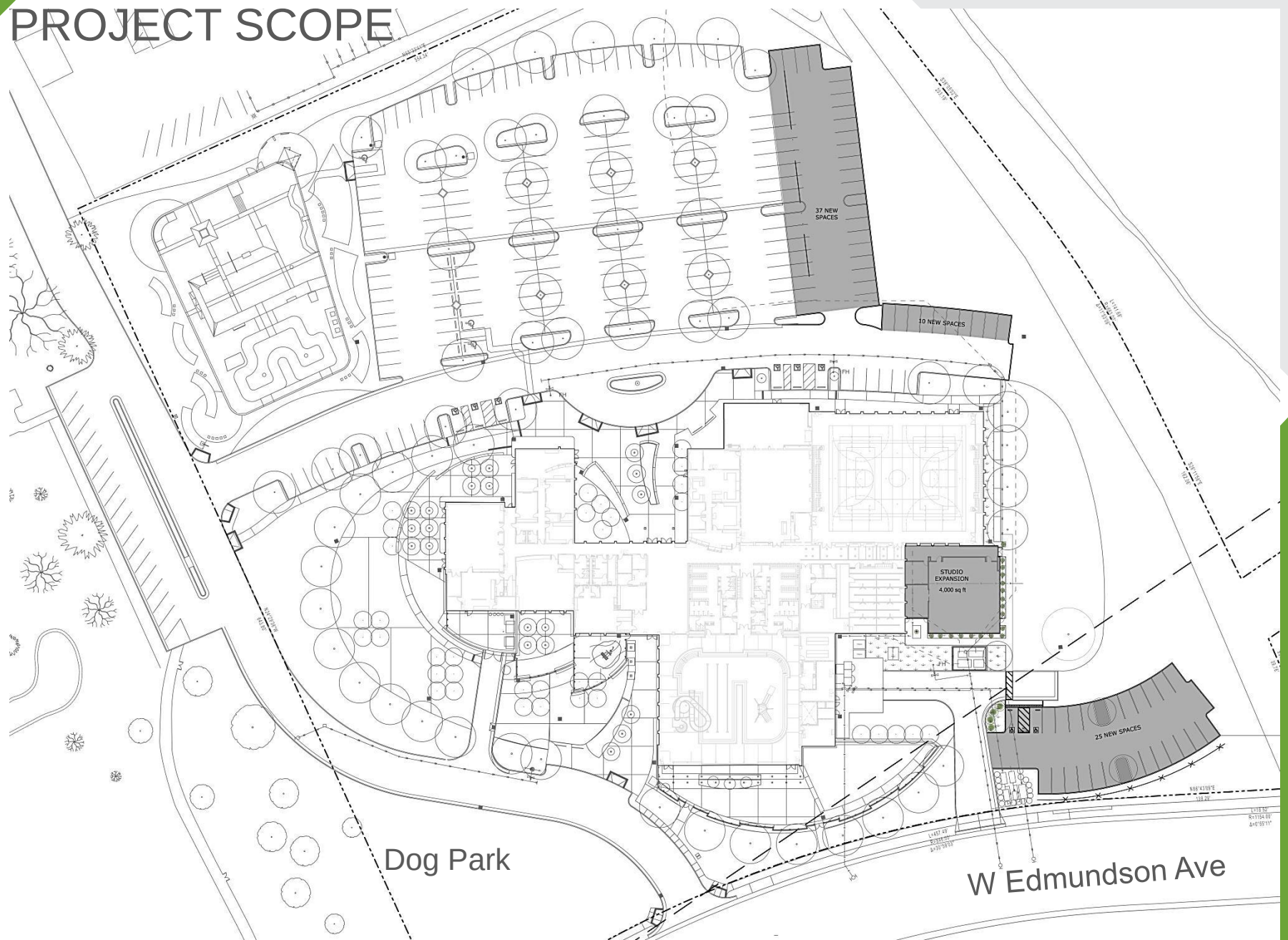


CITY OF MORGAN HILL

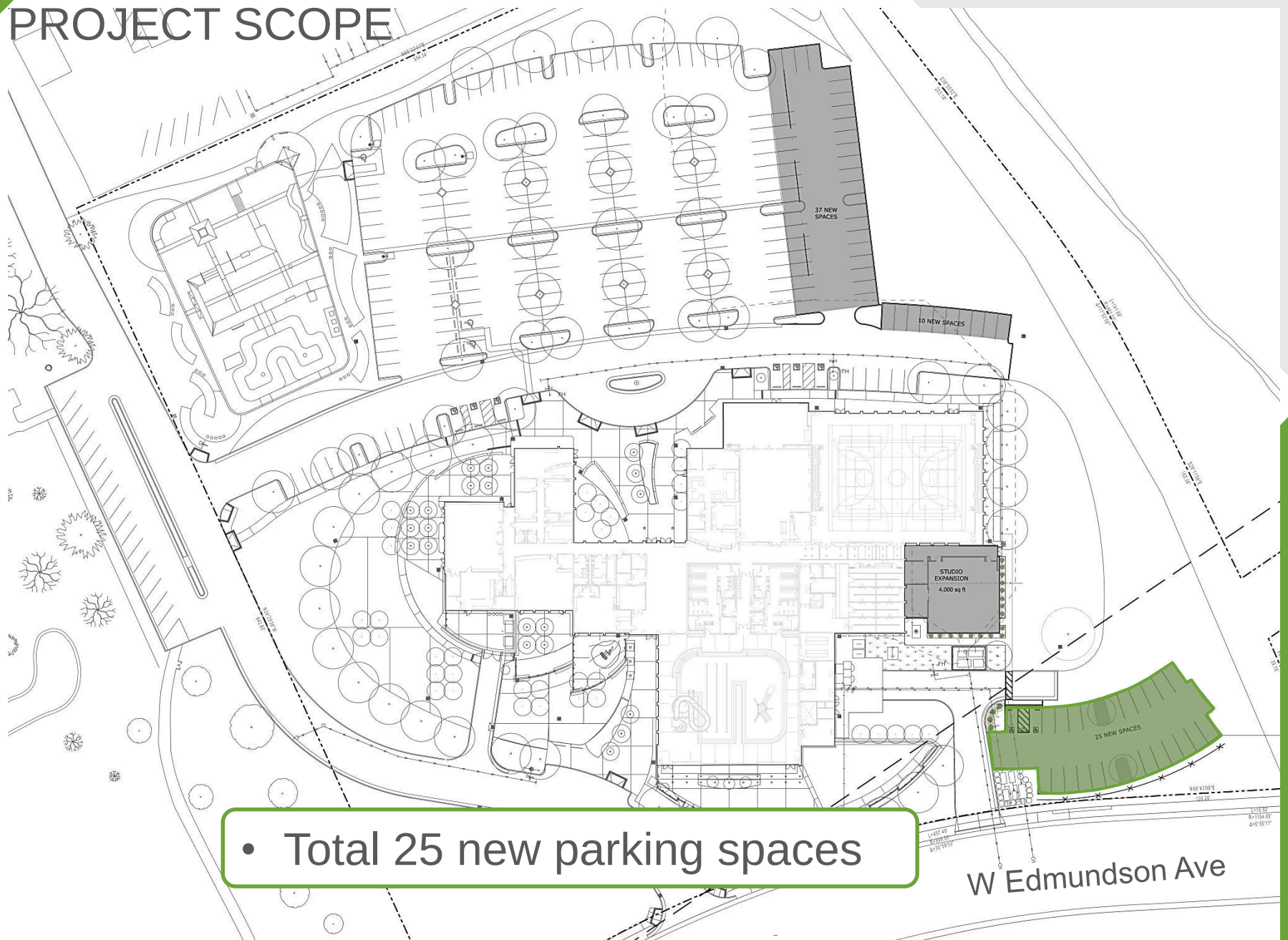
EXISTING SITE



PROJECT SCOPE



PROJECT SCOPE



PROJECT SCOPE

- Total 47 new parking spaces

37 NEW SPACES

10 NEW SPACES

STUDIO EXPANSION
4,000 sq ft

25 NEW SPACES

Dog Park

W Edmundson Ave

- # PROJECT SCOPE
- Total 47 new parking spaces
-
- 37 NEW SPACES
- 10 NEW SPACES
- STUDIO EXPANSION
4,000 sq ft
- 25 NEW SPACES
- Dog Park
- W Edmundson Ave

PROJECT SCOPE

- Total 47 new parking spaces

37 NEW SPACES

10 NEW SPACES

STUDIO EXPANSION
4,000 sq ft

25 NEW SPACES

Dog Park

W Edmundson Ave

PROJECT SCOPE

- Total 47 new parking spaces

37 NEW SPACES

10 NEW SPACES

STUDIO EXPANSION
4,000 sq ft

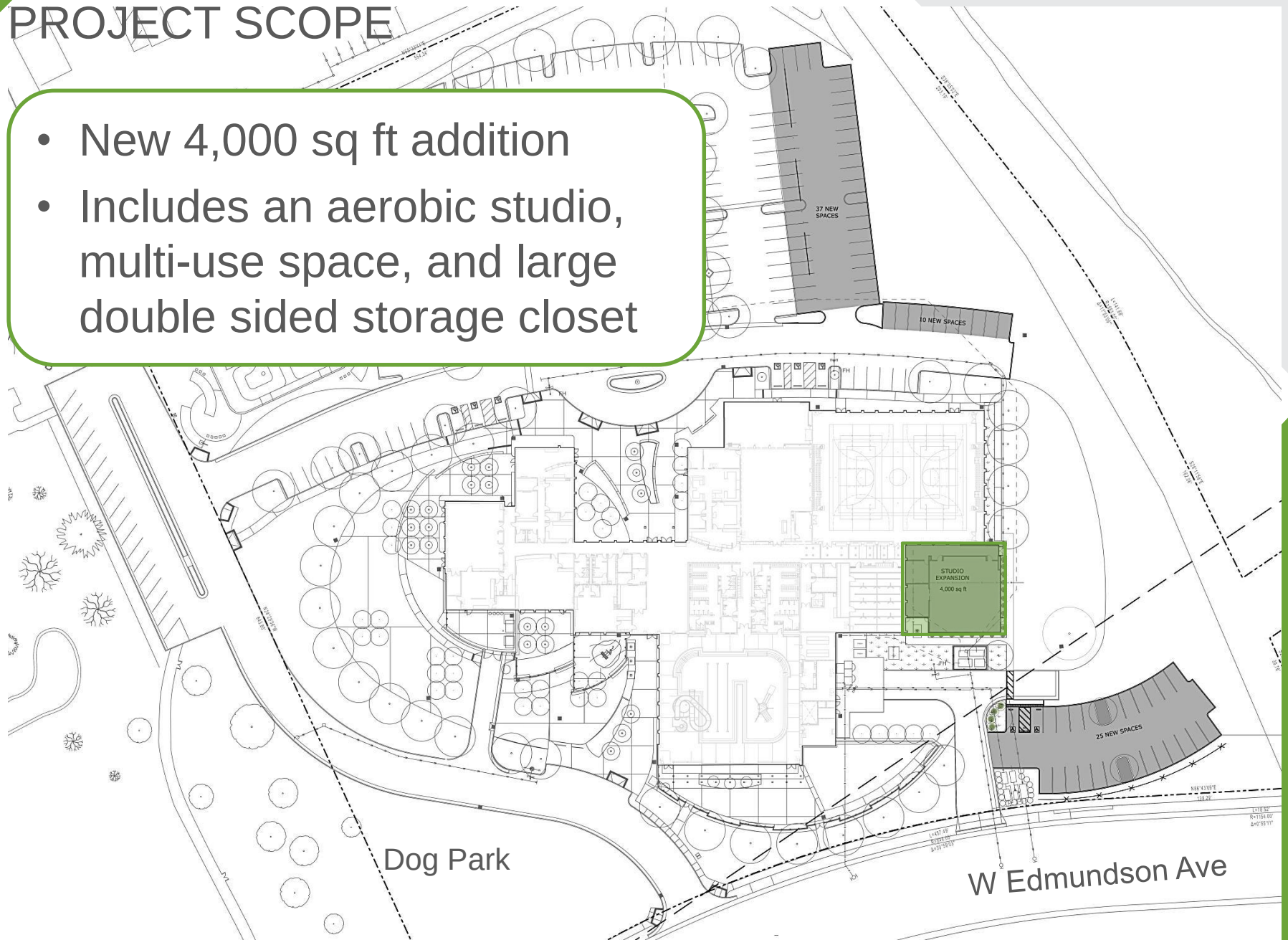
25 NEW SPACES

Dog Park

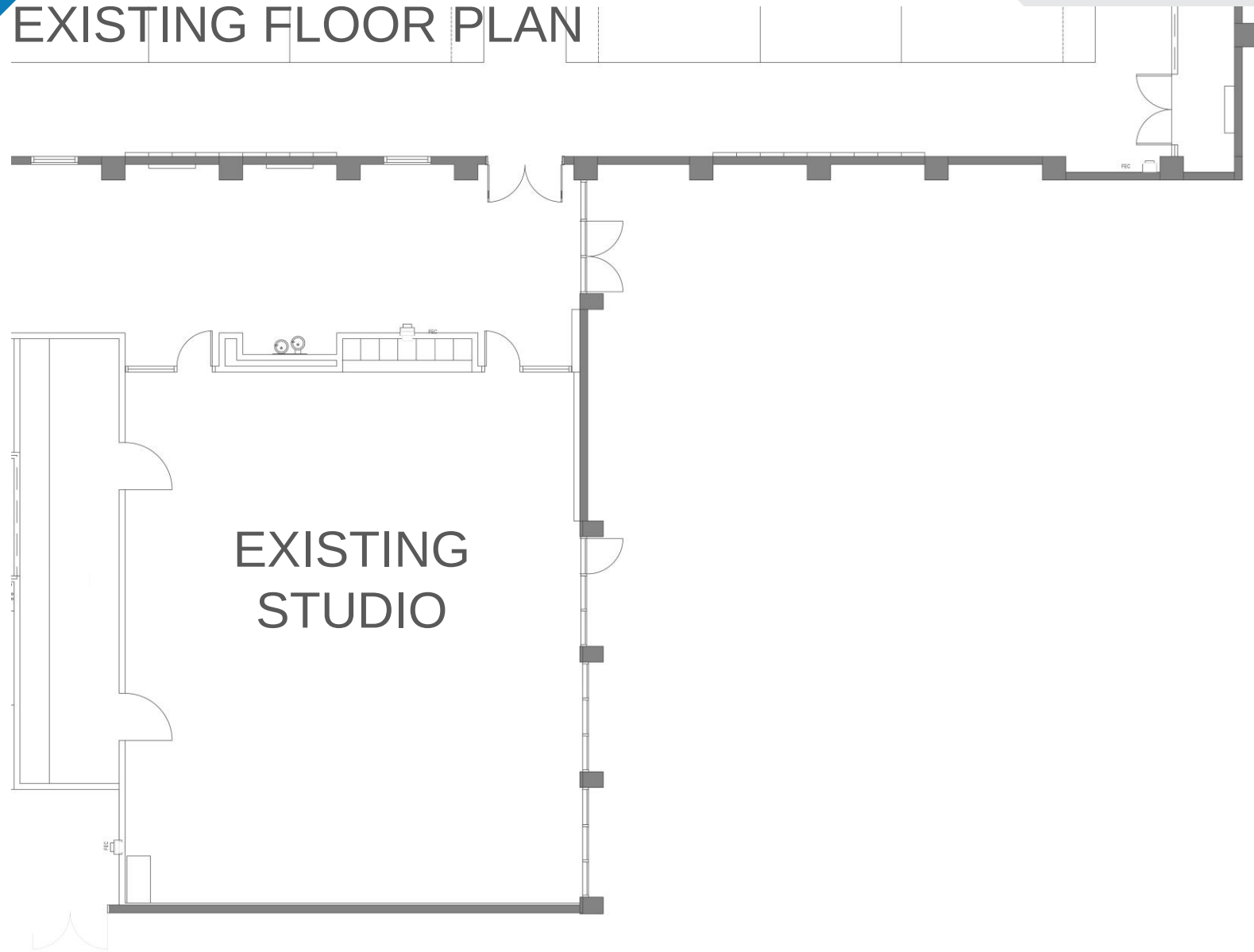
W Edmundson Ave

PROJECT SCOPE

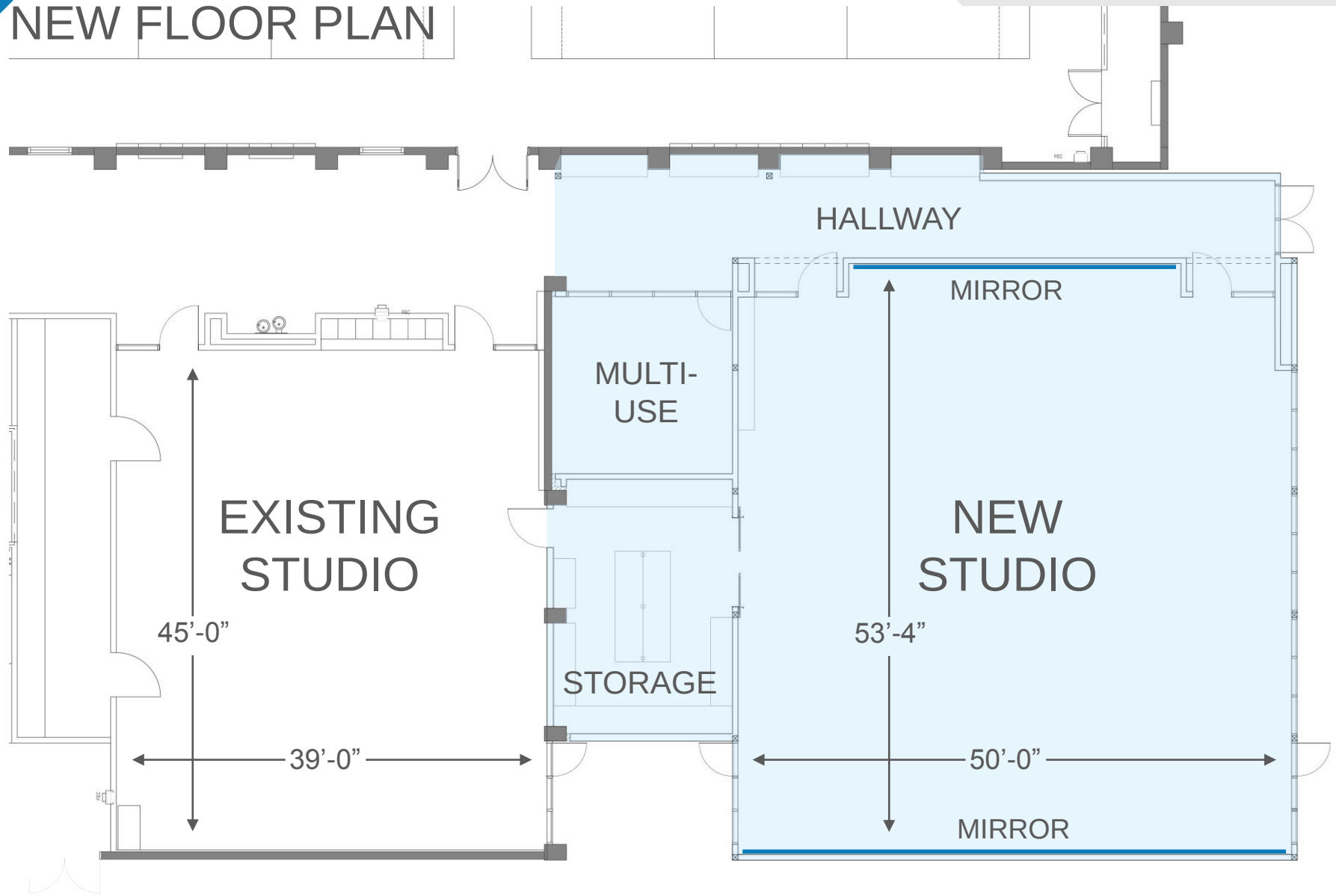
- New 4,000 sq ft addition
- Includes an aerobic studio, multi-use space, and large double sided storage closet



EXISTING FLOOR PLAN



NEW FLOOR PLAN

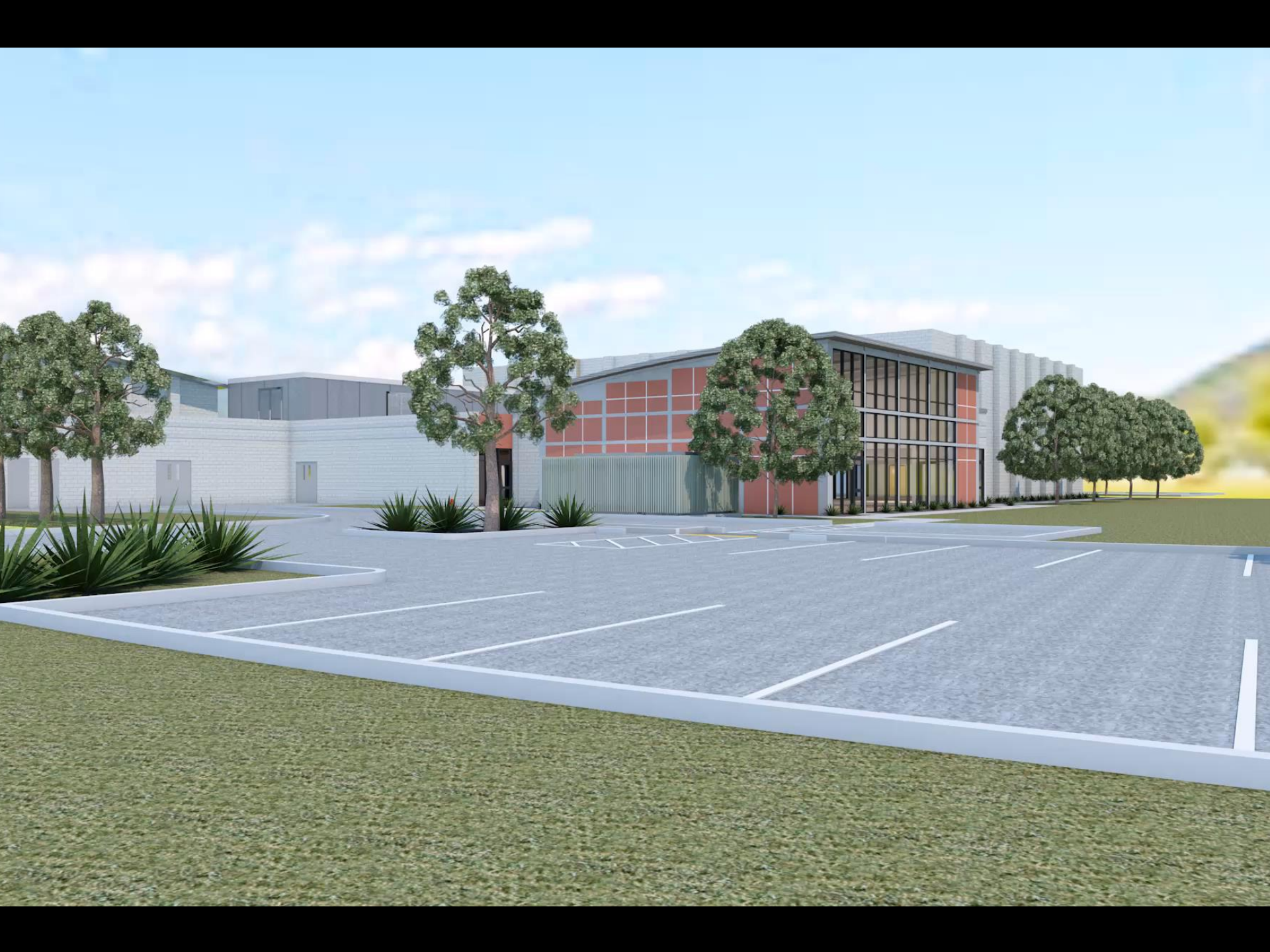




EXISTING

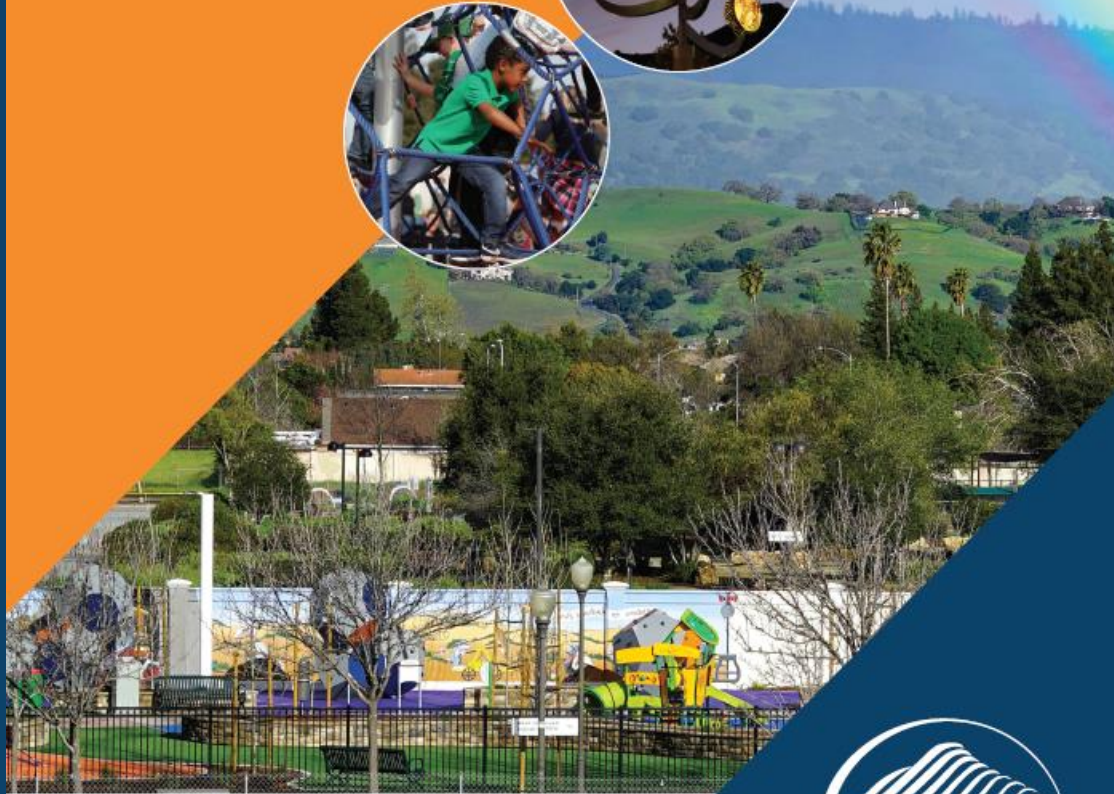


NEW



Fiscal Years
2018-19 & 2019-20

Recommended Operating and CIP Budget



morganhill.ca.gov/budget

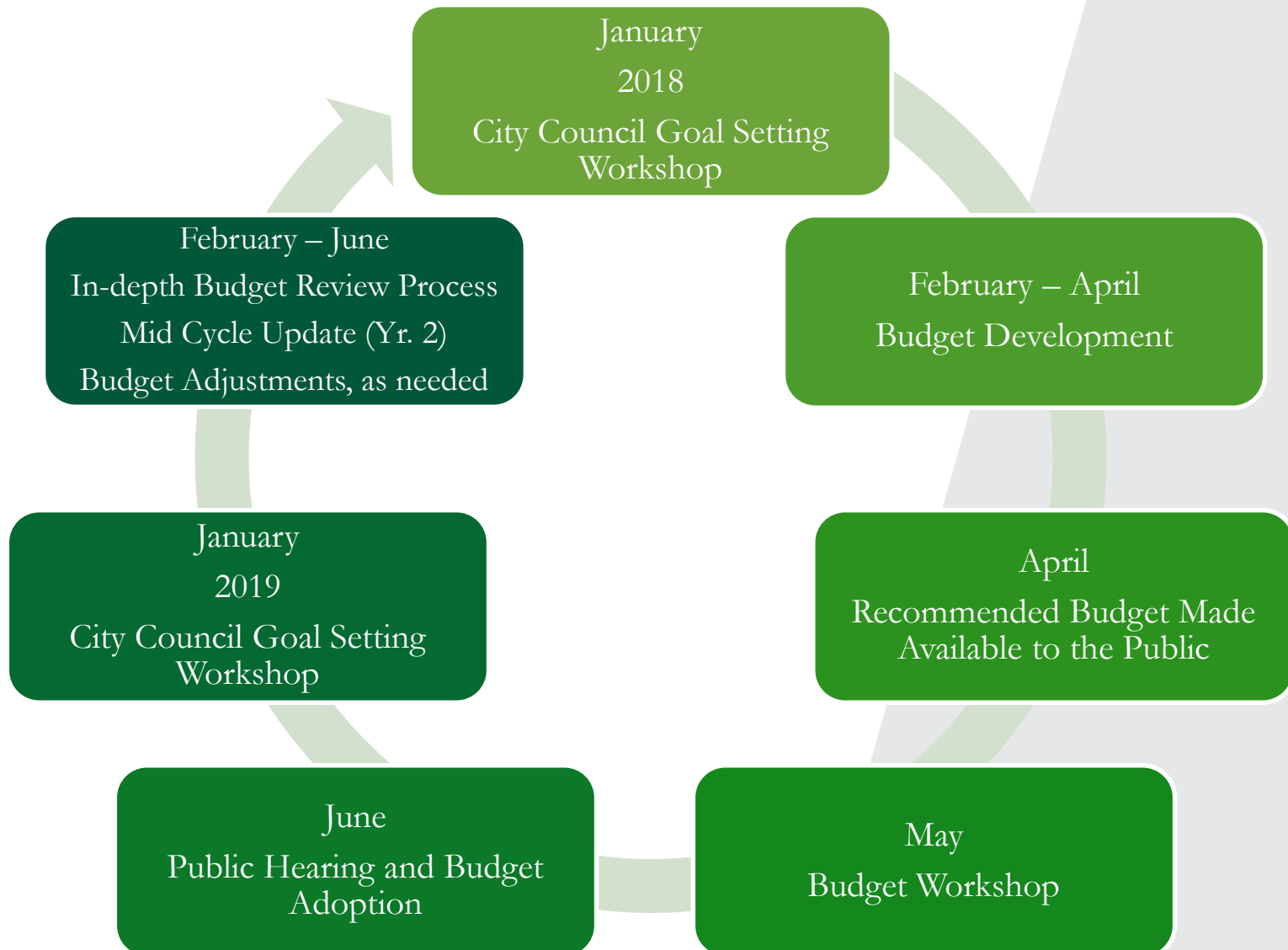


Presentation Outline



- Budget Process and Foundation
- 3rd Quarter Financial Report
- Recommended Budgets
- Service Level Enhancements
- Capital Improvement Program Highlights
- Next Steps

2 Year Budget Process



Principles that Guide the Sustainable Budget Strategy



- Critical services should be maintained to the greatest extent possible
- Resources should be allocated to the highest priority services
- Reserves and one time revenues should be used first to invest in capital outlay items that could reduce long range operating costs

Principles that Guide the Sustainable Budget Strategy (cont.)



- Community wide tax resources should be allocated first to support community wide services
- Regular monitoring of financial performance opportunities to make midcourse corrections

City Council's Ongoing Priorities



- Enhancing Public Safety
- Protecting the Environment
- Maintaining Fiscal Responsibility
- Supporting Youth, Seniors, and Entire Community

City Council's Ongoing Priorities (cont.)



- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving Our Cultural Heritage
- Enhancing Diversity and Inclusiveness

City Council's 2018 Strategic Priorities



Community Engagement and Messaging



Financial Stewardship



Infrastructure



Regional Initiatives



Economic Development and
Telecommunications

Community's Quality of Life Service Needs and Priorities



- Rapid response to 9-1-1 emergencies
- Maintaining the number of police officers on neighborhood patrols
- Maintaining crime prevention and investigation programs

Community's Quality of Life Service Needs and Priorities (cont.)



- Maintaining fire protection
- Maintaining City streets, roads, and repairing potholes
- Maintaining long-term financial stability

3rd Quarter Financial Report FY 2017-18



General Fund



Revenues are projected to exceed budget estimates

Category	Budget	YTD Actual	Prior YTD	YEP
Property Tax	\$10.6	\$6.4	\$5.5	\$11.3
Sales Tax	9.6	8.0	7.3	10.1
Svc Charges	9.5	6.8	6.5	9.5
Hotel Tax	2.8	1.7	1.8	2.7

Category	Budget	YTD Actual	Prior YTD	YEP
Revenues	\$37.8	\$28.0	\$24.7	\$41.3
Expenditures	42.8	33.1	30.2	41.7

*Includes encumbrances

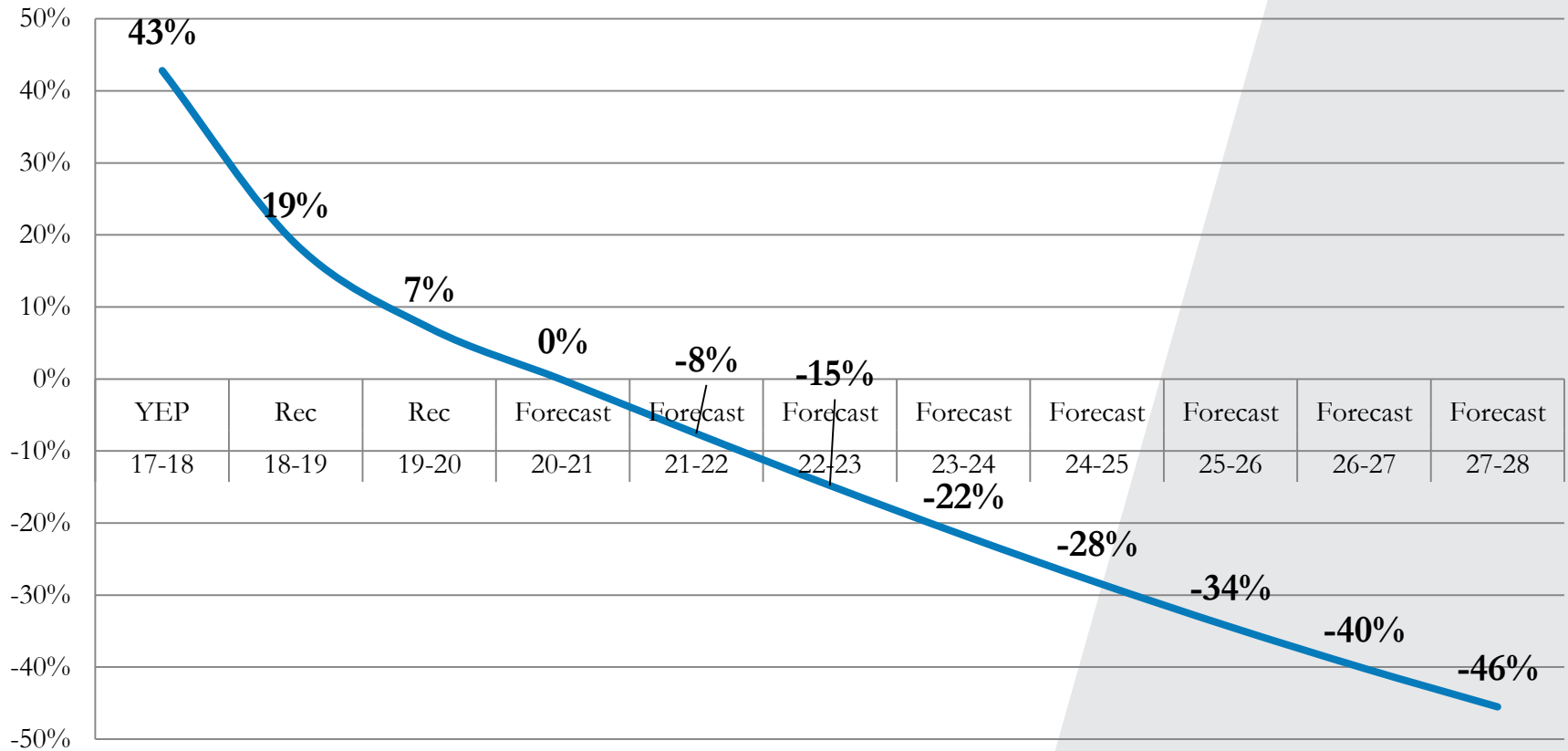
Development Services Fund



Both revenues and expenditures, including encumbrances are tracking better than budget

Category	Budget	YTD Actual	Prior YTD	YEP
Revenues	\$3.7	\$3.3	\$3.6	\$4.5
Expenditures	5.5	4.2	3.8	5.0

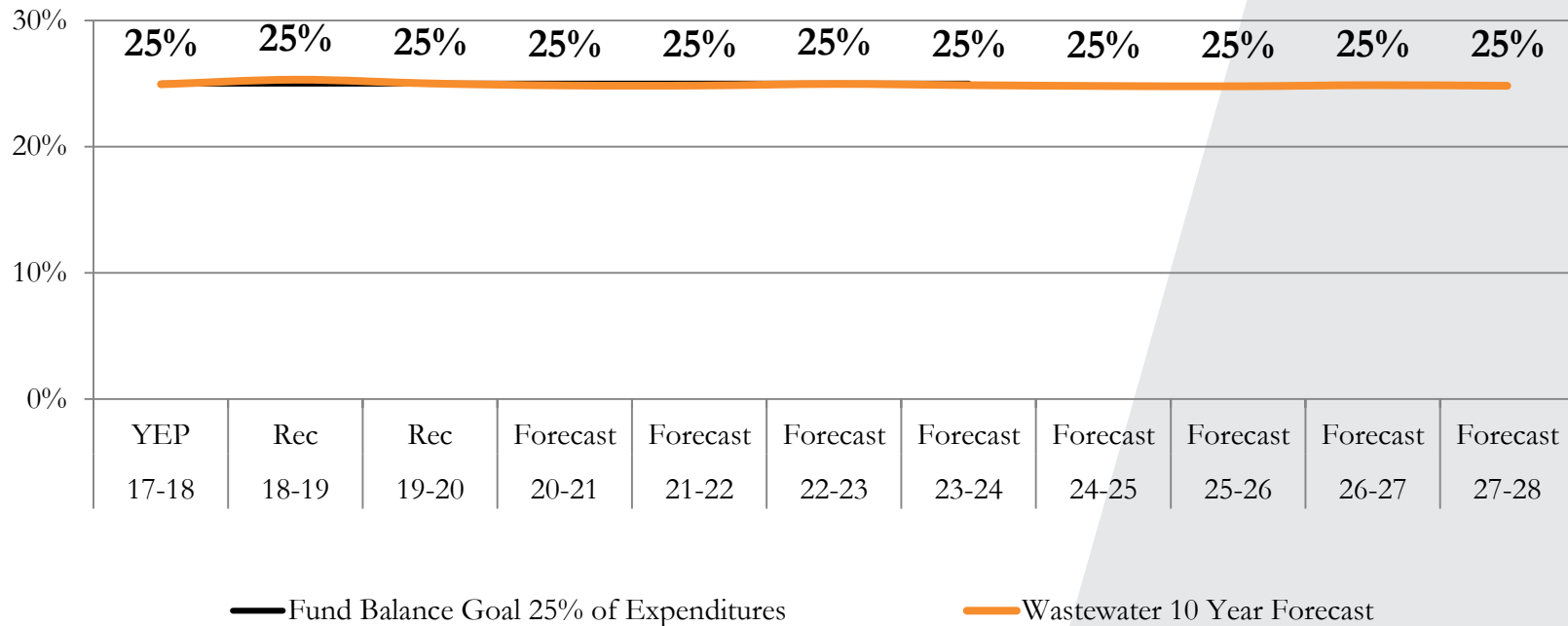
Development Services Fund (cont.)



Wastewater Enterprise



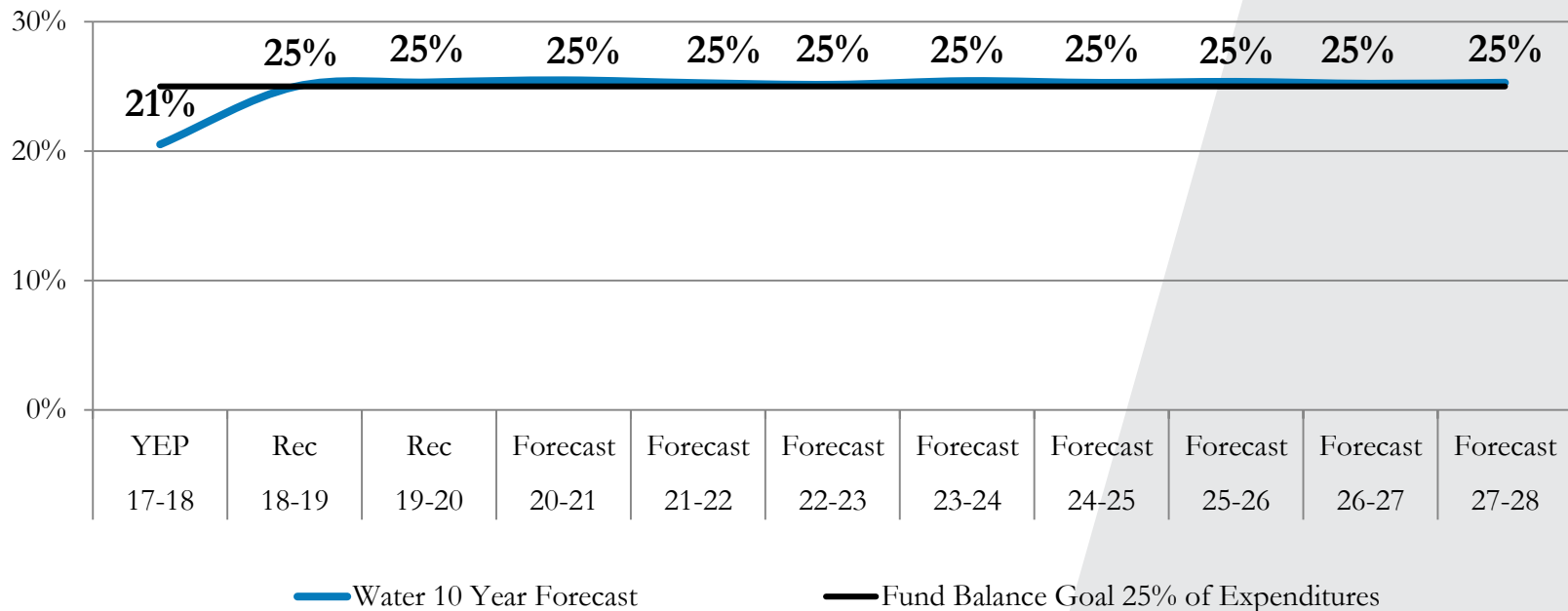
Category	Budget	YTD Actual	Prior YTD	YEP
Revenues	\$10.3	\$7.5	\$7.3	\$10.1
Expenditures	10.8	7.7	7.3	10.6
Net	(\$0.5)	(\$0.2)	-	(\$0.5)



Water Enterprise



Category	Budget	YTD Actual	Prior YTD	YEP
Revenues	\$12.2	\$9.7	\$8.1	\$13.0
Expenditures	12.1	9.0	7.6	12.1
Net	\$0.1	\$0.7	\$0.5	\$0.9



Recommended Budget



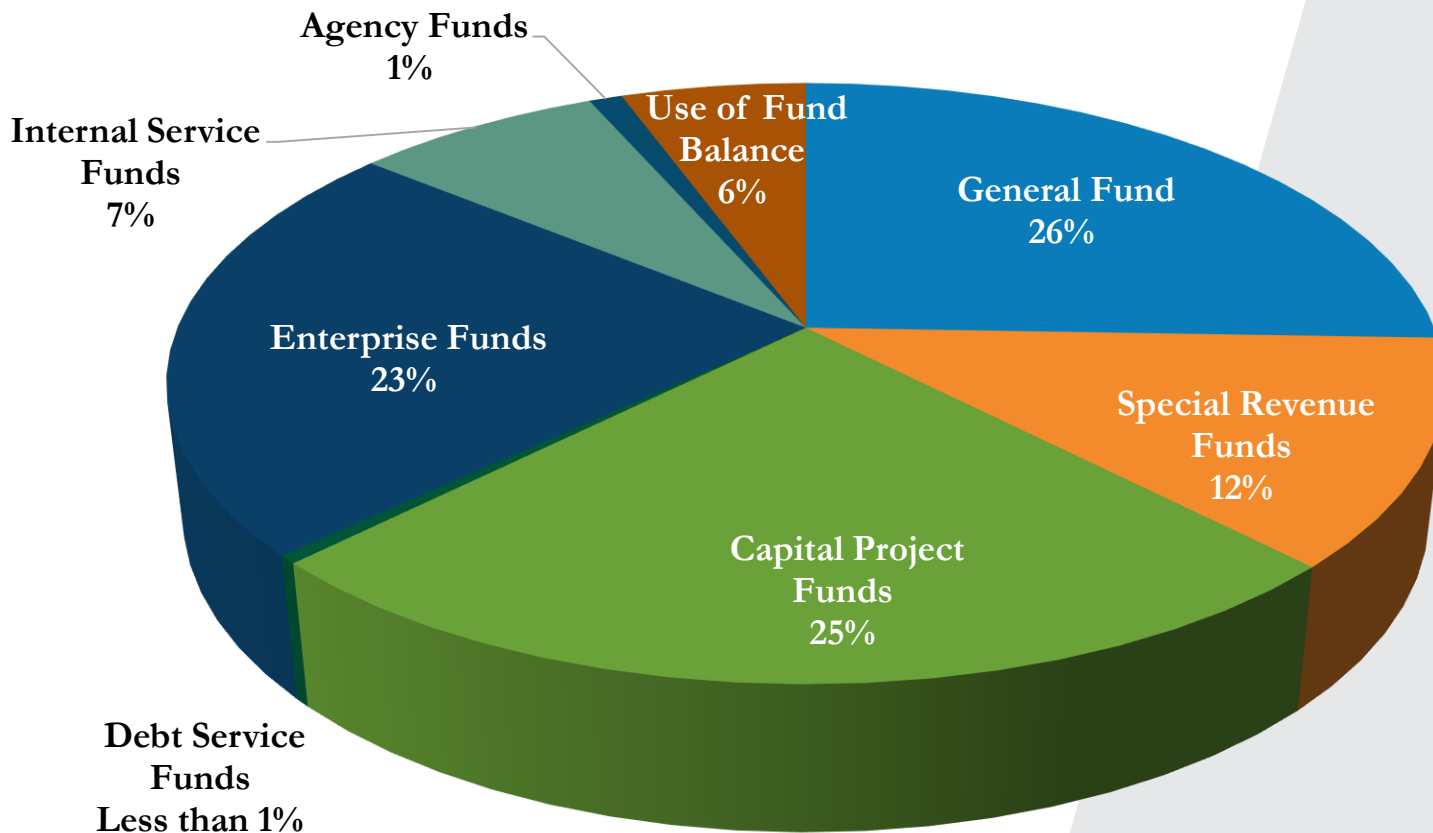
Budget Summary



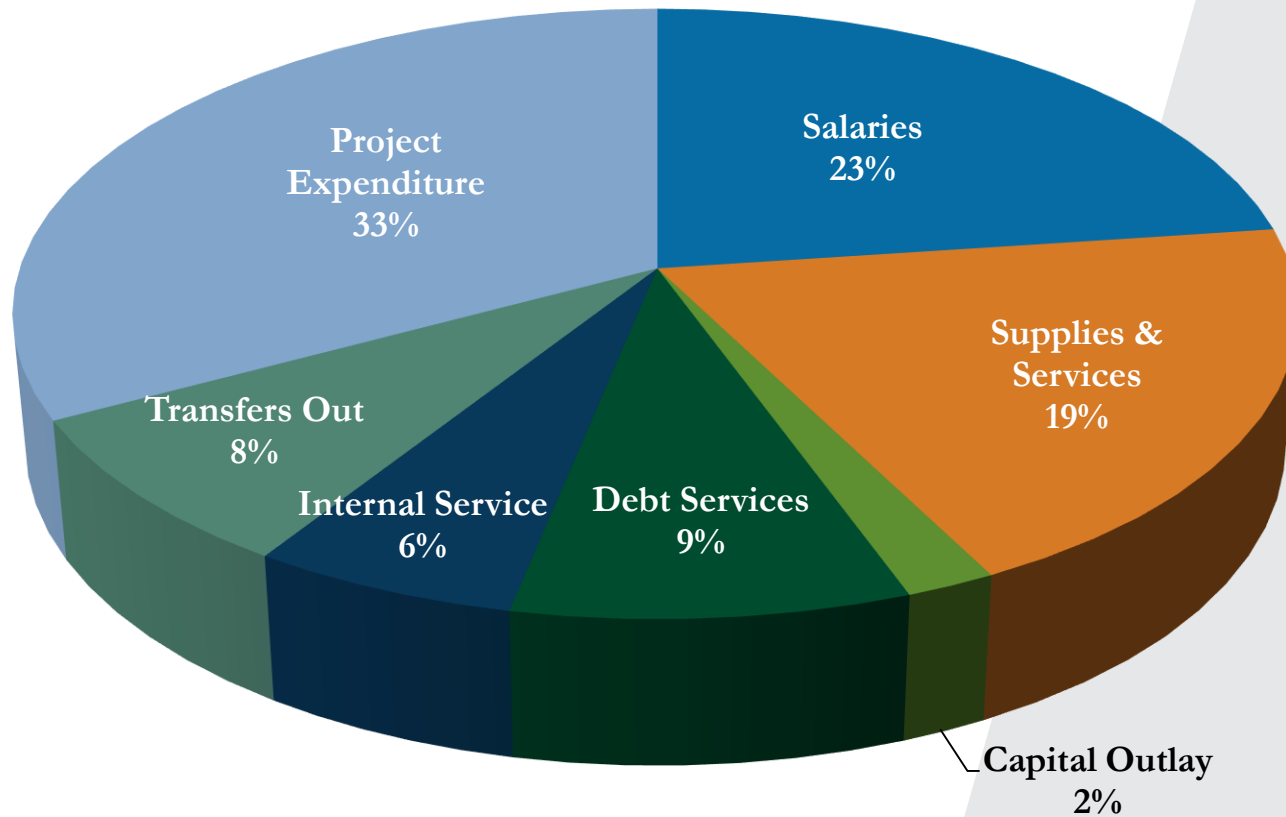
	FY 18-19	FY 19-20
Operating Budget	\$107.0 million	\$104.6 million
Capital Improvement Program	50.0 million	30.5 million
Total Recommended Budget	\$157.0 million	\$135.1 million

Total Recommended 6 Year CIP Budget: \$151.5 million

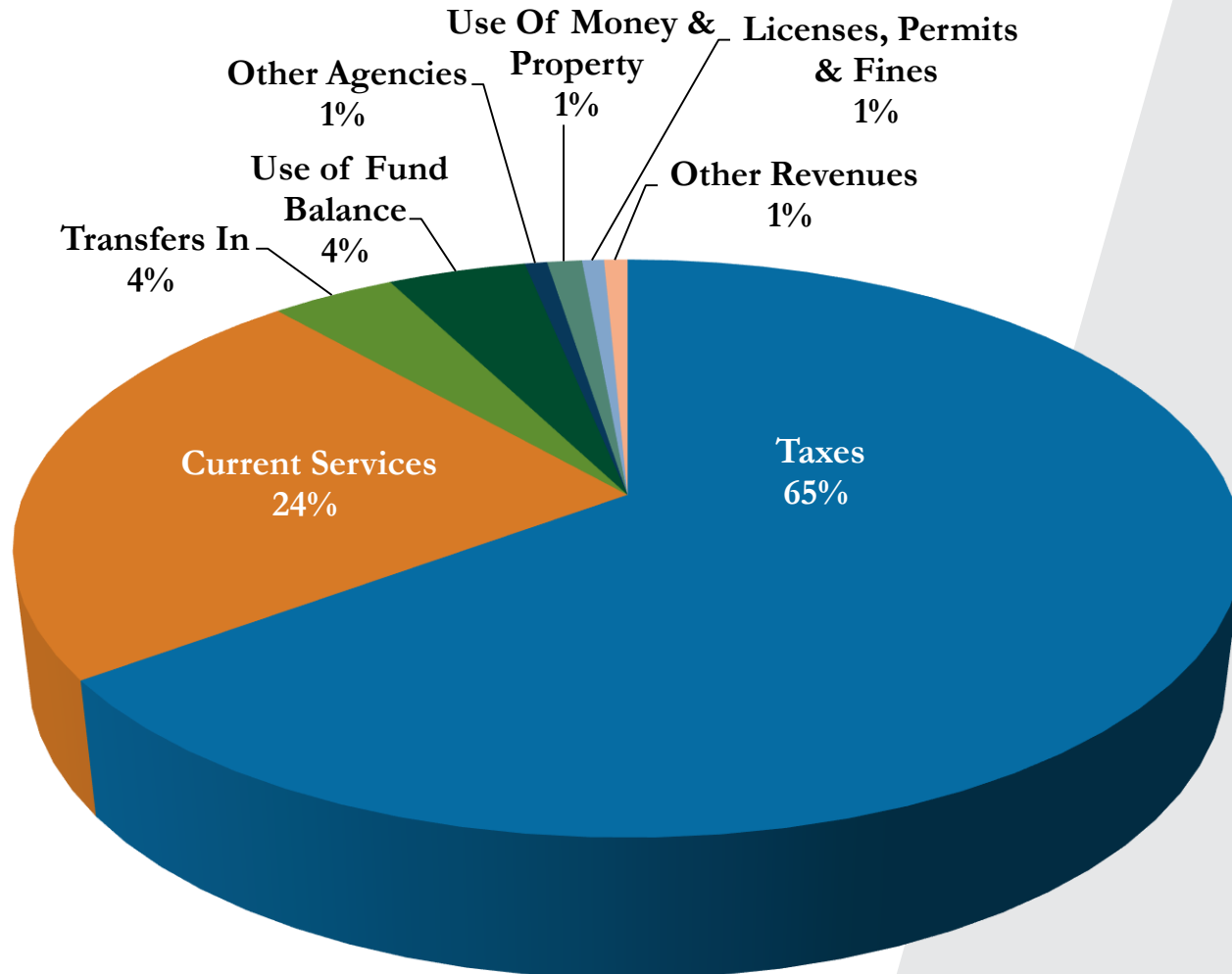
Total Recommended FY 2018-19 City Resources by Fund Type \$157.0 Million



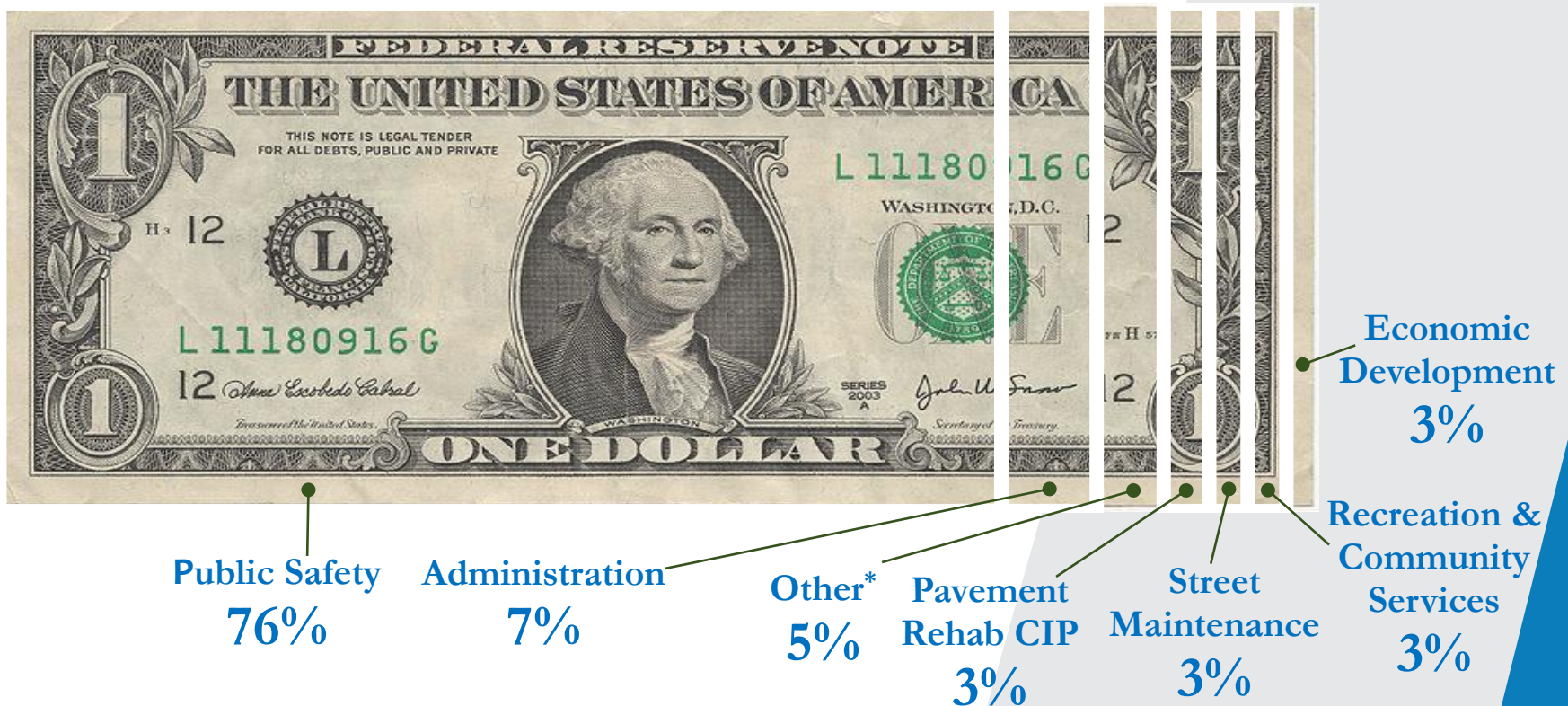
Total Recommended FY 2018-19 Use of Funds by Category \$157.0 Million



Total Recommended FY 2018-19 General Fund Resources \$40.1 Million

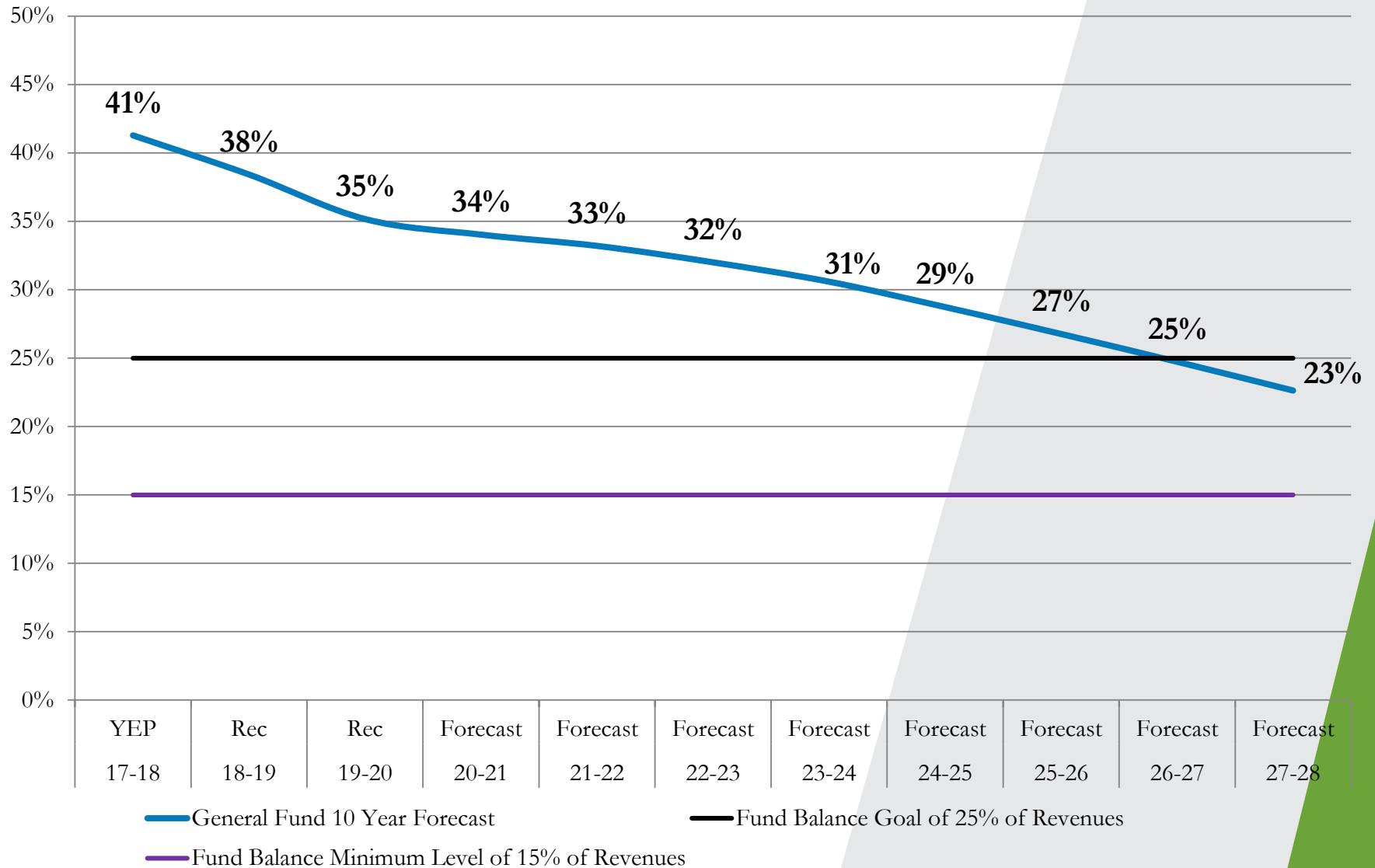


Total Recommended FY 2018-19 General Fund Discretionary Expenditures \$29.1 Million



*Other includes: Downtown Maintenance, Park Maintenance, OPEB, Environmental Programs

General Fund 10 Year Forecast



Service Level Enhancements



Service Level Enhancements



- Addition of 1.0 New FTE (Police Officer) - \$200,000
- Increased funding for training, including suicide prevention training - \$64,400 over 2 years
- Additional funding for unlimited services with the County Animal Shelter - \$19,000
- Outfit Fire's reserve engine for turn-key status - \$167,000

Service Level Enhancements (cont.)



- Purchase electronic medicine dispensary with double secure narcotic storage - \$41,000
- Increase the annual general fund investment in Other Post Employment Benefits (OPEB), parks maintenance, building maintenance, and streets - \$1,250,000 over 2 years

Service Level Enhancements (cont.)



- “Focus” Safe Parking Program to provide respite and resources for local unsheltered families or persons living in cars or RVs - \$30,000
- Hiring of a dedicated South County Case Manager for individuals targeted for housing intervention - \$50,000 (one-time)

Capital Improvement Program



Project Category	FY 18-19 through FY 23-24
Parks and Recreation	\$28.9 million
Public Facilities	8.0 million
Storm Drainage	6.9 million
Streets and Roads	46.6 million
Wastewater	44.5 million
Water	16.6 million
Total Recommended 6 Year CIP	\$151.5 million

Capital Improvement Program (cont.)



- Centennial Recreation Center Expansion
- Inclusive Playground
- Library Expansion

Capital Improvement Program (cont.)



- Pavement Rehabilitation Program
- Hale Avenue Extension
- Sewer Pipeline Capacity Improvements

Next Steps



Unfunded/Underfunded Liabilities and Projects

- PERS
- OPEB
- Infrastructure (Parks, Streets, and Building Replacement)
- Capital Projects (Wastewater Projects, New Fire Station, Non-profit Center/Civic Center Expansion, and Ballfield Development)

Community Engagement



Upcoming Important Dates

Time	Date	Event	Location
9am	Friday, May 18, 2018	Budget Workshop	Council Chamber
7pm	Wednesday, June 6, 2018	Public Hearing and Budget Adoption	Council Chamber



HOUSING ACCOUNTABILITY ACT



What is Affordable Housing? Who does it serve?



- ☐ Renters and homeowners, service workers, tech employees, seniors, homeless individuals and families
- ☐ Extremely Low-Income up to the Moderate-Income
- ☐ Deed-restricted for 55 years or more
- ☐ Spending no more than 30 percent on housing
- ☐ Workforce housing

Income Categories

Income Categories	1 Person			4 Persons		
	Income Limit	Max Rent/ Price	Max	Income Limit	Max Rent/ Price	Max
Extremely Low 0% up to 30% AMI	\$23,450	\$585/mo/ \$44,400		\$33,500	\$840/mo/ \$92,624	
Very Low 30% up to 50% AMI	\$39,100	\$980/mo/ \$119,000		\$55,800	\$1,395/mo/ \$197,400	
Low 50% up to 80% AMI	\$55,500	\$1,390/mo/ \$196,400		\$79,250	\$1,980/mo/ \$307,800	
Median 100% AMI	\$79,300	\$1,980/mo/ \$307,800		\$113,300	\$2,835/mo/ \$469,300	
Moderate 80% up to 120% AMI	\$89,950	\$2,250/mo/ \$358,800		\$128,500	\$3,215/mo/ \$541,200	
Above Moderate (MOD) 120% up to 150% AMI	\$118,950	\$2,975/mo/ \$495,700		\$169,950	\$4,250/mo/ \$736,600	

SCC Median Home Price up 27.8% (\$1.08M)



Morgan Hill

- Median listing price \$949,000
- Median sale price \$889,000
- Rentals
 - 1-bedroom \$1,770
 - 2-bedroom \$2,462
 - 3-bedroom \$3,048
 - 4-bedroom \$4,135

Housing Policy



- 2017, 130 bills constraining local land use authority and eliminating discretion to increase supply
- 2017, Fifteen bills approved, the “housing package”
- SB 35, entitles developments with 50% affordable units to streamline permitting if jurisdictions are failing to meet affordability numbers (10% in cities not performing as well as Morgan Hill)
- 200 proposed housing bills to increase supply in 2018

Morgan Hill's Housing Program



- Residential Development Control System (RDCS), 1977
- 14,415 housing units, of which 1,682 are affordable and deed restricted
- One in every eight homes is affordable

2007-2014 RHNA Production



Income Level	RHNA # Allocated to MH	Total Permits Issued	% Met
Very Low Income up to 50% AMI	317	98	31% <u>(-219)</u>
Low Income 51% to 80% AMI	249	100	40% <u>(-149)</u>
Moderate Income 81%-120% AMI	246	43	17% <u>(-203)</u>
Above Moderate Income more than 120%	500	1286	257% (+786)
Total	<u>1312</u>	1527	Achieved 116% of Total Unit Goal and 30% of Affordable Unit Goal

2015-2022 RHNA TO DATE



Income Level	RHNA Production # Allocated to MH	Permits Issued 2015	Permits Issued 2016	Permits Issued 2017	Total Permits Issued to Date	% Met
Very Low Income up to 50% AMI	273	11	29	0	40	15% (-233)
Low Income 51% to 80% AMI	154	114	30	15	159	103% (+5)
Moderate Income 81%- 120% AMI	185	5	5	6	16	9% (-169)
Above Moderate Income more than 120%	316	333	201	361	895	283% (+579)
Total	928	463	265	382	1,110	

FACTS

- Achieved 120% of Total Unit Goal to Date
- Achieved 35% of affordable units to date (215 permitted out of 612 affordable required)
- 66% of RHNA is required to be at Moderate Income levels or below
- End of Year 2017 report depicts a 402-unit deficit, Extremely Low (116 units), Very Low (117 units) and Moderate (169 units)

FACTS

- Approximately 402 affordable units would need to be awarded in the 2019 and 2020 RDCS competition to have construction permits by 2022
- Multi-year allotments are not factored in at this time as they will further reduce availability

For Policy Consideration:

- Modify RDCS points to target the 402 unit deficit (VLI & Mod)
- Adopt an Inclusionary Housing Ordinance
- Increase inclusionary from 10% to 15%
- Increase RDCS points for Accessory Dwelling Units (ADUs)

For Policy Consideration:



- Terminate the “on-going project” multi-year RDCS allocation awards
- Exempt affordable units from the Annual Building Permit Cap of 215
- Eliminate/reduce impact fee requirements on Accessory Dwelling Units
- Create an ADU Program

For Policy Consideration:



- Lock impact fees for affordable projects
- Develop housing product criteria for Mixed Use Flex block level masterplans and subsequent specific plan/form-based code areas along Monterey Road to assist with construction of workforce housing
- Exempt Affordable Rental Housing Projects from Sub-Metering

For Policy Consideration:



- Adopt a commercial linkage fee on new industrial/commercial projects
- Identify city-owned property to be developed and work w/non-profits to create extremely low income/very low income development

402 Affordable Unit Deficit



- o 71 units pledged but not built

- o 54 units built but not counted

- o If all of the perspective units are low or moderate the deficit will be **277**

Measure C & S in an 8 Year Housing Element Cycle = 1,762 Units

	2015	2016	2017	2018	2019	2020	2021	2022
RDCS competition	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Measure C & S Allocations	242	250	195	215 (139 Very Low/Mod)	215 (139 Very Low/Mod)	215	215	215

=1,762 Units

If the approximate deficit (277) is added to the 1,762 RDCS allotments, then the City would produce 2,039 units over an eight year cycle

What strategies does the
Council want to explore?

Will Silicon Valley Be Ground Zero For SB 35?

BY JOSH STEPHENS

Few symbols of the tech economy are more palpable or more massive than the Apple Corporation's new headquarters, an enormous aluminum-clad torus that made landfall on the northern edge of Cupertino recently. Few symbols of the consequences of the tech economy are more palpable or more massive than Vallco Shopping Mall, a moribund 50-acre shopping center, just the other side of Interstate 280 from Apple.

A standard-issue 1970s mall, once replete with Ice Capades, Orange Julius, May Co., and mountains of parking, Vallco has been wasting away roughly as long as the iTunes store has been in business. Developers have eyed the site for years, considering it an ideal location for redevelopment — in a city at the epicenter of California's housing crisis, where an average two-bedroom goes for over \$3,330. Due in large part to community opposition, redevelopment of the site has proceeded at a speeds more reminiscent of dial-up modems than 4G wireless.

Developer Sand Hill Property Co. bought the property four years ago and proposed a mixed-use development for the site called Vallco Town Center. Sand Hill placed

a measure on the 2016 Cupertino ballot that, if passed, would have enacted zoning to accommodate its proposed the project. Opponents put a competing measure on the ballot essentially calling for the downzoning of the entire site. Both measures failed, leaving stakeholders and the developer to prepare for a protracted battle.

Last month, though, Sand Hill revealed a new proposal for a mixed use development with 2,400 housing units, two million square feet of office space, and the imprimatur of celebrity architect Rafael Viñoly. It also added a new killer app to get the project entitled: invocation of SB 35.

Among the most prominent bills in the suite of 15 housing-related bills enacted last year, SB 35 attempts to add meaning to the state's Regional Housing Needs Allocation. Traditionally, the Department of Housing and Community Development has set RHNA targets for housing production in every city in the state, but cities that failed to approve — much less zone for — the allocations essentially faced no consequences. SB 35 requires cities that are out of compliance with RHNA to streamline their approvals for certain housing developments by-right, provided that the



Sand Hill envisions a mixed-use development at Vallco.

>>> Will Silicon Valley Be Ground Zero For SB 35?

— CONTINUED FROM PAGE 6

developments include housing earmarked for low-income residents.

SB 35 takes away a degree of local control. Some local stakeholders welcome it.

Geoff Paulsen, chair of the Cupertino Planning Commission, said he is “pumped” about the Vallco proposal, and he “enthusiastically endorse(s)” the use of SB 35.

“We’ve been held hostage by the NIMBY element, which is just afraid of change,” said Paulsen, speaking as a private citizen and not in his official capacity as planning commissioner. “Let each city have its design input but not let each city have the control of stopping people from being afford a place to live.”

Earlier this year, HCD published a list cities that have not fulfilled their RHNA obligations. Only 13 cities and counties avoided the list while 378, including Cupertino, received some level of censure. The city’s most recent housing report shows that only 199 units of the 1,064 in the city’s RHNA have been permitted; the city has permitted none of its allocated 563 units for low- and very-low-income residents.

SB 35 includes tiered streamlining categories depending on how far out of compliance a jurisdiction is. In Cupertino projects must include at least 50 percent affordability to qualify for SB 35 streamlining. The invocation of SB 35 not only bypasses the City Council and Planning Commission also exempts the project from analysis under — and lawsuits based on — the California Environmental Quality Act.

Even so, environmentalists wary of development on the urban fringe hail the maneuver.

“This is one of the most important opportunities to provide new homes in the heart of Silicon Valley to address our

**Vallco is
by far the
largest
project so
far to invoke
SB 35.**

jobs-housing imbalance and take pressure off of the natural and agricultural lands of the region that are threatened by sprawl development,” said Matt Vander Sluis, deputy director of Greenbelt Alliance.

Sand Hill’s “Revitalize Vallco” website insists that it still intends to go through the traditional planning process. Cupertino planners are currently drafting a specific plan for the proposed development. The city’s general plan already allows for a mix of uses on

the site. SB 35 requires that at least half of a mixed-use project’s square footage to go residential development. Sand Hill’s proposal would dedicate 4.7 million square feet, or 68 percent of the project’s total floor space, to residential uses. Paulsen said he will advocate for design changes such as more green space but acknowledged that design issues are “minor” compared to the need to provide well located housing.

Along with a small multifamily development in Berkeley (see CP&DR [coverage](#)), Vallco is one of the first, and by far the largest, projects to use SB 35. Vander Suis called it a “wakeup call” for the cities of the San Francisco Peninsula and South Bay. Many of them have wavered for years in a discomfiting condition in which they are trying to retain their bedroom-community character while suffering (or benefiting from) astronomical real estate prices and the presence of some of the 21st century’s most successful corporations.

“Communities have so many reasons to build housing, and SB 35 is one more reason,” said Vander Sluis.

A recent informal poll conducted by residents group Better Cupertino found that, among five options for the Vallco site, just over 50 percent of the survey’s 2,555 respondents favored a mall. This despite the fact that the property is in dispute precisely because the community was not able to support the mall that is already there.

— CONTINUED ON PAGE 8

>>> Will Silicon Valley Be Ground Zero For SB 35?

– CONTINUED FROM PAGE 7

“Some of these people want to go back to the 1970s and bring back Penney’s and Kmart and that kind of thing,” said Paulsen. “That’s just not going to happen. The world is changing. We need to shape the change, not resist it.”

While homeowners have not been shy about opposing development, many of the companies and their employees have, traditionally, not gotten politically engaged. This deadlock has prevented many Silicon Valley cities from achieving their RHNA numbers. Now that they are vulnerable to SB 35 projects, they will either have to plan for growth and approve RHNA-supporting projects of their own accord — or be prepared to accept SB 35-compliant projects whether their plans and zoning call for it or not.

Representatives of the Cupertino Planning Department and of Better Cupertino did not respond to requests for comment for this story. ■

Contacts & Resources

[Revitalize Vallco](#) (Sand Hill Property Co.)

[Vallco Specific Plan](#)

Geoff Paulsen, Chair, [Cupertino Planning Commission](#), gpaulsen@cupertino.org

Matt Vander Sluis, Deputy Director, [Greenbelt Alliance](#), mvaardersluis@greenbelt.org

Image courtesy of Revitalize Vallco.



IS ON TWITTER AND FACEBOOK!

Please follow our tweets @Cal_Plan,
and search for us and become a fan on Facebook.



Developer Puts Pressure on Berkeley With SB 35

BY MORRIS NEWMAN

Marking a first for Senate Bill 35, a break-through-the-jams housing statute enacted last year, a homebuilder earlier this month invoked the law to both bypass the California Environmental Quality Act and speed up the approval process for a 260-unit rental complex in Berkeley. Half the units in the 1900 Fourth Street development are reserved for low- to-moderate-income households, far beyond the city's inclusionary requirement of 13 affordable units. The developer is WBI, a subsidiary of Danville-based Blake Griggs Properties.

Sponsored by State Sen. Scott Wiener (D-San Francisco), SB 35 exempts projects from both CEQA and local land-use laws for projects that meet at least one of two conditions: In communities that have already built required number of affordable units, projects set aside 10 percent of units for low- and moderate-income households (those earning 80 percent of the area or less of area median income (AMI). In cities that have not yet built their "fair share," 50 percent of the units are to be set aside for the same category of renters. Additionally, construction workers must be paid prevailing wages.

The project is the latest of many that have run the gauntlet of Berkeley land-use politics, local opposition consistently leads to the rejection or down-sizing of both commercial and residential projects. Subjecting conforming projects to CEQA review is par for the course in Berkeley, according to lawyer Jennifer Hernandez, a partner at Holland & Knight who represents the developer.

"There are no ministerial [i.e. by-right] approvals in Berkeley," she said.

The city required the developer of 1900 Fourth to prepare an EIR, even though the proposed housing conformed to existing ordinances, and did not need to be down-sized or otherwise changed.

Local anti-growth groups latched onto the alleged remnants of Indian artifacts in the soil as the means to bring CEQA into the development dispute. Activist groups like Indians Organizing for a Change claimed construction would disrupt ancient shellmounds, which were funerary towers built by ancestors of the Ohlone Indian Tribe. The remains of more than 300 mounds, some of them 20 feet tall, were built as early as 3700 BC.

After testing the subsurface for shellmound remains, including trenching, the construction site did not overlay

any shellmounds, according to Berkeley planning consultant Mark Rhoades, a consultant to the developer. Those findings were included in the 2016 draft EIR, although Indian representatives remain unconvinced.

Facing the force of SB 35, the city announced on March 8 it was fast-tracking the approval of the development, officially starting the 180-day countdown to approval, as required in the statute. Other components of the project include 27,500-square-foot shopping center with a restaurant, a 7,000-square-foot park, and a 1,300-square-foot community center.

Indian representative Vincent Medina Jr. said he was "surprised and taken aback" by the city's decision to go forward with the housing. Speaking to Berkeleyside, a local news site, Medina said he found the move "deeply unsettling ... that our burial spaces, our sacred sites are not protected or respected by people who want to make a profit on these places."

Hernandez, for her part, she said she was impressed by the muscle in SB 35: the city has already scheduled meetings involving multiple departments to iron out traffic-circulation and other details necessary for final project approval.

"The clock is ticking and the city has been very cooperative," she said, referring to the 180-day deadline for project approval required under the new state law.

The use of SB 35 to bypass both CEQA and local ordinances has the potential to become a popular toll for home builders across the state that previously have hit roadblocks of zoning restrictions, hostile neighborhood groups, or both. Technically, SB 35 is applicable to the great majority of California municipalities. According to a SB 35 Statewide Determination Summary, prepared by the California League of Cities, only 13 cities or counties statewide had approved or built their share of affordable units according to the Regional Housing Needs Assessments (RHNA).

"It is not surprising that the (summary) includes nearly every city and county in California," says the League of Cities report. "Because state formula-generated housing need numbers have always ignored actual market conditions [such as high land costs] restrictive local zoning and the loss of affordable housing funds due to the termination of redevelopment agencies." ■

Is SB 827 Really Dead?

Nobody expected Sen. Scott Wiener's SB 827 to bite the dust so quickly. The controversial bill overriding local zoning power around transit stations had received so much publicity nationwide that everybody thought it had legs, even if Wiener had to amend it pretty significantly to get it through. [Jonathan Chait in *New York* magazine talked about](#) how the bill was "the great test for progressive politics"; it even [got some publicity](#) in Houston.

Indeed, just two weeks ago, I told the assembled planning commissioners of California at a League of California Cities event in Monterey that they had to get ready because "something like" SB 827 was coming down the pike.

And yet we were all wrong. The bill [failed its first committee](#) test this week and now it's dead for this year at least. There will be a lot of post-mortems as to why this happened. But the important question is: Will SB 827 – or something like it – be back next year? And if so, what are the odds of its success?

I can't say for sure what a future SB 827 – or a package of bills designed to promote housing – might look like. But I will say this: In the last two years, Wiener has succeeded in transforming the entire policy debate about housing in California. He's done it by taking a [well-documented issue](#) that nobody wanted to face and moving it forward with provocative bills that nevertheless seems to have a chance of passing.

His SB 35 last year passed in part because it was part of a larger package of housing bills and because – though it encompassed the same general idea of overriding local zoning to build housing – it was more limited in scope. As we documented not long ago, SB 35 has already given developers more leverage in both [Berkeley](#) and [Cupertino](#).

But SB 35's success, coupled with SB 827's failure, points to a couple of strategies that seem to increase likelihood of success for a local override bill. The first is limiting the override to affordable housing. And the second is tethering the override to the housing element. Developers can use SB 35 only in cities that have not met their production goals under the housing element – though, practically speaking, this means [virtually all cities in the state](#).

That's why it's important to keep an eye on Wiener's *other* major bill – SB 828, which would essentially require cities to double the amount of housing they zone for in order to account for the existing shortage of some 2 million housing units across the state. (Liam Dillon in the *Los Angeles Times* [recently provided an excellent overview](#) of the bill.)

Unlike SB 827, SB 828 is still alive. It may be just nerdy and obscure enough to pass – and that will change the world of housing even more, at least for local government planners around the state.

– WILLIAM FULTON | APR 20, 2018 ■





DEVELOPMENT PROCESS CONSULTANTS

May 2, 2018

City of Morgan Hill, City Council

SUBJECT: Agenda Item #15. HOUSING – MEETING THE CALIFORNIA HOUSING ACCOUNTABILITY ACT REQUIREMENTS AND MORGAN HILL’S REGIONAL HOUSING NEED ALLOCATIONS (RHNA).

Dear Council Members,

Last week a few members of the development community met with Staff to discuss the challenges that the City of Morgan Hill and local developers have before them to meet the California Housing Act Requirements and the RDCS Measure S.

We understand that the Measure S process introduces additional challenges unique to the City of Morgan Hill. We support staff and would like to participate to provide input and coordination to create the most efficient program to meet these housing requirements within the RDCS process.

Vincent R. Burgos

DEVELOPMENT PROCESS CONSULTANTS



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