



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, June 20, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The Establishment of an Annual Regulatory Fee for Massage Establishments within City Limits will be scheduled for a future meeting with date uncertain.

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 Pro Tem Constantine

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming the month of July 2018 as Parks and Recreation Month

PRESENTATIONS

RECYCLER OF THE YEAR, CHILI'S RESTAURANT- BY JULIE ALTER, RECOLOGY SOUTH VALLEY

YAC PRESENTATION- ASSET # 15- POSITIVE PEER INFLUENCE

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE LEASE WITH GO KIDS, INC

Recommendation:

Authorize the City Manager to execute and administer a ground lease with GO Kids, Inc.

2. FINAL MAP APPROVAL OF LAS COLINAS (FORMERLY E DUNNE MANA/E DUNNE KYONO) - TRACT NO. 10471

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with MH Las Colinas 2017 LLC, a California Corporation;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

3. FINAL MAP APPROVAL OF HENCKEN OAKS - TRACT NO. 10448

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Reliance Development LLC, a California Limited Liability Company;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney;
4. Authorize the City Manager to execute a Cash Deposit Agreement Guaranteeing Improvements; and
5. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

4. AWARD ANNUAL TRAFFIC SIGNAL AND LIGHTING AGREEMENT

Recommendation:

1. Award a three-year contract to Cal-West Lighting and Signal Maintenance, Inc. in the amount of \$450,000; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Cal-West Lighting and Signal Maintenance, Inc.

5. AWARD 2018 PAVEMENT RESURFACING PROJECT TO O'GRADY PAVING, INC.

Recommendation:

1. Approve the 2018 Pavement Resurfacing Project plans and specifications;
2. Award contract to O'Grady Paving, Inc. for the 2018 Pavement Resurfacing Project in the amount of \$1,556,650.50;
3. Authorize expenditure of construction contingency funds not to exceed \$155,665.05; and
4. Authorize the City Manager to execute and administer the construction contract with O'Grady Paving, Inc. pending review and approval by the City Attorney.

6. AMENDMENT OF DEVELOPMENT AGREEMENT WITH UHC 00661 MORGAN HILL, LP

Recommendation:

Approve technical modifications to the Development Agreement (Agreement) by and between the City of Morgan Hill and UHC 00661, LP, for the development of the Crossings on Monterey 39-unit housing project, and authorize staff to make the appropriate changes to the Exhibit C of the Agreement.

7. THIRD AMENDMENT TO AGREEMENT WITH LUHDORFF & SCALMANINI CONSULTING ENGINEERS

Recommendation:

1. Approve Third Amendment to Agreement with Luhdorff & Scalmanini Consulting Engineers for an additional amount of \$54,000 for a total not to exceed contract amount of \$283,840; and
2. Authorize the Assistant City Manager to execute and administer the Third Amendment to Agreement with Luhdorff & Scalmanini Consulting Engineers.

8. FIFTH AMENDMENT TO AGREEMENT WITH LEONE AND ALBERTS

Recommendation:

Authorize City Manager to Execute Fifth Amendment to Legal Services Consultant Agreement with Leone and Alberts for Litigation Services For a Total Not to Exceed Amount of \$170,000.

9. APPROVAL OF MEYERS NAVE AGREEMENT

Recommendation:

Approve contract with Meyers Nave to provide labor negotiations services for an amount not to exceed \$50,000.

10. APPROVE PURCHASE OF POLICE VEHICLES

Recommendation:

1. Authorize the purchase (including build-out) of three patrol vehicles - 2018 Ford Explorers - for an amount not to exceed \$65,400 each;
2. Authorize the purchase (including build-out) of one MSO Patrol Vehicle - Ford F150 Truck— in an amount not to exceed \$50,800;
3. Auction two aged patrol vehicles: 2011 Ford Crown Victoria - #133 (VIN#:2767) and 2011 Ford Crown Victoria - #139 (VIN#: 6669);
4. Salvage one 2005 Chevrolet Silverado Graffiti Abatement Vehicle (VIN#: 3348);
5. Repurpose one 2010 Ford Crown Victoria - #140 (VIN#:8668) to the Traffic Division; and
6. Repurpose one 2007 Chevrolet Silverado Truck (VIN#: 9290) to a Graffiti Abatement Vehicle.

11. BOOKSMART UPDATE

Recommendation:

Informational Only.

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

Recommendation:

Receive and accept report.

13. APRIL 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

14. APPROVE THE JUNE 6, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

15. APPEAL (AAE2018-0006 AND AAE2018-0008) OF PLANNING COMMISSION'S DISTRIBUTION OF RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) BUILDING ALLOTMENTS FOR RDCS2017-0013: COCHRANE – MWEST PROP CO AND RDCS2017-0014: MONTEREY/CENTRAL-ECA FOR FISCAL YEAR 2019/20

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and,
3. Adopt a Resolution denying the appeals and reaffirming the distribution of the Residential Development Control System (RDCS) Building Allotments for Fiscal Year 2019/20.

Estimated Time: 45 Minutes

OTHER BUSINESS

16. ACQUISITION OF 41% INTEREST IN MORGAN HILL TRANSIT CENTER LOT

Recommendation:

1. Authorize the transfer at no cost, of the 41% interest for future parking, subject to negotiation of compensation agreement and approval of the Successor Agency and Oversight Board; or
2. Authorize the transfer of the property by purchase and compensation agreement for the 2011 value of the asset of \$1,489,218. Or, should this not be negotiable and or supported by the Department of Finance,
3. Authorize the transfer and sale of the property to the City of Morgan Hill, for up to \$2.6 million, as supported by the 2018 appraisal prepared by Valbridge/Hulberg and Associates.
4. Adopt resolution approving an amendment to the Fiscal Year 2018-19 Fund 255 Housing Fund budget for the purchase of the 108,408-sf (41%) Successor Agency interest in the jointly owned Valley Transportation Authority/Successor Agency parking and transit facility located at 17295 Butterfield Blvd. up to the fair market appraised value of \$2.6 million, for future development at a time when replacement parking can be required of the development and important transit operation functions considered;
5. Authorize the City Manager to prepare and execute any and all related documents to affect the purchase; and
6. Direct staff to forward the recommendation to the Morgan Hill Successor Agency, Oversight Board, and subsequently the state Department of Finance (DOF) for review and concurrence, consistent with AB 1484, the California Redevelopment Dissolution Act.

Estimated Time: 20 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.



June Developmental Asset

Asset #15

Positive Peer Influence

Young person's best friends
model responsible behavior.

Tips on this asset

- Important to choose friends wisely
- Feel safe with each other
- Trust in every situation



How this relates to YAC?

- Model responsible behavior with other youth
- Make others feel welcome
- Build bonds with each other





June Complementary Asset

Asset #35

Resistance Skills

Young person can resist
negative peer pressure and
dangerous situations.

Why this is important?

- Ensure your safety and safety of others
- Lead to more responsible choices
- Set a good example for others to follow



What advice would you give a teen who feels peer pressured?





CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Chris Ghione, Community Services Director
APPROVED BY: City Manager

APPROVE LEASE WITH GO KIDS, INC

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a ground lease with GO Kids, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

For several decades, Go Kids, Inc. has had a ground lease to house a portable building on City property at Galvan Park. This space, approximately 0.12 acres, is located at the North end of the Park, just east of the new handball courts.

It was recently noticed by staff that the previous ground lease had expired in 2009. Staff then began the process to re-establish the lease. Go Kids utilizes the site as an administrative office for the services they offer in Morgan Hill and the surrounding area. The administrative offices support at home family child-care programs through oversight and technical assistance.

COMMUNITY ENGAGEMENT: Not Applicable

No community engagement was performed, as City staff worked directly with Go Kids staff on the lease agreement.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the ground lease and provide staff with additional direction for use of the site.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City last approved a lease agreement with Go Kids in January 2006.

FISCAL AND RESOURCE IMPACT:

The new ground lease agreement will result in \$2,400 per year in revenue.

CEQA (California Environmental Quality Act):

Categorical Exemption

The planned maintenance and management of city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Attachment 1 - Go Kids Ground Lease

**GROUND LEASE AGREEMENT
BETWEEN THE CITY OF MORGAN HILL AND
GO KIDS, INC.**

This GROUND LEASE AGREEMENT ("Agreement") between the City of Morgan Hill, a municipal corporation ("CITY"), and Go Kids, Inc., a California non-profit corporation ("GO KIDS"), sets forth the respective roles of CITY and GO KIDS in regard to the ground lease of CITY-owned PROPERTY, as further described in Exhibit A, is made and entered into as of _____, 20__ ("Effective Date"). Throughout this Agreement, CITY and GO KIDS are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the City Council approval on _____.
2. GO KIDS desires to continue to lease that portion of land owned or controlled by CITY as listed below.

In consideration of CITY leasing the PROPERTY to GO KIDS, GO KIDS leasing the PROPERTY from CITY, and the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

1. TERM

The term of this Agreement is effective from noon on the Effective Date to noon on June 30, 2023 ("Termination Date"). This Agreement may be renewed by mutual consent of the Parties on the same terms and conditions for four additional subsequent five-year terms upon GO KIDS giving 60 days' notice before the expiration of the term of this Agreement. CITY's City Manager is authorized to extend the term of this Agreement upon the same terms and conditions contained herein.

1.1 Holding Over. If GO KIDS or any assignee or sublessee thereof continues to occupy the PROPERTY after the term of this Agreement has expired or terminated in any manner and CITY has not objected thereto, such holding over shall be deemed a month to month agreement terminable on thirty (30) days' notice given by either Party (the "Hold-Over Agreement") on the same terms and conditions as provided in this Agreement.

1.1.1 Notwithstanding the foregoing, nothing contained in this Agreement shall give GO KIDS any right to occupy the PROPERTY at any time after expiration of the term of this Agreement or its earlier termination. GO KIDS acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Paragraphs 7260 et seq.) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the term of this Agreement, upon its earlier termination, or upon the termination of any holdover tenancy pursuant to this paragraph. GO KIDS hereby waives and releases to CITY all rights, if any, to which GO KIDS may be entitled under said provisions or other law or regulations.

1.1.2 If GO KIDS or any assignee or sublessee thereof shall continue to occupy the PROPERTY after the term of this Agreement has expired or is terminated in any manner and CITY has

objected thereto, then CITY shall be entitled to reenter the PROPERTY and enforce any other right available to it under the laws of California or the provisions of this Agreement.

1.2 Termination of Agreement. This Agreement may be terminated by either Party hereto for any reason upon thirty (30) days written notice to the other Party. CITY's City Manager is authorized to terminate this Agreement on behalf of CITY.

2. PROPERTY USE

2.1. The Property. The Parties hereto acknowledge that CITY is the owner of the real property described as a portion of Galvan Park, and as further described in **Exhibit A**, incorporated herein by this reference ("PROPERTY"). The building within which GO KIDS shall operate is a portable building owned and operated exclusively by GO KIDS. Said building, the fence surrounding the building and all of its fixtures, equipment, materials, and accessories are owned and operated and controlled by GO KIDS.

2.2 Former Land Lease Agreement. Parties acknowledge that CITY and GO KIDS were parties to a Land Lease Agreement for the same PROPERTY, which expired on January 18, 2009, to conduct and operate a day care center facility. GO KIDS has continuously occupied the PROPERTY, but no longer operates the day care center.

2.4. Permitted Use. CITY agrees to permit GO KIDS to use the PROPERTY for office use. GO KIDS shall not use or permit the PROPERTY to be used for any other purpose without CITY's prior written consent, which consent may be granted or withheld in CITY's sole discretion.

2.4.1. GO KIDS shall not block the use of park fields or amenities from public use without a valid rental permit granted by CITY.

2.4.2 GO KIDS shall have the non-exclusive right to park in the Galvan Park public parking lot, but will not have any priority over general members of the public utilizing the public parking.

2.4.3 Compliance with "No Smoking Law" (2003 Assembly Bill 846): GO KIDS shall ensure that the PROPERTY is in compliance with Government Code Title 1, Division 7, Chapter 32 (commencing with section 7596), as may be amended from time to time, and, if necessary, shall modify the PROPERTY to comply with the law and the regulations promulgated to implement 2003 Assembly Bill 846, as well as Morgan Hill Municipal Code Chapter 8.44.

2.5. "As Is" Condition. GO KIDS accepts the PROPERTY permitted for its use under the Agreement in its present condition, "as is" and subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record, (2) all matters discoverable by physical inspection of the PROPERTY or that would be discovered by an accurate survey of the PROPERTY, and (3) all matters known to GO KIDS or of which GO KIDS has notice, constructive or otherwise. The taking of possession of the PROPERTY shall, in itself, constitute acknowledgment by GO KIDS that the PROPERTY is in a condition satisfactory for its use and that CITY has not agreed to undertake any modifications, alterations, or improvements to the PROPERTY except as specifically provided in this Agreement. GO KIDS specifically acknowledges that, except as otherwise may be expressly provided herein, CITY has made no representations concerning the condition of the PROPERTY, the fitness of the PROPERTY for GO KIDS' intended use, or the compliance of the PROPERTY with any federal, state, or local building codes or ordinances or with any laws, regulations, or guidelines regarding disabled or handicapped person, including, without limitation, the Americans with Disabilities Act of 1990.

2.6. Maintenance, Repairs, and Alterations.

2.6.1 GO KIDS shall, at its own cost, keep and maintain the PROPERTY in good repair and lawful condition in compliance with all applicable CITY Codes and standards. If CITY notifies GO KIDS of any deficiencies in maintenance, GO KIDS shall be responsible to address deficiencies outlined in by CITY in a timely manner. If after thirty (30) days written notice from CITY, GO KIDS has failed to commence and diligently pursue completion of any and all maintenance, replacement, and repair which may be required to restore the PROPERTY and any of its fixtures, equipment, and mechanical systems as a result of the neglect of or loss or damage caused by GO KIDS or any of its officers, employees, agents, invitees, or licensees or which otherwise results from GO KIDS' use or occupancy of the PROPERTY, then CITY shall have the right, but not the duty, to perform such maintenance, replacement, and repair at GO KIDS' expense and GO KIDS shall reimburse CITY for such costs promptly upon CITY's written demand. The performance of maintenance and repair by CITY shall, in no event, be construed as a waiver of GO KIDS' duty to maintain and repair as herein provided. Unless CITY's written approval has been first obtained in each instance, GO KIDS shall not alter the point of supply of any utilities. GO KIDS shall indemnify, defend, and hold harmless CITY against all actions, claims, and damages by reason of GO KIDS' failure to comply with and perform the provisions of this section. Damage caused by GO KIDS shall be repaired by GO KIDS at GO KIDS' expense. GO KIDS shall promptly notify CITY of any damage or service needs that may significantly interfere with the normal use of the PROPERTY.

2.6.2 Alterations. GO KIDS may make no alterations, additions or improvements to the PROPERTY without prior written permission of CITY. Improvements must be approved by CITY's Community Services Director. All required permit fees (Building Permits) are responsibility of GO KIDS. GO KIDS shall pay for all labor done and materials furnished in any repairs or any permitted alterations, additions, or improvements to the PROPERTY. Upon GO KIDS' completion of any improvements within the PROPERTY, GO KIDS shall furnish to CITY a set of reproducible, final "as built" drawings of any and all such alterations, additions, or improvements. GO KIDS waives the right to make repairs at the expense of CITY or, in lieu thereof, to vacate the PROPERTY, and waives the benefit of the provisions of Paragraph 1941 and 1942 of the California Civil Code or any successor statute thereto and any other similar law now or hereafter in effect.

2.6.3 Liens or Encumbrances. GO KIDS shall keep the PROPERTY free and clear of any liens or encumbrances of any kind whatsoever created by or through GO KIDS. If any such liens or encumbrances are filed, GO KIDS shall not be deemed to be in default if such liens or encumbrances have been removed of record within forty-five (45) days of the filing thereof. If GO KIDS fails to do so, CITY shall have the right and option, but not the duty, to pay or otherwise discharge, stay or prevent the execution of any liens or encumbrances. In such event, CITY shall not be deemed to have waived CITY's right to declare GO KIDS in default under this Agreement, and GO KIDS shall reimburse CITY for all sums expended in connection with such liens or encumbrances, including CITY's reasonable attorneys' fees and costs. Such reimbursement shall be due and payable ten (10) days after CITY's written demand for any such payments, fees, or costs.

2.6.4 Waste. GO KIDS shall not commit, nor permit to be committed, any waste upon the PROPERTY, or carry on any nuisances or illegal activities on the PROPERTY.

2.6.5 GO KIDS' PROPERTY. Any and all property, including the building referenced in Section 2.1, belonging to or brought onto the PROPERTY by GO KIDS or any of its officers, employees, agents, invitees, or licensees shall be at the sole risk of GO KIDS. GO KIDS is hereby advised and understands that the property of GO KIDS, and any of its tenants, is not insured by CITY for either damage or loss, and CITY assumes no liability for such loss. GO KIDS is advised that, if insurance coverage is desired by GO KIDS, it is GO KIDS' responsibility to obtain said coverage. Subject to CITY's right of approval, GO KIDS may place and install trade fixtures and other personal property on the PROPERTY for use in connection with its operations hereunder and the same shall be and remain the property of GO KIDS. GO KIDS shall, however, be responsible for the cost of repairing any damage to the PROPERTY or any other improvements of CITY which are caused by the removal of any such trade fixtures and personal property. Notwithstanding the foregoing, however, if GO KIDS shall at any time be in default hereunder, then CITY shall have the benefit of any statutory liens on GO KIDS' property located in the PROPERTY which are available to CITY under the laws of the State of California and GO KIDS shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Agreement have been cured. Should GO KIDS' building be damaged or destroyed, GO KIDS shall be responsible for its immediate repair or removal.

2.6.6 City's Right to Enter. CITY and its designated agents shall have the right to enter any and all part or spaces on the PROPERTY at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose

2.7. Rules and Regulations. GO KIDS covenants and agrees to observe and comply with all rules and regulations of CITY, including all safety, security and operations directives of CITY's Community Service Director or his or her designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the PROPERTY and the use of facilities. GO KIDS further covenants and agrees to observe and comply with any and all valid and applicable requirements of all duly-constituted public authorities and with all federal, state and local statutes, ordinances, and regulations applicable to GO KIDS, the PROPERTY or CITY. GO KIDS agrees to pay or reimburse CITY for any fines which may be assessed against CITY as a result of the violation by GO KIDS of any applicable regulation at CITY, which payment shall be made by GO KIDS within fifteen (15) days from receipt of CITY's invoice for such amount. Documentation showing that payment of such fine is GO KIDS' responsibility hereunder.

2.8. Waiver of Damage. GO KIDS hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency, or impairments of any of the services in or to the PROPERTY or CITY, including, but not limited to, 1) electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage, or sewage systems, 2) from wires leading to or inside of any space or structure, or 3) by reason of any loss resulting from the failure of any such system or facility, unless such loss or damage is due to the sole negligence or willful misconduct of CITY or its officers, agents, or employees.

2.9. End of Term. At the end of the term or upon the earlier termination of this Agreement, GO KIDS shall deliver to CITY possession of the PROPERTY in its original condition in all respects, reasonable use and wear excepted. CITY may require that GO KIDS remove all of GO KIDS' equipment and the building. GO KIDS agrees to reimburse CITY for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition provided, however, in the event GO KIDS has caused any alterations, additions, or improvements to be made to the PROPERTY, CITY may elect, with respect to each such alteration, addition, or improvement, to accept it as it was at the time it was made

or constructed, reasonable use and wear excepted, or to require the same to be restored to its original condition at GO KIDS' expense.

2.10. Nondiscrimination. GO KIDS covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that this Agreement is made and accepted upon and subject to the following conditions: there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, or enjoyment of the portion of the PROPERTY herein leased nor shall GO KIDS, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, invitees, permittees, subtenants, or vendees in the portion of the PROPERTY herein leased.

2.11. Hazardous Materials. GO KIDS shall not keep or maintain any Hazardous Substance on or in the PROPERTY without CITY's prior written approval. GO KIDS shall not keep or have on the PROPERTY any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the PROPERTY. GO KIDS shall promptly give notice to CITY of any Hazardous Substance dispersal, spill, or Hazardous Substance claim of which it is aware. GO KIDS shall defend, with counsel acceptable to CITY, indemnify and hold CITY harmless from any and all claims, costs, damages, penalties, or liabilities arising out of the use or release of any Hazardous Substance at, in, or on the PROPERTY dated from the time GO KIDS occupied the PROPERTY. The term "Hazardous Substance" as used in this Agreement shall mean any products, substances, chemical, material, or waste whose presence, nature, quantity, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on the PROPERTY, is either (a) potentially injurious to the public health, safety, or welfare, the environmental, or the PROPERTY, (b) regulated or monitored by any governmental authority, or (c) a basis for liability of CITY to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but is not be limited to, hydrocarbons, MTBE, petroleum, gasoline, crude oil, or any products, by-products, or fractions thereof.

2.12. City's Reserved Rights

2.12.1 CITY reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the PROPERTY and to run water, electrical, telephone, gas, drainage, communications and other lines over, under, across, and through the PROPERTY and to grant necessary utility easements therefore.

2.12.2 CITY reserves the right (a) to further develop, improve, repair and alter the PROPERTY and all facilities and buildings as it may see fit, free from any and all liability to GO KIDS for loss of business or damages of any nature whatsoever to GO KIDS occasioned during the making of such improvements, repairs, alterations, and additions, including, but not limited to, any damages resulting from negligence of CITY or its employees, agents or contractors, and (b) to establish such fees and charges for the use of the PROPERTY.

2.13. Destruction of Property. In the event the PROPERTY is partially destroyed from any cause, CITY shall have the right to repair the PROPERTY without providing any alternative space for GO KIDS. If the repairs cannot be made within one hundred eighty (180) days, this Agreement may be terminated at the option of either Party by written notice given to the other Party. In the event the PROPERTY suffers the destruction of more than twenty-five percent (25%) of the replacement cost or in the event insurance proceeds are not sufficient to cover at least ninety percent (90%) of the cost of repairs, CITY may elect to

terminate this Agreement. CITY shall not be obligated to replace any of GO KIDS' personal property, including the building referenced in Section 2.1, which may be damaged or destroyed.

3. FEES AND CHARGES

3.1. Use Fee. As consideration for GO KIDS' use of PROPERTY pursuant to the terms and conditions of this Agreement, GO KIDS agrees to pay to CITY two hundred dollars (\$200.00) per month on the Effective Date and upon said subsequent anniversary dates of such execution during such time as this Agreement continues to remain in effect.

3.2 Building Service Charges. GO KIDS shall pay all Building Service Charges. "Building Service Charges" shall include charges and fees for utility charges (electricity, water and sewer), trash collection, if any, property insurance premiums for the PROPERTY, property taxes, reception services, operation of community rooms, and cost of on-site personnel employed by GO KIDS, if any, to implement maintenance or services. GO KIDS shall be responsible for obtaining and paying for any other utilities (including, without limitation, telephone, cable, wireless internet service) as is necessary for GO KIDS' use of the PROPERTY.

3.3 Taxable Possessory Interest. The property interest created by this Agreement may be subject to property taxation, and GO KIDS, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on the interest.

4. INSURANCE REQUIREMENTS. GO KIDS 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 GO KIDS, including liability for damage or injury to the property or person (including death) of any GO KIDS or invitee of GO KIDS or any other person entering upon or using the PROPERTY, or any structure thereon, or any part thereof, and arising from GO KIDS' use and occupancy thereof, 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. GO KIDS further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to GO KIDS, at any time as deemed necessary to protect the interests of CITY.

4.1. Insurance Types and Amounts.

4.1.1. Commercial General Liability (CGL). GO KIDS 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 five hundred thousand dollars (\$500,000.00) for property damage, or (ii) the maximum amount of such insurance available to GO KIDS under GO KIDS' combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

4.1.2. Automobile Liability. GO KIDS shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if GO KIDS does not own automobiles, then GO KIDS 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 five hundred thousand dollars (\$500,000.00) for property damage, or (ii) the maximum amount of such insurance available to GO KIDS under GO KIDS' combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

4.1.3. Workers' Compensation Insurance and Employer's Liability. GO KIDS 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 GO KIDS under GO KIDS' combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If GO KIDS is self-insured, GO KIDS shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

4.1.4. Property. GO KIDS shall maintain Property Insurance to cover GO KIDS' personal property, including temporary structures, furniture and fixtures, at an amount equal to the full replacement cost of such property. Such coverage shall include protection against fire, theft, vandalism, sprinkler leakage, malicious activity, and all other forms of loss ("all-risk" coverage). GO KIDS may elect to self-insure GO KIDS' personal property by written notice given to CITY.

4.1.5. Other Liability Insurance. Should GO KIDS' activity on, or use of, the property involve contact with minors, GO KIDS 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 GO KIDS under GO KIDS combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

4.2.1. General Liability.

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

4.2.1.2. 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,

4.2.1.3. insurance shall be primary non-contributing.

4.2.2. 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.

4.3. 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.

4.4. Certificates. GO KIDS shall furnish CITY with copies of all policies or certificates as outlined herein, 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. Certificates,

including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

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

5. INDEMNIFICATION

GO KIDS agrees to indemnify, defend, and hold harmless CITY, its governing board (including, without limitation, members of the City Council), officers, employees, and agents, from and against all liabilities, losses, suits, claims, demands, judgments, damages, fines, penalties, costs, and expenses (including attorney's fees and costs), which may be incurred by, charged to, or recovered from any of the foregoing (i) by reason or on account of damage to or destruction of any property of CITY, damage to any property of, injury to, or death of any person resulting from or arising out of GO KIDS' use, operation, occupancy, or maintenance of the PROPERTY or any improvements thereto, or the acts or omissions of GO KIDS' officers, agents, employees, contractors, subcontractors, invitees, subtenants, or licensees, regardless of where the damage, destruction, injury, or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost, or expense was caused by CITY's sole negligence or willful misconduct, or (ii) arising out of the failure of GO KIDS to keep, observe, or perform any of the covenants or agreements in this Agreement to be kept, observed, or performed by GO KIDS. In carrying out its obligations hereunder, GO KIDS shall use counsel reasonably acceptable to CITY's City Attorney. The provisions of this Paragraph shall survive the expiration or earlier termination of the term of this Agreement with respect to any acts or omissions occurring during the term of this Agreement.

6. DEFAULT

In the event that (a) GO KIDS or any of its officers, employees, agents, invitees, subtenants or licensees violates any other term, covenant or condition of this Agreement and such violation continues beyond thirty (30) days after CITY has given written notice thereof to GO KIDS, or if the nature of the cure of such term, covenant or condition reasonably requires more than thirty (30) days to remedy, if GO KIDS does not commence the cure of such term, covenant or condition within such thirty (30) day period and diligently pursues such cure to completion thereafter, (b) GO KIDS ceases to use the PROPERTY or to operate its services as set forth in this Agreement beyond ten (10) days after CITY has given written notice to resume operation, or (c) if a trustee or receiver is appointed to take possession of substantially all of GO KIDS' assets located in the PROPERTY or of GO KIDS' interest in this Agreement, where possession is not restored to GO KIDS within thirty (30) days, then in any such event GO KIDS will be in default under this Agreement. On the occurrence of any such default, CITY may elect to terminate this Agreement (which termination shall only be evidenced by a written notice of termination from CITY to GO KIDS) and resume possession of the PROPERTY, thereafter using the same for its own purposes without having to account to GO KIDS therefore, and GO KIDS shall immediately return to CITY all unexpended and unencumbered funds provided to GO KIDS by CITY under this Agreement.

7. ACCESS DISCLOSURE

The PROPERTY has not undergone an inspection by a Certified Access Specialist (CASP), and a disability access inspection certificate, as described in subdivision (e) of Section 55.53 of the California Civil Code, has not been issued for the PROPERTY. In accordance with Section 1938 of the California Civil Code, GO KIDS is advised of the following: "A Certified Access Specialist (CASP) can inspect the subject PROPERTY and determine whether the subject PROPERTY comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASP inspection of the

subject PROPERTY, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject PROPERTY for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the PROPERTY." Accordingly, the parties hereby agree that GO KIDS shall have the right, but not the obligation, to have a CASp inspect the PROPERTY and determine whether the PROPERTY complies with all of the applicable construction-related accessibility standards under state law. If it is determined that the PROPERTY do not meet all applicable construction-related accessibility standards, then GO KIDS shall promptly make, as soon as reasonably possible, but subject to Section 10 hereof, any repairs necessary to correct violations of construction-related accessibility standards identified by such inspection, at GO KIDS' sole cost and expense.

8. WAIVER

The waiver by either Party of a breach by the other Party of any agreement herein shall not be deemed to be a waiver by that Party of any covenant of this Agreement. Such waiver by either Party shall not constitute a waiver of any future breach by the other Party of the same or other covenants of this Agreement.

9. AMENDMENTS

This Agreement may be amended only by an instrument in writing executed by both Parties.

10. ASSIGNMENT AND SUBLETTING

Except as otherwise provided in this Agreement, GO KIDS may not assign this Agreement or any of the rights granted to it hereunder or sublet the PROPERTY or any portion thereof without the prior written consent of CITY.

11. SUCCESSORS AND ASSIGNS.

This lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of GO KIDS.

12. 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.

13. INDEPENDENT CONTRACTOR.

It is agreed that GO KIDS shall act and be an independent contractor and not an agent or employee of CITY.

14. MORGAN HILL BUSINESS LICENSE.

GO KIDS shall obtain a City of Morgan Hill Business license, and maintain it throughout the term of this Agreement.

15. NOTICES

Any notice or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery for five (5) days after deposit in any United States mail depository, first class postage prepaid and addressed to the party for whom intended.

For City: City Manager
City of Morgan Hill

17575 Peak Avenue
Morgan Hill, CA 95037

Copies to: City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

For GO KIDS: Go Kids, Inc.
885 Moro Drive
Gilroy, CA 95020

Correspondence other than notices may be given by phone, regular mail, email or facsimile through the Community Services Director or his or her designee.

16. SEVERABILITY

The partial or total invalidity of one or more parts of this Agreement will not affect the intent or validity or remaining parts of this Agreement.

17. JURISDICTION; GOVERNING LAW

Jurisdiction over any disputes arising out of this Agreement shall be vested in the courts of the County of Santa Clara, State of California, and the provisions of this Agreement shall be interpreted under and according to the laws of the State of California.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and any representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written, are merged herein.

19. COUNTERPARTS

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

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20. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.

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 Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

GO KIDS, INC.

 City Attorney

By:

 Donald A. Larkin
 Print Name

Laurence P. Drury, CEO

Laurence P. Drury, CEO

 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: *May 21, 2018*

Patricia DelBene

 By:

Patricia DelBene

 Print Name and Title of Signer.

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

Date: *May 21, 2018*

Attachment: Attachment 1 - Go Kids Ground Lease (1796 : Go Kids Lease)

Exhibit "A"

Boundary Description to Accompany Lease Agreement

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

Being a portion of Lot 70, as delineated upon that certain map entitled "Morgan Hill Ranch Map No. 3", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book G of Maps at pages 20-22, and more particularly described as follows:

COMMENCING at a point on the common intersection of said Lots 70 and 71, of said Morgan Hill Ranch Map No.3, on the westerly right of way line of Hale Avenue (66' wide); thence along the easterly line of said Lot 70, North 34° 52' 00" West 330.00 feet; thence along the westerly line of said Lot 70 and perpendicular to said westerly right of way line of Hale Avenue, South 55° 08' 00" West 223.00 feet to the Point Of Beginning;

From said Point Of Beginning parallel to said right of way line of Hale Avenue South 34° 52' 00" East 63.00 feet; thence parallel to said westerly line of Lot 70 South 55° 08' 00" West 85.00 feet; thence parallel to said right of way line of Hale Avenue North 34° 52' 00" West 63.00 feet; thence along the westerly line of said Lot 70 and perpendicular to said westerly right of way line of Hale Avenue North 55° 08' 00" East 85.00 feet to Point Of Beginning, and containing 5,355 square feet (0.123 acres) of land , more or less.

The preceding description is shown on the attached plat, Exhibit B, and by reference is made a part hereof.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

FINAL MAP APPROVAL OF LAS COLINAS (FORMERLY E DUNNE MANA/E DUNNE KYONO) - TRACT NO. 10471

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with MH Las Colinas 2017 LLC, a California Corporation;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Las Colinas – Tract No. 10471 is a 32-lot subdivision located on East Dunne Avenue just east of Butterfield Boulevard (see attached site map). The developer, MH Las Colinas 2017 LLC, a Limited Liability Company, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on March 27, 2018.

The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Map.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council authorize the City Manager to sign a Subdivision Improvements Agreement on behalf of the City and sign a Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT: Involve

On March 27, 2018, the Planning Commission approved the Tentative Map. Residents

within a 300 feet radius were informed of Planning Commission's intent to approve the tentative map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over the tentative map requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the tentative map conditions approved by the Planning Commission to file for a final map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 2, 2018, the City Council adopted the ordinances approving the Development Agreement (Ordinance No. 2275) and the Zoning Amendment (Ordinance No. 2274).

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration for the project was adopted on March 27, 2018.

LINKS/ATTACHMENTS:

1. site map - Las Colinas Tract 10471
2. Map - Las Colinas Tract 10471
3. Tract 10471 Subdivision Improvements Agreement
4. Stormwater BMP Operation and Maintenance Agreement Form



Attachment: site map - Las Colinas Tract 10471 (1810 : FINAL MAP APPROVAL OF LAS COLINAS - TRACT 10471)



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

G:\R-14\Proj\GIS\John\Mario_LasColinasTR10471.mxd

SITE MAP



OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THE HEREIN MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENTS ARE NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL, THE REAL PROPERTY DESCRIBED BELOW IN FEE FOR PUBLIC PURPOSES: ALL STREETS AND PORTIONS OF STREETS NOT HERETOFORE EXISTING AND DESIGNATED AS LOS CASTAÑOS DRIVE, ST ANTHONY DRIVE AND EAST DUNNE AVENUE AS SHOWN UPON THIS MAP. SAID DEDICATIONS AND OFFERS OF DEDICATION ARE FOR ANY AND ALL PUBLIC USES UNDER, UPON, AND OVER SAID STREETS AND PORTIONS THEREOF.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL THE REAL PROPERTY DESCRIBED BELOW AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING, BUT NOT LIMITED TO SIDEWALKS, POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS PUBLIC SERVICE EASEMENT (P.S.E.) ON THE WITHIN MAP.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL THE REAL PROPERTY DESCRIBED BELOW AS AN EASEMENT FOR PUBLIC PURPOSES: UPON AND OVER THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS EMERGENCY VEHICLE ACCESS EASEMENT (E.V.A.E.), FOR EMERGENCY VEHICLE ACCESS PURPOSES ONLY.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL THE REAL PROPERTY DESCRIBED BELOW AS A NON-EXCLUSIVE EASEMENT FOR PUBLIC PURPOSES: UPON AND OVER THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS PUBLIC PEDESTRIAN INGRESS AND EGRESS EASEMENT (P.P.I.E.E.), FOR PEDESTRIAN ACCESS TO AND FROM ST. ANTHONY DRIVE AND LOS CASTAÑOS DRIVE ONLY.

THE HEREIN DESCRIBED OFFERS OF DEDICATION TO THE CITY OF MORGAN HILL ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY A RESOLUTION ACCEPTING SAID STREETS AND EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE DEVELOPER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION. THE CITY OF MORGAN HILL SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON. ALL DEDICATED RIGHTS-OF-WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE CITY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

WE HEREBY RESERVE FOR THE NON-EXCLUSIVE USE OF THE OWNERS OF LOTS 22 THROUGH 24, AND LOT 26, A STORM DRAINAGE EASEMENT IN, UNDER, UPON AND ACROSS THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS "P.S.D.E." (PRIVATE STORM DRAINAGE EASEMENT). THE OWNERS OF EACH OF THE SAID LOTS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THAT PORTION OF SAID EASEMENT THAT LIES WITHIN THE BOUNDS OF THEIR RESPECTIVE LOTS.

WE HEREBY RESERVE FOR THE HOMEOWNERS' ASSOCIATION FOR THE BENEFIT OF LOTS 1 THROUGH 32, OF "LAS COLINAS" SUBDIVISION, OPEN SPACE 'A', OPEN SPACE 'B' AND OPEN SPACE 'C' FOR THE PURPOSES OF STORING, TREATING AND CONVEYING STORM WATER; LANDSCAPING, RECREATIONAL AMENITIES AND ALL OTHER APPURTENANCES THERETO. NO FURTHER SUBDIVISION AND OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS SHALL BE ALLOWED. SAID 'OPEN SPACE' PARCELS SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY RESERVE FOR THE HOMEOWNERS' ASSOCIATION FOR THE BENEFIT OF LOTS 1 THROUGH 32, OF "LAS COLINAS" SUBDIVISION, THEIR LICENSEES, VISITORS AND TENANTS PRIVATE STREETS (ABETO LANE, CIPRES LANE AND OLMO LANE) SHOWN AS 'COMMON AREA, PARCEL 1' FOR THE PURPOSES OF INGRESS, EGRESS AND FOR THE INSTALLATION & MAINTENANCE OF PRIVATE STREETS AND UTILITIES AND ALL OTHER APPURTENANCES THERETO. SAID PRIVATE STREETS SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY RESERVE FOR THE HOMEOWNERS' ASSOCIATION, FOR THE USE OF LOTS 1-32 OF "LAS COLINAS" SUBDIVISION, THEIR LICENSEES, VISITORS, AND TENANTS, FOR PURPOSES OF MAINTENANCE AND FOR PRIVATE PEDESTRIAN INGRESS AND EGRESS, A PRIVATE HOMEOWNERS ASSOCIATION SIDEWALK EASEMENT, IN, UNDER, UPON, AND ACROSS ALL PRIVATE SIDEWALKS AND RELATED ACCESS IMPROVEMENTS APPURTENANT TO THE PRIVATE STREETS (ABETO LANE, CIPRES LANE, AND OLMO LANE) AND WITHIN THOSE STRIPS OF LAND DESIGNATED AS "P.H.A.S.E." ON LOTS 15-19, 28-32, AND OPEN SPACE A. ALL PRIVATE SIDEWALKS AND ACCESS IMPROVEMENTS LOCATED WITHIN SAID AREAS SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION AND KEPT FREE OF ANY STRUCTURES OR OBSTRUCTIONS THAT WOULD IMPAIR, OBSTRUCT, OR OTHERWISE BE INCONSISTENT WITH THE USE OF SUCH IMPROVEMENTS FOR PRIVATE PEDESTRIAN INGRESS AND EGRESS.

AS OWNER:

MH Las Colinas 2017 LLC, a California Limited Liability Company

BY: Dividend Homes, Inc., a California Corporation
ITS: General Manager

BY: Richard B. Oliver

ITS: PRESIDENT

TRACT No. 10471 Las Colinas

BEING A 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, AT PAGES 2 AND 3.

LYING WITHIN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

JUNE 2018

NOTES

- 1.) THE DISTINCTIVE BOUNDARY LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE BOUNDARY IS 5.259 ACRES.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL STUDY WAS PREPARED BY Quantum Geotechnical, Inc., Dated January 4, 2018, PROJECT NO. D058.G.
- 5.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNERS/OWNER.

ACKNOWLEDGMENT

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

State Of California Santa Clara
County Of

On June 5, 2018, before me, Jamies Jessel, Notary Public

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 Jamies Jessel (Seal)
Printed Name

Principal County Of Business: Santa Clara

Commission Expires: July 5, 2020

Commission # Of Notary: 2156117



SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AT THE REQUEST OF DIVIDEND HOMES ON DECEMBER, 18 2017; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS ON OR BEFORE SEPTEMBER 15, 2019 AND THAT SUCH MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

Harinder Singla
HARINDER SINGLA, P.L.S. 8347

6-05-18

DATE



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP. THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF. ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

SCOTT C. CREER - CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 58879



DATE

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

JOHN K. KING - ACTING CITY SURVEYOR
P.L.S. NO. 6809



DATE

PLANNING COMMISSION STATEMENT

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED ON 3-27-18 BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL, CALIFORNIA, BY RESOLUTION NUMBER 18-07, APPLICATION NUMBER SD2016-0009.

JENNIFER CARMAN
SECRETARY OF THE PLANNING COMMISSION

DATE

COUNTY RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 20____

AT _____ M. IN BOOK _____ OF MAPS, AT PAGES _____ AT THE REQUEST OF M.H. ENGINEERING CO.

FILE NO. _____

FEE \$ _____

REGINA ALCOMENDRAS, COUNTY RECORDER OF SANTA CLARA COUNTY

BY: _____
DEPUTY

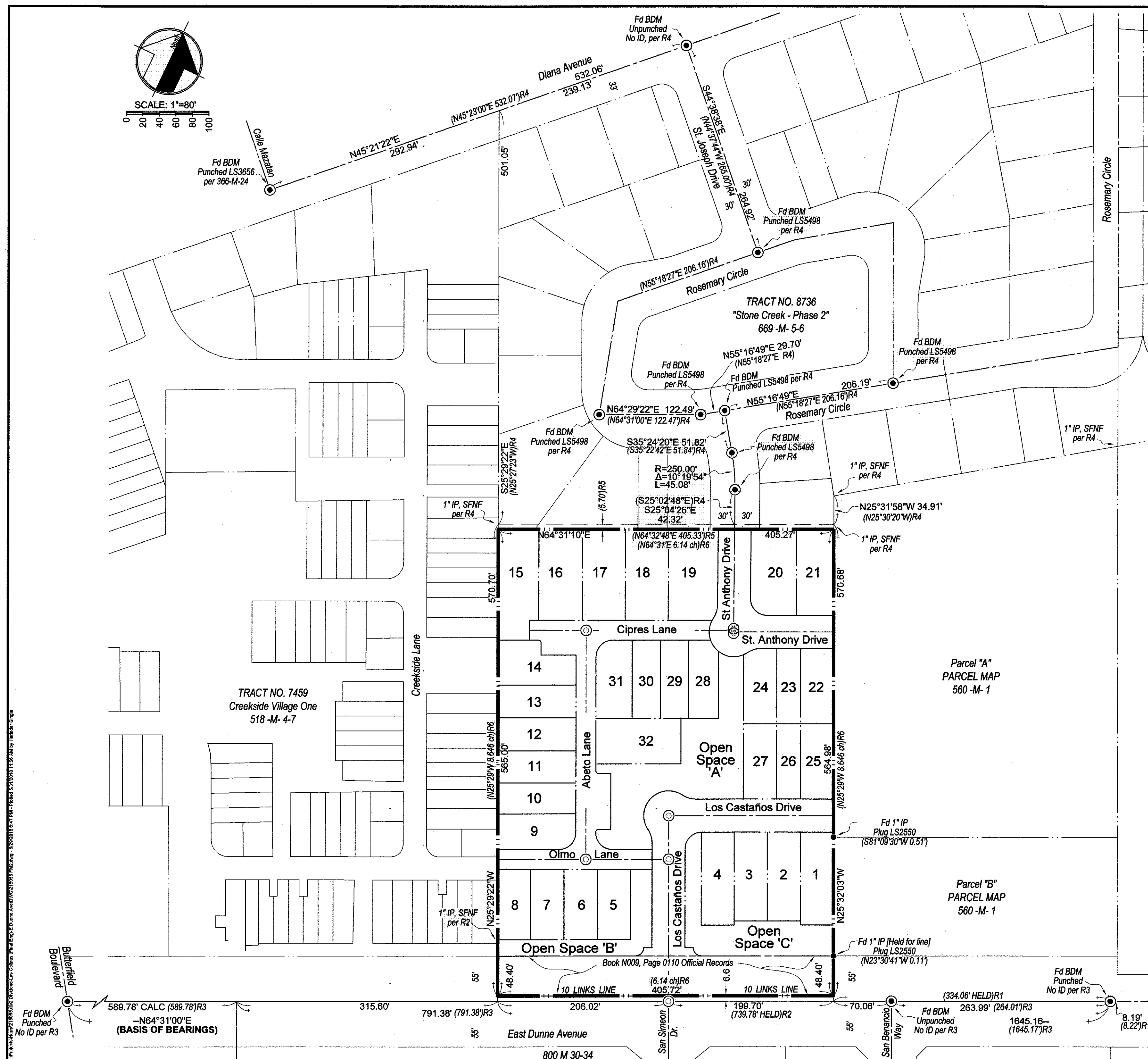
SHEET 1 OF 4



MH engineering Co.

16075 Vineyard Boulevard
Morgan Hill, CA 95037

215055.div2





TRACT No. 10471
Las Colinas

BEING A 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, AT PAGES 2 AND 3.
LYING WITHIN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA
STATE OF CALIFORNIA
JUNE 2018

SHEET 3 OF 4



MH engineering Co.

16075 Vineyard Boulevard
Morgan Hill, CA 95037

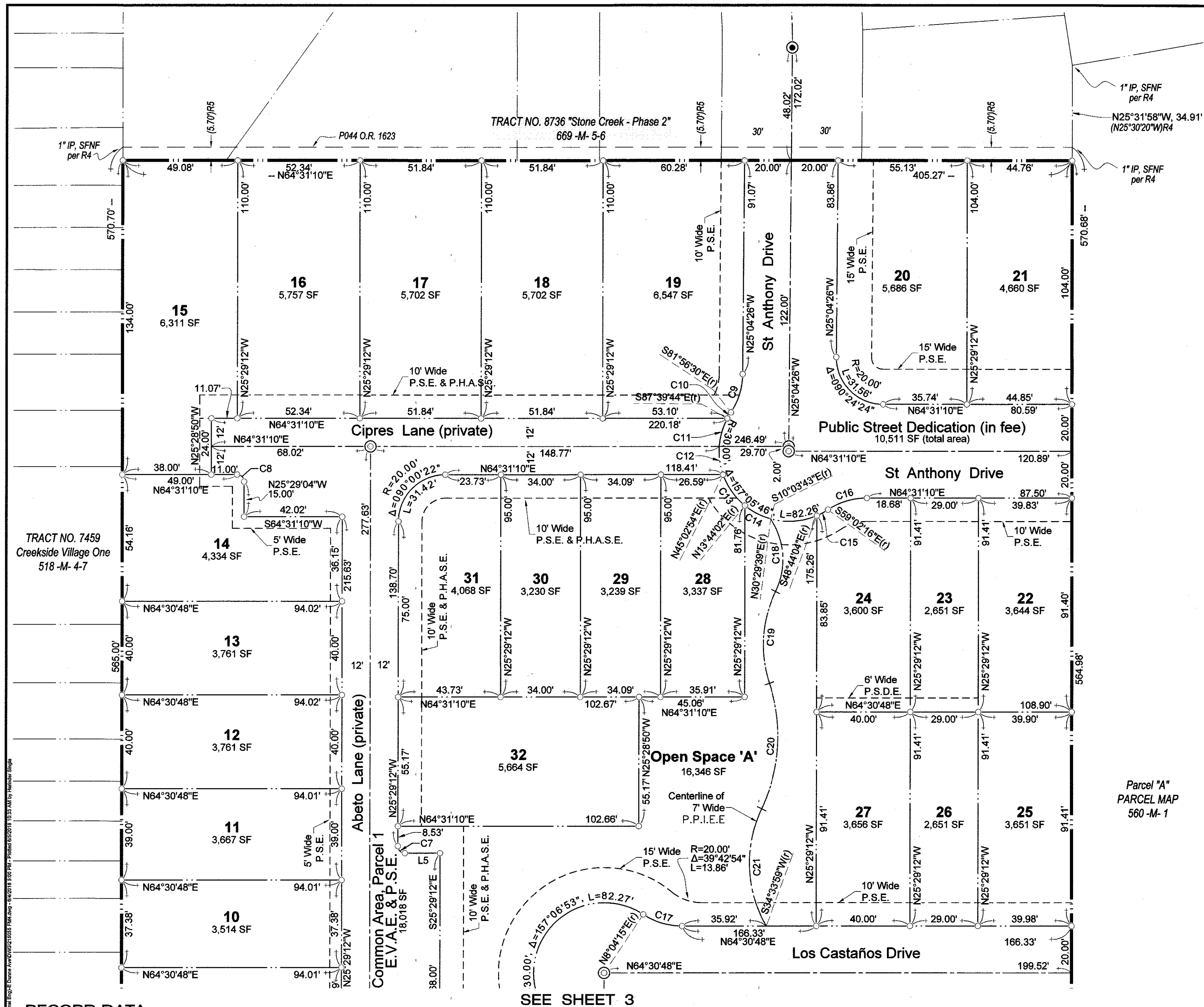
21 5055.div2

RECORD DATA

R1	PARCEL MAP BOOK 580 OF MAPS, PG. 1	R4	TRACT NO. 8736 - STONE CREEK - PHASE 2 BOOK 669 OF MAPS, PGS. 5-6
R2	TRACT NO. 7459 - CREEKSIDE VILLAGE ONE BOOK 518 OF MAPS, PGS. 4-7	R5	CERTIFICATE OF COMPLIANCE LOT LINE ADJUSTMENT DOCUMENT NO. 13057033 (P044 O.R. 1623)
R3	TRACT NO. 9732 - JASPER PARK - PHASE 1 BOOK 800 OF MAPS, PGS. 30-34	R6	GRANT DEED DOCUMENT NO. 15728923

BASIS OF BEARINGS

THE BEARINGS SHOWN UPON THE HEREIN MAP ARE BASED UPON THE CENTERLINE OF EAST DUNNE AVENUE, AS FOUND MONUMENTED AND RECORDED AS NORTH 64°31'00" EAST, AS SHOWN UPON THAT CERTAIN TRACT NO. 9732 ENTITLED "JASPER PARK - PHASE 1, FILED FOR RECORD ON MAY 12, 2006 IN BOOK 800 OF MAPS, PAGES 30-34.



RECORD DATA

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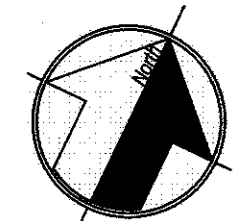
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LEGEND

⊙	FOUND STANDARD CITY MONUMENT PER R1 OR AS NOTED
⊙	SET STANDARD CITY MONUMENT, TAGGED PLS 8347
○	SET 3/4" IRON PIPE, TAGGED PLS 8347
●	FOUND 1" IRON PIPE, AS NOTED
(...)	RECORD DATA
BDM	BRASS DISC MONUMENT
E.V.A.E.	EMERGENCY VEHICLE ACCESS EASEMENT
FN., FND	FOUND
P.H.A.S.E.	PRIVATE HOMEOWNER'S ASSOCIATION SIDEWALK EASEMENT
P.P.I.E.E.	PUBLIC PEDESTRIAN INGRESS AND EGRESS EASEMENT
P.S.D.E.	PRIVATE STORM DRAINAGE EASEMENT
P.S.E.	PUBLIC SERVICE EASEMENT
SFNF	SEARCH FOR, NOT FOUND
(r)	RADIAL BEARING
—	CENTERLINE
—	DISTINCTIVE BOUNDARY LINE
—	LOT LINE
—	EASEMENT LINE

Curve Table			
#	Radius	Delta	Length
C7	3.00'	090°00'00"	4.71'
C8	3.00'	089°59'46"	4.71'
C9	30.00'	033°07'56"	17.35'
C10	30.00'	005°43'15"	3.00'
C11	30.00'	023°59'44"	12.56'
C12	30.00'	023°17'38"	12.20'
C13	30.00'	031°18'52"	16.40'
C14	30.00'	023°47'45"	12.46'
C15	30.00'	010°18'12"	5.39'
C16	30.00'	033°33'26"	17.57'
C17	30.00'	033°33'26"	17.57'



SCALE: 1"=30'

Line Table		
#	Direction	Length
L5	S64°30'48"W	15.00'

Curve Table			
#	Radius	Delta	Length
C18	31.00'	060°10'35"	32.56'
C19	52.00'	044°27'21"	40.35'
C20	72.00'	043°46'16"	55.00'
C21	54.00'	055°17'10"	52.11'

TRACT No. 10471 Las Colinas

BEING A 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, AT PAGES 2 AND 3.

LYING WITHIN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

JUNE 2018

SHEET 4 OF 4

MH engineering Co.

16075 Vineyard Boulevard
Morgan Hill, CA 95037

215055.div2

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

SUBDIVISION IMPROVEMENTS AGREEMENT

MH LAS COLINAS 2017 LLC

LAS COLINAS – TRACT NO. 10471

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **LAS COLINAS 2017 LLC, a California Limited Liability Company** ("Subdivider"), is entered into this ____ day of _____, 2018. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10471**, the subdivision known as LAS COLINAS ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final 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 LAS COLINAS, Tract No. 10471**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. 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.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

Attachment: Tract 10471 Subdivision Improvements Agreement (1810 : FINAL MAP APPROVAL OF LAS COLINAS - TRACT 10471)

6. This 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 Final 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 Agreement, this 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 LAS COLINAS".

(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 Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of MAY 2, 2018 are attached hereto as Exhibit "A".

The Performance Bond 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 Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be 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 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 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 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 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 the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his 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 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 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 Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this 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 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 this 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 this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final 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 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, 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 (a) will survive termination of this Agreement.

Section 10. Insurance

Concurrent with the execution of this 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 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 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 Agreement City shall issue a stop work order, or terminate the 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 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) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project" or "per location" basis, 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) combined single limit, 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 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 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 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 **\$1,839,846** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$391,622** payable at the time of recording of the Final Map, and

(2) **\$1,448,224** 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 Final 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 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 Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this 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:

c/o Richard Oliver
MH Las Colinas 2017 LLC
385 Woodview Avenue #100
Morgan Hill, CA 95037

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 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 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 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 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 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 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 Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision 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 Agreement to be recorded.

Section 19. Effective Date

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

Section 20. Amendment of Agreement

This 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 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 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 Agreement.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this 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 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 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 Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

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

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"

MH Las Colinas 2017 LLC,

A California Limited Liability Company

By:

Print Name and Title

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

Date: _____

By:

Print Name and Title

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

Date: _____

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF MAY 2, 2018

MH 215055.div2

5/2/2018

Engineer's Cost Estimate
Las Colinas (Public Improvements only for City use)

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
Schedule I - Streets and Earthwork					
1	Site clearing and grubbing (excludes structural demo and tree removal)	1	LS	\$ 2,000.00	\$ 2,000.00
2	Public street rough grading	1,761	CY	\$ 9.00	\$ 15,849.00
3	Public street finish grading	35,674	SF	\$ 0.15	\$ 5,351.10
4	Public street pavement (4" AC on 13.5" AB)	24,461	SF	\$ 6.00	\$ 146,766.00
5	Public City std sidewalk on agg base (incl. handicap ramps)	8,023	SF	\$ 7.00	\$ 56,161.00
6	City std. curb & gutter on agg. Base	1,276	LF	\$ 28.00	\$ 35,728.00
7	Street name signs	2	LF	\$ 400.00	\$ 800.00
8	Street monuments	3	EA	\$ 500.00	\$ 1,500.00
9	Electroliers incl. conduit & pullboxes (150w) (includes one replacement light on E. Dunne Ave)	6	EA	\$ 3,200.00	\$ 19,200.00
10	Stop sign & legends	1	LF	\$ 600.00	\$ 600.00
Total Schedule I					\$ 283,955.10
Schedule II - Water					
1	10" DIP Water Main	118	LF	\$ 52.00	\$ 6,136.00
2	8" D.I.P. water main	726	LF	\$ 48.00	\$ 34,848.00
3	Fire hydrant assembly complete	4	EA	\$ 3,200.00	\$ 12,800.00
4	1" City std. water service	32	EA	\$ 1,400.00	\$ 44,800.00
Total Schedule II					\$ 92,448.00
Schedule III - Sanitary Sewer					
1	8" PVC (SDR-26)	543	LF	\$ 46.00	\$ 24,978.00
2	6" PVC (SDR-26)	135	LF	\$ 42.00	\$ 5,670.00
3	City std. Manhole	5	EA	\$ 2,800.00	\$ 14,000.00
4	Clean Outs	2	EA	\$ 700.00	\$ 1,400.00
5	4" PVC sewer lateral	32	EA	\$ 2,200.00	\$ 70,400.00
Total Schedule III					\$ 116,448.00
Schedule IV - Storm Drainage					
1	24" RCP	14	LF	\$ 78.00	\$ 1,022.00
2	18" RCP	279	LF	\$ 73.00	\$ 18,135.00
2	15" RCP	217	LF	\$ 65.00	\$ 14,105.00
8	City Std. manhole	3	EA	\$ 3,500.00	\$ 10,500.00
9	City std. curb inlet	6	EA	\$ 2,800.00	\$ 16,800.00
Total Schedule IV					\$ 60,562.00
Estimated Const Cost (Sch I-IV)					\$ 553,413.10

SUB TOTAL \$553,413

10% CONTINGENCY \$55,341

TOTAL \$608,754

Attachment: Tract 10471 Subdivision Improvements Agreement (1810 : FINAL MAP APPROVAL OF LAS COLINAS - TRACT 10471)

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 **MH LAS COLINAS 2017 LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

MH LAS COLINAS 2017 LLC
LAS COLINAS - TRACT NO. 10471

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20____, and identified as project **LAS COLINAS – TRACT NO. 10471**, 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 **Six Hundred Eight Thousand Seven Hundred Fifty Four dollars (\$608,754)** 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)

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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 **MH LAS COLINAS 2017 LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

MH LAS COLINAS 2017 LLC
LAS COLINAS – TRACT NO. 10471

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **LAS COLINAS – TRACT NO. 10471**, 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 **Six Hundred Eight Thousand Seven Hundred Fifty Four dollars (\$608,754)**, 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.)

Attachment: Tract 10471 Subdivision Improvements Agreement (1810 : FINAL MAP APPROVAL OF LAS COLINAS - TRACT 10471)

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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

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County of **Santa Clara**

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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 **MH LAS COLINAS 2017 LLC** (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement (hereinafter "Agreement"):

MH LAS COLINAS 2017 LLC
LAS COLINAS – TRACT NO. 10471

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20_____, and identified as project **LAS COLINAS – TRACT 10471**, 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 **Three Hundred Four Thousand Three Hundred Seventy Seven dollars (\$304,377)** 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:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary

Seal and Power of Attorney)

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

Attachment: Tract 10471 Subdivision Improvements Agreement (1810 : FINAL MAP APPROVAL OF LAS COLINAS - TRACT 10471)

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County of **Santa Clara**

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

WITNESS my hand and official seal.

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

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

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

APN:726-02-014

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 **MH LAS COLINAS 2017 LLC**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

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

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **STORM WATER RUNOFF MANAGEMENT PLAN for Las Colinas (Tract No. 10471)** prepared by **MH engineering Co.** and dated **February 5, 2018**, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

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

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be

binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.

2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT.

Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.

8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.
16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, its successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: (ENTER NAME)

Title: (ENTER TITLE)

CITY OF MORGAN HILL:

By: _____

Name: CHRISTINA J. TURNER

Title: CITY MANAGER, CITY OF MORGAN HILL

APPROVED AS TO FORM:

By: _____

Name: DONALD A. LARKIN

Title: CITY ATTORNEY, CITY OF MORGAN HILL

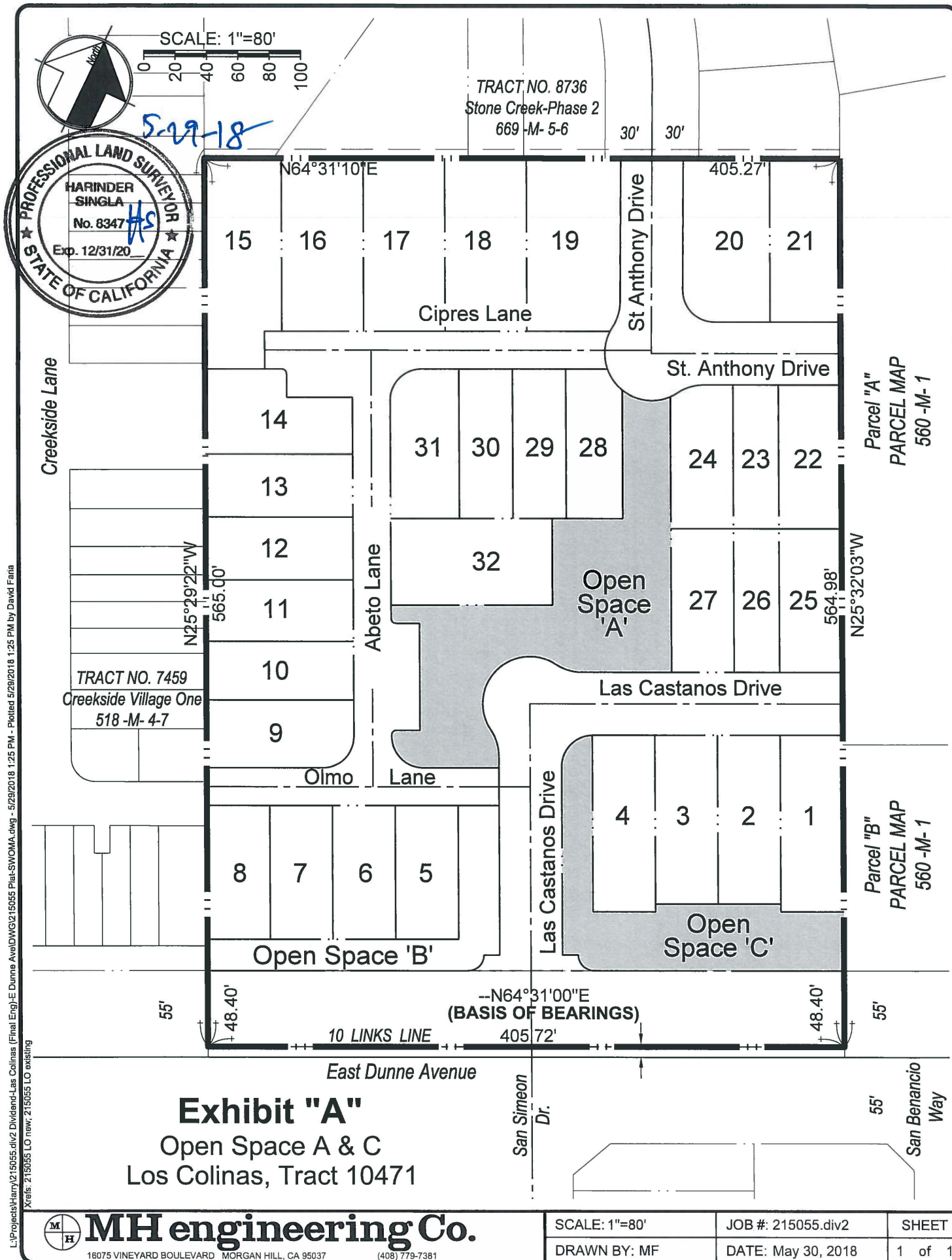


EXHIBIT "A-1"**LEGAL DESCRIPTION OF
PROPERTY**

All that certain real property situated in the County of Santa Clara, State of California and being a portion of land shown upon the Final Map for "Las Colinas" Tract No. 10471, recorded in Book ___ of Maps, Pages __ through __, on _____, 2018 at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

All of "Open Space "A" and "C" as shown upon said map.

END OF DESCRIPTION.

See Exhibit "A" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Harinder Singla, PLS 8347
Expires: 12/31/2019

Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2015\215055.div2-SWOMA Legal Exhibit A.doc

Attachment: Stormwater BMP Operation and Maintenance Agreement Form (1810 : FINAL MAP APPROVAL OF LAS COLINAS - TRACT 10471)

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)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Mario Jimenez, Associate Engineer

APPROVED BY: City Manager

FINAL MAP APPROVAL OF HENCKEN OAKS - TRACT NO. 10448

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Reliance Development LLC, a California Limited Liability Company;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney;
4. Authorize the City Manager to execute a Cash Deposit Agreement Guaranteeing Improvements; and
5. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Hencken Oaks – Tract No. 10448 is a 14-lot subdivision located on East Dunne Avenue just west of Monterey Road (see attached site map). The developer, Reliance Development LLC, a California Limited Liability Company, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on September 27, 2016.

The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Map.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Final Map. The developer will fulfill the requirements for Performance/Labor & Materials Bonds by entering into a Cash Deposit Agreement to guarantee the improvements in the sum of \$243,650. Upon project completion, staff will release the cash deposit as outlined in section 3 of the Cash Deposit Agreement. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council authorize the City Manager to sign a Subdivision Improvements Agreement, sign a Cash Deposit Agreement, and sign a Stormwater

BMP (Best Management Practices) Operation and Maintenance Agreement on behalf of the City pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT: Involve

On September 27, 2016, the Planning Commission approved the Tentative Map. Residents within a 300 foot radius were informed of Planning Commission's intent to approve the tentative map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over the tentative map requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the tentative map conditions approved by the Planning Commission to file for a final map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 2, 2016, the City Council adopted the ordinance approving the Development Agreement (Ordinance No. 2223).

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration for the project was adopted on September 27, 2016.

LINKS/ATTACHMENTS:

1. Site map - Hencken Oaks Tract 10448
2. Map - Hencken Oaks Tract 10448
3. Subdivision Improvements Agreement Hencken Oaks with Cash Deposit
4. HenckenOaks Stormwater BMP Operation and Maintenance Agreement



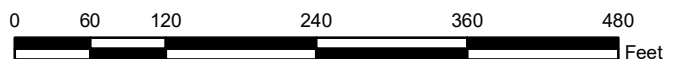
Attachment: Site map - Hencken Oaks Tract 10448 (1811 : FINAL MAP APPROVAL OF HENCKEN OAKS - TRACT 10448)



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

G:\R-14\Proj\GIS\John\Mario_HenkenOaksTR10448.mxd

SITE MAP



OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID REAL PROPERTY AND WE HEREBY CONSENT TO THE MAKING AND RECORDING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES: THE STREETS TO THE CITY OF MORGAN HILL NOT HERETOFORE EXISTING AND DESIGNATED AS WEST DUNNE AVENUE, SHOWN ON THIS MAP. SAID DEDICATION AND OFFER OF DEDICATION ARE FOR ANY AND ALL PUBLIC USES UNDER, UPON, AND OVER SAID STREETS.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS TO THE CITY OF MORGAN HILL, FOR ACCESS OF EMERGENCY VEHICLES OVER THOSE AREAS DESIGNATED AS "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS TO THE CITY OF MORGAN HILL, FOR ANY AND ALL PUBLIC SERVICES FACILITIES INCLUDING, BUT NOT LIMITED TO POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS "PUBLIC SERVICE EASEMENT" (PSE)

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: AN EASEMENT TO THE CITY OF MORGAN HILL FOR PUBLIC ACCESS AND FOR FUTURE PATHWAY DEVELOPMENT CONSISTENT WITH THE GOALS OF THE DOWNTOWN SPECIFIC PLAN LYING OVER, ON AND ACROSS THAT STRIP OF LAND DESIGNATED "PUBLIC ACCESS EASEMENT (P.A.E.)

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS WITHIN THIS SUBDIVISION, EASEMENTS OVER THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE INGRESS EGRESS EASEMENTS" (P.I.E.E.) FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS WITHIN THIS SUBDIVISION, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE STORM DRAIN EASEMENT" (PSDE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE STORM WATER MANAGEMENT FACILITIES. SAID EASEMENTS SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THIS SUBDIVISION.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS WITHIN THIS SUBDIVISION, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE SANITARY SEWER EASEMENT" (PSSE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE SANITARY SEWER FACILITIES. SAID EASEMENT SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THIS SUBDIVISION.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS WITHIN THIS SUBDIVISION, LOT 15, AS "OPEN SPACE" FOR LANDSCAPING, STORM WATER MANAGEMENT, AND RECREATIONAL PURPOSES. THE ABOVE-MENTIONED LOT 15 SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION. NO FURTHER SUBDIVISION OR RESIDENTIAL DEVELOPMENT OF THE "OPEN SPACE" LOT 15 SHALL BE ALLOWED.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS WITHIN THIS SUBDIVISION, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES, UNDER, UPON AND OVER THE STREET DESIGNATED AS (PRIVATE) AND SHOWN AS "HENCKEN OAKS LANE" (LOT 16). SAID STREET SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION CREATED FOR THIS SUBDIVISION AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

ALL OF THE HEREIN DESCRIBED STREETS AND EASEMENTS SHALL BE KEPT FREE OF BUILDINGS, EXCEPT LAWFUL UNSUPPORTED ROOF OVERHANGS, AND OBSTRUCTIONS THAT DO NOT IMPAIR THE USE OF, OR ARE CONSISTENT WITH THE PURPOSES OF THE STREET OR EASEMENT.

WE HEREBY RESERVE AS SHOWN ON THE HEREON MAP, LANDSCAPE EASEMENT (L.E.), PRECLUDING FENCING IN EXCESS OF THREE FEET IN HEIGHT. PLANTING AND LANDSCAPING MAINTENANCE SHALL BE THE SOLE RESPONSIBILITY OF THE LOT 9 OWNER.

LOT 9 PRECLUDES ANY FURTHER SUBDIVISION.

THE HEREIN DESCRIBED OFFERS OF DEDICATION TO THE CITY OF MORGAN HILL ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY A RESOLUTION ACCEPTING SAID STREETS AND EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE OWNER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION, THE CITY OF MORGAN HILL SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON, ALL DEDICATED RIGHTS-OF-WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE CITY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

AS OWNERS:
RELIANCE DEVELOPMENT LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

BY Harry Guidotti
NAME HARRY GUIDOTTI, ITS: MEMBER

S & G BUILDERS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY, MEMBER

BY Michael Soares BY Nicholas Gera
NAME MICHAEL SOARES, ITS: MEMBER NAME NICHOLAS GERA, ITS: MEMBER

PLANNING COMMISSION STATEMENT

I HEREBY STATE THAT THE TENTATIVE MAP OF "TRACT NO. 10448", WAS CONDITIONALLY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON SEPTEMBER 27, 2016 BY RESOLUTION NUMBER 16-59, APPLICATION NUMBER SD-13-08.

DATE: _____ BY: JENNIFER CARMAN
COMMUNITY DEVELOPMENT DIRECTOR
CITY OF MORGAN HILL, CALIFORNIA

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF NICK GERA ON DECEMBER 13, 2012; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE MARCH 2020; THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

SIGNED Mark A. Helton
MARK A. HELTON, LS 7078

DATE: 6-1-18

**OWNER'S ACKNOWLEDGMENT**

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF Santa Clara

ON June 1st, 2018 BEFORE ME,
H. Yamato - Colvill, A NOTARY PUBLIC,
PERSONALLY APPEARED HARRY GUIDOTTI WHO PROVED TO ME ON
THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT
HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND
THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE
ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL
NOTARY'S SIGNATURE [Signature]
PRINTED NOTARY'S NAME H. Yamato - Colvill
NOTARY'S PRINCIPAL PLACE OF BUSINESS Santa Clara
NOTARY'S COMMISSION NUMBER 2102538
EXPIRATION OF NOTARY'S COMMISSION 04-05-19

OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF Santa Clara

ON June 1st, 2018 BEFORE ME,
H. Yamato - Colvill, A NOTARY PUBLIC,
PERSONALLY APPEARED MICHAEL SOARES & NICHOLAS GERA WHO PROVED TO ME ON
THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT
HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND
THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE
ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL
NOTARY'S SIGNATURE [Signature]
PRINTED NOTARY'S NAME H. Yamato - Colvill
NOTARY'S PRINCIPAL PLACE OF BUSINESS Santa Clara
NOTARY'S COMMISSION NUMBER 2102538
EXPIRATION OF NOTARY'S COMMISSION 04-05-19

TRACT NO. 10448

CONSISTING OF THREE SHEETS

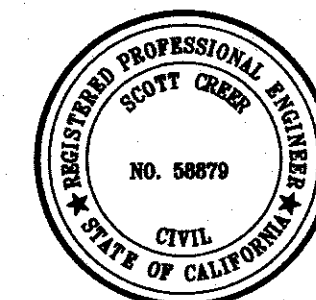
ALL OF LOTS 20, 21, 22, 23, 24, 25, 26 AND 27, IN BLOCK 84, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 2", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 10, 1892, IN BOOK "G" OF MAPS AT PAGE 19. LYING WITHIN THE LIMITS OF THE CITY OF MORGAN HILL, SANTA CLARA COUNTY, STATE OF CALIFORNIA.

MAY, 2018

**CITY ENGINEER'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN FINAL MAP OF TRACT NO.10448; THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, HAVE BEEN COMPLIED WITH.

SCOTT C. CREER
CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
RCE # 58879
DATE: _____

**CITY SURVEYOR'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF TRACT NO. 10448 AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

JOHN K. KING
ACTING CITY SURVEYOR
PLS NO. 6809

DATE: _____

**CITY CLERK'S STATEMENT**

I HEREBY STATE THAT THIS MAP, DESIGNATED AS TRACT NO. 10448 ,CONSISTING OF THREE (3) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2018, AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF "WEST DUNNE AVENUE", THE "PUBLIC ACCESS EASEMENT" (P.A.E.), THE "PUBLIC SERVICE EASEMENT" (PSE) AND THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

DATE _____ IRMA TORREZ - CITY CLERK
OF THE CITY OF MORGAN HILL, CALIFORNIA

RECORDER'S STATEMENT

FILE NO. _____ FEE \$ _____ PAID.
ACCEPTED FOR RECORD AND FILED IN BOOK _____ OF MAPS AT PAGE(S) _____
SANTA CLARA COUNTY RECORDS, THIS _____ DAY OF _____, 20____, AT _____M. AT THE REQUEST OF _____

REGINA ALCOMENDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY: _____ DEPUTY

SHEET 1 OF 3

CURVE DATA

No.	Delta	Radius	Arc Length
1	48°25'23"	32.00	27.04'
2	90°00'00"	2.00	3.14'
3	90°00'00"	2.00	3.14'
4	34°12'48"	39.00	23.29'
5	76°19'17"	3.50	4.66'
6	28°36'41"	60.50'	30.21'
7	25°51'59"	63.50	28.67'
8	25°51'59"	84.50	38.15'
9	42°16'12"	39.50	29.14'
10	73°35'47"	22.50	28.90'
11	90°00'00"	22.50	35.34'
12	41°39'29"	32.00	23.27'
13	6°45'54"	32.00	3.78'
14	17°03'10"	60.50'	18.01'
15	11°33'31"	60.50'	12.21'
16	18°30'00"	35.00'	11.30'
17	18°30'00"	45.00'	14.53'

LINE DATA

No.	Direction	Length
1	N55°08'37"E	12.00'
2	N34°51'23"W	16.00'
3	N55°08'37"E	18.00'
4	S34°51'23"E	16.00'
5	N17°16'38"E	19.34'
6	S72°43'22"E	25.57'
7	S38°44'24"W	20.31'
8	S34°51'23"E	14.32'
9	N34°51'23"W	9.08'
10	N55°08'37"E	1.61'
11	S55°08'37"W	1.63'
12	N65°19'53"E	1.78'
13	N34°51'23"W	2.92'
14	N34°51'23"W	34.54'
15	S53°21'23"E	18.50'
16	N34°51'23"W	29.49'
17	N55°08'37"E	10.00'

NOTE: SEE SHEET 2 FOR LEGEND, BASIS OF BEARINGS, NOTES, AND RECORD DATA REFERENCES.

TRACT NO. 10448

CONSISTING OF THREE SHEETS

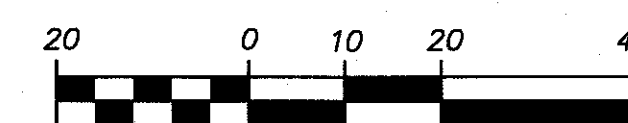
ALL OF LOTS 20, 21, 22, 23, 24, 25, 26 AND 27, IN BLOCK 84, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 2", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 10, 1892, IN BOOK "G" OF MAPS AT PAGE 19. LYING WITHIN THE LIMITS OF THE CITY OF MORGAN HILL, SANTA CLARA COUNTY, STATE OF CALIFORNIA.

MAY, 2018 SCALE: 1"=20'

GK Giuliani & Kull, Inc.
Engineers • Planners • Surveyors

4880 Stevens Creek Blvd. Suite 205 San Jose, CA. 95129
(408) 615-4000 Fax (408) 615-4004
Auburn • San Jose • Oakdale

GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

TRACT NO. 10448

CONSISTING OF THREE SHEETS

ALL OF LOTS 20, 21, 22, 23, 24, 25, 26 AND 27, IN BLOCK 84, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 2", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 10, 1892, IN BOOK "G" OF MAPS AT PAGE 19. LYING WITHIN THE LIMITS OF THE CITY OF MORGAN HILL, SANTA CLARA COUNTY, STATE OF CALIFORNIA.

MAY, 2018. SCALE: 1"=80'

GK Giuliani & Kull, Inc.
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(408) 615-4000 Fax (408) 615-4004
Auburn • San Jose • Oakdale

LEGEND

ALL DISTANCES AND DIMENSIONS ARE IN FEET & DECIMALS THEREOF

() INDICATES RECORD INFORMATION

[] INDICATES RECORD INFORMATION IN CONFLICT WITH MEASURED DATA

• INDICATES FOUND IRON PIPE OR AS NOTED

• INDICATES FOUND LEAD PLUG AND TAG RCE 7914 LP&T

⊙ INDICATES SET BRASS DISC IN MONUMENT BOX, STAMPED LS 7078

○ INDICATES SET 3/4" IRON PIPE TAGGED L.S. 7078

● INDICATES FOUND BRASS DISC (BD) IN MONUMENT BOX OR AS NOTED

— INDICATES CENTERLINE

--- EASEMENT LINE

— LOT LINE

--- DISTINCTIVE BORDER LINE

E.V.A.E. EMERGENCY VEHICLE ACCESS EASEMENT

P.I.E.E. PRIVATE INGRESS/EGRESS EASEMENT

P.S.D.E. PRIVATE STORM DRAIN EASEMENT

P.S.S.E. PRIVATE SANITARY SEWER EASEMENT

P.S.E. PUBLIC SERVICE EASEMENT

L.E. LANDSCAPE EASEMENT

S.C.V.W.D. SANTA CLARA VALLEY WATER DISTRICT

S.F. SQUARE FEET

OR. OFFICIAL RECORDS

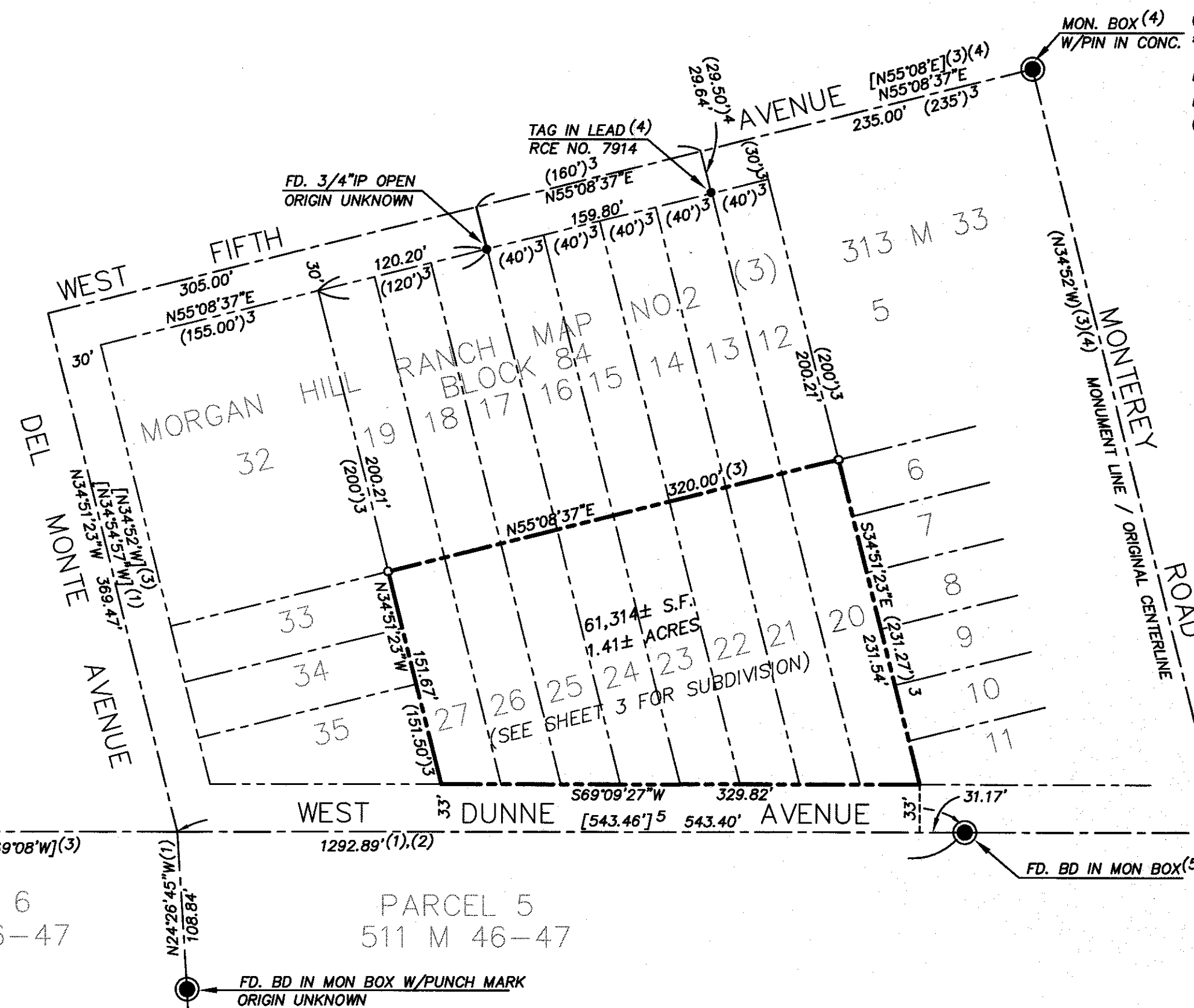
BD BRASS DISC

(R) RADIAL BEARING

P.A.E. PUBLIC ACCESS EASEMENT

REFERENCES

- () 1 PARCEL MAP (BK 511 MAPS P 46)
- () 2 TRACT NO. 8188 (BK 607 MAPS P 1)
- () 3 MORGAN HILL RANCH MAP NO. 2 (BK "G" MAPS P 19)
- () 4 RECORD OF SURVEY (BK 313 MAPS P 33)
- () 5 RECORD OF SURVEY (BK 857 MAPS P 11)



BASIS OF BEARINGS:

THE BEARING N69°09'27"E OF THE CENTERLINE OF WEST DUNNE AVENUE AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 8188 FILED IN BOOK 607 OF MAPS AT PAGE 1, SANTA CLARA COUNTY RECORDS, AND AS FOUND MONUMENTED, WAS TAKEN AS BASIS OF BEARINGS FOR THIS MAP.

NOTES:

- ALL DISTANCES AND DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- THE AREA WITHIN THE DISTINCTIVE BORDER LINES IS 1.41± ACRES, (61,314± SQUARE FEET), MORE OR LESS.
- THE DISTINCTIVE BORDER LINE DENOTES THE BOUNDARY OF THE SUBDIVISION.

GEOTECHNICAL ENGINEERING REPORT

A GEOTECHNICAL ENGINEERING REPORT ON THIS PROPERTY HAS BEEN PREPARED BY EARTH SYSTEMS PACIFIC, FILE NO. SH-13381-SA DATED OCTOBER 5, 2017 COPIES OF WHICH HAS BEEN FILED WITH THE CITY OF MORGAN HILL.

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

SUBDIVISION IMPROVEMENTS AGREEMENT

RELIANCE DEVELOPMENT LLC

HENCKEN OAKS – TRACT NO. 10448

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **RELIANCE DEVELOPMENT LLC, a California Limited Liability Company** ("Subdivider"), is entered into this ____ day of _____, 2018. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10448**, the subdivision known as **HECKEN OAKS** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final 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 **HENCKEN OAKS, Tract No. 10448**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the Improvements required by City to the satisfaction of the City Engineer.
4. 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.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This 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 Final 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 Agreement, this 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 HENCKEN OAKS – TRACT NO. 10448"**.

(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 Agreement (“Performance Bond”).

Improvements and the City Engineer’s Estimated Costs of Improvements as of MAY 9, 2018 are attached hereto as Exhibit “A” (“Estimated Construction Cost”).

The Performance Bond 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 Agreement (“Labor and Materials Bond”). The Labor and Materials Bond shall be 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 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 Agreement (“Warranty Bond”). The Warranty Bond shall be in a form substantially the same as Exhibit “E”.

(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 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 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 City’s jurisdiction.

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

(h) In lieu of providing the Performance Bond and the Labor and Material Bond required under subsection 4(a) and 4(b) hereinabove, Subdivider may provide City, at City's sole option, with a cash deposit in an amount required pursuant to Morgan Hill Municipal Code section 17.32.190.A (one hundred percent of the Estimated Construction Cost to guarantee the construction or installation of all Improvements and an additional amount of one hundred percent of the Estimated Construction Cost to guarantee the payment to the Subdivider's contractor, subcontractors and to persons furnishing labor, materials or equipment for the construction or installation of Improvements) which cash deposit obligation of Subdivider shall be made, memorialized and agreed to by Subdivider through execution of a Cash Deposit Agreement Guaranteeing Improvements in substantially the form attached hereto as Exhibit "D".

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 the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his 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 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 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 Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this 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 City.

(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 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 this 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 this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final 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 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, 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 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 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 Section 9 will survive termination of this Agreement.

Section 10. Insurance

Concurrent with the execution of this 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 Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. 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 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 Agreement, City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that 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 City.

(a) Policies and Limits. The following insurance policies and limits are required for this 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) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a “per project” or “per location” basis, 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) combined single limit, 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 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 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 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:

"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 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 Subdivider's agreement with City shall be reduced, canceled, allowed to expire, or materially changed except after

thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (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 **\$301,831** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

- (1) **\$88,275** payable at the time of recording of the Final Map, and
- (2) **\$213,556** 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 Final 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 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 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 Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this 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:

c/o Harry Guidotti
Reliance Development LLC
465 Bel Air Way
Morgan Hill, CA 95037

- 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 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 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 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 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 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 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 Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision 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 Agreement to be recorded.

Section 19. Effective Date

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

Section 20. Amendment of Agreement

This 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 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 Agreement.

Section 22. Non-Liability of Officials and Employees of City.

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

Section 23. Law to Govern: Venue

The law of the State of California shall govern this 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 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 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 Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

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

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"

RELIANCE DEVELOPMENT LLC
A California Limited Liability Company

By: _____

Print Name and Title

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

Date: _____

By: _____

Print Name and Title

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

Date: _____

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF MAY 9, 2018

Tract No. 10448
Off-Site Cost Estimate
Morgan Hill, CA



SURFACE WORK

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Clearing & Grubbing	1	LS	3,842.00	\$ 3,842.00
2" Grind & AC Overlay	108	S.F.	4.00	432.00
6" AC Remove & Repave	92	S.F.	8.00	736.00
Sidewalk	80	S.F.	8.00	640.00
Curb & Gutter	46	L.F.	25.00	1,150.00
Driveway Approach	300	S.F.	12.00	3,600.00
Street Tree	2	E.A.	1,000.00	2,000.00
Mobilization & Traf. Cont.	1	LS	4,000.00	4,000.00

Subtotal Surface Work **\$16,400.00**

STORM DRAINAGE SYSTEM

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
12" RCP	32	L.F.	72.00	\$2,400.00
Storm Drain Manhole	1	E.A.	3,000.00	3,000.00

Subtotal Storm System **\$5,400.00**

SANITARY SEWER SYSTEM

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
6" PVC	37	L.F.	50.00	\$1,850.00
Sanitary Sewer Manhole	1	E.A.	3,000.00	3,000.00
Cleanout	1	E.A.	600.00	600.00

Subtotal Sanitary Sewer System **\$5,450.00**

WATER SYSTEM

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
6" Water	104	L.F.	80.00	\$8,320.00
Tapping Sleeve & Valve	2	E.A.	\$2,500.00	\$ 5,000.00

WATER SYSTEM

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
6" Water	396	L.F.	\$80.00	\$31,680
Fire Hydrant	1	E.A.	\$3,000.00	\$3,000
1 1/2" Service & Meter	13	E.A.	\$2,500.00	\$32,500
2" Irr. Service & Meter	1	E.A.	\$3,000.00	\$3,000

SUBTOTAL WATER SYSTEM \$83,500

SUB TOTAL \$110,750

10% CONTINGENCY \$11,075

TOTAL \$121,825

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 **RELIANCE DEVELOPMENT LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

RELIANCE DEVELOPMENT LLC
HENCKEN OAKS – TRACT NO. 10448

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2018, and identified as project **HECKEN OAKS – TRACT NO. 10448**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called "City", in the penal sum of **One Hundred Twenty One Thousand Eight Hundred Twenty Five dollars (\$121,825)** 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 City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20____.

Principal

Principal

By:

Surety

By:

Attorney-in Fact

By:

California Resident Agent

By:

Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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)

Performance Bond
Page 4 of 4
Version: October 2016

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 **RELIANCE DEVELOPMENT LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

RELIANCE DEVELOPMENT LLC
HENCKEN OAKS – TRACT NO. 10448

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2018, and identified as project **HENCKEN OAKS – TRACT NO. 10448**, 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, hereinafter called "City," and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **One Hundred Twenty One Thousand Eight Hundred Twenty Five dollars (\$121,825)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and 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

Labor and Material Bond

Page 2 of 4

Version: August 2017

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)

Labor and Material Bond
Page 4 of 4
Version: August 2017

EXHIBIT "D"
CASH DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS

HENCKEN OAKS – TRACT NO. 10448
RELIANCE DEVELOPMENT LLC

THIS AGREEMENT is made this ____ day of _____, 2018, by the City of Morgan Hill, a municipal corporation, ("City"), and **RELIANCE DEVELOPMENT LLC**, a California Limited Liability Company ("Subdivider").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Sections 17.32.180 and 17.32.190 of the City of Morgan Hill's Municipal Code.
2. City has entered into a Subdivision Improvement Agreement with Subdivider pertaining to the development on **Tract No. 10448** or **APN#767-08-035,036,037,038** and commonly known as **HENCKEN OAKS**, and the Subdivision Improvement Agreement shall be referenced for further particulars of the subdivision. This Cash Deposit Agreement ("Agreement") is intended to fulfill the requirements for Performance/Labor & Material Bonds as set forth in the Subdivision Improvement Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Deposit.** That Subdivider has deposited the cash sum (cash, certified check, or cashier's check) of **Two Hundred Forty Three Thousand Six Hundred Fifty Dollars (\$243,650)** in lawful money of the United States of America herein called "Deposit Sum", with City. This Deposit Sum represents one hundred percent of the City Engineer's Estimated Costs of Improvements to guarantee the construction or installation of all Improvements by the Subdivider, and an additional one hundred percent of the City Engineer's Estimated Costs of Improvements to guarantee the payment to the subdivider's contractor, subcontractors and to persons furnishing labor, materials or equipment for the construction or installation of improvements required by the Subdivision Improvement Agreement between City and Subdivider. The Subdivision Improvement Agreement is attached hereto and incorporated herein as Exhibit "A", and Subdivider certifies and warrants that they have reviewed the Subdivision Improvement Agreement and agree to be bound by relevant provisions of such Agreement.

CASH DEPOSIT AGREEMENT
 GUARANTEEING IMPROVEMENTS

Page 1 of 4
 Version: December 2017

2. **Additional Deposits.** In the event the Deposit Sum is insufficient to complete and/or repair the public improvements, Subdivider will deposit with City such additional sum in lawful money of the United States of America as an additional deposit in such amount that will be required to complete the public improvements; said additional deposit to be subject to the terms of this Agreement.

3. **Release of Security.** The release of any securities shall be governed by the provisions of Section 17.32.230 of the Morgan Hill Municipal Code.

- a. Performance Security. Upon City acceptance of the improvements, City can disburse up to fifty percent of the funds guaranteeing performance. In lieu thereof, if Subdivider submits a Warranty Bond in the amount of fifty percent of the funds guaranteeing performance, City can disburse all of the funds guaranteeing performance. One (1) year after City's acceptance of the improvements, upon written approval of the City Engineer, remaining funds can be disbursed by City, or the Warranty Bond may be released.
- b. Payment Security. The funds on deposit to guarantee payment of labor and materials shall be held until the end of any claim period established by law. The amount shall then be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing, and if no such claims have been recorded, the securities shall be released in full.

4. **City Substitution for Subdivider.** In the event Subdivider fails to properly perform under the Subdivision Improvement Agreement, and City exercises its right to perform the contract itself or to subcontract work to a third party pursuant to the Subdivision Improvement Agreement, then Subdivider agrees that all funds then remaining shall remain deposited with City for disbursement to parties actually performing the work.

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

6. **Independent Contractor.** It is agreed that Subdivider and Subdivider's contractors, subcontractors, agents, or employees shall act and be independent contractors and not agents or employees of City.

7. **Subdivision Agreement.** This Agreement shall include the Subdivision Agreement which is incorporated herein. In the event of any inconsistency between the terms of the Subdivision Agreement and this Agreement, the Subdivision Agreement shall govern.

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 2 of 4
Version: December 2017

8. **Indemnity.** All indemnity provisions of the Subdivision Improvement Agreement shall apply with full force to this Agreement. City shall not be liable to Subdivider, Subdivider's contractors, subcontractors, agents, or employees for any payment under this agreement; liability for full repayment under the Subdivision Improvement Agreement shall be the sole responsibility of Subdivider.

9. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by Subdivider without prior written consent of City.

10. **Authority to Execute.** The persons executing this Agreement on behalf of entities represent and warrant that they are 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.

11. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by City and Subdivider.

12. **California Law.** 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.

13. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by both parties, and no rule of construction or interpretation shall apply against any particular Party bases on a contention that the Agreement was drafted by one of 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.

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CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 3 of 4

Version: December 2017

14. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

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

ATTEST:

CITY OF MORGAN HILL

By: _____
Michelle Wilson, Deputy City Clerk
Date: _____

By: _____
Christina J. Turner, City Manager
Date: _____

APPROVED:

"SUBDIVIDER"

RELIANCE DEVELOPMENT LLC
A California Limited Liability Company

By: _____
Scott Creer, City Engineer
Date: _____

By: _____
Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney
Date: _____

"SUBDIVIDER"

RELIANCE DEVELOPMENT LLC
A California Limited Liability Company

By: _____

Title: _____

Date: _____

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 4 of 4
Version: December 2017

Attachment: Subdivision Improvements Agreement Hencken Oaks with Cash Deposit (1811 : FINAL MAP APPROVAL OF HENCKEN OAKS -

**EXHIBIT “E”
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 **RELIANCE DEVELOPMENT LLC** (hereinafter designated as “Principal”) have entered into a Subdivision Improvement Agreement (hereinafter “Agreement”):

**RELIANCE DEVELOPMENT LLC
HENCKEN OAKS – TRACT NO. 10448**

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 2018, and identified as project **HENCKEN OAKS – TRACT NO. 10448**, 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 **Sixty Thousand Nine Hundred Thirteen Dollars (\$60,913)** 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

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 1 of 4

Version: December 2017

Attachment: Subdivision Improvements Agreement Hencken Oaks with Cash Deposit (1811 : FINAL MAP APPROVAL OF HENCKEN OAKS -

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:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 2 of 4

Version: December 2017

Attachment: Subdivision Improvements Agreement Hencken Oaks with Cash Deposit (1811 : FINAL MAP APPROVAL OF HENCKEN OAKS -

Seal and Power of Attorney)

APPROVED AS TO FORM:

By:_____

Donald A. Larkin, City Attorney

Date:_____

END OF WARRANTY BOND

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 3 of 4

Version: December 2017

Attachment: Subdivision Improvements Agreement Hencken Oaks with Cash Deposit (1811 : FINAL MAP APPROVAL OF HENCKEN OAKS -

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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CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 4 of 4

Version: December 2017

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

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

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

APN:767-08-035,036,037,038

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 **RELIANCE DEVELOPMENT 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 **STORM WATER RUNOFF MANAGEMENT PLAN for Hencken Oaks Tract No. 10448** prepared by **Giuliani & Kull, Inc.** and dated **April 23, 2018**, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

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

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and

determined that the provisions of this AGREEMENT shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.

2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties

associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.

8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.
16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, its successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: **Harry Guidotti**

Title: **Managing Member**

CITY OF MORGAN HILL:

By: _____

Name: **CHRISTINA J. TURNER**

Title: **CITY MANAGER, CITY OF MORGAN HILL**

APPROVED AS TO FORM:

By: _____

Name: **DONALD A. LARKIN**

Title: **CITY ATTORNEY, CITY OF MORGAN HILL**

EXHIBIT "A"

Legal Description of
Common Area of Tract No. 10448
For Maintenance Purposes
Morgan Hill, California

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

Being all of Lots 15 and 16, and those strips of land designated as Private Storm Drainage Easement (P.S.D.E.) over Lots 1 through 8, as shown upon that certain map entitled "Tract No. 10448", which was filed for record on _____, 20____, in Book _____ of Maps, at Pages _____, in Santa Clara County Records;

Containing an area of 0.57 Acres, (25,036 Sq. Ft.), more or less.

END OF DESCRIPTION.



Mark A. Helton
5-23-18

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CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

AWARD ANNUAL TRAFFIC SIGNAL AND LIGHTING AGREEMENT

RECOMMENDATION(S)

1. Award a three-year contract to Cal-West Lighting and Signal Maintenance, Inc. in the amount of \$450,000; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Cal-West Lighting and Signal Maintenance, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The City has contracted for traffic signal and lighting services for many years and does not have the staffing resources or equipment to perform the work internally. Services provided under this contract include streetlight, parking lot light, and traffic signal bulb replacements, equipment troubleshooting, emergency response services, and consultation services. The City's current contract expires on June 30, 2018.

The purpose of this report is to summarize the results of the recent Request for Proposals (RFP) process and request authorization for the City Manager to enter into a new agreement for these needed services. The proposed term of the new service agreement is three years, starting on July 1, 2018, with an option to extend for one additional year.

The RFP was issued on April 30, 2018, and four proposals were received on May 21, 2018. In soliciting proposals for this contract, the City advertised in the Morgan Hill Times, posted on the City website, and two online plan services, Public Purchase and the Online Plan Service, whose subscribers include multiple Northern California Builders' Exchanges.

The City evaluated the proposals using a "Best Value," methodology in which contractors meeting the minimum threshold score in the Qualifications, Experience and References narrative, were then evaluated based upon their cost proposals. A team of evaluators from the Community Services Department independently evaluated and scored the proposals based on the contractors' narrative, qualifications, experience and references. All four contractors exceeded the minimum qualifying score of 40 out of 50

points.

Staff then compared the four contractors' cost proposals. Cal-West Lighting and Signal was the lowest qualified bidder. They proposed the lowest rates for the annual routine maintenance scope of work, and on average the lowest rates for labor and equipment costs. A complete summary of all the contractors' proposed rates is attached to this staff report.

The "total annual routine maintenance costs" category accounted for 80 of the 100 points available for the cost proposal scoring. Below is a summary of the total annual routine maintenance costs proposed by each contractor:

Contractor	Annual Routine Maintenance Pricing
Cal-West Lighting and Signal	\$42,420.00
St. Francis Electric	\$51,540.00
Siemens Industry	\$54,876.00
Bear Electrical Solutions	\$62,100.00

Cal-West Lighting and Signal has been the City's traffic signal and streetlighting contractor since 2007. They have provided excellent and efficient service during that time. The company has over 14 years of experience in the traffic signal and streetlight business. Reference checks with other jurisdictions confirmed that they are also responsive to and provide excellent workmanship to their other clients.

Staff recommends entering into a three-year not-to-exceed contract with Cal-West Lighting and Signal for \$450,000 to provide traffic signal and streetlighting services to the City. The \$450,000 includes \$127,260 for routine maintenance plus \$322,740 in additional maintenance and repair costs to be performed on an as-needed basis and pre-approved by City Maintenance Staff.

COMMUNITY ENGAGEMENT: Not Applicable

As traffic signaling and streetlighting services are expected to be performed within the City, no community engagement was completed for this contract.

ALTERNATIVE ACTIONS:

The City Council could elect not to award this maintenance service agreement and request that the services be rebid in hopes of obtaining a lower cost proposal. This action would require the extension of the current traffic signaling and streetlighting contract until December 31, 2018 in order to allow enough time to rebid services. It is unlikely that a lower bid could be obtained since it is a specialized service and four firms responded to this RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously approved contracts for traffic signaling and streetlighting services for over a decade. The City's current agreement was approved by the Council on June 3, 2015.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$450,000. Funding for the traffic signaling and streetlighting services is accounted for in the Streets Maintenance Fund (010.6100), and Downtown Maintenance Fund (010.5460) and included in the FY 2018-2019 and 2019-2020 budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Complete _Traffic Signal and Street Lighting RFP
2. Cal-West Lighting Agreement
3. Signed Cal-West Lighting Maintenance Service Agreement attached 05/29
4. Traffic Signal Scoring Summary and Rates



Request for Proposals (RFP) For Traffic Signal and Street Lighting Maintenance

The City of Morgan Hill is requesting proposals from qualified contractors to provide preventative maintenance, prompt scheduled repair and emergency response to the City's street lights, traffic signals, lighted crosswalks and flashing beacons at various locations throughout Morgan Hill for the period from July 1, 2018 to June 30, 2020.

**Proposals are due on Monday, May 21, 2018 at 11:00 a.m. at City Hall
located at
17575 Peak Avenue in Morgan Hill.**

REQUEST FOR PROPOSALS (RFP) INFORMATION

SECTION 1 – General Instructions and Information for Contractors
SECTION 2 – Technical Specifications
SECTION 3 – Bid Proposal, Bid Schedule, Response to Technical Questions, and
Wage Theft Prevention Bid Certification

ATTACHMENTS

Sample Maintenance Service Agreement including insurance requirements

SECTION 1 – General Instructions and Information for Contractors

Proposal Submission. Deliver sealed proposals to the City of Morgan Hill Community Services Department, City Hall, 17575 Peak Avenue, Morgan Hill, California 95037, by the due date and time above. Proposals must be addressed to the Community Services

Department and labeled as **“Response to RFP for Traffic Signal and Street Light Maintenance.”** Proposals will be not be opened publicly on Monday, May 21, 2018, and final scoring of proposals will not occur until City staff has reviewed all bid documents. Proposal submittals and scores become public information after notice of intent to award. Failure to use the forms provided within the RFP package will result in an incomplete proposal.

Contractor is to complete the following bid documents and include them in the bid proposal package:

- 1) Bid Proposal
- 2) Bid Schedule
- 3) Response to Technical Questions
- 4) Wage Theft Prevention Bid Certification

These forms are provided in Section 3. Incomplete proposals will not be considered.

Request for Proposal (RFP) Schedule.

Traffic Signal and Lighting RFP Schedule	
April 27th	Notice of RFP posted on City Website and in Morgan Hill Times
April 30th	RFP posted on Public Purchase and Online Plan Service
May 9th	Deadline to Submit Questions in writing to Management Analyst @ cynthia.iwanaga@morganhill.ca.gov
May 14th	City Responses to Written Questions Posted on Public Purchase and Online Plan Service
May 21st	Proposals Due no later than 11:00 a.m.
June 6th	Contract Awarded by City Council
July 1st	Commencement of Two-Year Contract

Contractor Selection Criteria.

The City will be awarding this contract using a “Best Value” methodology in a two-part evaluation.

Part One of the Evaluation is a review of Qualifications, Experience and References of the Contractor based upon “Response to Technical Questions.” Contractors must receive a minimum score of 40 out of 50 points on the Qualifications, Experience and References to be further considered in the selection process.

Qualifications, Experience, and References will be reviewed on the following criteria:

1. Previous experience in providing a superior level of service at like-sized cities.
2. Assessments of work quality, performance and working relationships by current and recent clients that indicate high levels of satisfaction and effectiveness.
3. Qualifications of staff proposed to provide traffic signal and street light maintenance at City Facilities.
4. Well organized communication systems and electronic reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City.

The contractors meeting the minimum scoring requirement in Part One will then be evaluated in Part Two of the Evaluation, which is a review and comparison of the Cost Proposals (Bid Schedule). The full methodology for the evaluation of the Cost Proposals is described on Attachment 4.

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

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

Bid Guarantee. No bid shall be withdrawn except as provided for pursuant to Public Contract Code Section 5103, and the bidder shall guarantee the Total Bid Price for a period of ninety (90) calendar days from the date of the proposals are submitted to the City.

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

Bonds. No Bonds are required.

License. Contractors submitting a proposal shall possess a valid, current and in good standing Class A (General Engineering) or Class C-10 (Electrical) contractor’s license issued by the California Contractor’s State License Board (CSLB), and will comply with all other license, insurance and permit requirements of the City, State and Federal governments as well as all other requirements of the law. The successful bidder will be required to obtain a City of Morgan Hill Business License.

City Representative. The designated City representative for this Request for Proposals (RFP) is Cynthia Iwanaga, Management Analyst at cynthia.iwanaga@morganhill.ca.gov

Submittal of Written Questions regarding this RFP. All questions regarding this RFP must be submitted in writing to Cynthia Iwanaga at cynthia.iwanaga@morganhill.ca.gov **no later than Wednesday, May 9th at 5:00 p.m.** The City will respond to all questions via an Addendum to be posted on Public Purchase and the Online Plan Service no later than Monday, May 14th.

Engineer's Estimate. Although total quantities per year cannot be estimated at this time, the current value of the existing contract is \$125,000 per year.

Insurance. If awarded the contract, the Bidder/CONTRACTOR shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements within 10 days of receipt of the Notice of Award. The required insurance must cover the activities of CONTRACTOR, 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 the Contract until the date of recordation of the notice of completion. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by the City.** If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, Owner may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **CONTRACTOR further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONTRACTOR, at any time as deemed necessary to protect the interests of the CITY.**

Commercial General Liability (CGL). CONTRACTOR shall maintain CGL and shall include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit and a general aggregate limit of two million dollars (\$2,000,000.00) or (ii) the maximum amount of such insurance available to CONTRACTOR under CONTRACTOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

Workers' Compensation Insurance and Employer's Liability. CONTRACTOR 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 CONTRACTOR under CONTRACTOR's

combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If CONTRACTOR is self-insured, CONTRACTOR shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

General Liability.

1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
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,
3. Insurance shall be primary non-contributing.

Workers Compensation.

1. 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.

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

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

Certificates. Contractor shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Contractor's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten days written notice must be made to Owner. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

DIR Registration: No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

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

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

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

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

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

Permits. The Contractor shall obtain and pay for any necessary permits.

Taxes. The proposal price shall include all applicable federal, state and local taxes.

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

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

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

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

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

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

The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid

Protest Deadline or after receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder. Protected bidder must concurrently transmit a copy of the response and all supporting documents by fax or by e-mail, by or before the Response Deadline, to the protesting bidder and any other bidder who has reasonable prospect of receiving an award depending upon the outcome of the protest.

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

Rejection of Bids and Award of Contract. City reserves the right, acting in its sole discretion, to waive non-substantive bid irregularities, the right to accept or reject any and all bids, or to abandon the work entirely. The Contract will be awarded by City Council, if at all, within sixty (60) calendar days after conducting interviews on the basis of the bid most advantageous to the City.

SECTION 2 TECHNICAL SPECIFICATIONS: TRAFFIC SIGNAL AND STREET LIGHTING MAINTENANCE SCOPE OF WORK AND SPECIAL PROVISIONS

Introduction and General Information:

The City of Morgan Hill (City) is requesting the services of a qualified electrical contracting firm (Contractor) which specialized in providing maintenance services for the City's traffic signals and lighting, street lights, flashing beacons, lighted crosswalks and other City equipment. The scope of work will include maintenance, emergency repair, non-emergency routine inspections and new equipment upgrade and installation work. The City operates and maintains 42 traffic signals with a variety of signal controllers and 16 flashing beacons.

The City also has an EMTRAC Signal-Priority System that must be maintained on a quarterly basis.

The City is seeking a contractor whose combination of experience and personnel will provide timely, cost-effective and quality professional services to the City. The selected Contractor will be required to have qualified traffic technicians that have demonstrated experience with traffic signal, street light and other electrical work. The Contractor shall also have the ability to troubleshoot and diagnose problems with all of the City's traffic signal related electrical operation systems.

The total amount of work available will be a function of routine traffic signal maintenance plus the amount of work that is required due to normal "wear and tear," collision damage, vandalism, and other factors that may result in the need for emergency response maintenance services. The City expects traffic signal technicians to be regularly assigned to the City as necessary to provide preventative maintenance and to respond to unscheduled/emergency work.

Scope of Work:

1-1 SCOPE OF SERVICE:

The Contractor will furnish all tools, equipment, apparatus, facilities, labor, service and materials to perform all work necessary to maintain traffic signal facilities and street lights in good and workmanlike manner. All labor, services, materials and equipment shall be furnished and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of the Community Services Director of the City of Morgan Hill, or his representative.

Preventative Maintenance:

The Contractor shall provide a routine, comprehensive preventative maintenance program designed to minimize the incidence of outages and malfunction; reduce complaints; and extension the useful life of the traffic signal equipment. The Contractor will be required to furnish and use a preventative maintenance checklist form approved by the City. The Contractor shall provide one electronic copy of the maintenance checklist

to the City following each inspection, to maintain a copy of the checklist in the traffic signal controller cabinet, and to maintain a copy of the maintenance checklist at the Contractor's office. The program shall include monthly inspections of each signalized intersection.

Each controller unit shall be inspected, cleaned, and adjusted during a routine inspection one time per month. This includes all accessory items such as the Emtrac system and signal interconnect systems. Each controller conflict monitor shall be tested once yearly during the month of July.

All traffic signal detection loops shall be maintained and repaired as needed.

All incandescent lamps in all signals shall be replaced based on an eighty percent (80%) depletion period. Contractor shall use only standard traffic signal lamps as manufactured by General Electric Company or Sylvania Company.

All light emitting diode (LED) modules in all signals shall be replaced when more than two percent (2%) of the LEDs have failed. Contractor shall only use standard LED traffic signal modules approved by the California Department of Transportation (Caltrans).

The Contractor shall replace or repair any and all defective parts of the controller mechanism as needed. All lenses and reflectors shall be cleaned and polished once a year. At this time, all broken parts shall be replaced.

Contractor shall maintain the appearance of all traffic signals monthly including graffiti removal, and removal of stickers, etc.

All fixed time, semi-actuated and fully actuated signal which are installed from time to time shall be added to those already maintained by the Contractor as City notifies the Contractor of the installation thereof. These signals shall be maintained at the same rate and in the same manner as those covered by the maintenance agreement. In the event notification is made at other than the beginning of the monthly contract period, payment for that month shall be prorated from the day the Contractor is notified. The Contractor is to be at all new installation turn-on to provide technical assistance and guidance.

Contractor is to maintain by quarterly testing all Emtrac systems throughout the city at locations.

School/PED flashing beacons are to be adjusted regarding Daylight Savings Time and Pacific Standard Time as needed twice a year.

Scheduled Repair:

The Contractor shall investigate and determine the corrective requirements for each reported malfunction, failure or outage of the traffic signal system. The Contractor shall repair or replace equipment and components that have failed, deteriorated or malfunctioned from the normal operation of the traffic signal system. Replacement of controllers and battery backup systems will require approval of City staff prior to

replacement.

Based on a Street Light Repair list sent weekly, repairs would be made within fourteen (14) calendar days. The price is for the electrician, bucket truck, and lamp. Additional items are extra cost. Lights needing a quicker response will be billed based on labor and material.

No permanent change shall be done without prior approval of the City. Whenever equipment is removed, the City representative shall be notified by phone and e-mail within twenty-four (24) hours, except weekends and holidays (where the firm shall wait until the next calendar day to notify the City Representative).

The Contractor may be requested to input timing changes provided by the City.

Emergency Response Work:

The Contractor may be called upon from time to time by the City to repair, replace, or refurbish equipment which has been damaged by vehicle accidents, acts of God, malicious damage, natural causes, or need to install new appurtenances. In this case Contractor shall make emergency service calls when necessary to make temporary or permanent repairs or installation to signal equipment and appurtenances such as: safety lighting, traffic signs, pedestrian signals, flashing beacons, street lights, detector devices external to the cabinet or failure of the controller.

The City's street lights are maintained by the City. The Contractor shall, upon request, make emergency calls to remove street lights that have been knocked down, and deliver same to the City corporation yard. The Contractor may be requested to replace and install a new street light and possibly, depending upon extent of damage, repair or replace the street light pole pedestal.

Contractor shall maintain a 24 hour per day emergency service for the replacement of burned-out lamps or controller malfunctions. A maximum response time of two (2) hours will be required of the Contractor. In the course of traveling to and from the locations of the equipment to be serviced, Contractor's representative shall observe traffic signals at other designated intersections for possible malfunctions.

1-2. TERM OF SERVICE The term of the contract will be from July 1, 2018 through June 30, 2020. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to one additional year beginning on July 1, 2020. This option will be exercised only if the contractor has demonstrated superior performance in provision of traffic signal and street light maintenance services to the City.

Pricing entries in Bid Schedule of Proposal Package applies to the period of July 1, 2018 to June 30, 2020. For services beginning on July 1, 2020, the Contractor may request a percentage adjustment to the pricing for all services equal to the Consumer Price Index (CPI) for the San Francisco Bay Area Counties. This request must be in writing ninety (90) days prior to the end of July 1, 2020.

1-3 WORK HOURS

The work hours for any, and all traffic signal and street light preventative maintenance and repairs will be scheduled with City Maintenance Staff during regular business hours (7:00 a.m. to 5:00 p.m. Monday through Friday). As authorized by the City, the Contractor may perform Unscheduled and Emergency Response Work on the traffic signal system not covered by preventative maintenance and scheduled repairs.

Deviation from the above will not be permitted except by written permission of the City Maintenance Coordinator or designated representative from the facility.

From time to time, the City may take on improvement projects or other construction. The Contractor shall cooperate with the City or its agents while said work is underway.

1-4 WORKMANSHIP AND QUALITY LEVEL

All work shall be performed by staff directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to provide the specified traffic signal and street light maintenance. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

The Contractor shall cooperate with the representative authorized by the City to enable them to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall give personal supervision to the work and will meet with the Maintenance Manager or designated City representative, a minimum of once per month, at a schedule mutually agreed upon.

1-5. LOCATIONS

A list of signalized intersections is attached to this RFP as "Attachment A"

1-6. MONTHLY ACTIVITY REPORT

The Contractor shall provide a computerized monthly activity report to the City by the fifteenth (15) working day of each month for the previous month. A monthly report shall be sent via e-mail to the City with the monthly invoice. No payment will be made without submittal of the report: The report shall include:

- i. Unscheduled and Emergency Response Work: Time the service calls were received, names of City staff who made the service call, time arrived at intersection, response time, nature of problem, the number of hours spent for each repair, materials used, whether the activity related to accident or vandalism, and a special listing of intersections with three or more calls in one month.
- ii. Scheduled Repairs: A complete record of all work that was performed on the traffic signal equipment during the previous month including the date and time, make model, and serial number of any major components or other equipment that was newly installed at each intersection.

- iii. Preventative Maintenance: Time and date the preventative maintenance work was performed.
- iv. Pending Repair List: Provide a monthly report of all pending repair work needed at each intersection. The intersection name should be listed along with a description of the repair required, problem that created the repair and level of severity (high priority repair, medium priority repair, low priority repair).

1-7. RESPONSE AND SERVICE

- i. The Contractor shall provide response and service on a twenty-four (24) hour, seven (7) day per week basis. Immediate action shall be taken to safeguard the public any time a signal installation becomes partly or totally inoperative from any cause whatsoever. The maximum response times shall be as follows:
 - a. Emergency and accident maintenance – one (1) hour
 - b. Replacement of burned out signal faces
 - 1. Red faces on mast arms – two (2) hours
 - 2. Red faces on poles – two (2) hours
 - 3. Green and yellow faces – two (2) hours
 - c. All other signal maintenance – twenty-four hours
 - d. Safety Lighting – forty-eight (48) hours
- ii. Signal on-flash, signal blackout not caused by a power outage, and any malfunction of pedestrian signals shall constitute an emergency. The City may extend the maximum response time for maintenance on a case by case basis if the signal remains operational in a satisfactory manner and the condition poses no immediate hazard to the public.
- iii. Permanent work shall be completed as soon as possible and in all cases no less than fourteen (14) calendar days, unless extended in writing by the City and as agreed upon by City and Contractor.
- iv. Failure to meet the response time requirements by the Contractor shall be sufficient cause for the City to authorize maintenance to be completed by others and deduct the costs of said maintenance from payments due the Contractor. Repetitive failure shall be deemed sufficient cause for the City to terminate the contract.

1-8. SIGNAL SHUT DOWN AND SIGNAL ON FLASH

The Contractor shall immediately notify the City's Community Services Department and Police Department of any signal turn-offs or signal-on-flash necessitated by their operation. Signal shut down of any duration and sign-on-flash operation in excess of fifteen (15) minutes must be first authorized by the Community Services Dept.-Maintenance Division.

1-9. SPARE EQUIPMENT

The Contractor shall maintain adequate storage and shop facilities and sufficient stock of spare parts and signal equipment to effectively maintain the traffic signals. The Contractor shall maintain at least one fully tested standby controller that is compatible with the City's system. The Contractor will own and maintain all spare parts until installation in the City.

1-10. SALVAGED EQUIPMENT

The Contractor shall store any designated equipment, as designated by the City, at the Contractor's storage yard at no additional cost to the City. Components such as mast arms and luminaires that are undamaged may be re-used at the direction of the City. Any material or equipment declared as non-salvageable by the Community Services Department shall be taken from the City and disposed of properly by the Contractor at Contractor's cost.

1-11. SAFETY

The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way.

1-12. EMERGENCY SITUATIONS

For medical or public safety emergencies call 9-1-1. For all emergencies contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

SECTION 3

- 1) Bid Proposal
- 2) Bid Schedule
- 3) Response to Technical Questions Form
- 4) Wage Theft Prevention Bid Certification

Note that each document included in this section must be included in bid proposal package.

Proposal to Furnish Traffic Signal and Street Light Maintenance In the City of Morgan Hill

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

1. **Base Bid.** Bidder proposes to perform and fully provide Traffic Signal and Street Light maintenance as specified in the Contract Documents, for the two-year (2) time period from July 1, 2018 to June 30, 2020, for the pricing (“Base Bid”) listed in the attached Bid Schedule.

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

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

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

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

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

3.3 Bidder is fully qualified to perform the Work.

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

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

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

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

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

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

s/ _____
Name and Title [print]

Company Name

Address Phone

City, State, Zip Fax

Email

Attachments:

- 1) Bid Schedule
- 2) Response to Technical Questions Form
- 3) Wage Theft Prevention Certification
- 4) Methodology for Scoring

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

**ATTACHMENT 1
BID SCHEDULE**

Traffic Signal and Street Light Maintenance in the City of Morgan Hill

Bid Schedule on next page

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: Complete _Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

Attachment 1 : Bid Schedule

City of Morgan Hill Traffic Signal and Street Lighting Maintenance

Annual Routine Maintenance

(Task Rate Schedule A)

Annual Amount

1. Monthly Maintenance Fee Per Intersection*

\$ _____ /month x 12 months = x 42 intersections = \$ _____

2. Emtrac System Maintenance Quarterly*

\$ _____ /quarter x 4 quarters = \$ _____

3. Flashing Beacons*

\$ _____ /month x 12 months = x 16 flashing beacons = \$ _____

4. Lighted Crosswalk

_____ /month x 12 months = x 1 lighted crosswalk = \$ _____
TOTAL (annual) \$ _____

* Based on attached Intersection List (Attachment A)

Time and Materials - Service Repairs

(Task Rate Schedule B)

1. LABOR AND EQUIPMENT RATES FOR MAINTENANCE

LABOR SCHEDULE

STRAIGHT
TIME

OVERTIME

Signal Maintenance Supervisor

\$ _____

\$ _____

Signal Maintenance Technician

\$ _____

\$ _____

Traffic Signal Staff

\$ _____

\$ _____

Laborer

\$ _____

\$ _____

EQUIPMENT

HOURLY
RATEDAY
RATEJOB
TRIP
RATE

Utility Vehicle

\$ _____

\$ _____

\$ _____

Service Vehicle

\$ _____

\$ _____

\$ _____

Boom Truck

\$ _____

\$ _____

\$ _____

Hydraulic Lift

\$ _____

\$ _____

\$ _____

Air Compressor

\$ _____

\$ _____

\$ _____

A. Total for 2 Hour Emergency Service Call for Pole Knockdown \$ _____

B. Timing Input Call \$ _____

2. LOOP REPAIR

As it is deemed necessary to replace damaged detection loops, contractor
(Includes all labor, material, and equipment)

Cost for 1 each forward loop (Attachment B)

\$ _____

All others (1 each) (CalTrans Standard Plan ES-5B / Attachment C)

\$ _____

3. NEW SIGNAL TURN-ON

1 each occurrence

\$ _____

4. STREET LIGHT MAINTENANCE

1 each occurrence

\$ _____

5. MARK-UP ON PARTS AND MATERIALS (% PERCENTAGE MARK-UP)

_____ %

Name of Company: _____

Signature _____

Date _____

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: Complete Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

**ATTACHMENT A:
 BID SCHEDULE-TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE**

4/20/2018

CITY OF MORGAN HILL SIGNALIZED INTERSECTIONS TO BE SERVICED BY THIS CONTRACT

- 1 Monterey/Tilton
- 2 Monterey/Burnett
- 3 Monterey/Peebles
- 4 Monterey/Madrone Parkway
- 5 Monterey/Cochrane
- 6 Cochrane/Cochrane Circle
- 7 Cochrane/Butterfield
- 8 Cochrane/Sutter Boulevard
- 9 Cochrane/Cochrane Plaza/Madrone
- 10 Cochrane/DePaul
- 11 Monterey/Old Monterey
- 12 Monterey/Wright
- 13 Monterey/Main
- 14 Main/Butterfield
- 15 Main/Calle Mazatan
- 16 Monterey / 2nd Street
- 17 Monterey/Dunne
- 18 Dunne/Church
- 19 Dunne/Butterfield
- 20 Dunne/Walnut Grove
- 21 Dunne/Condit
- 22 Dunne/Murphy
- 23 Dunne/Peppertree
- 24 Dunne/Hill
- 25 Monterey/Spring
- 26 Monterey/Cosmo
- 27 Monterey/Tennant-Edmundson
- 28 Tennant/Church
- 29 Tennant/Vineyard
- 30 Tennant/Butterfield
- 31 Tennant/Juan Hernandez
- 32 Monterey/Vineyard
- 33 Monterey/Watsonville-Butterfield
- 34 Monterey/John Wilson Way
- 35 Butterfield/Sutter
- 36 Butterfield/Diana
- 37 Butterfield/San Pedro
- 38 Butterfield/Barrett
- 39 Butterfield/Central Ave
- 40 Cochrane/Mission View (To be activated)
- 41 Monterey/4th
- 42 Butterfield/Digital

RAPID FLASHING BEACONS:

ADVANCE SIGNAL FLASHING BEACONS:

- 1 Monterey / Tilton
- 2 Monterey / Old Monterey
- 3 Monterey/John Wilson Way

FLASHING BEACONS:

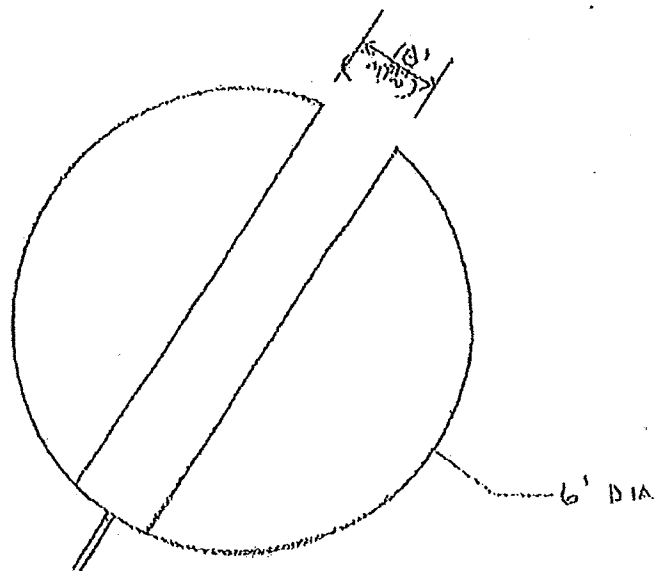
- 1 Tilton / Dougherty
- 2 17660 Monterey
- 3 Monterey / Central
- 4 17775 Monterey
- 5 Nordstrom on Dunne
- 6 Dunne / Saddleback
- 7 Main/Del Monte
- 8 W Dunne/Del Monte
- 9 W Edmundson/Trail Crossing
- 10 W Edmundson/Community Park Drive
- 11 Edes Ct/Trail Crossing
- 12 Cosmo/Trail Crossing
- 13 Burnett Ave. at Sobrato High School

LIGHTED CROSS WALKS:

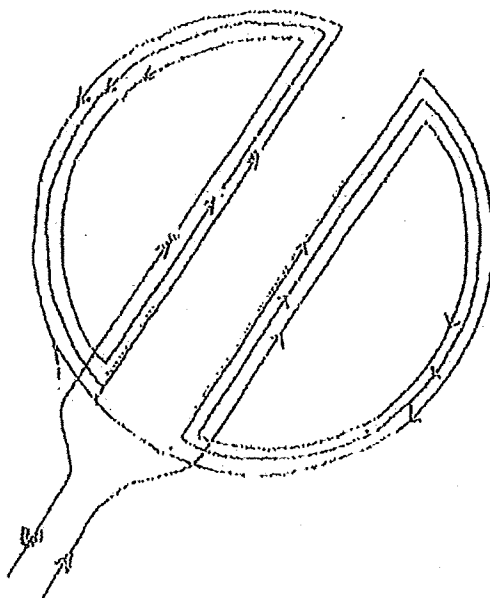
- 1 Monterey/Third Street

ATTACHMENT B-FORWARD LOOP

ALL FRONT LOOPS



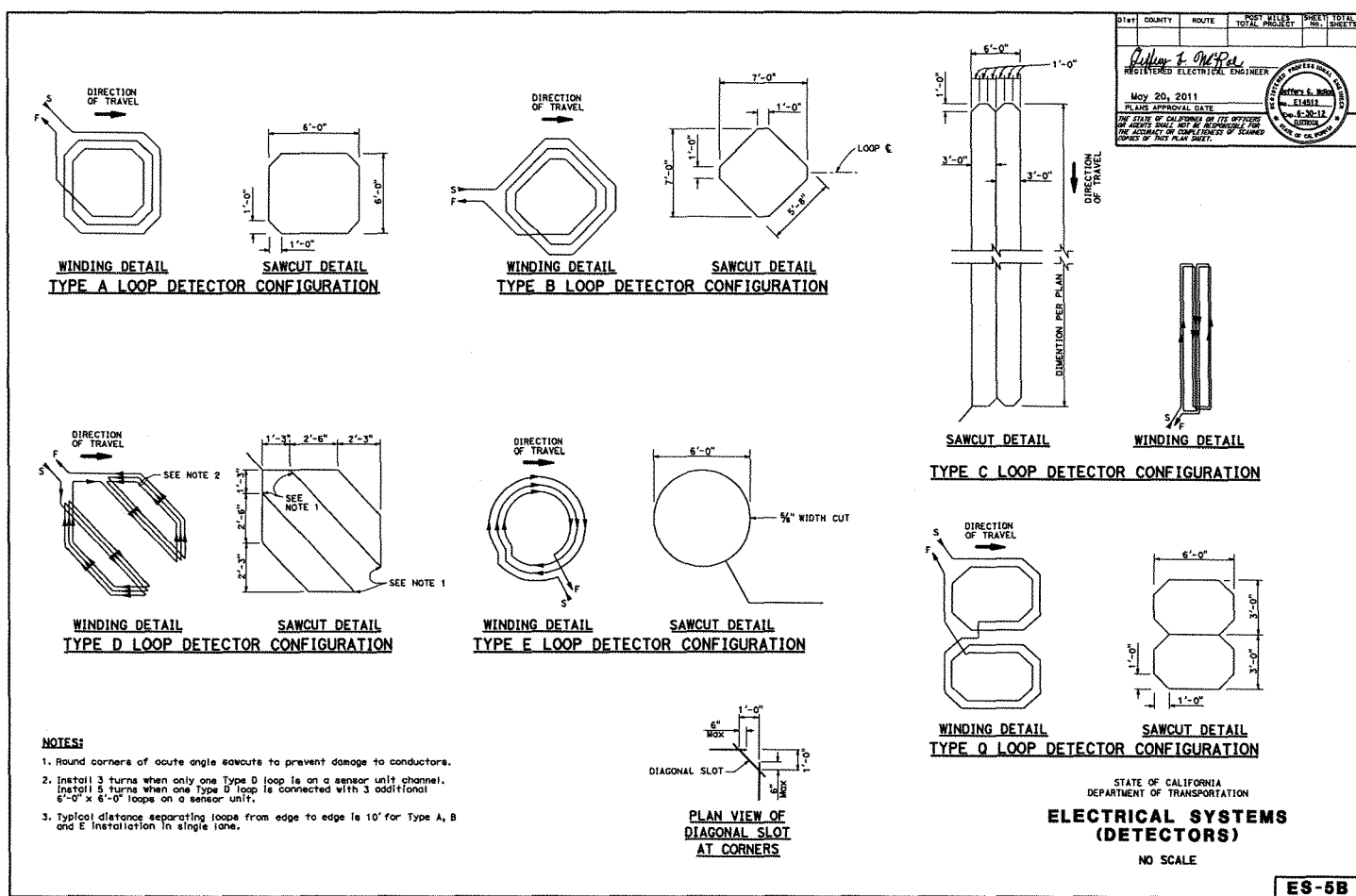
Modified Type "E" Loop
(Sawout Detail)



(Wiring Detail)

ATTACHMENT C-STANDARD PLAN ES-5B

449



2010 STANDARD PLAN ES-5B

Attachment: Complete Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

ATTACHMENT 2

RESPONSE TO TECHNICAL QUESTIONS FORM TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE RFP

Please provide a brief narrative **(Not to Exceed 10 pages)** entitled, “**Attachment 2-Response to Technical Questions from Traffic Signal and Street Light Maintenance RFP**,” which answers the questions in Sections 1 through 4 below *(Please include your company’s complete legal name and form of entity, for example, “corporation,” on each page)*:

Section 1: Previous Experience in providing a superior level of service on like-sized public and/or private projects

Please answer the following:

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

Section 2: REFERENCES: Assessment of Work Quality, Performance and Working Relationships with Current and Recent Clients

1. List three (3) like-sized customers that you have provided ongoing traffic signal and street light maintenance to within the last three (3) years. Provide the following information for each contact:
 - a. Customer Name
 - b. Customer Contact Name
 - c. Phone Number
 - d. Number of years your firm has provided traffic signal and street light maintenance to Customer.

- e. Names of facilities/locations where services have been provided.

Section 3: Qualifications of Staff to be assigned to provide traffic signal and street light maintenance

1. Attach an organizational chart for your company, or the local office that would service this contract.
2. For the local office to serve this contract, list the following:
 - A. Total number of staff assigned to City of Morgan Hill
 - B. Names and qualifications of key staff including years in the industry and with your firm.
 - C. Number of new hires in the last six months.
3. Briefly describe your employee training program and requirements.

Section 4: Well organized communication systems and reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City.

1. Describe the systems your company uses to communicate between supervisors, office staff and field staff. Also describe the systems you use to assign, track, and evaluate work performed by your employees.
2. Describe your existing customer service program, how you would monitor customer satisfaction, how complaints will be resolved and your plan for quality control.
3. Describe your communication plan to assure proper communication between your representative and the City's representative.
4. Describe in detail your Safety Program.

Attachment 3

Wage Theft Prevention Bid Certification

(To be executed by bidder and submitted with bid)

All Bidders are expected to have read and understand the "Wage Theft Prevention Policy" adopted on July 26, 2017, which can be found at <http://www.morgan-hill.ca.gov/1061/Council-Policy-by-Number>

The undersigned Bidder hereby certifies that Bidder and its principals have___, have not___ been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid or proposal. For each disclosed violation, the Bidder shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder's efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the Bidder to the City as a part of its bid or proposal. The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this certification is executed on _____ [date], at _____ [city], _____ [state].

s/ _____

Print Name and Title

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment 4

Methodology for Scoring Cost Proposals

The Cost Proposal score will be based upon a 100-point formula.

There are two parts to the Bid Schedule: 1) Routine Maintenance (Task Rate Schedule A) and 2) Time and Materials -Service Repairs (Task Rate Schedule B).

Task Schedule A

The Total Annual Routine Maintenance – Task Rate Schedule A will account for 80% of the cost proposal score. The bidder submitting the lowest price for the Total Annual Routine Maintenance will receive 80 points. The remaining bidder will be assigned points based on the following formula:

Lowest price bid cost/bid cost submitted X 80 = score for that bidder

For example, if Bidder A bid \$150,000, Bidder B bid \$160,000, and Bidder C bid \$195,000 the scores would be as follows:

Bidder A would receive the full 80 points.

Bidder B would receive 75 points. $150/160 * 80 = 75$ points.

Bidder C would receive 60 points. $150/195 * 80 = 61.5$ points.

Task Schedule B

The Time and Materials-Service Repairs-Task Rate Schedule B will account for 20% of the total cost proposal score. Since there are several different sections of Task Schedule B, the 20 points will be individually calculated by section. The lowest priced bidder in each section of Task Schedule B will receive the full point value for that section and the remaining bidders will receive a lower score using the following formula:

Lowest price bid cost/bid cost submitted X points available for that section = score for that bidder for that section

The points available for each section are:

Average of Labor Costs	2 points
Average of Equipment and Trip Costs	2 points
Total for 2 Hour Emergency Service	3 points
Timing Input Call	2 points
Cost for 1 Each Forward Loop	1 point
All Other Loops	1 point

New Signal Turn-On	1 point
Street Light Maintenance	4 points
Mark up on Parts	4 points

Total Score

The last step in the Cost Proposal Evaluation will add the above scores for each bidder to calculate a final Cost Proposal score and the qualified bidder with the highest point total will be the bidder recommended to be awarded the contract.

MAINTENANCE SERVICE AGREEMENT SAMPLE ONLY

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

1. **City Authority.** This Agreement is entered into pursuant to Choose an item.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be _____ as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$ _____. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed _____ dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without

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

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

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

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

8.1.5. Professional Liability.

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

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

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

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

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Address of CITY is as follows:

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

 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: _____

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

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

Expiration Date(s) _____

Expiration Date(s) _____

Seal:

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

Attachment: Complete _Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

**EXHIBIT A
SCOPE OF SERVICES**

Attachment: Complete _Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Attachment: Complete _Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Attachment: Complete _Traffic Signal and Street Lighting RFP (1781 : Award Traffic Signal and Lighting)

MAINTENANCE SERVICE AGREEMENT Cal-West Lighting and Signal Maintenance, 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 Cal-West Lighting and Signal Maintenance, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2021 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be traffic signal and street lighting maintenance as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$450,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four hundred fifty thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this Agreement.
- 8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers,

or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Cal-West Lighting and Signal Maintenance, Inc.
P.O. Box 612035
San Jose, CA 95161-2035

Address of CITY is as follows:

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CAL-WEST LIGHTING AND SIGNAL
 MAINTENANCE, INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

 Craig H. Geis Jr. - President

 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: May 29, 2018

By: _____

 Frank A. Garcia - Treasurer

 Print Name and Title of Signer.

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

Date: May 29, 2018

C-10 847901

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

1000023113

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

Expiration Date(s) 10/31/2018

Expiration Date(s) 6/30/2018

Seal:

EXHIBIT A SCOPE OF SERVICES

The Contractor will furnish all tools, equipment, apparatus, facilities, labor, service and materials to perform all work necessary to maintain traffic signal facilities and street lights in good and workmanlike manner. All labor, services, materials and equipment shall be furnished and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of the Community Services Director of the City of Morgan Hill, or his representative.

The City operates and maintains 42 traffic signals with a variety of signal controllers and 16 flashing beacons. The City also has an EMTRAC Signal-Priority System that must be maintained on a quarterly basis.

Preventative Maintenance:

The Contractor shall provide a routine, comprehensive preventative maintenance program designed to minimize the incidence of outages and malfunction; reduce complaints; and extend the useful life of the traffic signal equipment. The Contractor is required to furnish and use a preventative maintenance checklist form approved by the City. The Contractor shall provide one electronic copy of the maintenance checklist to the City following each inspection, maintain a copy of the checklist in the traffic signal controller cabinet, and maintain a copy of the maintenance checklist at the Contractor's office. The program shall include monthly inspections of each signalized intersection.

Each controller unit shall be inspected, cleaned, and adjusted during a routine inspection one time per month. This includes all accessory items such as the EMTRAC system and signal interconnect systems. Each controller conflict monitor shall be tested once yearly during the month of July.

All traffic signal detection loops shall be maintained and repaired as needed.

All incandescent lamps in all signals shall be replaced based on an eighty percent (80%) depletion period. Contractor shall use only standard traffic signal lamps as manufactured by General Electric Company or Sylvania Company.

All light emitting diode (LED) modules in all signals shall be replaced when more than two percent (2%) of the LEDs have failed. Contractor shall only use standard LED traffic signal modules approved by the California Department of Transportation (Caltrans).

The Contractor shall replace or repair any and all defective parts of the controller mechanism as needed. All lenses and reflectors shall be cleaned and polished once a year. At this time, all broken parts shall be replaced.

Contractor shall maintain the appearance of all traffic signals monthly including graffiti removal, and removal of stickers, etc.

All fixed time, semi-actuated and fully actuated signal which are installed from time to time shall be added to those already maintained by the Contractor as City notifies the Contractor of the installation thereof. These signals shall be maintained at the same rate and in the same manner as those covered by the maintenance agreement. In the event notification is made at other than the beginning of the monthly contract period, payment for that month shall be prorated from the day the Contractor is notified. The Contractor is to be at all new installation turn-on to provide technical assistance and guidance.

Contractor is to maintain by quarterly testing all EMTRAC systems throughout the city at locations.

School/PED flashing beacons are to be adjusted regarding Daylight Savings Time and Pacific Standard Time as needed twice a year.

The total amount of work available will be a function of routine traffic signal maintenance plus the amount of work that is required due to normal "wear and tear," collision damage, vandalism, and other factors that may result in the need for emergency response maintenance services. The City expects traffic signal technicians to be regularly assigned to the City as necessary to provide preventative maintenance and to respond to unscheduled/emergency work.

Scheduled Repair:

The Contractor shall investigate and determine the corrective requirements for each reported malfunction, failure or outage of the traffic signal system. The Contractor shall repair or replace equipment and components that have failed, deteriorated or malfunctioned from the normal operation of the traffic signal system. Replacement of controllers and battery backup systems require approval of City staff prior to replacement.

Based on a Street Light Repair list sent weekly, repairs must be made within fourteen (14) calendar days. The price is for the electrician, bucket truck, and lamp. Additional items are extra cost. Lights needing a quicker response will be billed based on labor and material.

No permanent change shall be done without prior approval of the City. Whenever equipment is removed, the City representative shall be notified by phone and e-mail within twenty-four (24) hours, except weekends and holidays (where the Contractor shall wait until the next calendar day to notify the City Representative).

The Contractor may be requested to input timing changes provided by the City.

Emergency Response Work:

The Contractor may be called upon from time to time by the City to repair, replace, or refurbish equipment which has been damaged by vehicle accidents, acts of God, malicious damage, natural causes, or need to install new appurtenances. In this case Contractor shall make emergency service calls when necessary to make temporary or permanent repairs or installation to signal equipment and appurtenances such as: safety lighting, traffic signs, pedestrian signals, flashing beacons, street lights, detector devices external to the cabinet or failure of the controller.

The City's street lights are maintained by the City. The Contractor shall, upon request, make emergency calls to remove street lights that have been knocked down, and deliver same to the City corporation yard. The Contractor may be requested to replace and install a new street light and possibly, depending upon extent of damage, repair or replace the street light pole pedestal.

Contractor shall maintain a 24 hour per day emergency service for the replacement of burned-out lamps or controller malfunctions. A maximum response time of two (2) hours will be required of the Contractor. In the course of traveling to and from the locations of the equipment to be serviced, Contractor's representative shall observe traffic signals at other designated intersections for possible malfunctions.

Work Hours:

The work hours for any, and all traffic signal and street light preventative maintenance and repairs will be scheduled with City Maintenance Staff during regular business hours (7:00 a.m. to 5:00 p.m. Monday through Friday). As authorized by the City, the Contractor may perform Unscheduled and Emergency Response Work on the traffic signal system not covered by preventative maintenance and scheduled repairs.

Deviation from the above will not be permitted except by written permission of the City Maintenance Coordinator or designated representative from the facility.

From time to time, the City may take on improvement projects or other construction. The Contractor shall cooperate with the City or its agents while said work is underway.

Workmanship and Quality Level:

All work shall be performed by staff directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to provide the specified traffic signal and street light maintenance. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

The Contractor shall cooperate with the representative authorized by the City to enable them to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall give personal supervision to the work and will meet with the Maintenance Manager or designated City representative, a minimum of once per month, at a schedule mutually agreed upon.

Monthly Activity Report:

The Contractor shall provide a computerized monthly activity report to the City by the fifteenth (15) working day of each month for the previous month. A monthly report shall be sent via e-mail to the City with the monthly invoice. No payment will be made without submittal of the report. The report shall include:

- i. Unscheduled and Emergency Response Work: Time the service calls were received, names of City staff who made the service call, time arrived at intersection, response time, nature of problem, the number of hours spent for each repair, materials used, whether the activity related to accident or vandalism, and a special listing of intersections with three or more calls in one month.
- ii. Scheduled Repairs: A complete record of all work that was performed on the traffic signal equipment during the previous month including the date and time, make model, and serial number of any major components or other equipment that was newly installed at each intersection.
- iii. Preventative Maintenance: Time and date the preventative maintenance work was performed.
- iv. Pending Repair List: Provide a monthly report of all pending repair work needed at each intersection. The intersection name shall be listed along with a description of the repair required, problem that created the repair and level of severity (high priority repair, medium priority repair, low priority repair).

Signal Shut Down and Signal On Flash:

The Contractor shall immediately notify the City's Community Services Department and Police Department of any signal turn-offs or signal-on-flash necessitated by their operation. Signal shut down of any duration and sign-on-flash operation in excess of fifteen (15) minutes must be first authorized by the Community Services Dept.-Maintenance Division.

Spare Equipment

The Contractor shall maintain adequate storage and shop facilities and sufficient stock of spare parts and signal equipment to effectively maintain the traffic signals. The Contractor shall maintain at least one fully tested standby controller that is compatible with the City's system. The Contractor will own and maintain all spare parts until installation in the City.

Salvaged Equipment:

The Contractor shall store any designated equipment, as designated by the City, at the Contractor's storage yard at no additional cost to the City. Components such as mast arms and luminaires that are undamaged may be re-used at the direction of the City. Any material or equipment declared as non-salvageable by the Community Services Department shall be taken from the City and disposed of properly by the Contractor at Contractor's cost.

Safety:

The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way.

EXHIBIT B**SCHEDULE OF COMPENSATION RATES**

Compensation shall be based on the attached Bid Schedule (Annual Routine Maintenance and Time and Materials-Service Repairs) submitted in the proposal dated May 21, 2018 by Cal-West Lighting and Signal Maintenance, Inc.

Annual Routine Maintenance:

1. Monthly Maintenance: \$70 per month X 12 months X 42 intersections=	\$35,280.00
2. Emtrac System Quarterly Maintenance	Included Above
3. Flashing Beacons: \$35 per month X 12 months X 16 beacons=	\$ 6,720.00
4. Lighted Crosswalk: \$35 per month X 12 months X 1 lighted crosswalk=	\$ 420.00
Total Annual Routine Maintenance Amount	\$42,420.00

Three Year Annual Routine Maintenance Amount is \$127,260.00

Time and Materials-Service Repairs:

Please see the attached Bid Schedule for the Time and Materials - Service Repairs

1. Labor and Equipment Rates for Maintenance
2. Loop Repair
3. New Signal Turn-On
4. Street Light Maintenance
5. Mark-Up on Parts and Maintenance

Total Not to Exceed Contract Amount is \$450,000 which includes \$127,260 for routine maintenance plus \$322,740 in additional maintenance and repair costs to be performed on an as-needed basis and pre-approved by City Maintenance Staff.

Pricing as described in this Exhibit B and the attached Bid Schedule applies to the period of July 1, 2018 to June 30, 2020. For services beginning on July 1, 2020, the Contractor may request a percentage adjustment to the pricing for all services equal to the Consumer Price Index (CPI) for the San Francisco Bay Area Counties. This request must be in writing ninety (90) days prior to the end of July 1, 2020.

Attachment 1 : Bid Schedule

City of Morgan Hill Traffic Signal and Street Lighting Maintenance
Annual Routine Maintenance
(Task Rate Schedule A)

	Annual Amount			
1. Monthly Maintenance Fee Per Intersection*				
\$ <u>70.00</u> /month x 12 months = x 42 intersections =				\$ <u>35,280.00</u>
2. Emtrac System Maintenance Quarterly*				
\$ <u>0.00</u> /quarter x 4 quarters =				\$ <u>included</u>
3. Flashing Beacons*				
\$ <u>35.00</u> /month x 12 months = x 16 flashing beacons =				\$ <u>6720.00</u>
4. Lighted Crosswalk				
<u>35.00</u> /month x 12 months=x 1 lighted crosswalk =				\$ <u>420.00</u>
TOTAL (annual)				\$ <u>42,420.00</u>
* Based on attached Intersection List (Attachment A)				

Time and Materials - Service Repairs
(Task Rate Schedule B)

1.	LABOR AND EQUIPMENT RATES FOR MAINTENANCE			
		STRAIGHT TIME	OVERTIME	
	LABOR SCHEDULE			
	Signal Maintenance Supervisor	\$ <u>110.00</u>	\$ <u>190.00</u>	
	Signal Maintenance Technician	\$ <u>110.00</u>	\$ <u>190.00</u>	
	Traffic Signal Staff	\$ <u>75.00</u>	\$ <u>105.00</u>	
	Laborer	\$ <u>75.00</u>	\$ <u>105.00</u>	
		HOURLY RATE	DAY RATE	JOB TRIP RATE
	EQUIPMENT			
	Utility Vehicle	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
	Service Vehicle	\$ <u>25.00</u>	\$ <u>100.00</u>	\$ <u>50.00</u>
	Boom Truck	\$ <u>30.00</u>	\$ <u>120.00</u>	\$ <u>60.00</u>
	Hydraulic Lift	\$ <u>30.00</u>	\$ <u>120.00</u>	\$ <u>60.00</u>
	Air Compressor	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
A.	Total for 2 Hour Emergency Service Call for Pole Knockdown			\$ <u>280.00</u>
B.	Timing Input Call			\$ <u>140.00</u>
2.	LOOP REPAIR			
	As it is deemed necessary to replace damaged detection loops, contractor (Includes all labor, material, and equipment)			
	Cost for 1 each forward loop (Attachment B)			\$ <u>650.00</u>
	All others (1 each) (CalTrans Standard Plan ES-5B / Attachment C)			\$ <u>650.00</u>
3.	NEW SIGNAL TURN-ON			
	1 each occurrence			\$ <u>500.00</u>
4.	STREET LIGHT MAINTENANCE			
	1 each occurrence			\$ <u>70.00</u>
5.	MARK-UP ON PARTS AND MATERIALS (% PERCENTAGE MARK-UP)			<u>10</u> %

Name of Company: Cal-West Lighting and Signal Maintenance, Inc.

Signature

Date

5/21/18

Attachment: Cal-West Lighting Agreement (1781 : Award Traffic Signal and Lighting)

**ATTACHMENT A:
BID SCHEDULE-TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE**

4/20/2018

CITY OF MORGAN HILL SIGNALIZED INTERSECTIONS TO BE SERVICED BY THIS CONTRACT

- 1 Monterey/Tilton
- 2 Monterey/Burnett
- 3 Monterey/Peebles
- 4 Monterey/Madrone Parkway
- 5 Monterey/Cochrane
- 6 Cochrane/Cochrane Circle
- 7 Cochrane/Butterfield
- 8 Cochrane/Sutter Boulevard
- 9 Cochrane/Cochrane Plaza/Madrone
- 10 Cochrane/DePaul
- 11 Monterey/Old Monterey
- 12 Monterey/Wright
- 13 Monterey/Main
- 14 Main/Butterfield
- 15 Main/Calle Mazatan
- 16 Monterey / 2nd Street
- 17 Monterey/Dunne
- 18 Dunne/Church
- 19 Dunne/Butterfield
- 20 Dunne/Walnut Grove
- 21 Dunne/Condit
- 22 Dunne/Murphy
- 23 Dunne/Peppertree
- 24 Dunne/Hill
- 25 Monterey/Spring
- 26 Monterey/Cosmo
- 27 Monterey/Tennant-Edmundson
- 28 Tennant/Church
- 29 Tennant/Vineyard
- 30 Tennant/Butterfield
- 31 Tennant/Juan Hernandez
- 32 Monterey/Vineyard
- 33 Monterey/Watsonville-Butterfield
- 34 Monterey/John Wilson Way
- 35 Butterfield/Sutter
- 36 Butterfield/Diana
- 37 Butterfield/San Pedro
- 38 Butterfield/Barrett
- 39 Butterfield/Central Ave
- 40 Cochrane/Mission View (To be activated)
- 41 Monterey/4th
- 42 Butterfield/Digital

RAPID FLASHING BEACONS:

ADVANCE SIGNAL FLASHING BEACONS:

- 1 Monterey / Tilton
- 2 Monterey / Old Monterey
- 3 Monterey/John Wilson Way

FLASHING BEACONS:

- 1 Tilton / Dougherty
- 2 17660 Monterey
- 3 Monterey / Central
- 4 17775 Monterey
- 5 Nordstrom on Dunne
- 6 Dunne / Saddleback
- 7 Main/Del Monte
- 8 W Dunne/Del Monte
- 9 W Edmundson/Trail Crossing
- 10 W Edmundson/Community Park Drive
- 11 Edes Ct/Trail Crossing
- 12 Cosmo/Trail Crossing
- 13 Burnett Ave. at Sobrato High School

LIGHTED CROSS WALKS:

- 1 Monterey/Third Street

Attachment: Cal-West Lighting Agreement (1781 : Award Traffic Signal and Lighting)

EXHIBIT C SCHEDULE OF PERFORMANCE

RESPONSE AND SERVICE

i. The Contractor shall provide response and service on a twenty-four (24) hour, seven (7) day per week basis. Immediate action shall be taken to safeguard the public any time a signal installation becomes partly or totally inoperative from any cause whatsoever. The maximum response times shall be as follows:

- a. Emergency and accident maintenance – one (1) hour
- b. Replacement of burned out signal faces
 - 1. Red faces on mast arms – two (2) hours
 - 2. Red faces on poles – two (2) hours
 - 3. Green and yellow faces – two (2) hours
- c. All other signal maintenance – twenty-four hours
- d. Safety Lighting – forty-eight (48) hours

ii. Signal on-flash, signal blackout not caused by a power outage, and any malfunction of pedestrian signals shall constitute an emergency. The City may extend the maximum response time for maintenance on a case by case basis if the signal remains operational in a satisfactory manner and the condition poses no immediate hazard to the public.

iii. Permanent work shall be completed as soon as possible and in all cases no less than fourteen (14) calendar days, unless extended in writing by the City and as agreed upon by City and Contractor.

iv. Failure to meet the response time requirements by the Contractor shall be sufficient cause for the City to authorize maintenance to be completed by others and deduct the costs of said maintenance from payments due the Contractor. Repetitive failure shall be deemed sufficient cause for the City to terminate the contract.

3405.txt
Signed Agreement received and attached to staff report on May 29th

Attachment: Signed Cal-West Lighting Maintenance Service Agreement attached 05/29 (1781 : Award Traffic Signal and Lighting)

City of Morgan Hill Traffic Signal and Lighting RFP SCORING SUMMARY

NARRATIVE SCORING: 50 points total						NARRATIVE SCORING				
		Cal-West Lighting and Signal	St. Francis Electric	Siemens Industry	Bear Electrical Solutions	Points Available	Cal-West Lighting and Signal	St. Francis Electric	Siemens Industry	Bear Electrical Solutions
Previous Experience						20.0	18.0	19.7	18.7	18.7
References & Work Quality						15.0	14.7	15.0	9.3	14.7
Qualifications of Staff						5.0	4.7	5.0	4.7	4.7
Organized Communication Systems						10.0	8.3	9.3	9.3	9.7
NARRATIVE POINTS TOTAL						50.0	45.7	49.0	42.0	47.7
COST PROPOSALS						COST PROPOSALS SCORING				
Item	Price from Lowest Bidder	Cal-West Lighting and Signal Maintenance	St. Francis Electric	Siemens Industry	Bear Electrical Solutions	Points Available	Cal-West Lighting and Signal Maintenance	St. Francis Electric	Siemens Industry	Bear Electrical Solutions
Task A:										
Total Annual Routine Maintenance	42,420.00	42,420.00	51,540.00	54,876.00	62,100.00	80.0	80.0	65.8	61.8	54.6
Task B:										
Average of Labor Costs	120.00	120.00	138.75	154.63	133.13	2.0	2.0	1.7	1.6	1.8
Average of Equipment and Trip Costs	39.67	39.67	138.67	74.67	67.33	2.0	2.0	0.6	1.1	1.2
Total for 2-Hour Emergency Service	280.00	280.00	440.00	375.00	350.00	3.0	3.0	1.9	2.2	2.4
Timing Input Call	140.00	140.00	400.00	200.00	180.00	2.0	2.0	0.7	1.4	1.6
Cost for 1 Each Forward Loop	625.00	650.00	625.00	725.00	1,350.00	1.0	1.0	1.0	0.9	0.5
All Other Loops	620.00	650.00	625.00	620.00	1,250.00	1.0	0.95	0.99	1.00	0.50
New Signal Turn-On	500.00	500.00	650.00	725.00	850.00	1.0	1.0	0.8	0.7	0.6
Street Light Maintenance	205.50	239.00	205.50	290.00	232.50	4.0	3.4	4.0	2.8	3.5
Mark-up on Parts	10.00	10.00	15.00	15.00	15.00	4.0	4.0	2.7	2.7	2.7
COST PROPOSALS POINTS TOTAL						100.0	99.4	80.2	76.1	69.3

Point Score is lowest bidder's item price divided by each Contractor's item price times the number of points available. For example, St. Francis' Annual Maintenance Price = 42,420/51,540 X 80 points = 65.8 points

Annual Maint Rates	Cal-West Lighting	St. Francis	Siemens	Bear Electrical
Monthly Maint.	35,280.00	40,320.00	45,360.00	45,360.00
Emtrac	-	-	336.00	7,560.00
Flashing Beacons	6,720.00	10,560.00	8,640.00	8,640.00
Lighted Crosswalks	420.00	660.00	540.00	540.00
Annual TOTAL:	42,420.00	51,540.00	54,876.00	62,100.00

Labor Rates	Cal-West Lighting	St. Francis	Siemens	Bear Electrical
Signal Maint Sup S/T	110.00	135.00	165.00	90.00
Signal Maint Sup O/T	190.00	195.00	215.00	150.00
Signal Maint Tech S/T	110.00	125.00	155.00	130.00
Signal Maint Tech O/T	190.00	185.00	195.00	200.00
Traffic Signal Staff S/T	75.00	125.00	115.00	130.00
Traffic Signal Staff O/T	105.00	185.00	144.00	200.00
Laborer S/T	75.00	65.00	100.00	70.00
Laborer O/T	105.00	95.00	148.00	95.00
Average	120.00	138.75	154.63	133.13

Equipment Rates	Cal-West Lighting	St. Francis	Siemens	Bear Electrical
Utility Vehicle H/R	0.00	25.00	20.00	20.00
Utility Vehicle D/R	0.00	200.00	160.00	70.00
Utility Vehicle J/T	0.00	100.00	40.00	100.00
Service Veh H/R	25.00	25.00	25.00	20.00
Service Veh D/R	100.00	200.00	200.00	70.00
Service Veh J/T	50.00	100.00	50.00	100.00
Boom Truck H/R	30.00	65.00	28.00	30.00
Boom Truck D/R	120.00	520.00	224.00	180.00
Boom Truck J/T	60.00	260.00	56.00	180.00
Hydraulic Lift H/R	30.00	35.00	28.00	30.00
Hydraulic Lift D/R	120.00	280.00	224.00	105.00
Hydraulic Lift J/T	60.00	140.00	56.00	45.00
Air Compressor H/R	0.00	10.00	1.00	10.00
Air Compressor D/R	0.00	80.00	6.00	35.00
Air Compressor J/T	0.00	40.00	2.00	15.00
Average	39.67	138.67	74.67	67.33

2-Hour Emergency Call	280.00	440.00	375.00	350.00
Timing Input Call	140.00	400.00	200.00	180.00

Loop Repair - Forward Loop	650.00	625.00	725.00	1,350.00
Loop Repair-All Others	650.00	625.00	620.00	1,250.00

New Signal-Turn-On	500.00	650.00	725.00	850.00
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Street Light Maintenance	70.00	85.00	120.00	225.00
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Mark-Up on Parts	10	15	15	15
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CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Lynette Kong, Associate Engineer
APPROVED BY: City Manager

AWARD 2018 PAVEMENT RESURFACING PROJECT TO O'GRADY PAVING, INC.

RECOMMENDATION(S)

1. Approve the 2018 Pavement Resurfacing Project plans and specifications;
2. Award contract to O'Grady Paving, Inc. for the 2018 Pavement Resurfacing Project in the amount of \$1,556,650.50;
3. Authorize expenditure of construction contingency funds not to exceed \$155,665.05; and
4. Authorize the City Manager to execute and administer the construction contract with O'Grady Paving, Inc. pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The 2018 Pavement Resurfacing Project involves resurfacing on the following streets:

- Hill Road (E. Dunne Ave. – Diana Ave.)
- Llagas Creek Estates (Adair Ct., Christeph Dr., Kay Springs Ct., Llagas Creek Dr., Llagas Vista Dr., and Serpentine Ct.)
- Sparhawk Estates (Eagle Springs Ct., Llagas Creek Dr., Sparhawk Dr., and Sparhawk Ct.)
- Sutter Boulevard (Cochrane Rd. – Butterfield Blvd.)

The scope of work will include cold-in-place recycling (CIR) pavement rehabilitation, hot mix asphalt concrete (AC) overlay, full depth AC pavement repair, slurry sealing, crack sealing, replacement of pavement delineation and markings, utility adjustments, and traffic signal loops. The striping work will include the installation of a new Class II bicycle lane facility along northbound Hill Road from E. Dunne Avenue to Diana Avenue. The crack sealing work will be completed on portions of Cochrane Road and Tennant Avenue as part of the project's pavement maintenance scope.

The plans and specifications are available for review on the City's web page under the Government tab and Community Projects site found here:

<https://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>

The bid opening was held on June 12, 2018 and the four bids received are listed below.

O'Grady Paving, Inc.	\$1,556,650.50*
Granite Rock Company	\$1,698,308.00
PMK Contractors, LLC	\$1,711,265.00*
Granite Construction Company	\$1,723,586.00*

**construction bid was adjusted due to calculation error*

The low bidder, O'Grady Paving, Inc. is an experienced Public Works contractor with over 50 years of paving construction experience throughout the Bay Area. O'Grady Paving, Inc.'s bid amount of \$1,556,650.50 was 11% lower than the engineer's estimate of \$1.75 million. Staff recommends moving forward with this project to improve the condition of the project streets and prevent further roadway deterioration leading to costlier pavement rehabilitation treatments. Therefore, staff recommends award of the contract to O'Grady Paving, Inc. for \$1,556,650.50. Staff anticipates construction to commence in early August 2018 and be completed by November 2018.

COMMUNITY ENGAGEMENT: Inform

The project sites are located adjacent to residences and businesses and the contractor will provide written notifications to affected residents and businesses in advance of construction activities. Staff will also provide updated construction information weekly through Nextdoor and on the City's information website page.

ALTERNATIVE ACTIONS:

The award of this contract will improve the overall condition of the project streets as identified in the approved Capital Improvement Program and the City's Pavement Management Report. No alternative actions are presented at this time. Should the Council not elect to move forward with the project, funds would not be expended and could be used on a future pavement project. Future projects would not occur until the Summer of 2019.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 27, 2017, City Council adopted a Resolution to amend the FY 17-18 Capital Improvement Project budget to include the Sutter Boulevard Rehabilitation Project funded by SB 1, the Road Repair and Accountability Act.

FISCAL AND RESOURCE IMPACT:

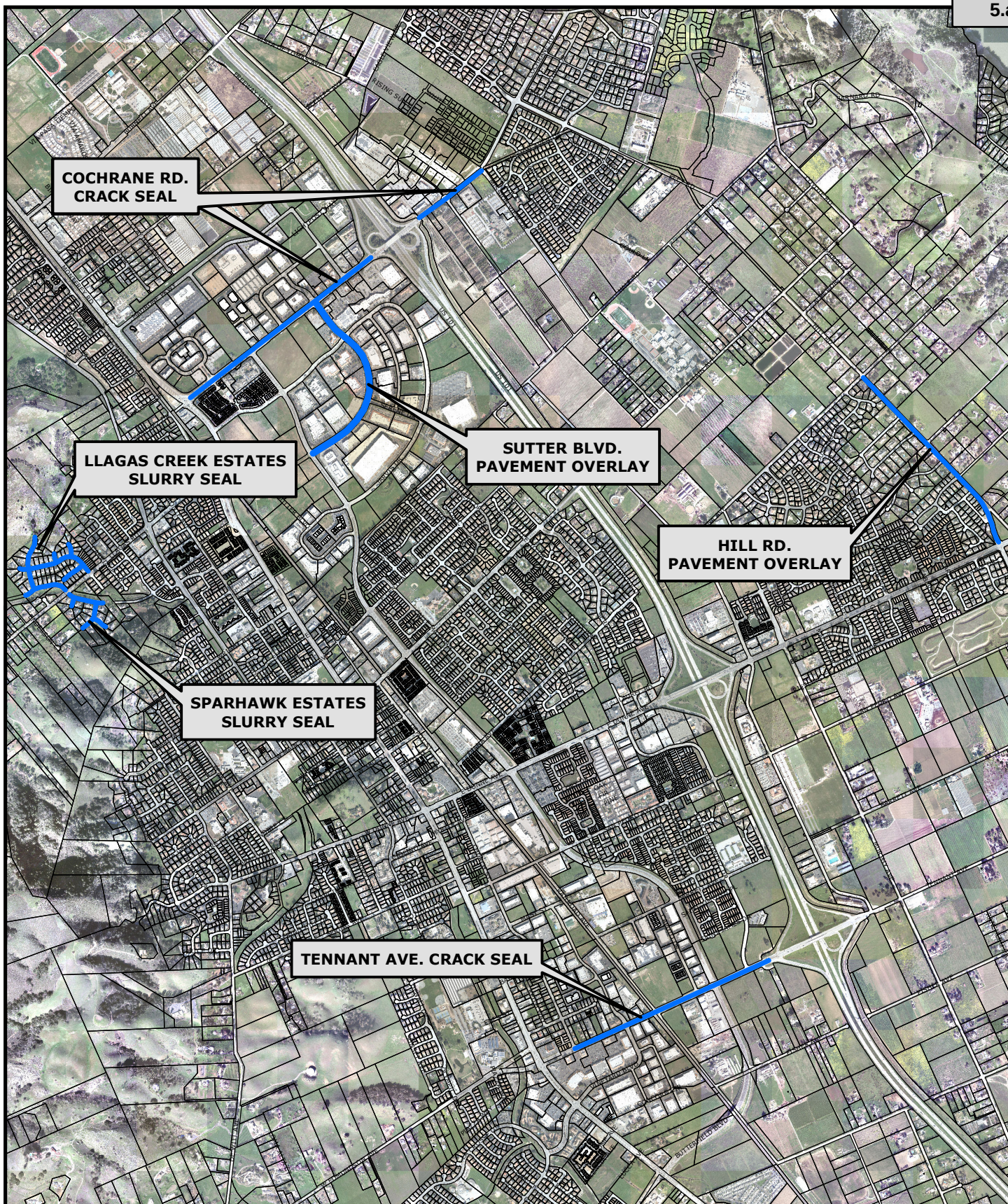
If approved, the total authorization for this project would be \$1,712,315.55, which includes a 10% contingency of \$155,665.05. The project costs are sufficiently budgeted in the FY 18/19 Capital Improvement Program (CIP) under CIP Project 519000, Pavement Rehabilitation Program, with \$3,590,000 from the Street CIP Fund (308). The Street CIP Fund includes contributions from SB 1, the Road Repair and Accountability Act and the Vehicle Registration Fee (VRF) Local Road Improvement and Repair program.

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



Attachment: Project Location Map (1814 : Award 2018 Pavement Resurfacing Project)



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

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LOCATION MAP

**2018
 PAVEMENT RESURFACING PROJECT**





CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

AMENDMENT OF DEVELOPMENT AGREEMENT WITH UHC 00661 MORGAN HILL, LP

RECOMMENDATION(S)

Approve technical modifications to the Development Agreement (Agreement) by and between the City of Morgan Hill and UHC 00661, LP, for the development of the Crossings on Monterey 39-unit housing project, and authorize staff to make the appropriate changes to the Exhibit C of the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Affordable housing developer UHC, received approval of a Development Agreement (DA) by the City Council on February 21, 2018, for the 39 Unit "Crossings on Monterey," multi-family project located on the corner of Monterey Road and Bisceglia. The DA contained two errors, one related to the developer's pledge to convert street lights or pay the conversion fee, the other, was a pledge of purchase of Transferable Development Credits (TDC's) for facilitation of open space preservation. The agreement should be amended to reflect the following:

1. That the project shall commit a \$1500 per dwelling unit fee for conversion of lighting, rather than converting 78 lights (Exhibit C, page 8), and;
2. The Project will pay \$8,234.86 per unit or \$321,159.54, as double open space fees. The original calculation in the agreement was \$13,880.00 per unit or \$541,320.00, and is just a miscalculation error (Exhibit C, page 2). Because the error is significant, the City Council is being advised and noticed of the error.

COMMUNITY ENGAGEMENT:

This report is intended to inform the community and City Council of modifications to a Development Agreement to correct errors.

ALTERNATIVE ACTIONS:

There are no alternative actions. The agreement shall be amended to reflect the corrected facts.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 21, 2018, the City Council held a Public Hearing regarding the subject Development Agreement, and on March 7, 2018 adopted an Ordinance approving the agreement. The ordinance became effective 30 days later.

FISCAL AND RESOURCE IMPACT:

The correction will result in the decrease in previously calculated open space fees of \$220,161.

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration (MND) was prepared for the project and adopted on July 26, 2006. An addendum to the MND was prepared for the revised project. This action is solely to correct typographical errors, and therefore would have no impacts on the environment beyond those already analyzed.

LINKS/ATTACHMENTS:

1. UHC Exhibit c

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to the Development proposed in the RDCS applications MC-14-17 and MC-15-14 Monterey-UHC and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	\$825 per unit	Prior to issuance of building permits for each unit.	\$32,175
B.4	Off-site pedestrian safety improvements			N/A
	Open Space			
B.1.a	Open space buffer (freeway/arterials)			N/A
B.1.b	Common useable open space	Private usable open space is provided with tot lot and picnic area with shade trellis.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.c	Convenient access to amenities			N/A
B.1.d	Accessibility to parks/open space			N/A
B.1.e	Access to existing/proposed parks outside project boundaries			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.f	Private usable open space for 75% or 100% (single-family attached projects)			N/A
B.1.g	Dual purpose open space (storm water detention)			N/A
B.1.h	Historical sites and landmarks			N/A
B.3	Shared open space (downtown vertical mixed projects)			N/A
B.4.a	TDC for projects (<20% slope)			N/A
B.4.b	TDC for projects (>25 units)			N/A
B.4.c	TDC for projects zoned R-2 or R-3	Affordable project. Applicant commits to purchase double TDC's or in lieu of a TDC commitment, applicant agrees to pay double the Open Space fee.	Prior to the final building inspection for each unit.	\$8,234.86 per unit = \$321,159.54
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines			N/A
	Public Facilities			
B.2.a	Grids water			N/A
B.2.b	Drainage concept consistent with City's storm drain system			N/A
B.2.c	Storm drain lines constructed within paved area of the street	Project storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street, or in a location acceptable to the Director of Public Works.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.d	No on-site detention pond or open space retention areas required			N/A
B.2.e	Provides municipal water well			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.f	Excess public improvements	The project will provide public improvements at a cost of \$4,400 per unit. Public improvements shall be determined and approved by Public Works.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	\$171,600
B.2.g	Contribution to RDCS Capital Improvements fund	Applicant will contribute \$1,100 per unit to the RDCS Capital Improvements fund.	Prior to the final building inspection for each unit.	\$42,900
	Parks and Paths			
B.1	Park in-lieu fee (<50 units)	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to the final building inspection for each unit.	N/A
B.2	On-site recreational amenities	Project shall provide: a cabana or shade trellis area; a recreation hall/community room; and a tot lot with a minimum of three age appropriate activities.	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.3	Bicycle/equestrian/pedestrian paths			N/A
B.4	Pedestrian connections (Downtown)			N/A
B.5	On-site/off-site neighborhood or public park (<150 units)			N/A
B.6	Additional park fees (in-lieu fee)			N/A
B.7	Additional park fees (in-lieu fee) for projects (>50 units)			N/A
B.8	Dedication of land			N/A
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.a	Standard Housing Fee			N/A
B.2.b	Double Housing Fee			N/A
B.2.c	Double Housing Fee and 20% dwellings with 2 nd dwellings			N/A
B.3.a	Affordable Units for Sale or Rent	Meets criteria as a 100% affordable development. 17.95% of the units will be at Extremely Low Income. 61.55% of the units will be at Very Low Income, and 20.50% will be at low income	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.3.b	Downtown overall affordability			N/A
B.3.c	Multi-family rental project (>150 units)			N/A
B.4	Joint Venture BMR units			N/A
B.5	Multi-family rental with 50% enclosed garages			N/A
	Housing Types			
B.1.a	Diversity of housing	100% rental		N/A
B.1.b	10% detached units (R-2), 10% attached units (R-1), 10% ownership (R-3)			N/A
B.2.a	Economic diversity	17.95% of the units will be at Extremely Low Income. 61.55% of the units will be at Very Low Income, and 20.50% will be at low income	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.2.b	10% units affordable (>150 units)			N/A
B.3.a	Housing variation- single-family			N/A
B.3.b	Housing variation- Multi-family			N/A
B.3.c	Housing variation-Vertical mixed use			N/A
B.4	25% visitability accessible units	Ground floor - 11 units or 28% accessible. Upper floors are serviced by	Shall be shown on the building permit plans and shall be verified	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		an elevator to equal 100% of units accessible.	prior to the final building inspection for the final unit.	
	Quality of Construction Standards			
B.1.a	OSB/Plywood wrap	Yes		N/A
B.1.b	Foundations	Yes		N/A
B.1.c	Wallboard	Yes		N/A
B.1.d	Electrical raceway	Yes		N/A
B.1.e	Storm doors	No		N/A
B.1.f	90% high efficiency fan forced heating	No		N/A
B.1.g	Zoned heating and air conditioning	No		N/A
B.1.h	Multiple efficiency improvements	Yes		N/A
	Lot Layout and Orientation			
B.1.a	Complies with Zone District	Project will not require any deviations from the lot size and dimensions and setback standards of the base zoning district. The project is considered an affordable housing project under state law and can request a concession to deviate from the City's development standards. The project requests concessions for the front setback and the height requirement.	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.1.b	Excess side yard setbacks	The zoning is CC-R. The minimum setback has been provided. Project does not create deep narrow lots and provides side yard setback of 30 feet, minimum required is 5 feet in CC-R	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	NA
B.1.c	Separation of buildings	Building provides side yard setback in	Shall be shown on the building	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		excess of 20% (5 ft min, providing 30 ft)	permit plans and shall be verified prior to the final building inspection for the final unit.	
B.1.d	Avoids sound walls	Project has been designed without a sound wall along an arterial. [Monterey Road]	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.1.e	Avoids driveways greater than 150 feet	Driveways less than 150, project assessable from Monterey Road and Bisceglia Avenue		N/A
B.1.f	Transition of lot sizes	Buildings in proper scale with existing improvements and similar zoning/product proposed along Monterey Road Corridor		N/A
B.1.g	Above average lot layouts	Request above average for one point		N/A
B.1.h	Project design	Single building, no repeat factor	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.2.a	Continuous park/open space	Tot lot in open space area conveniently located within development	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Enhance neighborhood security	The building has four access points, each access point is visible from Public Right of Way or onsite parking lot.		N/A
B.3.a	Front setback variation			N/A
B.3.b	Rear setback variation			N/A
B.3.c	Lot width variation			N/A
B.3.d	Garage placement variation (single family and	Parking lot and carport are behind building and not seen from the Public		N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	multi-family)	ROW (Monterey Road and Bisceglia Avenue)		
B.3.e	Garage placement variation (multi-family)	Building articulated from Public ROW (Monterey Road and Bisceglia Avenue)		N/A
B.3.f	Building articulation (multi-family)			N/A
B.3.g	Unit entries			N/A
B.3.h	Garage door width			N/A
B.4	Noise reduction	Project to install sound insulation board, AC units to be on the roof	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.5	Second story articulation (Downtown/multi-family)	Multi-family project. Second story has balconies and 3 feet articulation or more	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.6	Building to Building variation (Downtown/multi-family)	Building will have siding, decorative screening, and moldings around windows on all four sides	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.7	Shared parking (Downtown/multi-family)	The rear parking lots not visible from Public Right of Way (Monterey Road and Bisceglia Avenue)		N/A
	Circulation Efficiency			
B.1.a	Future street extensions			N/A
B.1.b	Future drive aisle extensions			N/A
B.1.c	Eliminates stub or substandard streets			N/A
B.1.d	Avoids short blocks			N/A
B.1.e	Backout distance			N/A
B.2.a	Two access points			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.b	Avoids long cul-de-sacs			N/A
B.2.c	Detached sidewalks	Project proposes detached sidewalks along Bisceglia Avenue	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.d	Facilitates emergency response	Project configuration will provide for adequate circulation for emergency response and police patrol.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.e	Provides public parking in Downtown			N/A
B.3.a	Converts lighting			N/A
B.3.b	Converts lighting (Downtown and R-3)	Project zoned CC-R, with density of R3, will convert two lights per unit	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	\$1,500 per dwelling
B.4	General Community Benefit	Project will contribute to improve existing streets \$2,200/unit	Prior to the final building inspection for each unit.	\$85,800
B.5.a	Mid-block pedestrian connections (Downtown)			N/A
B.5.b	Project entries (Downtown)			N/A
B.5.c	Closes gaps (Downtown)			N/A
B.5.d	Bicycle parking (Downtown)			N/A
B.6	Lighted circulation map (R-3 or mixed use)	Will provide detailed and lighted circulation map per criterion	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
	Safety and Security			
B.1.a	Fire proof safe	Project will install fire a proof safe, bolted to the floor in each unit	Prior to the final building inspection for each unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.b	First aid kit	Will provide first aid kit and poison control in kitchen of each unit	Prior to the final building inspection for each unit.	N/A
B.1.c	Fire protection device			N/A
B.1.d	Outdoor lighting	Will provide outdoor lighting on all units to meet all Police Department specifications	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.e	Pedestrian scale lighting (Multi-family)	Applicant commits to installing pedestrian scaled lighting along walkways and in common areas. Applicant will not utilize bollard style lighting.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.f	Illuminated address numbers	Applicant commits to installing lighted address numbers on each building and illuminated unit numbers. Applicant commits to installing painted reflective curb numbers where possible.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.g	Intrusion protection device			
B.1.h	Parks with lighting	Will provide lighting at 1.5 foot candles at common areas on site	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.i	Covered bicycle parking (Multi-family)			
B.1.j	Security Cameras	Applicant commits to installing security cameras to monitor common areas such as laundry, parking and recreational areas/halls. Applicant commits to connecting security camera to DVR to maintain recordings for a minimum of 7 days.	Prior to the final building inspection for the final unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.k	Illuminated pathways/walkways	All pathways will be illuminated to 1 candle foot	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Project designed to provide natural surveillance. Open space, courtyards are visible by surrounding and upstairs units. Managers office located next to community room and laundry room.		N/A
B.3	Lockable hardware			N/A
B.4	Central Monitoring	Project will install fire alarm system without central monitoring and no intrusion system	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.5	Neighborhood emergency preparedness	Applicant commits to establishing a Neighborhood Preparedness Program administered through the Property Management Company. Applicant will direct property manager to contact Office of Emergency Services within 180 days of first five homeowners taking occupancy to schedule a resident meeting.	Shall be verified prior to the final building inspection for each unit.	N/A
B.6	Neighborhood "Watch Program"	Property Management to enact neighborhood watch program per criterion	Shall be verified prior to the final inspection for each unit.	N/A
	Landscaping, Screening and Color			
B.1.a	Twenty-four inch box trees	Project will provide one 24" box tree for every 10 trees provided in the landscaped area	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.b	Planting around off-street parking			N/A
B.1.c	Varied front yard landscaping	Project will provide varied landscaping installed along the project frontage in front of buildings and in the interior areas.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.d	Street Tree Master Plan			N/A
B.2.a	Pervious hardscape cover	The project has committed to B.2.a by installing pervious hardscape (minimum 15% of the landscape area).	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Low to moderate water use	Low to moderate water use plants will be using in landscaped areas	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.c	Existing water supply (off-site irrigation well)			N/A
B.3	Overall Landscaping			N/A
B.4	Underground retention	Project proposes pervious pavement in parking stalls to reduce storm water runoff. The soil is class B type (highly permeable) per SCVURPPP soil classification	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.5	Building color (Downtown)			N/A
	Natural and Environmental Features			
B.1	Site Grading			N/A
B.2.a	Solar Water heating	Yes	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Solar photovoltaic panels (50%			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.c	Solar photovoltaic panels (60%)			N/A
B.2.d	Solar photovoltaic panels (70%)			N/A
B.2.e	Solar photovoltaic panels (80%)			N/A
B.2.f	Solar photovoltaic panels for club house	Yes	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.g	Exceeds Title 24	5%	Shall be shown on building permit plans prior to approval and verified with final building inspection.	N/A
B.2.h	Build It Green	Yes	Shall be shown on building permit plans prior to approval and verified with final building inspection.	N/A
B.2.i	220 Volt outlet			N/A
B.2.j.1	Community pool solar water heater			N/A
B.2.j.2	Community pool salt-chlorinator			N/A
	Livable Communities			
B.2.a	Bus shelters, benches, street sections	Project to install bus pad at the existing bus stop per VTAs recommendation. Applicant will provide as required by VTA to fullest extent of VTA request to yield maximum points.	Shall be shown on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	School bus benches and shelter			N/A
B.4	Vertical Mixes Use			N/A
B.5	Builds to Planned Density	Project proposes to build above the density range using the density bonus provisions for affordable housing.		N/A
B.6	Architectural variation	All units have a porch or balconies.	Shall be shown on building permit	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		Provides different roof elements - dormer and gable roof ends are represented in the building architecture. Building is well articulated both vertically and horizontally to break up the massing. The shingle style architecture is consistent with a number of adjacent homes to the east. Building conforms to R3 product required per base zoning on this site. Project provides a consistent level of architectural relief and third dimensional design elements with architectural detailing, finishes, and colors which are consistent on all sides of the building. Building utilize balconies, covered porches, and dormer elements on front and rear elevations.	plans prior to approval and complete prior to the final building inspection for the final unit.	
B.7	Maximizes privacy	Project provides privacy such that windows do not face porch, patio, or balcony of adjacent unit.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.8	Washer and dryers (Multi-family)			N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

THIRD AMENDMENT TO AGREEMENT WITH LUHDORFF & SCALMANINI CONSULTING ENGINEERS

RECOMMENDATION(S)

1. Approve Third Amendment to Agreement with Luhdorff & Scalmanini Consulting Engineers for an additional amount of \$54,000 for a total not to exceed contract amount of \$283,840; and
2. Authorize the Assistant City Manager to execute and administer the Third Amendment to Agreement with Luhdorff & Scalmanini Consulting Engineers.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Water System Master Plan

REPORT NARRATIVE:

On June 17, 2015, the City Council approved a Professional Service Agreement with Luhdorff & Scalmanini Consulting Engineers to provide the City with well design services in the amount of \$229,840. Two contract amendments have since been approved which extended the contract expiration date to account for delays in drilling the new well on East Main Avenue.

Additional contract funding and time are now needed to retain Luhdorff & Scalmanini's services through the construction of the well housing, pump and motor control system portion of the project. The services provided by Luhdorff & Scalmanini's include: project management, well inspection, plan revisions, submittal review, etc. It is anticipated that the cost for these services through project completion will be \$54,000. Therefore, staff recommends approving the third contract amendment with Luhdorff & Scalmanini to increase the contract amount by \$54,000 and extend the contract term through June 30, 2019.

Construction of the Main Avenue #3 Well building and pump equipment commenced on May 14, 2018 and is tentatively scheduled to be completed by Spring of 2019.

COMMUNITY ENGAGEMENT: Inform

Staff began community engagement in May and will continue to provide updates

through the City's website, the email notification system, and NextDoor.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Approved Professional Service Agreement with Luhdorff & Scalmanini Consulting Engineers to provide well design services in amount not to exceed \$229,840 on June 17, 2015.

FISCAL AND RESOURCE IMPACT:

If approved, the Third Amendment will increase the authorized amount from \$229,840 to \$283,840 (\$54,000). There is sufficient funding for this action in the 2016-17 through 2021-22 Capital Improvement Budget in project #601000 – Water Wells, from Water Impact Fund (651).

CEQA (California Environmental Quality Act):

Categorical Exemption

New construction or conversion of small structures (CEQA Guidelines Section 15303d).

LINKS/ATTACHMENTS:

1. Luhdorff & Scalmanini Consulting Engineers, Inc Amend 3 - Well Walnut & Grove
2. Project Location Map

**THIRD AMENDMENT TO AGREEMENT
LUHDORFF & SCALMANINI CONSULTING ENGINEERS, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, LUHDORFF & SCALMANINI CONSULTING ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of June 30, 2015, for consultant services for a maximum compensation of TWO HUNDRED TWENTY-NINE THOUSAND EIGHT-HUNDRED FORTY AND NO/100 DOLLARS (\$229,840.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "Continuance Agreement and First Amendment to Agreement" made as of September 20, 2016, under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS was extended to June 30, 2017. The maximum compensation was not increased.
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of June 29, 2017, under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS was extended to June 30, 2018. The maximum compensation was not increased. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 30, 2015, until June 30, 2019. The Assistant City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any extension to this SERVICE AGREEMENT FOR DESIGN PROFESSIONALS shall be in writing and signed by both Parties to this Agreement."

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 TWO HUNDRED EIGHTY-THREE THOUSAND EIGHT HUNDRED FORTY AND NO/100 DOLLARS (\$283,840.00) and shall be billed based on the rate and basis set forth in **Exhibit B**. If the Assistant City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the Assistant 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 for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement"

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"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."

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

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

in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault."

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 SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendments the terms of this Third Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

Assistant City Manager

Date: _____

APPROVED AS TO FORM:

Luhdorff & Scalmanini, Consulting Engineers, Inc.

City Attorney

Date: _____

By: _____

Title: _____

William L. Halligan

Print Name and Title of Signer.

If Corporate: Chairman, President or

Vice President

Date: _____

6-7-18

William L. Halligan

By: _____

Title: _____

William L. Halligan

Print Name and Title of Signer.

If Corporate: Secretary, Assistant

Secretary, Chief Financial Officer or

Assistant Treasurer

Date: _____

6-7-18

EXHIBIT "1"

SECOND AMENDMENT TO AGREEMENT LUHDORFF & SCALMANNINI CONSULTING ENGINEERS

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 6/29/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and LUHDORFF & SCALMANNINI CONSULTING ENGINEERS, a California Corporation ("CONSULTANT").

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 Manager's authority.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of June 30, 2015, for consultant services for a maximum compensation of Two Hundred Twenty-Nine Thousand Eight Hundred Forty Dollars (\$229,840.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "Continuance Agreement and First Amendment to Agreement" made as of September 20, 2016, under which the term of the CONSULTANT AGREEMENT, as amended, was extended to June 30, 2017. The CONSULTANT AGREEMENT and the Continuance Agreement and First Amendment thereto are attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the 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:

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

"2. **Term of Agreement.** This Agreement shall cover services rendered from June 30, 2015, until June 30, 2018, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy

City Clerk

Date:

6/30/17

CITY OF MORGAN HILL

for City Manager

Date:

6-29-17

APPROVED AS TO FORM:

for

City Attorney

Date:

6-29-17

LUHDORFF & SCALMANNINI CONSULTING ENGINEERS

By:

Title: Vicki Kretsinger Grabert, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

6-28-17

By:

Title: William L. Halligan, CFO

Print Name and Title of Signer.

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

Date:

6-28-2017

127-04-15-027

CONTINUANCE AGREEMENT AND FIRST AMENDMENT TO AGREEMENT
LUHDORFF & SCALMANINI CONSULTING ENGINEERS
 Well Buildings for Walnut Grove and Main Avenue Sites

This CONTINUANCE AGREEMENT AND FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 9/20/16 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and Luhdorff & Scalmanini Consulting Engineers, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Continuance Agreement and First Amendment to Agreement is entered into based upon the approval of the City Manager.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 30, 2015, for consultant services for a maximum compensation of Two Hundred Twenty Nine Thousand Eight Hundred Forty DOLLARS (\$229,840) ("CONSULTANT AGREEMENT").
3. The parties hereto acknowledge that the CONSULTANT AGREEMENT entered into by the parties as of June 30, 2015, expired by its terms as of June 30, 2016. The parties desire to continue the CONSULTANT AGREEMENT from June 30, 2016 to June 30, 2017. The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Continuation of Term.** The CONSULTANT AGREEMENT expired by its terms as of June 30, 2016, and the parties to the CONSULTANT AGREEMENT expressly agree that the term of the CONSULTANT AGREEMENT shall be extended from June 30, 2016, to June 30, 2017.
2. **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:

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 30, 2015 until June 30, 2017."

EXHIBIT "A"

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy City Clerk
 Date: 9/20/16

APPROVED AS TO FORM:

for City Attorney
 Date: 09/19/16

THE CITY OF MORGAN HILL

City Manager
 Date: (SP) 9/20/16

Luhdorff & Scalmanini

By: Vicki Kretsinger Grabert
 Title: President
 Date: September 6, 2016

By: Thomas D. Elson
 Title: Vice President
 Date: September 6, 2016

EXHIBIT A

12-7-04-15-027

**SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
NEW DOMESTIC WATER WELL BUILDINGS, CONTROL AND TREATMENT EQUIPMENT FOR THE
WALNUT GROVE AND MAIN AVE. SITES**

THIS AGREEMENT is entered into and becomes effective on JUNE 30, 2015 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Luhdorff & Scalmanini Consulting Engineers 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 June 17, 2015.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2016 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 for the design of wellhead, supporting equipment and domestic water treatment and the sound attenuated building for the Walnut Grove and Main Ave. well sites; as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$229,840.00. Total compensation under this Agreement shall not exceed Two-Hundred and Twenty-Nine Thousand, and Eight-Hundred and Forty dollars and shall be billed based on the rate and basis set forth in Exhibit B.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.
6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care,

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

7. Insurance Requirements.

- 7.1. Commencement of Work. CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability insurance policies, CONSULTANT 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.

CONSULTANT 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. CONSULTANT and all subcontractors shall maintain Workers' Compensation Insurance, as required by law.
- 7.3. Insurance Types and Amounts. CONSULTANT 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.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

Address of CONSULTANT is as follows:

John D. Fawcett P.E.
Luhdorff & Scalmanini Engineering Consultants
500 First Street
Woodland California, 95695-4026
(530) 661-0109

Address of CITY is as follows:

Kevin O'Connell, P.E.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

15. **Maintenance of Records.**

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

- 15.2. Access to and Audit of Records. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal

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

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

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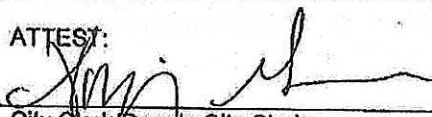
25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

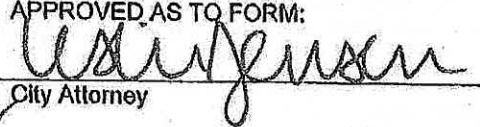
ATTEST:


City Clerk/Deputy City Clerk

for Michelle Wilson
Print Name

Date: 7/1/15

APPROVED AS TO FORM:


City Attorney

Renee Gurza
Print Name

Date: 06/30/15

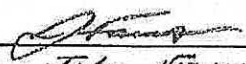
CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

Date: 6/30/15

Luhdorff & Scalmanini, Consulting Engineers

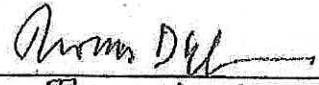
By: 

John Stewart

Title: Vice President

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

Date: 6/1/15


By: Thomas D. Elson

Title: CFO

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

Date: 6/1/15

Exhibit A Scope of Services



The LSCE team has reviewed and understands the Walnut Grove and Main Avenue Pump Station Projects as outlined in the City's RFP. The Scope of Work outlined below is organized according to the tasks described in District's RFP and includes additional items not discussed in the RFP. All additional items are specifically noted at the end of the Scope of Work. The Scope of Work is outlined in the following tasks:

Task 1 -- Pre-Design Activities, Meetings and Permitting

Task 1.1 -- Obtain Project Design Information and Coordinate with the City

Task 1.2 -- Obtain Survey Basemap and Geotechnical Information

Task 2 -- Pump Station Design

Task 2.1 -- Plans and Specifications for Pump Stations

Task 2.2 -- Project Bidding Services

Task 3 -- Pump Station Construction

Task 3.1 -- Project Construction Services

Task 1.1 -- Obtain Project Design Information and Coordinate with the City

Task 1.1 -- Obtain Project Design Information and Coordinate with the City

LSCE's work will begin with a kick-off meeting with the City staff and key LSCE team members to become acquainted with project staff and to discuss various aspects of the project (such as specific City design requirements and equipment preferences for this particular project as it may vary from previous work performed for the City).

A site visit will be conducted following the kickoff meeting to discuss the overall pump station project design, construction concepts and site constraints at both the Walnut Grove and Main Avenue sites. Following the kickoff meeting and site visit, LSCE will provide the City with a list of requested information that will be used for the development of the project design documents discussed below.

- **Procedural:** Set forth a schedule and chain-of-command for all project requests for information and submittal reviews with an emphasis on meeting design and construction schedules.
- **Existing Utilities:** LSCE will request the City provide any additional information pertaining to the site and existing City facilities and other utilities, including: property deeds, Title Insurance reports, and development plans for the immediate area (if available). LSCE will identify the availability of utilities needed to support the pump station operation (i.e. water, sewer and storm, electrical power). Due to the long lead time required to secure electrical power to the site, one of the first items to be addressed is the filing of the application for electrical service with PG&E.

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- **SWRCB Process and other Permitting:** LSCE will discuss the SWRCB permitting process and discuss interaction with applicable agencies for permitting and approvals, including: the Water Supply Permit Amendment, Drinking Water Source Assessment and Protection Program encroachment permit, Storm Water Pollution Prevention Plan, NPDES/Waste Discharge Requirements, electrical service application, etc. Through our work on numerous projects LSCE has developed a good working relationship with the SWRCB and other entities and can assist in expediting all necessary applications and supporting permit documents in a cost efficient manner.

LSCE understands that the CEQA study, building permit and encroachment permits will be performed by the City staff or by its consultant. LSCE is able to assist the City as needed for these tasks.

- **Land Survey:** Discussion of a topographical survey of the site for design purposes. The survey will include the area of the well site, and nearby utilities. The exact limits of the survey will be established following an initial assessment of the availability of utilities that will serve the pump station.
- **Geotechnical:** Discussion of all requisite geotechnical investigation for the two well pump station sites. The Geotechnical investigation will include soil borings, field and laboratory testing of soil properties needed for foundation design, pavement, and for utility trenching and compaction as needed.
- **Building:** Review of Walnut Grove and Main Avenue pump station building elements and consistency with the City's existing pump station (Butterfield, Diana Park, etc.) building materials and general layout/configuration. Other features such as standardization of disinfection systems, station piping, and controls and panels will be incorporated into the design. LSCE has developed several unique features to each of the well/pump houses that have been designed to permit not only the efficient removal of the well pump for service, be the pump a vertical lineshaft pump or of a submersible configuration, but permits direct access to the well in the event a well service rig is utilized. Other considerations will include protection from unwanted access to the building, safety measures to provide the utmost safety considering the station is in close proximity to residential areas, and ventilation/heating and cooling factors required for long-term operation of the station.
- **Electrical Service:** LSCE's intention to make an application to the power utility company immediately upon award of the contract to expedite the installation of utility service. LSCE recognizes that PG&E does require certain documents, such as plans and specifications including exactly power loads, however, LSCE intends to initiate the process early on by basing anticipated loads on previous experience in the area and will provide required documentation to PG&E as the design/construction process warrants. Emphasis will also be made in the electrical design process to ensure that the control logic and SCADA design conform to the prior successful City projects and to provide standardization and uniformity for ease of operation, and maintenance.

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in the future, LSCE will also ensure the proper selection of the well pump is made so as to maximize efficiency and minimize power costs.

- **Electrical Design Provisions:** Review of the required lighting, heating, cooling and security measures and ensure that all systems are designed not only to promote ease in maintenance but provide for maximization of efficiency.
- **Landscaping:** Discussion of landscaping desires, options. LSCE recognizes that some minimal landscaping will need to be incorporated into the design to blend the facility in with other adjacent park and residential areas and present a favorable visual to the passing public.

Task 1.2 -- Obtain Survey and Geotechnical Investigation

The geotechnical investigation will include a site visit to review physical site conditions and mark proposed drilling/tranching locations for geotechnical analysis and development of a report of findings. The report will include soil boring analysis and laboratory testing results from samples collected in the field. Site clearing and grading, foundation design and pipeline design, bearing capacity/settlement potential, utility trench backfill, and corrosion potential will be covered in the geotechnical report. Field testing during construction is discussed below in Section 3.

Completion of a topographic survey basemap in ACAD format will be needed for both project sites. The basemap will be used for preliminary layout of the pump stations that in turn will be used for preparing the final bidding plans. The basemap will also be used for preparing the PG&E applications.

Task 2 -- Pump System Design

Task 2.1 -- Plans and Specifications for Pump Stations

Under Task 3.1, LSCE will develop the pump station plans and specification for the pumping plants, consisting of a deep well line shaft pump or submersible pump and motor, motor control center, discharge piping, chemical treatment systems, standby diesel generator, instrumentation, electrical control panels, SCADA communication, and CMU block building to house the above ground components. The design will also address site modifications and improvements including grading, drainage, paving, fencing, and painting. The electrical control logic will be designed to conform to existing City control logic and SCADA systems which will permit effective communication between the new well and the City's existing central system.

The parameters incorporated in the design and selection of the pumping equipment will include an analysis of the relationship between the system flow requirements, their effect on pumping levels in the well, and the variable hydraulic losses in the well head piping and the distribution system. System-head input for the distribution main will be based on City's pressure requirements. The development of the resulting system-head relationship will provide the criteria for selecting the most efficient pump to meet desired flow rates. The selection of the well pump

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and associated appurtenances within the station will be developed based upon previous experience with the District and preferences noted.

Based on an evaluation of pumping test data, LSCE will prepare plans and technical specifications for the station at the 30%, 60%, 90% and 100% levels. Design elements addressed in the plans are:

Site Improvements: Drainage, replacement paving, above-ground and below-ground piping for the connection to the distribution system and site access for maintenance.

Structural Plans for Enclosures and Other Structures: Enclosures (as required) to house the pump station components, the station piping, and electrical switchgear.

Electrical Plans: Electrical service, metering, main disconnect and transfer switches, motor starter, controls, instrumentation, electrical conduits and conductors; all according to the City's standards.

Site Plan: Delineation of site and mechanical facilities.

Mechanical Plan: Well pump, station and main piping, and mechanical conduits.

Standard Construction Details: Plans will include pipe supports, pump pedestal construction and other standard details.

Task 2.1 Deliverables for Each Design Submittal (30, 60, 90 and 100%);

- Three sets of half-sized drawings and specifications for City review
- Updated construction cost estimates for each submittal
- Written explanation/response to City design review comments
- The 100% design will include a CD with electronic files of the final plans (in ACAD format) and specifications (in MS Word format).

Task 2.2 -- Project Bidding Services

The project will be managed and contracted out as a combined project for the Walnut Grove and Main Avenue Pump Stations. LSCE will provide a signed set of plans and specifications to the City in a format suitable for reproduction. LSCE assumes the City will distribute bidding documents to prospective bidders.

LSCE will assist the City with advertisement and solicitation of bids from qualified contractors, and will conduct a mandatory pre-bid conference with the City and LSCE project managers present. Based upon questions from bidders, LSCE will prepare any required written clarifications and/or addendums to clarify the scope for bidding purposes. At the pre-bid meeting, labor compliance requirements and certified payroll record requirements will also be emphasized.

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After the bids are publicly opened by the City, LSCE will review all formal bids to ensure responsiveness with the contract requirements. A thorough background check on qualifications and references will be conducted on the three lowest bidders and the findings of that review will be discussed with the City. LSCE will prepare a formal summary of the bid review and a recommendation for award to the lowest responsible bidder.

3.1 Pump Station Construction

Task 3.1 – Project Construction Services

LSCE has developed a systematic approach to technical support and will assist the District with the following key elements to ensure that the well pump stations meet the performance requirements of the construction contract and that work is performed in the timeliest, most cost effective, and safe manner.

Prior to mobilization, LSCE will conduct a pre-construction conference with the successful bidder to ensure that they are familiar with the project specifications and answer any technical or logistical questions concerning the project. LSCE will provide submittal and RFI review, key milestone inspections, and assistance during station start-up at the Walnut Grove and Main Avenue sites. In accordance with the RFP, the City will provide the on-site inspection duties during the course of the construction of the Walnut Grove and Main Avenue pump stations. Accordingly, LSCE assumes that the City will provide an on-site inspector that covers the day-to-day construction with LSCE providing/attending the following inspections and/or meetings.

Conferences: Prior to commencement of construction, a conference with the contractor will be held to confirm the contractor's understanding of the intent of the contract documents. LSCE will prepare the pre-construction conference agenda. Final site visitation with the contractor will be made as part of the conference to review site access and to address questions of the contractor prior to equipment arrival.

Submittals and RFIs: Review all submittals and requests for information to ensure all products used during construction are consistent with the plans and specifications.

Meetings and Status Reports: LSCE will conduct meetings with the Contractor and the City as needed to discuss construction status items, including topics such as schedule, change orders, RFIs, inspections, progress payments and any technical issues. LSCE will assist the City with progress reports as needed.

Construction Staking: Provide the initial set of construction staking for the pump station site and pipeline.

Pump Components: Match field performance characteristics with design parameters for the pumps and their prime movers, and verify that installation meets manufacturer and industry standards.

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Structural Plans for Enclosures and Other Structures: Inspect enclosure foundation, CMU construction, building/enclosure structures and paving.

Electrical and Control Systems: Verify the adequacy of the motor control center components and the operating control and safety features for starting and stopping the pump station.

Station Piping: Inspect materials of construction of the station piping.

Pumping Plant Testing: Verify field performance of the pumping plant against the manufacturer's quoted performance and the specified performance, including capacity, discharge head, and pumping plant efficiency.

Project Acceptance: Conduct final inspection and recommended acceptance of the work.

LSCE will provide assistance to the City and consultation with respect to such items as design intent, addressing interface issues of existing systems and equipment, providing opinions on the General Contractor's proposed layouts, and resolving other such technical issues as needed in the field. In addition, LSCE will provide special support services in the field as listed below:

Civil/Mechanical Engineer Support: Furnish an engineer for field observation of station layout/grading; pedestal construction and well pump installation; station piping/valving installations; transducer installation; utility service lines/conduits and ventilation system construction; and chemical feed equipment installations. Prepare list of incomplete construction items for the general contractor prior to final acceptance of the project by the City. An estimated four site visits are needed to perform this work.

Structural Engineer Support: Furnish an engineer for field observation of construction of pump station building components including the rebar, concrete slab, CMU wall, and removable roof section. One site visit from a civil engineer will be needed to cover this inspection.

Geotechnical Engineering Services: The work will include: a) Excavation and Earthwork Inspection: Observation of major excavations and fill areas to confirm that material encountered is consistent with assumptions developed during the design. Observe and advise field staff on unusual, questionable, or unanticipated soil conditions. Other examples of as-needed geotechnical services will be attendance at meetings, or responding to written RFIs or telephone questions. LSCE will also track the work and maintain and copy the City records of inspection and test results. An estimated three site visits are needed to perform this work—however additional site visits may be needed.

Electrical Engineering Support: Inspection of conduit routing, equipment anchorage, control and distribution panel configuration and electrical switchgear will be performed. Also included in this task will be to inspect the electrical for "green tagging" for power company electrical service connection. Two site visits by the electrical engineer and civil engineer are estimated to be needed for this scope of work.

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Assumptions: The attached cost estimate is based on an 8-month construction period. The cost assumptions are presented below:

- LSCE's engineering inspection work will total 8 visits
- Electrical engineering inspection (EPS) will total 4 visits
- Geotechnical engineering inspection (W&K) will total 4 visits
- The field startup and testing support will include an LSCE engineer and EPS electrical/SCADA engineer for an 8-hour factory witness test, and 2, 8-hour pump station start-up test days.

4. PROJECT TEAM

RFP: "List the Project Manager and Key Project Staff who will be assigned to the project."

LSCE has assembled a team of professionals with the specific expertise in hydrogeology, well design, pump station design, structural design, electrical controls and instrumentation, and construction oversight necessary to ensure the success of the Walnut Grove and Main Avenue Pump Station Project. LSCE has assembled a project team that includes engineers that have worked together as a team for over 20 years on well, pump station, and electrical/instrumentation projects similar to the Walnut Grove and Main Avenue Pump Station project. The key project team members include LSCE's most experienced senior and project staff and our sub-consultants for the electrical (Electrical Power Systems) and structural (William Merkoll & Associates) components of the project. The complete list of LSCE's sub-consultants is provided in Section C, below. An organizational chart for the LSCE team is provided below. The LSCE key team members are as follows:

Project Manager and Primary Contact

John D. Fawcett, P.E., Principal Engineer, Project Manager -- Mr. Fawcett has 33 years experience in water resource engineering and is LSCE's Principal Engineer. Mr. Fawcett has been a licensed California Professional Civil Engineer since 1986. Mr. Fawcett's extensive experience, gained from hundreds of water resource projects throughout California, includes: preparation of design plans and specifications for well municipal pump stations (for both submersible and liftshaft well pumps), pipeline and station piping controls, iron and manganese removal units, chemical feed equipment (including on-site chlorine generation), facility site improvements and water supply well permitting through the SWRCB. Mr. Fawcett currently serves as project manager on several well pump station projects and has served as project manager for several previous City pump station projects as well as numerous other similar projects throughout the state of California.

Mr. Fawcett will be the designated Project Manager and primary contact for the Walnut Grove and Main Avenue Pump Station Project. Mr. Fawcett will draw, as necessary, from LSCE staff to effectively meet the project demands. Mr. Fawcett has repeatedly demonstrated that he possesses the skill set to manage and implement the projects, communicate effectively, prepare technical reports, and interface and coordinate all work with the City's project manager, sub-consultants and regulatory and permitting agencies. As Project Manager, Mr. Fawcett will ensure

LUDENDORFF & SCALMANINI CONSULTING ENGINEERS

Exhibit B

Schedule of Compensation Rates

LUHDORFF AND SCALMANINI CONSULTING ENGINEERS 500 FIRST STREET WOODLAND, CALIFORNIA 95695	
SCHEDULE OF FEES - ENGINEERING AND FIELD SERVICES 2015	
Professional:	
Senior Principal	\$ 198/hr.
Principal Professional	\$ 195/hr.
Project Manager	\$ 180/hr.
Senior Professional	\$ 172/hr.
Project Professional	\$ 130 to 167/hr.
Staff Professional	\$ 110 to 128/hr.
Technical:	
Engineering Inspector	\$ 120 to 128/hr.
Engineering Assistant	\$ 95/hr.
Technician	\$ 95/hr.
ACAD Drafting	\$ 110/hr.
Clerical Support:	
Word Processing, Clerical	\$ 67/hr.

Vehicle Use	\$.55/ml.
Subsistence	Cost Plus 15%
Groundwater Sampling Equipment (Includes Operator)	\$ 170.00/hr.
Copies	.20 ea.

Professional or Technical Testimony	200% of Regular Rates
Requested Technical Overtime	150% of Regular Rates
Outside Services/Rentals	Cost Plus 15%
Services by Associate Firms	Cost Plus 15%

* Engineer, Geologist, Hydrogeologist, and Hydrologist

Exhibit C - Schedule of Performance

City of Morgan Hill
Walnut Grove and Main Avenue Pump Stations
(revision Mon 6/8/15)

Task Name	Duration	Start	Finish
1. Project Approval	1.00	Mon 6/8/15	Mon 6/8/15
2. Permitting	1.00	Mon 6/8/15	Mon 6/8/15
3. Surveying and Boundary Control	1.00	Mon 6/8/15	Mon 6/8/15
4. Selection of Contractor	1.00	Mon 6/8/15	Mon 6/8/15
5. Contract Approval by City Manager	1.00	Mon 6/8/15	Mon 6/8/15
6. Start Construction	1.00	Mon 6/8/15	Mon 6/8/15
7. Work to Proceed	1.00	Mon 6/8/15	Mon 6/8/15
8. Project Completion	1.00	Mon 6/8/15	Mon 6/8/15
9. Final Inspection and Certificate of Completion	1.00	Mon 6/8/15	Mon 6/8/15
10. Project Closeout	1.00	Mon 6/8/15	Mon 6/8/15
11. Project Summary	1.00	Mon 6/8/15	Mon 6/8/15
12. Project Evaluation	1.00	Mon 6/8/15	Mon 6/8/15
13. Project Reporting	1.00	Mon 6/8/15	Mon 6/8/15
14. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
15. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
16. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
17. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
18. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
19. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
20. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
21. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
22. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
23. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
24. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
25. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
26. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
27. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
28. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
29. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
30. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
31. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
32. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
33. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
34. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
35. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
36. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
37. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
38. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
39. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
40. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
41. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
42. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
43. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
44. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
45. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
46. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
47. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
48. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
49. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
50. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
51. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
52. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
53. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
54. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
55. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
56. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
57. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
58. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
59. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
60. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
61. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
62. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
63. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
64. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
65. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
66. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
67. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
68. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
69. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
70. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
71. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
72. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
73. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
74. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
75. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
76. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
77. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
78. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
79. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
80. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
81. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
82. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
83. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
84. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
85. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
86. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
87. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
88. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
89. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
90. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
91. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
92. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
93. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
94. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
95. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15
96. Project Review	1.00	Mon 6/8/15	Mon 6/8/15
97. Project Feedback	1.00	Mon 6/8/15	Mon 6/8/15
98. Project Lessons Learned	1.00	Mon 6/8/15	Mon 6/8/15
99. Project Archiving	1.00	Mon 6/8/15	Mon 6/8/15
100. Project Handover	1.00	Mon 6/8/15	Mon 6/8/15

Luhdorff & Scalmanini
Consulting Engineers



Attachment: Project Location Map (1813 : Third Amendment with Luhdorff & Scalmanini)



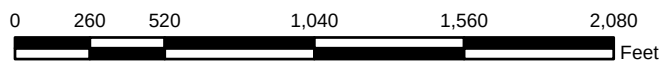
CITY OF MORGAN HILL

Engineering Division

Public Works Department

Path: G:\R-14\PROJ\GIS\John\Yat_Main\WalnutGrove_Well_Proj.mxd

Project Location Map EAST MAIN AVENUE WELL





CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

FIFTH AMENDMENT TO AGREEMENT WITH LEONE AND ALBERTS

RECOMMENDATION(S)

Authorize City Manager to Execute Fifth Amendment to Legal Services Consultant Agreement with Leone and Alberts for Litigation Services For a Total Not to Exceed Amount of \$170,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

REPORT NARRATIVE:

The City Attorney recommends amending the existing contract with the law firm of Leone & Alberts to extend the term to June 30, 2019 and increase the total not to exceed amount to \$170,000.

The City hired the law firm of Leone & Alberts to represent the City in litigation with a group of hotel owners seeking to prevent the development of a new hotel. The current litigation is now pending before the California Supreme Court. This contract amendment will extend the term of the agreement through June 2019, which will allow Leone & Alberts to continue representing the City in the litigation. In addition, we recommend an increase to the total not to exceed amount to \$170,000 (an additional \$30,000).

The additional funds will be used if the Supreme Court orders further proceedings in the hotel litigation. In addition, we anticipate the need to consult with the firm of Leone & Alberts on other litigation matters that are not covered by our pooled liability network, including new threatened litigation from hotel owners.

COMMUNITY ENGAGEMENT: Inform

Consideration of this action by City Council has been duly noticed and posted as required by applicable law in order to inform the public of this matter.

ALTERNATIVE ACTIONS:

The City Council could deny the contract amendment and direct staff to defend the lawsuit using existing resources.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The original contract with Leone & Alberts was entered into under the City Manager's authority with the compensation amount not to exceed \$45,000. In April 2016, the

contract was amended to add an additional \$30,000, and in November 2016 to extend the term of the agreement to June 30, 2017. A third amendment, approved on June 28, 2017, increased the not to exceed amount by \$20,000, for a total not to exceed amount of \$95,000 and extended the term by a year to June 30, 2018. On December 20, 2017, Council approved an increase of \$45,000 bringing the total not to exceed amount to \$140,000.

FISCAL AND RESOURCE IMPACT:

There are sufficient funds in the City Attorney's budget for outside counsel to pay the additional \$30,000.

CEQA (California Environmental Quality Act):

Not a Project: Approval of this contract amendment will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Leone & Alberts - Litigation - Hotel coalition 5th Amend - 6-20-18

FIFTH AMENDMENT TO AGREEMENT LEONE & ALBERTS

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 LEONE & ALBERTS, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fifth Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on _____, _____, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of February 3, 2016, for consultant services for a maximum compensation of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 27, 2016, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 29, 2016, under which the term was extended to June 30, 2017. The maximum compensation was not increased. On June 29, 2017, the CITY and CONSULTANT entered into a "Third Amendment to Agreement" increasing the maximum compensation to NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00) and extending the term to June 30, 2018. On December 21, 2017, the CITY and CONSULTANT entered into a "Fourth Amendment to Agreement" increasing the amount of compensation to ONE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$140,000.00). The CONSULTANT AGREEMENT, and the First, Second, Third and Fourth 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 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 1 shall be amended and replaced in its entirety by the following:

"1. **Term of Agreement.** This Agreement shall cover services rendered from January 21, 2016, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$170,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.

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 for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement."

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

THE CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

LEONE & ALBERTS

City Attorney

Date: _____

By: Katherine A. Alberts

Title: Vice President

Date: June 12, 2018

By: _____

Title: _____

Date: _____

EXHIBIT "A"

FOURTH AMENDMENT TO AGREEMENT
LEONE & ALBERTS

This FOURTH AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/21/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and LEONE & ALBERTS, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fourth Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on December 20, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of February 3, 2016, for consultant services for a maximum compensation of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 27, 2016, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 29, 2016, under which the term was extended to June 30, 2017. On June 29, 2017, the CITY and CONSULTANT entered into a "Third Amendment to Agreement" increasing the maximum compensation to NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00) and extending the term to June 30, 2018. The CONSULTANT 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 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:

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$140,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written

approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.

If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 1 Term of Agreement, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

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

12/21/17

APPROVED AS TO FORM:

City Attorney

Date:

12-21-17

THE CITY OF MORGAN HILL

City Manager

Date:

12-21-17

LEONE & ALBERTS

By:

Title:

Pres

Date:

12/7/17

By:

Title:

Secretary

Date:

12/6/17

176-04-16-019

THIRD AMENDMENT TO AGREEMENT LEONE & ALBERTS

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on June 29, 2017 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and LEONE & ALBERTS, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on June 28, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of February 3, 2016, for consultant services for a maximum compensation of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 27, 2016, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 29, 2016, under which the term was extended to June 30, 2017. The CONSULTANT 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 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 1 shall be amended and replaced in its entirety by the following:

"1. Term of Agreement. This Agreement shall cover services rendered from January 21, 2016, until June 30, 2018. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. Amount. Compensation under this Agreement shall not exceed NINETY-

EXHIBIT "A"

FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.

If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 1 Term of Agreement, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

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

Denity
 City Clerk
 Date: 6/29/17

THE CITY OF MORGAN HILL

for City Manager
 Date: 6/29/17 *christina Turner*

APPROVED AS TO FORM:

[Signature]
 City Attorney
 Date: 6/29/2017

LEONE & ALBERTS

By: Louis A Leone
 Title: Pres. n
 Date: 6/21/17
 By: Katherine A. Alberts
 Title: Vice President
 Date: 6/21/17

126-04-16-019

SECOND AMENDMENT TO AGREEMENT LEONE & ALBERTS

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on NOVEMBER 24, 2016 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and LEONE & ALBERTS, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on April 20, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of February 3, 2016, for consultant services for a maximum compensation of FORTY FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 27, 2016, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the 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:

Paragraph 1 shall be amended and replaced in its entirety by the following:

"1. **Term of Agreement.** This Agreement shall cover services rendered from January 21, 2016, until June 30, 2017. 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."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy

City Clerk

Date: 11/30/16

APPROVED AS TO FORM:

for City Attorney

Date: 11/28/16

THE CITY OF MORGAN HILL

City Manager

Date: 11/29/16

LEONE & ALBERTS

By: Katherine A. Alberts

Title: Secretary / Vice President

Date: 11/17/2016

By:

Title:

Date:

126-04-16-019

FIRST AMENDMENT TO AGREEMENT LEONE & ALBERTS

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 4/27/16 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and LEONE & ALBERTS, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on April 20, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of February 3, 2016, for consultant services for a maximum compensation of FORTY FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.

If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 1 Term of Agreement, 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.

Exhibit "A"

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy [Signature]
 City Clerk
 Date: 4/28/16

APPROVED AS TO FORM:

for [Signature]
 City Attorney
 Date: 04/25/16

THE CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 4/28/16

LEONE & ALBERTS

[Signature]
 By:
 Title: Vice President
 Date: 4/14/16

[Signature]
 By:
 Title: President
 Date: 4/14/16

**CONSULTANT AGREEMENT
LEONE & ALBERTS**

THIS AGREEMENT is made this 3rd day of February, 2016, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and LEONE & ALBERTS, a professional corporation ("CONSULTANT"),

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to City of Morgan Hill City Manager's authority.
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from January 21, 2016, until December 31, 2016. 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.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of the following: litigation services.
3. **Compliance with Outside Counsel Retention and Billing Policy.** CONSULTANT agrees that it will abide by the Outside Counsel Retention and Billing Policy attached hereto and incorporated herein as Exhibit "A."
4. **Compensation:** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** Compensation for all services, fees and expenses under this Agreement shall not exceed FORTY FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.

If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 1 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. Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required, payment shall be based on hourly rates in Exhibit "B."
- 4.3. Records of Expenses. CONSULTANT shall keep accurate records of payroll, travel, and expenses. These records will be made available to CITY.
- 4.4. Termination. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

5. Insurance Requirements.

5.1. Commencement of Work. CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability insurance policies, CONSULTANT 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 officials, officers, employees, agents and representatives are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,
- insurance shall be primary non-contributing.

CONSULTANT 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 by certified mail.

5.2. Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

5.3. Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain a claims-made professional liability insurance in an amount of \$1,000,000 per claim.

- 5.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- 5.5. Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.
6. 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.
7. Non-Discrimination. CONSULTANT covenants 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.
8. Independent Contractor. It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY. CONSULTANT shall be solely responsible for the performance of its employees, agents or subcontractors under this agreement.
9. Compliance with Law. CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
10. Ownership of Work Product. All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. Conflict of Interest and Reporting. CONSULTANT states that it does not represent clients with adverse interests to the CITY.
12. 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.

Address of CONSULTANT is as follows:

Leone & Alberts
2175 N. California Blvd., Suite 900
Walnut Creek, CA 94596

Address of CITY is as follows:

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

13. CONSULTANT'S Proposal. This Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

14. Licenses, Permits and Fees. CONSULTANT shall obtain all permits, and licenses as may be required by this Agreement.

15. Familiarity with Work. By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed, (2) it has the skills, knowledge and experience to perform this work competently and fulfill all professional and ethical obligation of attorneys at law in the State of California; 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.

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

17. Limitations Upon Subcontracting and Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT without prior written consent of CITY.

18. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

19. Indemnification. CONSULTANT agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and CONSULTANT.

21. California Law. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

22. Interpretation. This Agreement shall be interpreted as though prepared by both parties.

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23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

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

ATTEST:

City Clerk

Date: 2/3/16

APPROVED AS TO FORM:

City Attorney

Date: 2/3/16

THE CITY OF MORGAN HILL

City Manager

Date: 2/3/16

LEONE & ALBERTS

By:

Title: Katherine A. Alberts

Date: 2/2/2016

By:

Title: President

Date: 2/2/16

CITY OF MORGAN HILL
OUTSIDE COUNSEL BILLING AND RETENTION POLICY

A. Retention

The role of retained counsel will be that of co-counsel with the retaining attorney. (City Attorney). All legal services provided will be pursuant to a written analysis (including strategy and budget) developed by retained counsel in cooperation with the retaining attorney, and approved by the retaining attorney before work on the specified project begins. Retained counsel will also;

1. Obtain authorization from the retaining attorney before beginning work on any pleading, discovery, motion, or other legal paper, and before securing the services of any expert;
2. Review the above with the retaining attorney prior to use;
3. Provide written status reports on the progress of the litigation to the retaining attorney on the progress of the project as necessary, logical, or requested, but no less frequently than every 60 days;
4. Provide summaries of each deposition taken to the retaining attorney;
5. Coordinate with the retaining attorney to use the legal and paralegal services of the City Attorney's office to keep costs down;
6. Maintain a complete file and provide a copy of all documents generated to the retaining attorney;
7. Make a continuous and diligent attempt to resolve any litigation at the lowest possible cost, with the least expensive professional effort consistent with quality legal representation. To this end, the City will be billed for the time of only one attorney at depositions, hearings, trial, and interoffice conferences. Services performed without prior approval of the retaining attorney are not authorized and may not be approved for payment.

From time to time the retaining attorney may direct a departure from the requirements listed above, or may disapprove certain efforts proposed by retained counsel, or may direct efforts with which retained counsel disagrees. The retaining attorney is responsible for these decisions and will consult with the client as appropriate about such matters.

B. Billing Requirements

Retained counsel's services must be itemized individually and billed monthly. Each monthly statement must include 1) the name and billing rate of each attorney and paralegal who worked on the matter; 2) the date each service was performed; 3) a brief description of each service performed; 4) the time spent by each attorney and paralegal on each service performed, to the nearest tenth of one hour; 5) itemized costs; and 6) subtotal of fees and costs billed for the month and total for the matter to date.

Retained counsel will be reimbursed customary costs. When authorized, telephone, photocopy, electronic research and expedited delivery charges may be billed at the actual net cost to retained counsel or a rate approved in advance by the retaining attorney. Charges for approved travel will be at coach rates and automobile mileage will be reimbursed at the City's current rate (reflects IRS).

Costs for the following items will not be reimbursed unless approved in advance by the retaining attorney:

- Electronic research (Lexis, Westlaw, etc.)
- Word processing and photocopying
- Secretarial time
- Secretarial and paralegal overtime
- Express mail and messenger delivery
- Travel time in excess of 3 hours per trip

Bills must be submitted to the attention of the retaining attorney, 17575 Peak Avenue, Morgan Hill, California, 95037, in the form discussed above.

C. Contract

Each retained counsel will be required to execute a consultant agreement in a form acceptable to the City.

Retained counsel may not bill in excess of the contracted amount without prior written approval from the City Attorney.

LEONE & ALBERTS**Billing Rates for City of Morgan Hill Consultant Agreement**

Shareholders: \$250.00/hr

Louis A. Leone and Katherine A. Alberts

Associate Attorneys: \$195.00/hr

Paralegals: \$100.00/hr

EXHIBIT B TO CITY OF MORGAN HILL CONSULTANT AGREEMENT WITH LEONE &
ALBERTS



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Michelle Katsuyoshi, Human Resources Director
APPROVED BY: City Manager

APPROVAL OF MEYERS NAVE AGREEMENT

RECOMMENDATION(S)

Approve contract with Meyers Nave to provide labor negotiations services for an amount not to exceed \$50,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The City has three recognized bargaining units. These units are represented by the American Federation of State, County, and Municipal Employees (AFSCME), Community Service Officers' Association (CSOA), and the Police Officers' Association (POA). Collective bargaining agreements with each of these units will expire on December 31, 2018. During the 2015 negotiation period with the three bargaining groups, the City contracted with an outside firm to participate in the negotiation process with the unions. The City is recommending that we supplement our management negotiation's team again with outside services to provide additional expertise and support during negotiations. Services provided by the outside negotiators will include: participating in meetings/conference calls with the City Manager and others; drafting proposals, and counter proposals; drafting and revising Council handouts; and drafting final Memorandums of Understanding (MOU).

COMMUNITY ENGAGEMENT: Inform

The City will post all MOUs on the City's website.

ALTERNATIVE ACTIONS:

The Council could decide not to use an outside lead labor negotiator and instead only utilize City staff and resources.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At the June 6, 2018 City Council meeting, Council adopted the Recommended FY 2018-19 and 2019-20 Operating Budget which included the services of an outside lead labor negotiator to participate in and support negotiations.

FISCAL AND RESOURCE IMPACT:

As indicated above, the total cost of a not to exceed contract in the amount of \$50,000 has been included in the FY 2018-19 adopted Operating Budget for the general fund.

CEQA (California Environmental Quality Act):

Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making, and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Meyers Nave Contract

CONSULTANT AGREEMENT MEYERS NAVE, PC

THIS AGREEMENT is made this 14 day of JUNE, 2018, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and MEYERS NAVE, PC, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from June 21, 2018, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of the following: labor contract negotiations.
3. **Compliance with Outside Counsel Retention and Billing Policy.** CONSULTANT agrees that it will abide by the Outside Counsel Retention and Billing Policy attached hereto and incorporated herein as Exhibit "A."
4. **Compensation:** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** Compensation for all services, fees and expenses under this Agreement shall not exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.
 - 4.2. 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

- 5.2. Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.
- 5.3. Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain a claims-made professional liability insurance in an amount of \$1,000,000 per claim.
- 5.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- 5.5. Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.
6. 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.
7. Non-Discrimination. CONSULTANT covenants 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.
8. Independent Contractor. It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY. CONSULTANT shall be solely responsible for the performance of its employees, agents or subcontractors under this agreement.
9. Compliance with Law. CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
10. Ownership of Work Product. All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. Conflict of Interest and Reporting. CONSULTANT states that it does not represent clients with adverse interests to the CITY.
12. 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.

Address of CONSULTANT is as follows:

Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

Address of CITY is as follows:

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

13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain all permits, and licenses as may be required by this Agreement.

15. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed, (2) it has the skills, knowledge and experience to perform this work competently and fulfill all professional and ethical obligation of attorneys at law in the State of California; 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.

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

17. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT without prior written consent of CITY.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

19. **Indemnification.** CONSULTANT agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether

any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and CONSULTANT.

21. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

22. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

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

ATTEST:

THE CITY OF MORGAN HILL

City Clerk

Date

:

City Manager

Date:

APPROVED AS TO FORM:

MEYERS NAVE, PC

City Attorney

Date

:

By: GINA M. ROCCANOVA

Title: Attorney - Principal

Date: 6/15/18

By:

Title:

Date:

**CITY OF MORGAN HILL
OUTSIDE COUNSEL BILLING AND RETENTION POLICY**

A. Retention

The role of retained counsel will be that of co-counsel with the retaining attorney. (City Attorney). All legal services provided will be pursuant to a written analysis (including strategy and budget) developed by retained counsel in cooperation with the retaining attorney, and approved by the retaining attorney before work on the specified project begins. Retained counsel will also:

1. Obtain authorization from the retaining attorney before beginning work on any pleading, discovery, motion, or other legal paper, and before securing the services of any expert;
2. Review the above with the retaining attorney prior to use;
3. Provide written status reports on the progress of the litigation to the retaining attorney on the progress of the project as necessary, logical, or requested, but no less frequently than every 60 days;
4. Provide summaries of each deposition taken to the retaining attorney;
5. Coordinate with the retaining attorney to use the legal and paralegal services of the City Attorney's office to keep costs down;
6. Maintain a complete file and provide a copy of all documents generated to the retaining attorney;
7. Make a continuous and diligent attempt to resolve any litigation at the lowest possible cost, with the least expensive professional effort consistent with quality legal representation. To this end, the City will be billed for the time of only one attorney at depositions, hearings, trial, and interoffice conferences. Services performed without prior approval of the retaining attorney are not authorized and may not be approved for payment.

From time to time the retaining attorney may direct a departure from the requirements listed above, or may disapprove certain efforts proposed by retained counsel, or may direct efforts with which retained counsel disagrees. The retaining attorney is responsible for these decisions and will consult with the client as appropriate about such matters.

B. Billing Requirements

Retained counsel's services must be itemized individually and billed monthly. Each monthly statement must include 1) the name and billing rate of each attorney and paralegal who worked on the matter; 2) the date each service was performed; 3) a brief description of each service performed; 4) the time spent by each attorney and paralegal on each service performed, to the nearest tenth of one hour; 5) itemized costs; and 6) subtotal of fees and costs billed for the month and total for the matter to date.

Retained counsel will be reimbursed customary costs. When authorized, telephone, photocopy, electronic research and expedited delivery charges may be billed at the actual net cost to retained counsel or a rate approved in advance by the retaining attorney. Charges for approved travel will be at coach rates and automobile mileage will be reimbursed at the City's current rate (reflects IRS).

Costs for the following items will not be reimbursed unless approved in advance by the retaining attorney:

- Electronic research (Lexis, Westlaw, etc.)
- Word processing and photocopying
- Secretarial time
- Secretarial and paralegal overtime
- Express mail and messenger delivery
- Travel time in excess of 3 hours per trip

Bills must be submitted to the attention of the retaining attorney, 17575 Peak Avenue, Morgan Hill, California, 95037, in the form discussed above.

C. Contract

Each retained counsel will be required to execute a consultant agreement in a form acceptable to the City.

Retained counsel may not bill in excess of the contracted amount without prior written approval from the City Attorney.

MEYERS NAVE**EXHIBIT "B" – HOURLY BILLINGS RATES**

Gina Roccanova	\$425
Eddie Kreisberg	\$365
Jesse Lad	\$335
Yuki Cruse	\$290

Attachment: Meyers Nave Contract (1816 : Approval of Meyers Nave Agreement)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Ray Ramos, Administrative Sergeant
APPROVED BY: City Manager

APPROVE PURCHASE OF POLICE VEHICLES

RECOMMENDATION(S)

1. Authorize the purchase (including build-out) of three patrol vehicles - 2018 Ford Explorers - for an amount not to exceed \$65,400 each;
2. Authorize the purchase (including build-out) of one MSO Patrol Vehicle - Ford F150 Truck— in an amount not to exceed \$50,800;
3. Auction two aged patrol vehicles: 2011 Ford Crown Victoria - #133 (VIN#:2767) and 2011 Ford Crown Victoria - #139 (VIN#: 6669);
4. Salvage one 2005 Chevrolet Silverado Graffiti Abatement Vehicle (VIN#: 3348);
5. Repurpose one 2010 Ford Crown Victoria - #140 (VIN#:8668) to the Traffic Division; and
6. Repurpose one 2007 Chevrolet Silverado Truck (VIN#: 9290) to a Graffiti Abatement Vehicle.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture

2018 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

Staff recommends the purchase of three 2018 Police Package Ford Explorers to replace three aged 2010 and 2011 Ford Crown Victoria patrol vehicles and the purchase of one 2018 Ford F150 Truck to replace the 2007 Chevrolet Silverado Truck. The four new vehicles will replace the four aged vehicles as follows:

Aged Vehicles	Miles	New Vehicles
2010 Ford Crown Victoria #140 - patrol car	89,781	2018 Ford Explorer
2011 Ford Crown Victoria #133 - patrol car	101,686	2018 Ford Explorer
2011 Ford Crown Victoria #139 - patrol car	94,866	2018 Ford Explorer
2007 Chevrolet Silverado Truck- MSO	86,064	2018 Ford F150 Truck

FLEET BACKGROUND

There are currently 37 vehicles and 5 trailers in our Police Department fleet; 12 vehicles have been rotated through their respective life cycle but remain in our fleet. Thirteen

patrol cars/utilities and 4 motorcycles are assigned to 25 patrol officers in Field Operations; 7 unmarked police cars are assigned to 7 detectives and 1 marked police car is assigned to the School Resource Officer. Each vehicle has a vehicle replacement date of approximately 7 – 8 years, depending on the type of vehicle and its assignment. The Police Department's Vehicle Replacement Plan allows the City to financially plan for scheduled vehicle purchases to maintain safe, operational police vehicles for patrol officers, detectives, and civilian members of the Department.

1. The **2010 Ford Crown Victoria - Vehicle #140 (89,781 miles)** will be replaced with a 2018 Ford Explorer. The 2010 Ford Crown Victoria car is due for replacement in the current calendar year - 2018. This vehicle has had mechanical problems, several issues with the heating and cooling systems and the transmission has been changed twice. Although this vehicle has had some problems and it has reached its life cycle, because of the low miles, it will be repurposed to our Traffic unit for use during major collision investigations and inclement weather.

2. The **2011 Crown Victoria - Vehicle #133 (101,686 miles)** will be replaced with a 2018 Ford Explorer. The 2011 Crown Victoria car is also due for replacement in 2018. Staff recommends the replacement of this vehicle due to high mileage, increasing repair costs, major electrical problems, as of late the emergency lights have failed requiring repair and the vehicle is at the end of its life cycle. This car will go to auction.

3. The **2011 Crown Victoria - Vehicle #139 (94,866 miles)** will be replaced with a 2018 Ford Explorer. The 2011 Crown Victoria car is also due for replacement in 2018. Staff recommends the replacement of this vehicle due to high mileage, the vehicle has been in several collisions which have compromised the driver's side door and now does not properly close. There are increasing repair costs associated to the vehicle and it is at the end of its life cycle. This car will go to auction.

4. The **2007 Chevrolet Silverado Truck (86,064 miles)** MSO patrol vehicle is also due for replacement in 2018. Staff recommends the replacement of this vehicle due to high mileage, it has moderate body damage and is at the end of its life cycle. Although this vehicle has had some problems because of the low miles, it will be repurposed as the Graffiti Abatement Truck.

5. The **2005 Chevrolet Silverado Truck** – The Graffiti Abatement truck will be replaced with the current MSO patrol truck, which is a 2007 Chevrolet Silverado as described in #4 above. The Graffiti Abatement truck was due for replacement in 2015. The truck has major body damage and has been in several collisions in the recent years and has since had regular operational issues. Because of its poor condition, this truck will be salvaged.

The Police Department recommends buying three 2018 Ford Explorers and one Ford F150 Truck through a third party, Priority 1 Public Safety Equipment Installation Inc. Priority 1 Public Safety Equipment Installation Inc. will in turn purchase the vehicles through the state governmental competitive bid contract (Contract #:72305 on-going effective date: 08/03/2017) from Town Ford pursuant to Morgan Hill Municipal

Code ("MHMC") Sections 3.04.150(2) and 3.04.180 as the fleet price obtained by the competitive bid contract for (3) Patrol Ford Explorers is \$33,400 and \$27,200 for the Ford F-150 Truck. The Ford Store of Morgan Hill is unable to order Police Interceptors from the Ford factory; however, they will sell an identically equipped Ford F150 for \$27,100 (\$100 less than Town Ford); however, it will require delivery to Belmont which adds to the cost and will also require separate DMV and Purchase Order transactions adding to staff time. Staff recommends consolidating the purchase through Priority 1 since The Ford Store is unable to procure all the needed vehicles.

This competitive bid price does not include the vehicle build-out. The costs associated with the build-out include but are not limited to lights, prisoner cargo area, siren, control modules, radio installation, computers, and decals and are listed under the financial section of this staff report.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the Police Department's Vehicle Replacement Plan. This is required to maintain a safe and operational fleet. All police vehicles are outfitted with emergency communications and officer safety equipment. There are no local vendors with a governmental competitive bid contract that supply Police Package Ford Explorers.

ALTERNATIVE ACTIONS:

1) Purchase of Vehicles:

A feasible alternative would be to not approve acquisition of 4 vehicles at this time. This alternative would keep the fleet at the current levels and Police Officers would continue to drive these vehicles which are increasingly out of service due to mechanical problems.

2) Retaining Existing Fleet Vehicles:

A feasible alternative would be for Council to keep the aged vehicles to use as parts for our aging fleet, and then send to auction, or in most cases send the car to be recycled. Our fleet has mostly turned over, so the need for spare parts has diminished.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS: None.

FISCAL AND RESOURCE IMPACT:

The total price of the Patrol Ford Explorer Utility is \$65,400 each. The break-down of costs for each vehicle is below. The cost for all 3 is \$196,200.

Build-out	Cost
Ford Explorer	\$33,400
Emergency System Build-out	\$18,600
Data 911 Computer	\$6,200
Extended Warranty	\$2,000
9% sales tax	\$5,200
Total each vehicle	\$65,400

The total price of for the MSO Ford F-150 is \$50,800. The break-down of cost is below.

Build-out	Cost
Ford F-150	\$27,200
Emergency System Build-out	\$13,200
Data 911 Computer	\$6,200
9% sales tax	\$4,200
Total	\$50,800

The total cost to purchase and build-out the (4) vehicles is \$ 247,000.

The funds for the vehicles and build-outs are coming from the Vehicle Replacement Fund (790.8500.43830) and is included in the adopted 2018-19 Operating Budget.

CEQA (California Environmental Quality Act):

Not a Project.

Continuing administrative activities, such as purchases for supplies and equipment, is not a project subject to environmental review.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

BOOKSMART UPDATE

RECOMMENDATION(S)

Informational Only.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

At the April 4, 2018 meeting, the Council directed staff to proceed with research and analysis of BookSmart's financial status and business plan to consider the potential City funding of a bridge loan to BookSmart.

After exchanges of information, the City and BookSmart have mutually agreed to withdraw the request from BookSmart for a bridge loan from the City.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to update the community of the BookSmart request for funding.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 4, 2018, City Council directed staff to proceed with research and analysis of BookSmart's financial status and business plan.

FISCAL AND RESOURCE IMPACT:

None.

CEQA (California Environmental Quality Act):

Not a Project

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



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Harjot Sangha, Accounting Manager
APPROVED BY: City Manager

TENTH SEMI-ANNUAL REPORT ON POST-ISSUANCE COMPLIANCE FOR TAX ADVANTAGED BONDS

RECOMMENDATION(S)

Receive and accept report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

At its regular meeting on April 17, 2013, the City Council adopted procedures for Finance staff to follow in administering tax-exempt bonds in accordance with the Internal Revenue Service. This report, Post-Issuance Compliance Report, is called for by Section 2C of those procedures. Post-Issuance compliance procedures include monitoring of tax-exempt bonds to ensure:

- Proceeds are used for qualified purposes
- Proceeds are spent in a timely manner, as allowed by the IRS
- Proceeds are invested within the allowable yield restrictions
- There is appropriate record keeping of the expenditures and;
- All required disclosures and qualified significant events are reported on the Electronic Municipal Market Access (EMMA) website, ultimately available to the investors.

During the past six months, City staff has executed the post-issuance compliance procedures, notably as such:

- Continued to emphasize, throughout the City organization, the importance of having a plan based on reasonable expectations at the time of issuance (and then actually following through post-issuance) to spend tax-advantaged bond proceeds in the time frame as required by the internal revenue code.
- Ensured Total Pledged Tax Revenues for the annual debt service of the Refunding Revenue Bonds for the Former Redevelopment Agency, Series 2013A and 2013B were remitted by the County Auditor-Controller, to the trustee, on January 2, 2018.
- Received the annual arbitrage rebate analysis for the Madrone Business Park A, Series 2015, for computation period November 5, 2015 through November 5, 2017. As expected by Finance staff, the report confirmed there is no arbitrage

payment due to the Internal Revenue Service on this bond issue, as it had a negative arbitrage.

The City Manager and the Engineering & Utilities staff continue to ensure the City has a plan with a reasonable expectation to spend the 85% of the tax-advantaged bond proceeds within 3 years of issuance, and 100% within 5 years. These spending plans are illustrated in the adopted Capital Improvement Program Budget.

COMMUNITY ENGAGEMENT: Inform

This is an informational report, which assures the City staff has executed the post-issuance compliance procedures in the past six months. Staff expects the next semi-annual report to be issued in December 2018.

ALTERNATIVE ACTIONS:

There are no alternative actions recommended, as this is an information only report.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 17, 2013, the City Council adopted procedures for Finance staff to follow in administering tax-exempt bonds in accordance with the internal revenue code.

The City Council previously received such reports, in order, at the following meetings:

- 1st report: October 16, 2013
- 2nd report: April 16, 2014
- 3rd report: October 1, 2014
- 4th report: July 08, 2015
- 5th report: December 16, 2015
- 6th report: June 15, 2016
- 7th report: December 14, 2016
- 8th report: July 26, 2017
- 9th report: December 6, 2017

FISCAL AND RESOURCE IMPACT:

None for this report; carrying out post-issuance compliance procedures is part of the Finance work program each fiscal year.

CEQA (California Environmental Quality Act):

Not a Project as this is an administrative activity of government that will not result in direct or indirect physical changes in the environment.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

APRIL 2018 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the month ended April 30, 2018. The Revenue and Expense Summary for the month of April is included on the first page. Overall, General Fund revenues through April totaled \$32.9 million or 87% of the budget. Expenditures totaled \$33.3 million, and including encumbrances amounted to \$36.0 million or 84% 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 maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

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

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

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

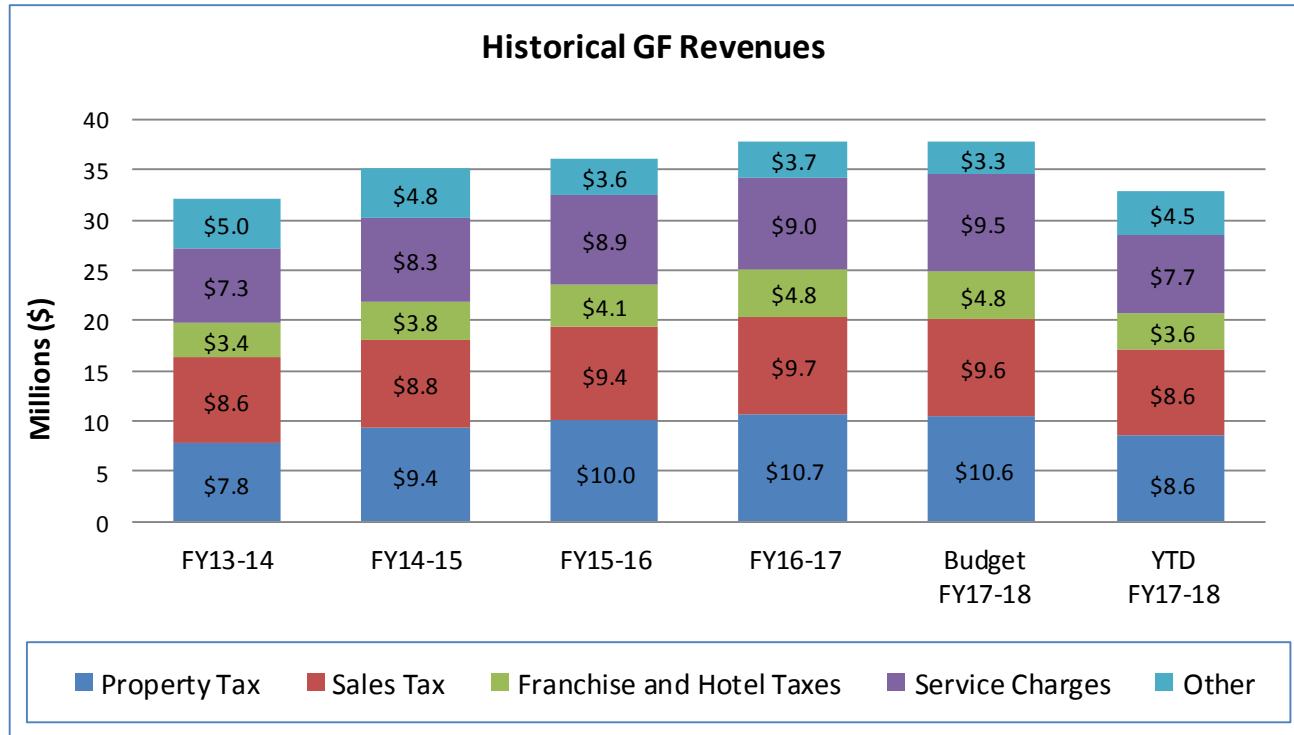


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED APRIL 2018 – 83% OF YEAR COMPLETE

- **General Fund** – Overall, revenues received through April totaled \$32.9 million, or 87% of the budgeted revenues. The amount received is 9% or \$2.8 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 \$660,000. As for property tax, the first four advances for the April 10, 2018 secured and unsecured property tax installment have been received and are 5% or approximately \$407,000 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 budgeted 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 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 April 30, 2018.

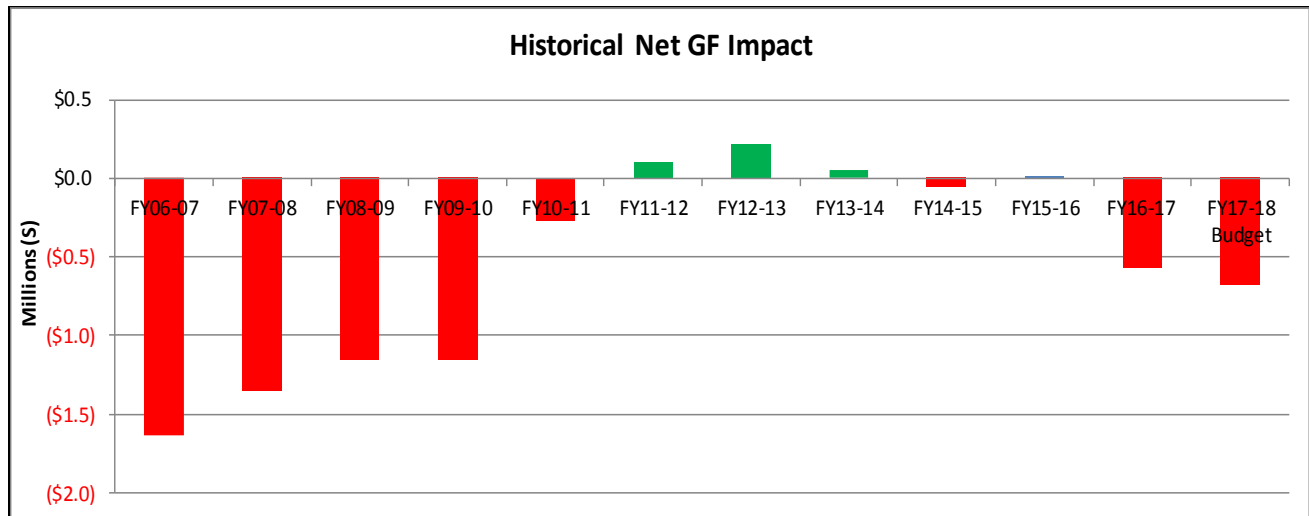


General Fund expenditures and encumbrances as of April 30, 2018 totaled \$36.0 million, of which approximately \$2.7 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED APRIL 2018 – 83% 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 \$906,000 through the month of April. Without the encumbrances, year to date operations resulted in a smaller negative impact to the general fund of approximately \$301,000. 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 April totaled \$3.7 million, or approximately 100% of the budget. The amount received to date is approximately \$270,000 or 7% less than prior year. Expenditures, including encumbrances totaled \$4.6 million or 83% of the budget. The fund was budgeted to end the fiscal year with an operating deficit of approximately \$1.9 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 April totaled \$678,000. 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 1% of the General Fund's budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED APRIL 2018 – 83% OF YEAR COMPLETE

- **Sewer Operations** – Revenues from Sewer Service Fees through April totaled \$8.4 million, 3% or \$239,000 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 \$8.5 million or 78% 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 April 30, 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	8.4
Expenditures	8.6	8.8	12.0	9.8	10.8	8.5
Operating Margin	0.8	1.5	(1.8)	(0.1)	(0.5)	(0.1)
Operating Margin without Encumbrances	0.8	1.5	(1.8)	(0.0)	(0.5)	0.2

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through April totaled \$10.6 million, approximately \$1.8 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 April totaled \$9.8 million. Without the encumbrances, however, the expenditures amounted to \$9.0 million. The table below shows Water Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of April 30, 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	10.6
Expenditures	12.1	9.3	9.7	10.8	12.1	9.8
Operating Margin	0.1	(0.5)	(1.2)	0.1	0.1	0.8
Operating Margin without Encumbrances	0.1	(0.5)	(1.2)	0.3	0.1	1.6

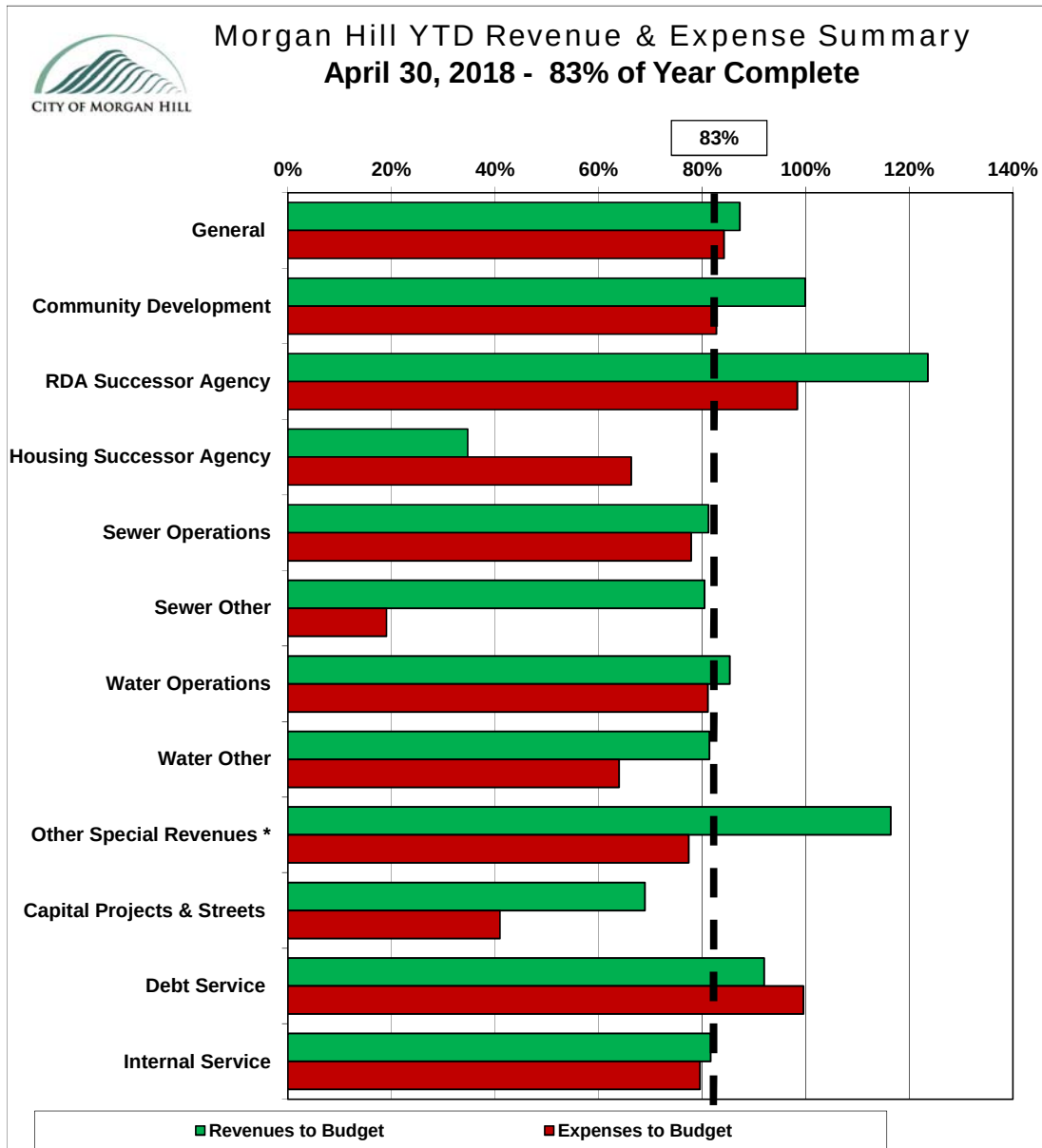
- **Investments** – Two securities were called and one security was purchased during the month of April 2018. Total interest earnings received on investments were \$209,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
April 30, 2018 - 83% of Year Complete



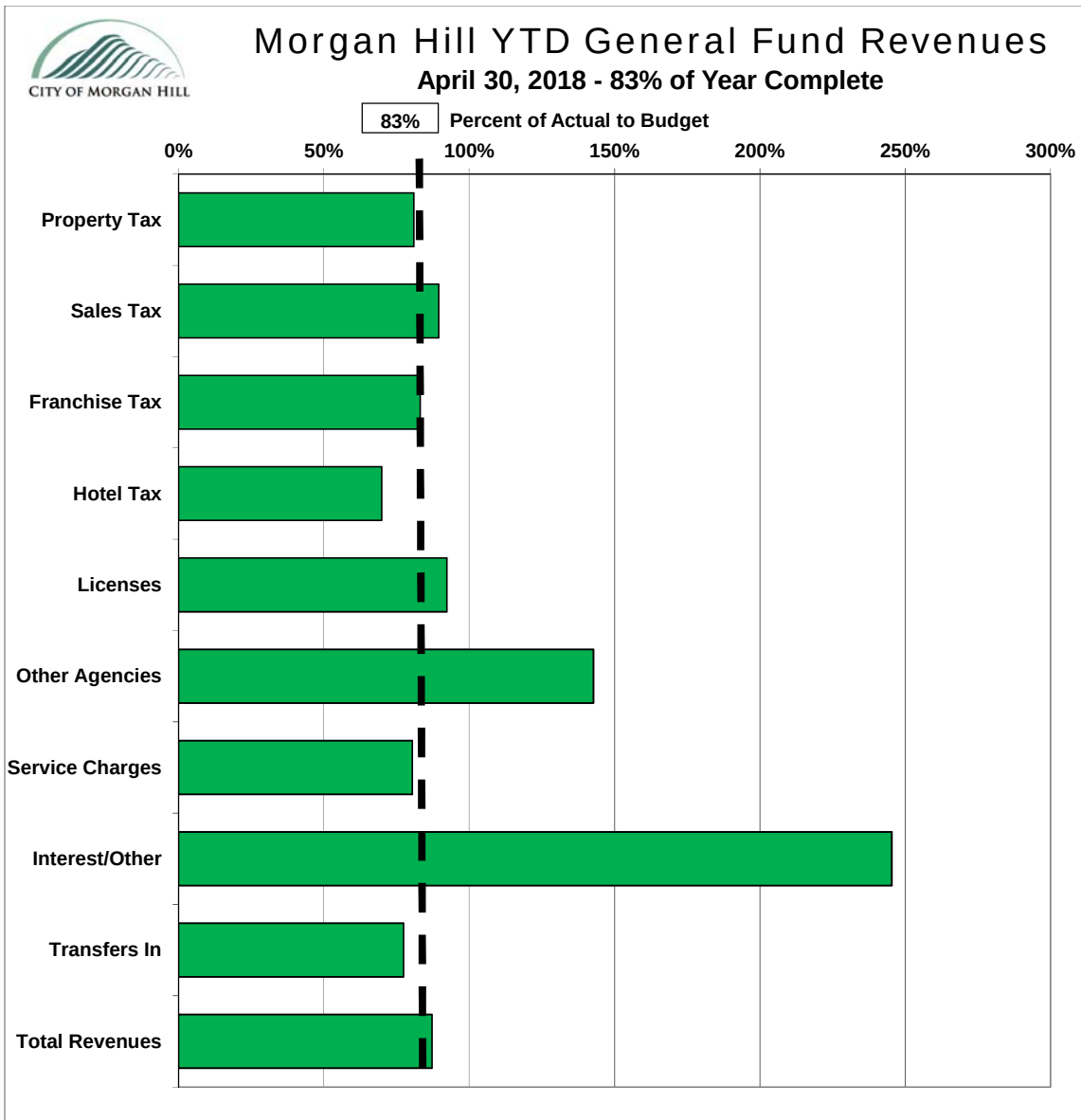
CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 32,939,622	87%	\$ 36,008,728	84%
Community Development	3,676,520	100%	4,587,096	83%
RDA Successor Agency	8,814,486	124%	7,062,389	98%
Housing Successor Agency	446,244	35%	1,663,650	66%
Sewer Operations	8,391,597	81%	8,468,627	78%
Sewer Other	5,814,551	80%	5,252,338	19%
Water Operations	10,599,451	85%	9,794,850	81%
Water Other	2,487,034	81%	4,330,129	64%
Other Special Revenues *	3,412,799	116%	2,337,903	77%
Capital Projects & Streets	12,184,234	69%	14,342,458	41%
Debt Service	627,786	92%	678,048	100%
Internal Service	8,531,462	82%	8,944,952	80%
TOTAL FOR ALL FUNDS	\$ 97,925,787	86%	\$ 103,471,168	62%

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

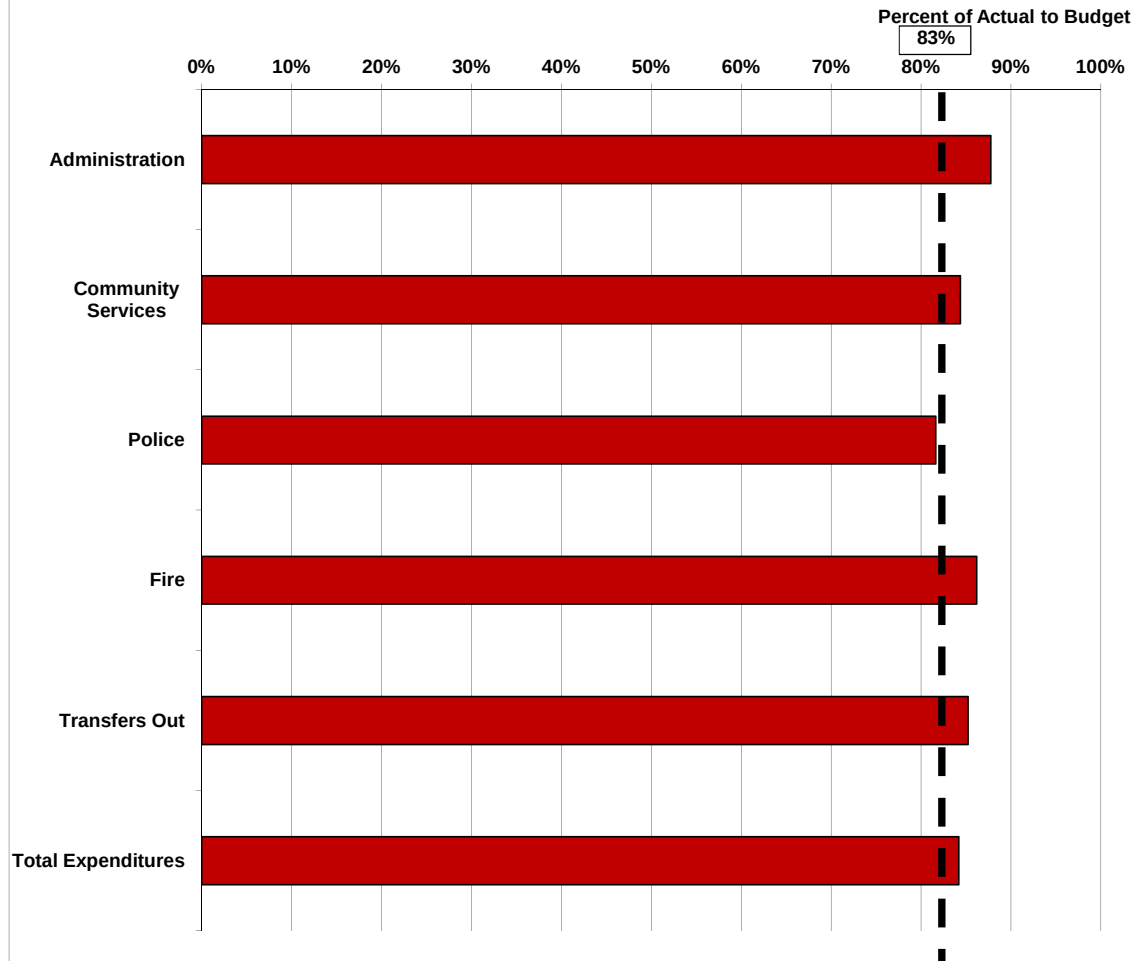


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$10,566,000	\$ 8,559,380	81%	\$ 8,275,078	3%
Sales Tax	9,588,502	8,582,219	90%	7,906,110	9%
Franchise Tax	1,981,796	1,648,521	83%	1,518,165	9%
Hotel Tax	2,827,050	1,974,724	70%	1,933,692	2%
Licenses	210,621	194,448	92%	187,492	4%
Other Agencies	319,875	456,304	143%	442,584	3%
Service Charges	9,536,644	7,662,828	80%	7,356,061	4%
Interest/Other	1,042,760	2,558,488	245%	1,242,080	106%
Transfers In	1,682,103	1,302,710	77%	1,279,028	2%
TOTAL REVENUES	\$37,755,351	\$32,939,622	87%	\$ 30,140,291	9%



Morgan Hill YTD General Fund Expenditures

April 30, 2018 - 83% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 7,443,327	\$ 6,532,315	88%	\$ 5,187,311	26%
Community Services	11,050,226	9,325,157	84%	8,663,583	8%
Police	16,585,805	13,543,269	82%	12,579,224	8%
Fire	5,785,389	4,986,966	86%	4,669,123	7%
Transfers Out	1,901,915	1,621,020	85%	1,783,963	-9%
TOTAL EXPENDITURES	\$ 42,766,662	\$ 36,008,728	84%	\$ 32,883,204	10%

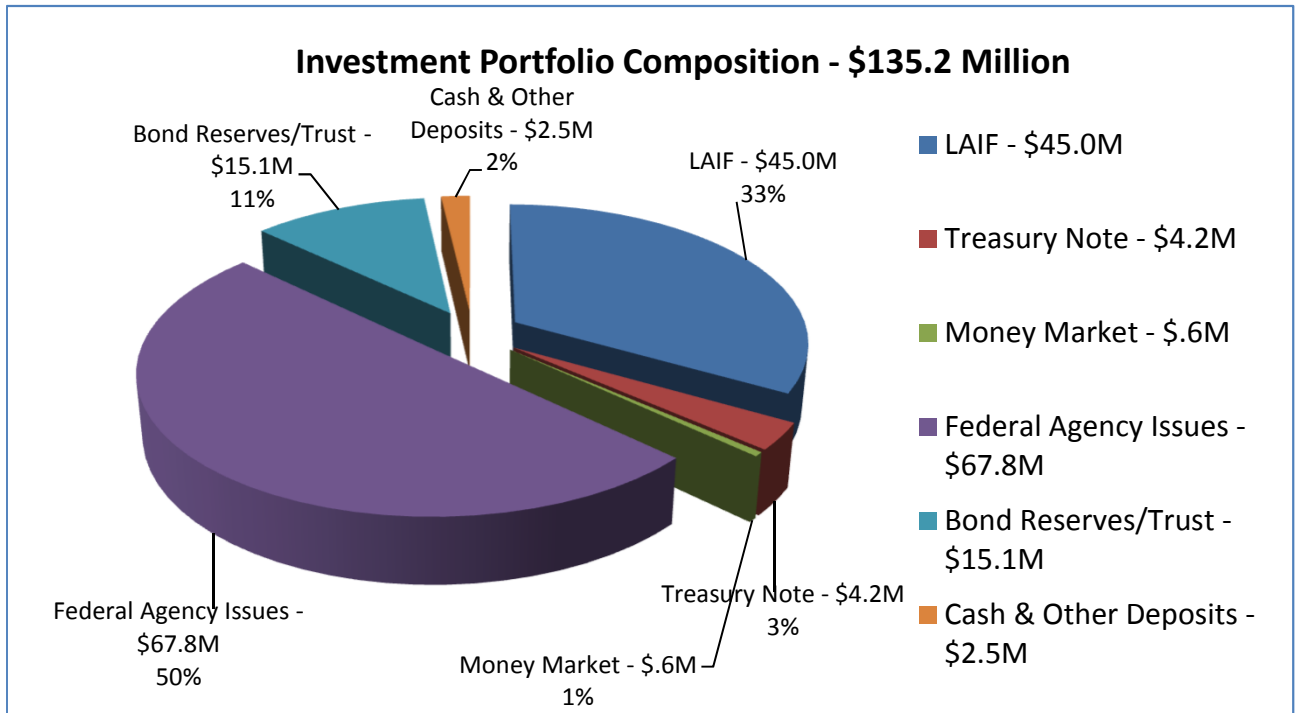


**City of Morgan Hill
Recreation Report - Fiscal Year 2017-18
For the Month and Ten Months Ended April 30, 2018
83% of Year Complete**

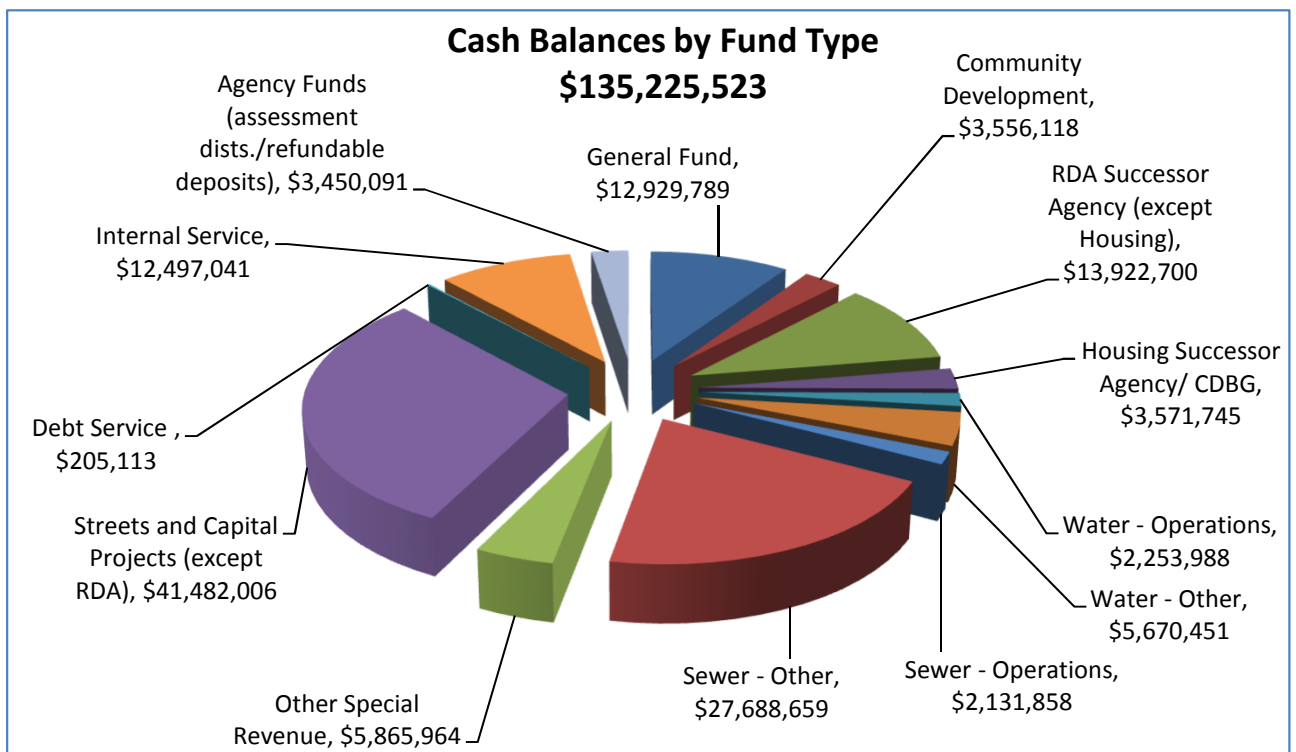
	<u>Budget</u>	<u>April 2018</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,197,036	\$ 533,687	\$ 4,911,384	
Facility Rentals	904,666	75,518	819,943	
Community Services	139,190	7,439	125,628	
Transfers in	75,000	6,250	62,500	
Total Revenues	\$ 7,315,892	\$ 622,893	\$ 5,919,455	81%
Less: Expenditures				
Membership & Program Services	\$ 5,914,430	\$ 309,834	\$ 4,567,165	
Facility Rentals	1,299,185	103,166	1,079,673	
Community Services	768,671	49,555	573,767	
Total Expenditures	\$ 7,982,287	\$ 462,554	\$ 6,220,605	78%
Net Impact without encumbrances	\$ (666,395)	\$ 160,340	\$ (301,150)	
Encumbrances	-	-	604,682	
Net Impact with encumbrances	\$ (666,395)	\$ 160,340	\$ (905,832)	

City of Morgan Hill Monthly Investment Report - April 30, 2018

The following are the snapshots of City's investment portfolio as of April 30, 2018. The first chart shows the portfolio composition by investment type:

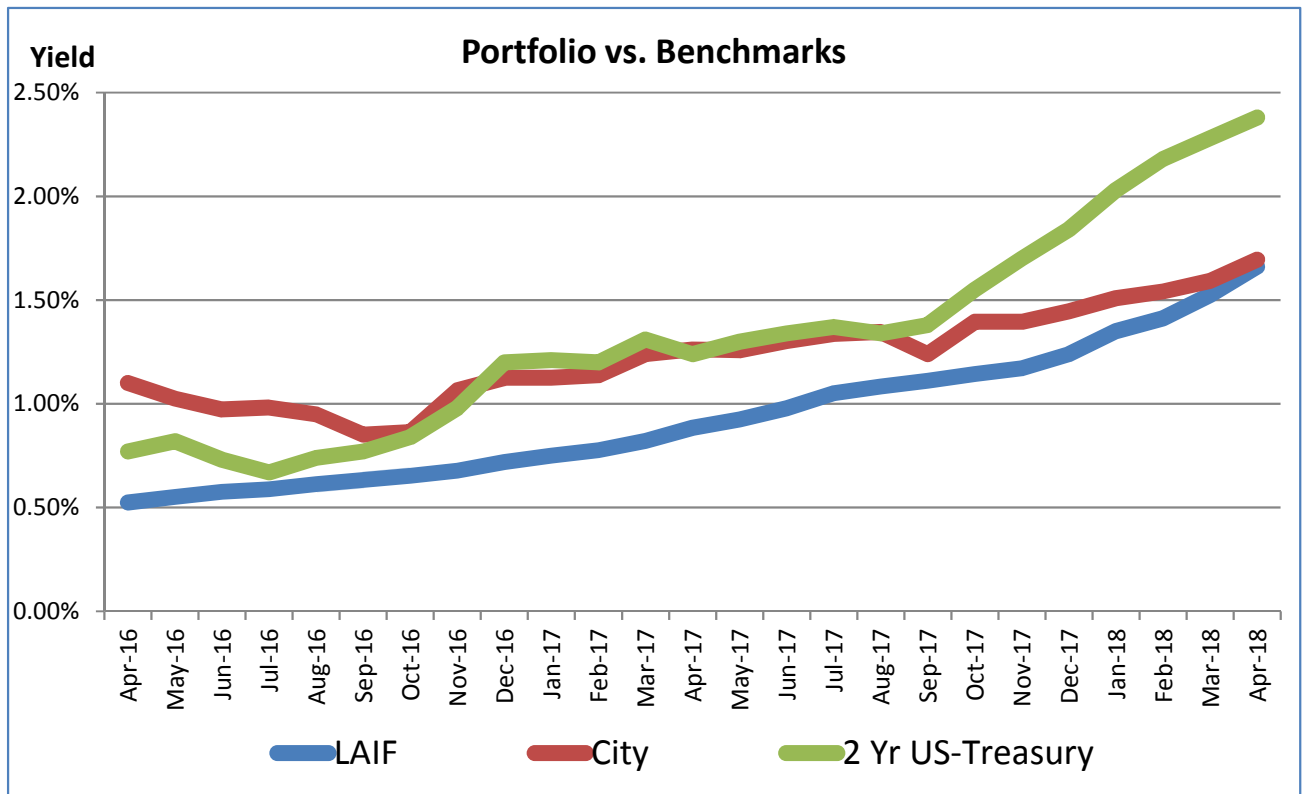


The chart below shows cash balances by fund type reconciled to City's financial system:

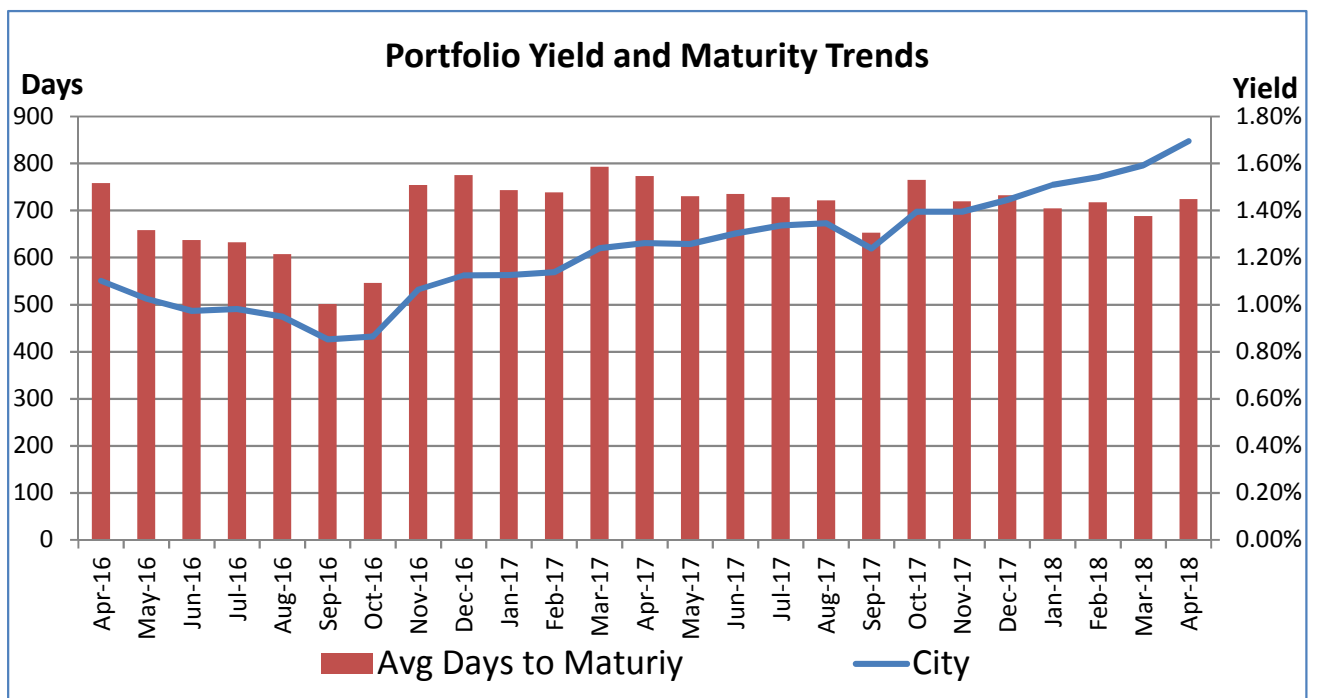


Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)

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 April 30, 2018

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 44,977,251	33.26%	\$ 44,866,517	1.66%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.96%	3,905,880	1.70%	7/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.96%	3,829,000	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.96%	3,836,320	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.48%	1,928,060	1.65%	6/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.96%	3,819,720	1.60%	6/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.96%	3,799,520	1.60%	7/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.96%	3,800,080	1.55%	7/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.48%	1,901,880	1.65%	7/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.96%	3,826,320	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.22%	2,874,390	1.65%	5/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.96%	3,832,400	1.63%	5/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.96%	3,857,640	1.88%	5/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.96%	1,259,895	2.15%	9/29/2018	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.85%	3,723,605	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	3.07%	4,010,685	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.22%	2,926,950	2.50%	1/30/2019	1/30/2023
Treasury Note	4/30/2018	4,246,875	3.14%	4,233,870	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,546,875	44.04%	\$ 57,366,214	1.82%		
Money Market		\$ 444,828	0.33%	\$ 444,828	1.54%		
Total City Managed/Average		\$ 104,968,954	77.63%	\$ 102,677,558	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,665	0.55%	\$ 743,273	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,741	0.55%	737,888	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,967	0.55%	738,705	1.25%	5/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.55%	739,163	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.55%	747,443	1.10%	6/13/2018	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.55%	749,318	1.00%	6/15/2018	6/15/2018
Fed Home Loan Bank	9/21/2016	749,941	0.55%	747,323	1.12%	6/21/2018	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,843	0.55%	737,745	1.29%	6/12/2018	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,878	0.55%	741,270	1.22%	5/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,552	0.55%	732,800	1.03%	7/30/2018	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,964	0.55%	737,625	1.25%	6/30/2018	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,830	0.55%	745,523	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,004,279	0.74%	994,130	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,857	0.74%	993,460	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	748,286	0.55%	741,728	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	742,976	0.55%	735,234	1.39%	6/20/2019	6/20/2019
Money Market		212,845	0.16%	212,845	1.54%		
Sub Total/Average		\$ 12,696,625	9.39%	\$ 12,575,469	1.21%		
Bond Reserve Accounts - Held By Trustees		\$ 13,292,301	9.83%	\$ 13,281,026			
Cash/Deposits		\$ 2,480,239	1.83%	\$ 2,480,239			
PARS Trust		\$ 1,787,404	1.32%	\$ 1,989,148	*Value as of 3/31/18		
GRAND TOTAL/AVERAGE		\$ 135,225,523	100.00%	\$ 133,003,442			

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF APRIL 30, 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	1.66%	\$ 38,627,649	28.57%	\$ 38,532,548
2014 Water Rev Bonds - Water Impact	Water Fund	1.66%	524,471	0.39%	523,180
2014 Water Rev Bonds - Water CIP	Water Fund	1.66%	114,670	0.08%	114,387
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.66%	5,710,461	4.22%	5,696,402
Federal Issues	All Funds Pooled	1.48%	67,783,779	50.13%	65,494,968
US Treasury Notes	All Funds Pooled	2.73%	4,246,875	3.14%	4,233,870
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.54%	657,673	0.49%	657,673
	SUBTOTAL		\$ 117,665,578	87.01%	\$ 115,253,028
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	1.34%	63	0.00%	63
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.34%	81	0.00%	81
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.54%	234,854	0.17%	234,854
US Treasury Notes - Revenue Acct.	Successor Fund	1.33%	6,862,871	5.08%	6,842,176
US Treasury Notes - Reserve Acct.	Successor Fund	0.75%	5,056,795	3.74%	5,066,215
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.34%	571,425	0.42%	571,425
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.34%	566,213	0.42%	566,213
	SUBTOTAL		13,292,301	9.83%	13,281,026
Other Cash/Deposits					
General Checking	All Funds		2,443,127	1.81%	2,443,127
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	0.73%	1,129,073 *
PARS - PENSION Trust			800,000	0.59%	860,076 *
	SUBTOTAL		4,267,643	3.16%	4,469,388
Total Cash and Investments			\$ 135,225,523	100.00%	\$ 133,003,442

CASH ACTIVITY SUMMARY
FY 2017-18

Fund Type	07/01/17 Balance	Change in Cash Balance	4/30/2018 Balance
General Fund	\$ 13,850,210	\$ (920,421)	\$ 12,929,789
Community Development	4,641,472	(1,085,354)	3,556,118
RDA Successor Agency (except Housing)	12,149,330	1,773,370	13,922,700
Housing Successor Agency/ CDBG	4,732,509	(1,160,764)	3,571,745
Water - Operations	1,512,329	741,659	2,253,988
Water Other	5,507,256	163,196	5,670,451
Sewer - Operations	2,085,815	46,042	2,131,858
Sewer Other	26,927,307	761,352	27,688,659
Other Special Revenue	4,381,840	1,484,123	5,865,964
Streets and Capital Projects (except RDA)	42,727,410	(1,245,403)	41,482,006
Debt Service	256,088	(50,975)	205,113
Internal Service	12,201,454	295,587	12,497,041
Agency Funds (assessment dists./refundable deposits)	4,008,713	(558,622)	3,450,091
Total	\$ 134,981,732	\$ 243,790	\$ 135,225,523

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 Ten Months Ended April 30, 2018
83% 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	\$ 8,091,982	89%	\$ 7,684,825	\$ 407,158	5%
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	201,524	71%	177,275	24,249	14%
Sales Tax	9,151,500	9,226,502	8,313,606	90%	7,654,026	659,580	9%
Public Safety Sales Tax	362,000	362,000	268,613	74%	252,083	16,529	7%
Transient Occupancy Taxes	2,827,050	2,827,050	1,974,724	70%	1,933,692	41,032	2%
Franchise (Refuse, Cable, PG&E)	1,981,796	1,981,796	1,648,521	83%	1,518,165	130,356	9%
Property Transfer Tax	481,000	481,000	391,696	81%	319,903	71,793	22%
TOTAL TAXES	24,917,346	25,444,348	21,156,539	83%	19,952,948	1,203,591	6%
LICENSES/PERMITS							
Business License	202,878	202,878	191,055	94%	185,177	5,878	3%
Other Permits	7,743	7,743	3,393	44%	2,315	1,078	47%
TOTAL LICENSES/PERMITS	210,621	210,621	194,448	92%	187,492	6,956	4%
FINES AND PENALTIES							
Parking Enforcement	12,240	12,240	6,746	55%	6,654	93	1%
Bails & Fines	65,280	65,280	54,027	83%	46,752	7,275	16%
Administrative Citations	-	-	14,300	n/a	700	13,600	1943%
TOTAL FINES AND PENALTIES	77,520	77,520	75,073	97%	54,106	20,967	39%
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	456,304	143%	442,584	13,720	3%
TOTAL OTHER AGENCIES	424,413	337,413	479,542	142%	462,136	17,405	4%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,640	32,640	34,130	105%	42,836	(8,706)	-20%
Business License Application Review	36,633	36,633	31,089	85%	34,935	(3,846)	-11%
Membership Services & Rec Programs	6,023,650	6,197,036	4,911,384	79%	4,623,008	288,376	6%
Facility Rentals	932,986	904,666	819,943	91%	768,117	51,826	7%
Community Services	139,190	139,190	125,628	90%	113,028	12,600	11%
General Administration Overhead	1,323,077	1,323,077	1,100,240	83%	1,047,850	52,390	5%
Other Charges Current Services	903,402	903,402	640,414	71%	726,288	(85,873)	-12%
TOTAL CURRENT SERVICES	9,391,578	9,536,644	7,662,828	80%	7,356,061	306,767	4%
OTHER REVENUE							
Use of money/property	309,396	309,396	324,897	105%	275,811	49,086	18%
Other Revenues	151,306	157,306	1,743,586	1108%	572,707	1,170,879	204%
TOTAL OTHER REVENUE	460,702	466,702	2,068,483	443%	848,519	1,219,964	144%
TRANSFERS IN							
One Time Transfer	-	26,595	-	0%	-	-	0%
Public Safety	100,000	100,000	106,000	106%	113,192	(7,192)	-6%
Streets	761,458	761,458	535,000	70%	528,336	6,664	1%
Police Impact	25,000	25,000	20,830	83%	-	20,830	n/a
Sewer Operations	347,025	347,025	289,190	83%	287,500	1,690	1%
Water Operations	347,025	347,025	289,190	83%	287,500	1,690	1%
Park Development	75,000	75,000	62,500	83%	62,500	-	n/a
TOTAL TRANSFERS IN	1,655,508	1,682,103	1,302,710	77%	1,279,028	23,682	2%
TOTAL GENERAL FUND	37,137,688	37,755,351	32,939,622	87%	30,140,291	2,799,332	9%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	536,444	70%	528,012	8,432	2%
Interest / Other Revenue/Other Charges	72	72	874	1214%	993	(119)	-12%
202 STREET MAINTENANCE	761,530	761,530	537,318	71%	529,005	8,313	2%

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Ten Months Ended April 30, 2018
83% 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	223	56%	350	(127)	-36%
Police Grant/SLEF/JAG	100,000	100,000	97,750	98%	87,657	10,093	12%
205 PUBLIC SAFETY TRUST	100,395	100,395	97,973	98%	88,007	9,965	11%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,937,862	1,937,862	2,108,981	109%	2,044,621	64,360	3%
Planning Fees	1,131,051	1,131,051	849,656	75%	694,661	154,995	22%
Engineering Fees	601,640	601,640	672,436	112%	962,434	(289,998)	-30%
Other Revenue/Current Charges	9,417	9,417	45,447	483%	244,465	(199,018)	-81%
206 COMMUNITY DEVELOPMENT	3,679,970	3,679,970	3,676,520	100%	3,946,181	(269,661)	-7%
207 LONG RANGE PLANNING	706,212	706,212	526,700	75%	626,184	(99,484)	-16%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	417	120,417	197,691	164%	21,239	176,452	831%
215 and 216 HCD BLOCK GRANT	417	120,417	197,691	164%	21,239	176,452	831%
225 ASSET SEIZURE	250	250	1,619	648%	66,661	(65,042)	-98%
229 LIGHTING AND LANDSCAPE	187,321	187,321	95,776	51%	99,918	(4,141)	-4%
230 COMMUNITY FACILITIES DISTRICT	43,340	43,340	23,637	55%	21,487	2,150	10%
232 ENVIRONMENTAL PROGRAMS	382,164	382,164	395,814	104%	317,416	78,398	25%
234 MOBILE HOME PARK RENT STAB.	3,931	3,931	2,965	75%	3,900	(935)	-24%
235 SENIOR HOUSING	1,633	1,633	2,476	152%	1,732	744	43%
236 HOUSING MITIGATION	842,443	842,443	2,042,390	242%	2,773,055	(730,664)	-26%
240 EMPLOYEE ASSISTANCE	30,966	30,966	24,186	78%	22,340	1,846	8%
247 ENVIRONMENT REMEDIATION	1,104	1,104	1,572	142%	1,171	401	34%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,131,889	7,131,889	8,814,486	124%	9,078,045	(263,560)	-3%
255 HOUSING SUCCESSOR AGENCY	1,285,374	1,285,374	446,244	35%	545,645	(99,401)	-18%
TOTAL SPECIAL REVENUE FUNDS	15,158,940	15,278,940	16,887,367	111%	18,141,986	(1,254,619)	-7%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,439,640	3,693,620	2,038,187	55%	1,994,942	43,245	2%
302 PARK MAINTENANCE	888,026	905,061	1,257,843	139%	859,411	398,431	46%
303 LOCAL DRAINAGE	1,822,884	1,822,884	1,981,720	109%	1,204,438	777,282	65%
304 LOCAL DRAINAGE/NON AB1600	70,894	70,894	154,244	218%	159,733	(5,489)	-3%
306 AGRICULTURE & OPEN SPACE PRESERVATION	1,539,970	1,539,970	796,128	52%	243,415	552,713	227%
308 STREET CIP	1,357,235	3,555,460	2,423,301	68%	1,222,532	1,200,769	98%
309 TRAFFIC IMPACT	1,348,287	1,348,287	575,633	43%	507,018	68,615	14%
311 POLICE IMPACT	256,218	256,218	227,367	89%	90,630	136,736	151%
313 FIRE IMPACT	94,577	94,577	78,600	83%	109,336	(30,737)	-28%
346 PUBLIC FACILITIES NON-AB1600	617,956	617,956	107,356	17%	777,946	(670,590)	-86%
347 PUBLIC FACILITIES IMPACT	171,217	171,217	156,053	91%	58,729	97,324	166%
348 LIBRARY	1,250,509	1,250,509	671,886	54%	324,106	347,780	107%
350 UNDERGROUNDING	53,236	53,236	203,491	382%	896,545	(693,054)	-77%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	544,341	544,341	107,005	20%	835,967	(728,962)	-87%
360 COMMUNITY/REC IMPACT FUND	985,274	985,274	868,104	88%	140,111	727,994	520%
TOTAL CAPITAL PROJECTS FUNDS	12,440,264	16,909,504	11,646,917	69%	9,424,859	2,222,057	24%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	297,408	297,408	246,328	83%	249,885	(3,557)	-1%
441 POLICE FACILITY BOND	385,373	385,373	381,458	99%	382,711	(1,253)	0%
TOTAL DEBT SERVICE FUNDS	682,781	682,781	627,786	92%	632,596	(4,810)	-1%

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Ten Months Ended April 30, 2018
83% 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	8,107,670	80%	7,782,415	325,254	4%
Interest Income/Transfers	48,461	48,461	24,837	51%	16,908	7,928	47%
Other Revenue/Current Charges	183,354	183,354	259,091	141%	353,223	(94,132)	-27%
640 SEWER OPERATION	10,834,510	10,334,510	8,391,597	81%	8,152,547	239,050	3%
641 SEWER EXPANSION							
Interest Income	59,474	59,474	166,203	279%	113,497	52,706	46%
Development Impact Fee	4,727,753	4,727,753	3,221,982	68%	1,237,504	1,984,478	160%
Transfers/Other	-	-	-	0%	600	(600)	-100%
641 SEWER EXPANSION	4,787,227	4,787,227	3,388,185	71%	1,351,601	2,036,584	151%
642 SEWER RATE STABILIZATION	15,702	15,702	336,003	2140%	56,029	279,973	500%
643 SEWER-CAPITAL PROJECT	2,424,509	2,424,509	2,090,364	86%	2,258,678	(168,314)	-7%
TOTAL SEWER FUNDS	18,061,948	17,561,948	14,206,148	81%	11,818,855	2,387,293	20%
650 WATER OPERATION							
Water Sales	11,201,856	11,401,856	9,372,535	82%	7,680,836	1,691,699	22%
Meter Install & Service	120,575	120,575	238,868	198%	134,017	104,851	78%
Transfers-In / Interest Income	424,507	424,507	370,451	87%	346,597	23,853	7%
Other Revenue/Current Charges	475,784	475,784	617,598	130%	658,369	(40,772)	-6%
650 WATER OPERATION	12,222,722	12,422,722	10,599,451	85%	8,819,820	1,779,632	20%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	1,944	1,944	41,963	2159%	29,771	12,191	41%
Development Impact Fee	1,196,984	1,196,984	881,178	74%	397,058	484,120	122%
651 WATER EXPANSION	1,198,928	1,198,928	923,140	77%	426,829	496,311	116%
652 Water Rate Stabilization	505,618	912,836	424,972	47%	418,522	6,450	2%
653 Water Capital Project	1,351,992	944,774	1,138,922	121%	810,588	328,335	41%
TOTAL WATER FUNDS	15,279,260	15,479,260	13,086,486	85%	10,475,758	2,610,727	25%
TOTAL ENTERPRISE FUNDS	33,341,208	33,041,208	27,292,634	83%	22,294,614	4,998,020	22%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,812	1,592,812	1,340,501	84%	1,339,185	1,316	0%
740 BUILDING MAINTENANCE	3,066,615	3,149,985	2,587,119	82%	2,563,928	23,191	1%
741 BUILDING REPLACEMENT	487,008	487,008	416,996	86%	395,196	21,801	6%
745 CIP ADMINISTRATION	1,869,109	1,869,109	1,148,439	61%	1,130,406	18,032	2%
760 UNEMPLOYMENT INSURANCE	1,094	1,094	1,829	167%	1,353	476	35%
770 WORKERS COMPENSATION	763,390	763,390	841,888	110%	651,942	189,946	29%
790 EQUIPMENT REPLACEMENT	974,418	1,024,418	887,141	87%	879,783	7,357	1%
791 EMPLOYEE BENEFITS	624,676	624,676	511,719	82%	1,118,620	(606,901)	-54%
793 CORPORATION YARD COMMISSION	-	-	1,850	0%	1,010	840	83%
795 GENERAL LIABILITY INSURANCE	941,342	941,342	793,980	84%	717,492	76,489	11%
TOTAL INTERNAL SERVICE FUNDS	10,320,464	10,453,834	8,531,462	82%	8,798,915	(267,453)	-3%
TOTAL FOR ALL FUNDS	\$ 109,081,345	\$ 114,121,618	\$ 97,925,787	86%	\$ 89,433,260	\$ 8,492,527	9%

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Ten Months Ended April 30, 2018
 83% 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	\$ 20,543	\$ 401,865	\$ 283,818	\$ 36,550	\$ 320,368	80%	\$ 261,000
	CITY ATTORNEY	46,760	836,813	597,183	147,526	744,709	89%	551,000
	CITY MANAGER/ATTORNEY LOAN	-	1,300,000	1,300,000	-	1,300,000	100%	831,000
	CITY MANAGER	80,313	1,901,979	936,259	714,138	1,650,396	87%	701,000
	HUMAN RESOURCES	45,921	757,742	564,635	6,560	571,195	75%	551,000
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	42,800	601,195	484,682	11,200	495,882	82%	461,000
	Elections	1,385	30,669	69,563	-	69,563	227%	131,000
	COUNCIL SVCS & RECORDS MGMT	44,185	631,864	554,245	11,200	565,445	89%	591,000
	FINANCE	121,437	1,613,065	1,340,094	40,107	1,380,201	86%	1,361,000
	TOTAL ADMINISTRATION	359,159	7,443,327	5,576,235	956,080	6,532,315	88%	4,871,000
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	309,834	5,914,430	4,567,165	577,884	5,145,049	87%	4,331,000
	Recreation Facility Rentals	103,166	1,299,185	1,079,673	-	1,079,673	83%	1,041,000
	Community Services	49,555	768,671	573,767	26,798	600,565	78%	541,000
	Solid Waste Management	13,308	277,104	157,127	-	157,127	57%	151,000
	Street Maintenance	195,130	2,225,954	1,639,762	242,823	1,882,585	85%	1,571,000
	Downtown Maintenance	27,662	296,241	224,835	57,857	282,692	95%	141,000
	Cable Television	1,503	49,443	16,353	-	16,353	33%	21,000
	COMMUNITY SERVICES	700,158	10,831,028	8,258,683	905,362	9,164,045	85%	7,821,000
	CODE COMPLIANCE	10,099	141,628	102,765	-	102,765	73%	101,000
	CONGESTION MANAGEMENT	1,337	77,570	58,348	-	58,348	75%	61,000
	TOTAL COMMUNITY SERVICES	711,594	11,050,226	8,419,795	905,362	9,325,157	84%	7,991,000
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	138,184	1,185,166	990,555	21,812	1,012,367	85%	991,000
	Field Operations	580,041	8,618,921	6,389,879	832,808	7,222,687	84%	6,201,000
	Support Services	165,216	2,089,756	1,709,551	3,536	1,713,087	82%	1,701,000
	Emergency Services/Haz Mat	16,337	217,012	155,362	30,639	186,000	86%	151,000
	Special Operations	146,651	2,779,972	2,092,318	-	2,092,318	75%	2,181,000
	Dispatch Services	127,279	1,694,978	1,316,811	-	1,316,811	78%	1,291,000
	POLICE	1,173,708	16,585,805	12,654,475	888,794	13,543,269	82%	12,521,000
	FIRE	429,643	5,785,389	4,982,217	4,749	4,986,966	86%	4,641,000
	TOTAL PUBLIC SAFETY	1,603,351	22,371,194	17,636,692	893,544	18,530,235	83%	17,171,000
IV. TRANSFERS								
	Other	145,443	1,901,915	1,621,020	-	1,621,020	85%	1,781,000
	TOTAL TRANSFERS	145,443	1,901,915	1,621,020	-	1,621,020	85%	1,781,000
	TOTAL GENERAL FUND	2,819,547	42,766,662	33,253,742	2,754,986	36,008,728	84%	31,831,000

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Ten Months Ended April 30, 2018
83% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	169	763,480	536,740	-	536,740	70%	52%
205	PUBLIC SAFETY/SUPP.LAW	-	100,000	106,000	-	106,000	106%	11%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	151,085	2,241,307	1,563,944	409,779	1,973,723	88%	1,63%
	Building	115,188	1,864,823	1,410,703	23,572	1,434,275	77%	1,41%
	Engineering	108,434	1,437,702	1,107,965	71,133	1,179,098	82%	83%
206	COMMUNITY DEVELOPMENT FUND	374,707	5,543,832	4,082,612	504,484	4,587,096	83%	3,89%
207	LONG RANGE PLANNING	42,910	1,311,662	493,292	243,964	737,256	56%	45%
215/216	CDBG	23,475	165,331	204,975	-	204,975	124%	21%
225	ASSET SEIZURE	-	26,595	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	16,692	205,430	143,497	36,360	179,857	88%	13%
230	COMMUNITY FACILITIES DISTRICT	1,100	45,100	15,268	1,356	16,624	37%	1%
232	ENVIRONMENT PROGRAMS	26,969	345,422	324,419	16,385	340,804	99%	48%
234	MOBILE HOME PARK	71	880	710	-	710	81%	-
236	HOUSING MITIGATION	130,541	2,270,091	595,869	131,046	726,915	32%	2,95%
240	EMPLOYEE ASSISTANCE	2,104	41,247	24,763	-	24,763	60%	2%
250	COMH-SUCCESSOR AGENCY-MHRDA	12,537	7,178,310	7,038,499	23,890	7,062,389	98%	8,56%
255	HOUSING SUCCESSOR AGENCY	157,908	2,509,803	1,638,650	25,000	1,663,650	66%	75%
TOTAL SPECIAL REVENUE FUNDS		789,184	20,507,183	15,205,293	982,485	16,187,778	79%	17,95%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	474,161	9,252,699	4,249,791	269,833	4,519,624	49%	91%
302	PARK MAINTENANCE	73,338	2,688,257	2,296,966	252,046	2,549,012	95%	77%
303	LOCAL DRAINAGE	986	47,010	12,722	5,579	18,301	39%	1%
304	LOCAL DRAIN. NON-AB1600	1,855	189,171	53,566	-	n/a	n/a	1%
306	AGRICULTURE & OPEN SPACE PRESERVATION	5,927	4,481,696	99,195	82,231	181,426	4%	82%
308	STREET CIP	11,024	5,335,964	2,113,439	307,692	2,421,131	45%	13%
309	TRAFFIC IMPACT	19,880	3,913,053	1,940,761	154,847	2,095,608	54%	1,06%
311	POLICE IMPACT	83,197	237,117	226,934	5,579	232,513	98%	26%
313	FIRE IMPACT	113	623,735	3,794	5,579	9,373	2%	-
346	PUBLIC FAC.NON AB1600	40,293	1,020,977	558,196	78,991	637,187	62%	53%
347	PUBLIC FACILITIES IMPACT	93	439,481	3,555	5,579	9,134	2%	-
348	LIBRARY IMPACT	44,778	3,824,836	408,081	105,029	513,110	13%	33%
350	UNDERGROUNDING	45	55,539	450	-	450	1%	70%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	19,022	1,809,032	257,107	64,042	321,149	18%	-
360	COMM/REC CENTER IMPACT	4,129	309,400	38,508	259,192	297,700	0%	-
TOTAL CAPITAL PROJECTS FUNDS		778,839	34,227,966	12,263,066	1,596,218	13,805,718	40%	5,59%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	75,280	297,423	285,345	-	285,345	96%	29%
441	POLICE FACILITY BOND DEBT	96,509	383,610	392,702	-	392,702	102%	38%
TOTAL DEBT SERVICE FUNDS		171,789	681,033	678,048	-	678,048	100%	67%

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Ten Months Ended April 30, 2018
 83% 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	811,298	10,871,377	8,183,603	285,024	8,468,627	78%	8,041
641	SEWER CAPITAL EXPANSION	35,312	19,130,592	1,163,174	627,019	1,790,192	9%	1,561
642	SEWER RATE STABILIZATION	325	3,900	3,250	-	3,250	83%	3,250
643	SEWER-CAPITAL PROJECTS	175,945	8,453,383	3,216,790	242,105	3,458,895	41%	3,241
TOTAL SEWER FUND(S)		1,022,880	38,459,252	12,566,817	1,154,148	13,720,965	36%	12,861
WATER								
	Water Operations	765,028	11,030,629	8,316,082	713,275	9,029,357	82%	7,451
	Utility Billing	51,325	836,258	604,524	27,481	632,005	76%	581
	Water Conservation	23,023	212,502	83,488	50,000	133,488	63%	91
650	WATER OPERATIONS	839,376	12,079,389	9,004,094	790,756	9,794,850	81%	8,131
651	WATER CAPITAL EXPANSION	12,273	3,405,848	346,615	1,831,937	2,178,553	64%	1,351
652	WATER RATE STABILIZATION	51	662	510	-	510	77%	510
653	WATER-CAPITAL PROJECTS	82,629	2,991,557	1,859,102	291,965	2,151,067	72%	3,281
TOTAL WATER FUND(S)		934,329	18,477,455	11,210,321	2,914,658	14,124,979	76%	12,771
TOTAL ENTERPRISE FUNDS		1,957,209	56,936,707	23,777,138	4,068,805	27,845,944	49%	25,631
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	78,108	1,796,307	1,361,926	44,539	1,406,465	78%	1,051
740	BUILDING MAINTENANCE	242,082	3,328,743	2,518,519	125,171	2,643,690	79%	2,491
741	BUILDING REPLACEMENT	38,426	524,821	350,801	85,914	436,715	83%	741
745	CIP ADMINISTRATION	107,624	1,872,190	1,148,418	18,183	1,166,601	62%	1,131
760	UNEMPLOYMENT	-	20,400	3,728	-	3,728	18%	3,728
770	WORKERS COMPENSATION	1,712	808,807	905,218	-	905,218	112%	431
790	EQUIPMENT REPLACEMENT	-	1,275,467	648,889	322,329	971,219	76%	1,291
791	EMPLOYEE BENEFITS FUND	41,068	558,538	582,555	-	582,555	104%	461
793	CORP YARD COMMISSION	910	-	8,467	1,903	10,370	0%	8,467
795	GEN. LIABILITY INSURANCE	30,628	1,059,920	818,391	-	818,391	77%	831
TOTAL INTERNAL SERVICE FUNDS		540,559	11,245,194	8,346,913	598,039	8,944,952	80%	8,471
REPORT TOTAL		\$ 7,057,128	\$ 166,364,744	\$ 93,524,200	\$ 10,000,534	\$ 103,471,168	62%	\$ 90,181

Attachment: April 2018 Financial and Investment Report (1815 : April 2018 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Ten Months Ended April 30, 2018 83% 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	87%	\$ 32,939,622	87%	\$ 33,253,742	78%	\$ (314,119)	\$ 2,754,986	\$ 13,761,512
TOTAL GENERAL FUND		\$ 16,830,617	87%	\$ 32,939,622	87%	\$ 33,253,742	78%	\$ (314,119)	\$ 2,754,986	\$ 13,761,512
202	STREET MAINTENANCE	440	71%	\$ 537,318	71%	\$ 536,740	76%	\$ 578	\$ -	\$ 1,018
205	PUBLIC SAFETY/SUPPL. LAW	16,702	98%	97,973	98%	106,000	77%	(8,027)	-	8,675
206	COMMUNITY DEVELOPMENT	2,646,685	100%	3,676,520	100%	4,082,612	74%	(406,092)	504,484	1,736,109
207	LONG RANGE PLANNING	1,170,077	75%	526,700	75%	493,292	38%	33,408	243,964	959,522
215 / 216	CDBG	95,752	164%	197,691	164%	204,975	0%	(7,284)	-	88,468
225	ASSET SEIZURE	136,345	648%	1,619	648%	-	0%	1,619	-	137,965
229	LIGHTING AND LANDSCAPE	160,594	51%	95,776	51%	143,497	70%	(47,720)	36,360	76,513
230	COMMUNITY FACILITIES DISTRICT	60,276	55%	23,637	55%	15,268	0%	8,369	1,356	67,289
232	ENVIRONMENTAL PROGRAMS	157,637	104%	395,814	104%	324,419	94%	71,395	16,385	212,647
234	MOBILE HOME PK RENT STAB.	41,059	75%	2,965	75%	710	81%	2,255	-	43,314
235	SENIOR HOUSING	220,710	152%	2,476	152%	-	0%	2,476	-	223,186
236	HOUSING MITIGATION	2,178,174	242%	2,042,390	242%	595,869	26%	1,446,522	131,046	3,493,650
240	EMPLOYEE ASSISTANCE	36,302	78%	24,186	78%	24,763	60%	(577)	-	35,725
247	ENVIRONMENT REMEDIATION	139,723	142%	1,572	142%	-	0%	1,572	-	141,295
250	COMH-SUCCESSOR AGENCY-MHRDA	4,650,153	124%	8,814,486	124%	7,038,499	98%	1,775,987	12,178,409	(5,752,269)
255	HOUSING SUCCESSOR AGENCY	3,956,700	35%	446,244	35%	1,638,650	65%	(1,192,406)	2,538,275	226,019
TOTAL SPECIAL REVENUE FUNDS		\$ 15,667,329	111%	\$ 16,887,367	111%	\$ 15,205,293	74%	\$ 1,682,074	\$ 15,650,280	\$ 1,699,123
301	PARK DEV. IMPACT FUND	4,850,439	55%	2,038,187	55%	4,249,791	46%	(2,211,604)	269,833	2,369,002
302	PARK MAINTENANCE	5,431,371	139%	1,257,843	139%	2,296,966	85%	(1,039,123)	252,046	4,140,202
303	LOCAL DRAINAGE	8,381,669	109%	1,981,720	109%	12,722	27%	1,968,998	5,579	10,345,088
304	LOCAL DRAINAGE/NON-AB1600	1,301,563	218%	154,244	218%	53,566	28%	100,678	-	1,402,241
306	AGRICULTURE AND OPEN SPACE PRESERV	6,014,381	52%	796,128	52%	99,195	2%	696,932	82,231	6,629,083
308	STREET CIP	1,819,399	68%	2,423,301	68%	2,113,439	40%	309,863	307,692	1,821,569
309	TRAFFIC IMPACT FUND	4,539,601	43%	575,633	43%	1,940,761	50%	(1,365,128)	154,847	3,019,625
311	POLICE IMPACT FUND	(778,194)	89%	227,367	89%	226,934	96%	432	5,579	(783,341)
313	FIRE IMPACT FUND	3,818,916	83%	78,600	83%	3,794	1%	74,805	5,579	3,888,142
346	PUBLIC FACILITIES NON-AB1600	1,117,552	17%	107,356	17%	558,196	55%	(450,840)	5,579	661,133
347	PUBLIC FACILITIES IMPACT FUND	343,009	91%	156,053	91%	3,555	1%	152,498	105,029	390,477
348	LIBRARY IMPACT FUND	2,103,639	54%	671,886	54%	408,081	11%	263,805	-	2,367,445
350	UNDERGROUNDING	510,438	382%	203,491	382%	450	1%	203,041	64,042	649,437
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,640,864	20%	107,005	20%	257,107	14%	(150,102)	259,192	1,231,570
360	COMM/REC CTR IMPACT FUND	268,766	88%	868,104	88%	38,508	0%	829,596	-	1,098,363
TOTAL CAPITAL PROJECT FUNDS		\$ 41,363,413	69%	\$ 11,646,917	69%	\$ 12,263,066	36%	\$ (616,150)	\$ 1,517,227	\$ 39,230,036
420	CIVIC CENTER DEBT	161,328	83%	246,328	83%	285,345	96%	(39,017)	63	122,247
441	POLICE FACILITY BOND DEBT	93,903	99%	381,458	99%	392,702	102%	(11,244)	81	82,579
TOTAL DEBT SERVICE FUNDS		\$ 255,231	92%	\$ 627,786	92%	\$ 678,048	100%	\$ (50,262)	\$ 144	\$ 204,826

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Ten Months Ended April 30, 2018 83% of Year Complete									
Fund No.	Fund	Fund Balance 06-30-17	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,997,397	\$ 8,391,597	81%	\$ 8,183,603	75%	\$ 207,994	285,024	2,920,367
641	SEWER IMPACT FUND*	13,739,517	3,388,185	71%	1,163,174	6%	2,225,011	627,019	15,337,509
642	SEWER RATE STABILIZATION	2,538,125	336,003	2140%	3,250	83%	332,753	-	2,870,877
643	SEWER-CAPITAL PROJECTS	8,964,265	2,090,364	86%	3,216,790	38%	(1,126,426)	242,105	7,595,734
650	WATER OPERATIONS	1,329,683	10,599,451	85%	9,004,094	75%	1,595,358	790,756	2,134,285
651	WATER IMPACT FUND*	3,153,845	923,140	77%	346,615	10%	576,525	1,831,937	1,898,433
652	WATER RATE STABILIZATION	539,303	424,972	47%	510	77%	424,462	-	963,764
653	WATER -CAPITAL PROJECT	613,123	1,138,922	121%	1,859,102	62%	(720,180)	291,965	(399,022)
TOTAL ENTERPRISE FUNDS		\$ 33,875,258	\$ 27,292,634	83%	\$ 23,777,138	42%	\$ 3,515,495	\$ 4,068,805	\$ 33,321,948

730	INFORMATION SERVICES	\$ 612,170	\$ 1,340,501	84%	\$ 1,361,926	76%	\$ (21,424)	\$ 44,539	\$ 546,206
740	BUILDING MAINTENANCE	126,409	2,587,119	82%	2,518,519	76%	68,600	125,171	69,838
741	BUILDING REPLACEMENT	2,063,612	416,996	86%	350,801	67%	66,195	85,914	2,043,892
745	CIP ENGINEERING	32,485	1,148,439	61%	1,148,418	61%	20	18,183	14,323
760	UNEMPLOYMENT	164,584	1,829	167%	3,728	18%	(1,898)	-	162,685
770	WORKERS COMPENSATION	1,647,992	841,888	110%	905,218	112%	(63,330)	30,000	1,554,662
790	EQUIPMENT REPLACEMENT	4,110,874	887,141	87%	648,889	51%	238,251	322,329	4,026,796
791	EMPLOYEE BENEFITS FUNDS	584,228	511,719	82%	582,555	104%	(70,836)	-	513,392
793	CORP YARD COMMISSION	-	1,850	0%	8,467	0%	(6,618)	1,903	(8,521)
795	GEN. LIABILITY INSURANCE	1,106,814	793,980	84%	818,391	77%	(24,411)	-	1,082,403
TOTAL INTERNAL SERVICE FUNDS		\$ 10,449,167	\$ 8,531,462	82%	\$ 8,346,913	74%	\$ 184,549	\$ 628,039	\$ 10,005,677

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,830,617	\$ 32,939,622	87%	\$ 33,253,742	78%	\$ (314,119)	\$ 2,754,986	\$ 13,761,512
SPECIAL REVENUE GROUP	15,667,329	16,887,367	111%	15,205,293	74%	1,682,074	15,650,280	1,699,123
DEBT SERVICE GROUP	255,231	627,786	92%	678,048	100%	(50,262)	144	204,826
CAPITAL PROJECTS GROUP	41,363,413	11,646,917	69%	12,263,066	36%	(616,150)	1,517,227	39,230,036
ENTERPRISE GROUP	33,875,258	27,292,634	83%	23,777,138	42%	3,515,495	4,068,805	33,321,948
INTERNAL SERVICE GROUP	10,449,167	8,531,462	82%	8,346,913	74%	184,549	628,039	10,005,677
TOTAL ALL GROUPS	\$ 118,441,015	\$ 97,925,787	86%	\$ 93,524,200	56%	\$ 4,401,587	\$ 24,619,482	\$ 98,223,121

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.

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, June 6, 2018 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(6:00 P.M. Commission Interviews/ 7:00 P.M. Regular Meeting)

A special meeting of the City Council was called at 6:00 p.m. for the purpose of conducting Commission Interviews.

SPECIAL MEETING

6:00 P.M.

CALL TO ORDER

Mayor Tate called the special meeting to order at 6:00 P.M.

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	Absent	

Minutes Acceptance: Minutes of Jun 6, 2018 6:00 PM (CONSENT CALENDAR)

Larry Carr	Council Member	Present	
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL ONE (1) VACANCY ON THE LIBRARY, CULTURE, AND ARTS COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant would possess;
2. Conduct Interviews;
3. Council Members identify top applicant and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant.

Mayor Tate introduced the item. The Council shared with the applicants, what their expectations are of a Library, Culture, and Arts Commissioner.

Council Interviewed the following applicants:

Valerie Goodwin
Raquel Gonzalez
Poonam Chabra

The special meeting was adjourned at 6:34 p.m.

Mayor Tate announced during the "Other Reports" section of the agenda that Poonam Chabra was unanimously selected to fill the vacancy on the Library, Culture, and Arts Commission.

RESULT:	APPOINT
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REGULAR MEETING

7:00 P.M.

Mayor Tate called the regular meeting to order at 7:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz spoke about the Institute for Local Government (ILG) TIERS Program. A team from Morgan Hill attended a workshop in February along with 11 other agencies. The two-day workshop involved learning the TIERS framework which provides practical tools for engaging residents, including the immigrant community. Each agency went to the workshop with a specific project to apply the framework to. Morgan Hill's project was engaging the community on infrastructure, public safety services,

and funding, which is a timely issue for us. The group felt that it was a successful two days and they will be coming back to Council with a report at the beginning of the next fiscal year with a game plan for implementing some of the strategies they learned to reach those goals moving forward.

She shared that she took part along with City Manager Christina Turner, Mayor Tate, and Council Member Carr in the Cities Association Annual General Membership meeting. At the meeting they talked about housing and transportation like they do at so many of the regional meetings they attend. Although they have not found any solutions or solid answers, they will continue to chip away at those issues. Along those lines, the Cities Association did support three ballot initiatives from this last election and all three passed.

She mentioned that in May she attended "Honoring the Badge" with Council Members Spring and Constantine and that our own Police Chief David Swing received an award that day.

She announced that the Relay for Life of Gilroy disbanded this year and the small team from Morgan Hill took them on; they are now the Relay for Life of South County. The program is run by two individuals from Morgan Hill, Nikki Underhill and Kelly Carmichael. They put on the whole event this year and so far, have raised \$107,598. The event took place in May and they will be fundraising until August. These individuals are two stellar members of our community that are doing great work.

CITY MANAGER'S REPORT

Teammate Recognitions

New Hires

Michael Horta - Sr. Human Resources Analyst
Lynette Kong - Associate Engineer

Promotions

Jennie Tucker- Recreation Manager

Retirement

Debbie Lee- Lazzarino

TEAMMATE RECOGNITION PRESENTATION

City Manager Christina Turner recognized the new, promoted, and retired teammates.

She spoke to the evening's supplements and presentations. She shared that she visited the third grade room 115 class at Morgan Hill Charter School's Idea Fair. It was a very fun event. They presented their ideas about what would make Morgan Hill a better community. One of her favorite ideas, was the proposal to expand Cal Train services to provide services throughout the day and to add weekend services. Some other fun ideas were adding batting cages to Morgan Hill and for Morgan Hill to be a gluten free town. She commented that we have a busy summer that is already underway. The Aquatics Center opened on Memorial Day Weekend and has been a great success since the opening. The Aquatics Center is now open 7 days a week through August 17th. She mentioned that she, along with Council Members Spring and Carr, attended a South County Regional Wastewater Authority (SCRWA) Board meeting this morning and announced that SCRWA won the second place award for Outstanding Professional Accomplishment and Engineering Achievement by the California Water Environment Association. SCRWA operates the joint treatment plant for Morgan Hill and Gilroy which treats the sewage from the two cities. The SCRWA Plant has been an award winning plant for many years and this award like past awards is another indication of the excellent work that is being done. She concluded by announcing that June is Pride Month and last Friday the City held a Pride Flag raising ceremony.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that on June 1st, High Speed Rail (HSR) released its 2018 Business Plan. Upon first reading it doesn't look significantly different from the draft document. We are still anticipating HSR to identify their preferred alignment this month.

OTHER REPORTS

Mayor Tate announced that the next coffee with the Mayor will be on Saturday, June 23rd at Booksmart from 10:00 to 11:30 a.m.

He shared that earlier in the evening the City Council held interviews to fill a vacancy on the Library, Culture, and Arts Commission. The Council unanimously appointed Poonam Chabra to fill the vacancy.

RECOGNITIONS

Recognizing Roger Knopf for his time, dedication, and service to the Morgan Hill Corporation Yard Commission

PUBLIC COMMENT

The public comment was opened at 7:19 p.m.

John McKay was called to speak.

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:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Carr, Jachimowicz, Spring
ABSENT:	Constantine

CONSENT CALENDAR**MOTION:**

Approving consent calendar items 2 through 15 and 17 through 19.

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

2. ACCEPT HIGHLAND AVENUE SEWER UPGRADE PROJECT

Recommendation:

1. Accept as complete the Highland Avenue Sewer Upgrade Project in the final amount of \$585,616;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

3. APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR BUTTERFIELD SELF STORAGE DEVELOPMENT AT 955 JARVIS DRIVE (APN: 726-25-090)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Butterfield Self Storage at 955 Jarvis Drive (APN: 726-25-090); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

4. APPROVAL OF STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR MJR ELECTRIC DEVELOPMENT AT 155 MAST STREET (APN: 817-02-050)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the MJR Electric development at 155 Mast Street (APN: 817-02-050); 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 STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR OAKWOOD SCHOOL DEVELOPMENT AT 105 JOHN WILSON WAY (APN: 779-04-073)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Oakwood School development at 105 John Wilson Way (APN: 779-04-073); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

6. FINAL MAP APPROVAL OF VALENCIA PHASE 2 - TRACT NO. 10433

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with MH Valencia 2015 Inc., a California Corporation;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

7. FINAL MAP APPROVAL OF SAN SEBASTIAN PHASE 2A - TRACT NO. 10451

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Toll CA XX, LP;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

8. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE COOPERATIVE AGREEMENTS WITH THE SANTA CLARA VALLEY WATER DISTRICT TO SHARE IN THE COSTS AND ADMINISTRATION OF WATER CONSERVATION PROGRAMS

Recommendation:

Adopt resolution authorizing the City Manager to execute and administer a Cooperative Agreement annually for water conservation purposes with the Santa Clara Valley Water District.

9. APPROVE AGREEMENT FOR UNIFORM SERVICES FOR UTILITIES AND MAINTENANCE STAFF

Recommendation:

Approve and authorize the City Manager to execute a three-year service agreement for a total of \$66,000 with Prudential Overall Supply.

10. AWARD OF TRAFFIC SIGNING AND STRIPING MAINTENANCE SERVICE AGREEMENT

Recommendation:

1. Award a three-year contract to Chrisp Company in the amount of \$225,000; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Chrisp Company.

11. AWARD JANITORIAL SERVICE CONTRACT

Recommendation:

1. Award a two-year contract to Firato Service Company, Inc. in the amount of \$880,859; and
2. Authorize the City Manager to execute and administer the Service Agreement with Firato Service Company, Inc.

12. APPROVE REHABILITATION OF THE 330 CREEKWOOD COURT BELOW MARKET RATE (BMR) HOME BY THE CITY HOUSING FUND

Recommendation:

1. Authorize rehabilitation of the Moderate, Below Market Rate (BMR) home located at 330 Creekwood Court to re-sell to an income-eligible buyer, preserving the unit within the City's affordable housing inventory at 120% of the Area Median Income and extending the affordability covenants; and
2. Adopt resolution to amend the City's Fiscal Year 2017-18 budget, appropriating \$74,851.43 from the Housing Fund (255) for short term expenses associated with the rehabilitation of the home located at 330 Creekwood Court, to be recovered at the time of resale of the property.

13. AUTHORIZE WRITE-OFF OF UNCOLLECTIBLE HOUSING REHABILITATION LOAN IN ACCORDANCE WITH THE WRITE-OFF POLICY

Recommendation:

Authorize write-off of uncollectible housing loan in the amount of \$38,725, in accordance with the write-off policy.

14. REPORT ON CURRENT OPERATIONS AT SKATEBOARD/BMX PARK

Recommendation:

Receive update on current operations at Skateboard/BMX Park.

15. ANNUAL EVALUATION REPORTS FOR THE SANTA CLARA COUNTY MULTI-JURISDICTIONAL PROGRAM FOR PUBLIC INFORMATION (PPI)

Recommendation:

Accept the Annual Evaluation Reports for FY 2015-16 (Year 1) and FY 2016-17 (Year 2) of the 2015 Santa Clara County Multi-Jurisdictional Program for Public Information (PPI).

16. ITEM PULLED FOR DISCUSSION**17. ADOPT ORDINANCE APPROVING A COMPREHENSIVE UPDATE OF TITLE 18 – ZONING OF THE CITY OF MORGAN HILL MUNICIPAL CODE INCLUDING AN AMENDMENT TO THE CITY'S OFFICIAL ZONING MAP CONSISTENT WITH THE MORGAN HILL 2035 GENERAL PLAN (FILE NO. ZA2016-0006: ZONING CODE UPDATE)**

Recommendation:

Waive the reading, adopt Ordinance No. 2277, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

18. APPROVE THE MAY 16, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

19. APPROVE THE MAY 18, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION**16. CALL FOR A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018**

Recommendation:

1. Adopt resolution calling for a General Municipal Election to be held on Tuesday, November 6, 2018 to elect a Mayor; one Council Member from District B; and one Council Member from District D; and
2. Adopt resolution requesting the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters Office - and the Consolidation of the Election.

The public comment was opened at 7:24 p.m.

Doug Muirhead 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:	Caitlin Jachimowicz, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Carr, Jachimowicz, Spring
ABSENT:	Constantine

PUBLIC HEARING

Minutes Acceptance: Minutes of Jun 6, 2018 6:00 PM (CONSENT CALENDAR)

**20. CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1
RESOLUTION ORDERING ANNUAL ASSESSMENTS AND RELATED ACTIONS**

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year 18/19 annual assessments and ordering the levy of assessments for the District.

Interim Deputy City Manager Chris Ghione provided the report.

The public comment was opened at 7:27 p.m.

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

MOTION:

Approving the recommended action.

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

**21. PUBLIC HEARING TO ADOPT THE FISCAL YEAR (FY) 2018-19 AND 2019-20
OPERATING BUDGET, FY 2018-19 THROUGH 2023-24 CAPITAL IMPROVEMENT
BUDGET, FY 2018-19 APPROPRIATIONS LIMIT, AND APPROVE A FIVE-YEAR
AGREEMENT WITH CAL FIRE**

Recommendation:

1. Open/Close Public Hearing;
2. Adopt resolution to:
 - a. Adopt the FY 2018-19 and 2019-20 Operating Budget;
 - b. Adopt the FY 2018-19 through 2023-24 Capital Improvement Program Budget;
 - c. Adopt the FY 2018-19 Appropriations Limit and Appropriations Limit Adjustment Factors;
3. Adopt resolution authorizing the City Manager to enter into a five-year agreement with the California Department of Forestry and Fire Protection (CAL FIRE) to provide fire and emergency medical response services effective July 1, 2018 through June 30, 2023; and
4. Adopt the Management, Professional, and Confidential Employees resolution and corresponding salary schedules effective July 1, 2018.

City Manager Christina Turner, along with Assistant City Manager Cindy Murphy, Finance Director Dat Nguyen, and Budget Manager Monica Delgado provided the report.

The public comment was opened at 7:56 p.m. The following people were called to speak:

Charles Weston and Heidi Golden

Margo Hinnenkamp

Kathy Sullivan

John McKay

Brian Sullivan

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

MOTION:

Directing the City Manager to negotiate an agreement with the Grange spending up to \$25,000 for the installation of an air conditioning system and negotiate a facility use agreement for City use of the Grange Hall.

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

MOTION:

Approving the recommended actions and include additional funding for the Grange.

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

CLOSED SESSION

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced the closed session item.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 8:31 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session 8:31 p.m.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

RECONVENE

The meeting reconvened at 9:17 p.m.

City Attorney Donald Larkin announced that there was no reportable action from the closed session.

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

The meeting was adjourned at 9:17 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

APPEAL (AAE2018-0006 AND AAE2018-0008) OF PLANNING COMMISSION'S DISTRIBUTION OF RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) BUILDING ALLOTMENTS FOR RDSCS2017-0013: COCHRANE – MWEST PROP CO AND RDSCS2017-0014: MONTEREY/CENTRAL-ECA FOR FISCAL YEAR 2019/20

RECOMMENDATION(S)

1. Grant a hearing de novo;
2. Open/close public hearing; and,
3. Adopt a Resolution denying the appeals and reaffirming the distribution of the Residential Development Control System (RDSCS) Building Allotments for Fiscal Year 2019/20.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Two of the applicants in this year's RDSCS competition, RDSCS2017-0013: Cochrane-MWest and RDSCS2017-0014: Monterey/Central-ECA, are appealing the final award (distribution) of building allotments as issued by the Planning Commission on May 22, 2018, using the appeal process set forth in Chapter 18.64 of the Morgan Hill Municipal Code. All decisions of the Planning Commission may be appealed to the City Council. The appellants submitted their appeal requests within the ten-day appeal period set forth in Chapter 18.64.

Planning Commission Action

The Planning Commission approved Resolution No. 18-13 (Attachment 2) at the May 22, 2018 meeting, awarding residential building allotments for Fiscal Year 2019/20 pursuant to the noted distribution amongst RDSCS applicants. As part of the award process, the Planning Commission awarded a specific number of building allotments to each of the competing projects, as authorized by City Council Resolution No. 17-066 (Attachment 3) and Section 18.78.120 (RDSCS procedures) of the Morgan Hill Municipal Code. For the Fiscal Year 2019/20 competition, 195 building allotments were distributed

among seven projects.

The Appeals

The two projects for which the City received appeals (RDSCS2017-0013: Cochrane-MWest and RDSCS2017-0014: Monterey/Central-ECA) are each discussed separately in the following analysis.

1. **RDSCS2017-0013: COCHRANE – MWEST PROP CO.**

Final Score: 179

Request: 379 Allotments (5-year request)

Build-out: 389 units

MWest has competed in the RDSCS process for three consecutive years. The first year, the project did not receive a qualifying score, and the subsequent two years the project was amongst the highest scoring projects. The project has received a total award of 81 building allotments. The project has not obtained the required discretionary entitlements or a Development Agreement for the first 10 allotments awarded for FY 2018/19. The project has a “commencement of construction” deadline for the first 10 allotments of June 30, 2019.

The appellant, MWest Propco XXIII LLC, has filed an appeal of the Planning Commission building allotment award because it did not include a multi-year award. The appellant is requesting the City Council award multi-year allotments (5-years) to complete the project. The appellant’s initial letter of justification is provided as Attachment 4 to this report. Late on June 14 the appellant provided a supplemental letter (Attachment 5), which includes additional justification and incentives for the approval of multi-year allotments. Because this proposal was received shortly before publication of this report, staff will perform additional analysis and provide a supplement early next week.

a. Regional Housing Needs Allocation (RHNA) and RDSCS Program

As part of their deliberations, the Planning Commission thought it was important to understand and consider the impacts of new and pending legislation and the potential punitive consequences of not meeting the RHNA and pending Senate Bill (SB) 828 (in committee) which could drastically increase RHNA quotas. Possible consequences considered included:

- a. Subject to HCD audit;
- b. Report to Attorney General for under production;
- c. Forced to go on a 4-year reporting cycle (currently 8-year cycle);
- d. Exposure to being sued by housing advocates for not meeting housing quotas;
- e. Unbuilt quotas are rolled over to the next cycle. At present quotas are reset for each 8-year cycle. As housing quotas compound, the City could get into a quota debt;
- f. The City could be required to plan for 125 percent of quotas and forced to re-

- zone more land to meet the quota, assuming that land is available; and
- g. May be ineligible to participate in specific funding programs.

As explained in the appellant's letter and in the presentation to the Planning Commission at the May 8, 2018 meeting, Senate Bill (SB) 35 (enacted in January) promotes the development of affordable housing, while removing local control. It allows developers with qualifying developments (paying prevailing wages) to submit plans that bypass important City processes:

- a. No environmental review
- b. No local review
- c. No Planning Commission/City Council approval required

The City can only apply objective criteria to an SB 35 project. The RDCS requirements are considered objective criteria. The appellant states that the City's annual cap under Measure S of 215 units would have no impact on a project's ability to move forward and therefore granting a multi-year award would not hinder an affordable project. The basis of this argument is that an affordable housing project with at least a 50% affordable commitment are not currently subject to the annual cap under Measure S. Such projects can proceed independently of the RDCS under SB 35 because the City is out of compliance with State Law. This statement is only true if the City were to award all future allotments and an SB 35 or Housing Accountability Act project were to be submitted and allotments were not available. It also presumes that all affordable housing projects that come forward would qualify for either SB 35 or the Housing Accountability Act. Further, the intent is clear that the City is to account for affordable housing when establishing competition categories to ensure that an adequate number of allotments are available consistent with RHNA and the adopted Housing Element pursuant to Morgan Hill Municipal Code Section 18.78.090. RDCS does not contemplate that affordable housing would be built in addition to the number of allotments, but rather it is likely that future annual reductions to available allotments would be made pursuant to 18.78.110B to maintain the purpose of RDCS and the City's goal to maintain a population cap and meter the pace of development.

The following tables demonstrate the allotment capacity with a five-year award based on current RDCS Competition Manual provisions, staff's alternative distribution presented to the Planning Commission and the appellant's proposed distribution. These proposals assume a maximum availability of 195 building allotments.

Table 1: RDCS Building Allotment Multi-Year Projection (Staff)

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (E. Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane-MWest	71	77	77	77	77

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Downtown*	N/A	48*	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	202	154	141	141
Available for Future	0	0	41	54	54

Table 2: RDCS Building Allotment Multi-Year Projection (Appellant)

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (E. Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane-MWest	71	45	45	109	109
Downtown*	N/A	48*	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	170	122	173	173
Available for Future	0	25	73	22	22

*Downtown exempt units can be deducted from future years and not from one single year; however, for demonstration purposes the deduction is shown in a single year.

The City Council and Planning Commission have expressed the desire to retain local control and maintain the RDCS program. To do this, future allotments need to be preserved for projects where their affordability is certain, deed restricted and metered through the RDCS program, where possible.

The City's Housing Division has been working with several affordable housing developers in the recent months and there are several projects on the horizon, which include the following:

Table 3: Potential Affordable Housing Projects

Developer	Site Location	Zoning	General Plan	Units
EAH	Monterey Road	MU-F	Mixed Use Flex	60 moderates
TBD (City owned)	Butterfield Blvd./Railroad	ML	Industrial	40 VLI (farmworker)
MidPen Housing	Monterey Road	MU-F	Mixed Use Flex	26 ELI 26 Low 26 Moderates
Confidential	Monterey Road	MU-F	Mixed Use Flex	40 VLI

Staff has looked at the zoning and General Plan designations of each site being considered and has determined that the sites would not qualify for streamlining pursuant to SB 35. These developers want to work within the City's RDCS framework, which would require residential building allotments to be available within the program. It may be possible, although not preferred, that some of the sites could develop using the Housing Accountability Act if RDCS allotments are not available.

As demonstrated in the Table 1, if a multi-year award is granted, the City would be unable to produce the additional 193 very low income (VLI) units through the RDCS program that are needed to meet the RHNA as described below.

Following the Planning Commission hearing, staff reviewed the information presented by the appellant and updated the City's currently unmet Regional Housing Needs Allocation (RHNA). It was determined that the City had not accounted for several units that may likely be moderate income rated (unrestricted) that can be reported to the California Department of Housing and Community Development (HCD) and the City can receive credit for them once a rental survey is complete. These moderate units may be provided by the following projects:

1. Monterey-Dynasty (Diamond Creek): The project consists of 100 multi-family rental units (35 units reported to HCD in 2015, 4 reported to HCD in 2017, and 61 reported to HCD in 2018). Based on a recent rent survey provided by the Diamond Creek Property Management, the rents being charged range from \$1,800 to \$3,408 and are within the moderate rental range. Traditional market rate projects have historically been placed in the above moderate category, the same way secondary dwelling units have. These will be corrected and placed in the moderate category after a third-party rental survey has been conducted by Keyser Marston and Associates (KMA) confirming the rents are actually moderate.
2. Condit-Evergreen: The project consists of 182 multi-family rental units. Permits have not been issued at this time; however, it is anticipated that the rents for these units will be within the moderate-income category. This will be verified by a third-party (KMA). Upon verification, these units will be included in the 2020 or 2021 HCD annual reporting period, well within our current housing element cycle.
3. Sunsweet: The project consists of 83 multi-family rental units. It is anticipated that the rents for these units will be within the moderate-income category based on the recent projected rental rates provided by the developers. This will be verified by KMA prior to reporting to HCD in the annual report.

Once KMA completes a rent survey and determines that all the new rental units are natural moderate-income units (unrestricted), based on current HCD rules, the City will receive credit for the new housing units. Based on this new information, the City's affordable goals will consist of a surplus of 256 moderate units and 59 low income units. The surplus of moderate units may change as KMA completes the rent survey. Only

units whose permits have been issued would be reflected in the annual reporting period. The City is required to produce 193 Very Low Income (VLI) units during the current RHNA cycle to meet the required unmet goal. This requirement has not changed.

b. Below Market Rate Unit Public Benefit Commitment

Within the RDCS Affordable Housing criteria, the project committed to providing 31 deed-restricted Below Market Rate (BMR) low income units as a public benefit commitment to the City. Because the City has met the need for low income units, these units would be considered a surplus in the low-income category in the annual report to the HCD. Recognizing this, during the Planning Commission public hearing the appellant offered to contribute an in-lieu fee for the 31 BMR low income units rather than construct the units to assist with meeting the City's affordable housing need. In addition, the appellant explained that by design, the MWest project would be providing moderate housing that would help reach the RHNA goals.

Staff does recognize that by design, the project may be providing moderate housing. However, there is no certainty that the units will be initially offered to moderate income individuals or remain at moderate levels. Providing moderate units within the project is a voluntary commitment not a requirement of the RDCS program or another inclusionary requirement.

For the City to have certainty that BMR units remain for a set period of time, the City requires that BMR units be deed restricted, as specified in the City's Housing Element:

Housing Element Policy HE-1tt: BMR Deed Restrictions. Continue to require the recordation of deed restrictions for all affordable units except as secondary dwelling units.

State law does not require moderate rental units to be deed restricted to count towards the City's affordable housing goals; however, state laws are continuing to evolve and change. As stated previously, the City has met the goal for moderate (unrestricted) units for this reporting period. It is possible that the State will require that moderate units be restricted to be counted in future reporting cycles and the City will be requiring deed restrictions for all BMR units within the City's program consistent with the General Plan.

c. Findings for Multi-year Allotments

Section 18.78.140 of the Morgan Hill Municipal Code and the RDCS Competition Manual have incorporated provisions that allow the distribution of allotments to a single project over multiple years. A multi-year allotment may only be awarded upon making the following findings as listed in Section 18.78.140.E:

1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
2. The multi-year allotments will help the City to plan for adequate public services

and infrastructure to accommodate new development;

3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

In awarding multi-year allotments, the City must ensure that a sufficient number of allotments are available each year for non-multi-year allotted projects, in addition to affordable allotments, to allow for a yearly competition.

The City must also find that there will be an adequate number in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

Based on the analysis provided and demonstrated in Tables 1, 2 and 3, with a multi-year award there would not be an adequate number of allotments into future years to produce the City's required housing units to reach the RHNA goals within the RDCS program.

The project was awarded 71 building allotments for FY 2019/20; however, it was determined that the findings required to award multi-year status to the project pursuant to Morgan Hill Municipal Code Section 18.78.140 could not be made.

2. **RDCS2017-0014: MONTEREY/CENTRAL – ECA**

Final Score: 169

Request: 12 Allotments

Build-out: 12

The appellant, ECA Partners LLC, has filed an appeal of the Planning Commission decision to not award the project RDCS allotments, as the project was the lowest scoring project within the competition. The appellant is requesting the City Council reconsider their RDCS application and award the project RDCS allotments. The appellant's letter of justification has been provided (Attachment 6).

a. Project History

In 2013, the appellant competed in the RDCS and was awarded a two-year award for seven allotments in FY 2015/16 and seven allotments in FY 2016/17. The project did not complete the required discretionary entitlements, as required by the Development Agreement schedule, and did not "commence construction" by the deadline of June 30, 2017 and the allotments expired.

The Tentative Map was approved on June 14, 2016. Final map and improvement plans were submitted to Public Works on December 15, 2016, with comments on the map and improvement plans provided to the project engineer on April 11, 2017. The project engineer has not responded to those plan check comments.

A Site Review application was filed on July 24, 2015. The application was dormant for 15-months. Revised Site Review plans were submitted to the City on February 2, 2017, architecture plans on March 30, 2017 and landscape plans on April 12, 2017. The Site Review was never completed for this project. Master building plans have not been submitted to the Building Division.

The appellant states in their letter of justification that the project is nearly completed and ready for construction. The appellant further states that the final map and project improvement plans are complete and have been reviewed by Public Works. This is not accurate. There has been no activity with the project since the last RDCS extension was denied and the project failed to commence construction by the June 30, 2017 deadline.

b. RDCS Project Review

Public hearings were held on March 13 and 27, 2018 to allow the Planning Commission to consider the scoring recommendation and to make a final determination of project scoring. This was the opportunity for the applicant to request changes to project scores. Because this was the lowest scoring project that qualified for allotments, it was important for the applicant to participate in the scoring and evaluation process. The applicant did not request any changes to the staff recommended scoring of the project nor did the applicant request any changes during the public hearing process.

During the public hearing process for allotments, the appellant requested an award for the project explaining that it was a previous Measure C project and should receive an award. The Planning Commission considered the request but did not want to alter the proposed distribution of allotments. The Planning Commission asked the appellant if he was willing to relinquish allotments proposed for RDCS2017-0015 Diana-Hanalei for this request (appellant's other project). The Diana-Hanalei project was proposed to receive 23 allotments in the competition. The appellant declined splitting the allotments between the projects.

The project did receive a qualifying score to receive building allotments, however, it was the lowest scoring project within the competition. The project design and score should be improved to better align with the General Plan goals and requirements of the RDCS Competition Manual. Staff recommends that an award should not be granted, consistent with the Planning Commission findings.

Conclusion

The appellant for **RDCS2017-0013: Cochrane-MWest** is requesting that the City Council provide a five-year RDCS building allotment award for full building out of the project. The appellant for **RDCS2017-000014: Monterey/Central-ECA** is requesting that the City Council reconsider the application and provide an RDCS building allotment award to the project. As discussed, facts have not been provided to adequately support these requests. For the reasons set forth above, it is recommended that the City Council adopt a resolution denying the appeals.

The City received a supplemental letter (Attachment 5) from the appellant, MWest Propco XXIII LLC, proposing to modify their affordable housing public benefit commitment by providing 20 percent very-low income units within their project contingent upon:

1. The City's commitment to cooperate with Divco to apply for and secure "20-50" bond financing.
2. The Project qualifying for Federal and State "20-50" bond financing and tax credits.
3. The City's commitment to allow Divco to proceed immediately with Design Review and all other entitlements, to secure building permits for all 389 units, to construct the project in one continuous phase, and to occupy the units when completed. Depending on the financing requirements, the building permits may all need to be pulled at one time or may be broken down by building for the vertical construction.

Because this proposal was submitted the evening of June 14, 2018, staff will need additional time to analyze the new information. A supplemental report will be provided to the City Council early next week.

COMMUNITY ENGAGEMENT: Involve

The Planning Commission awarded building allotments at its meeting on May 22, 2018. A notice of the appeal hearing was mailed to the property owners within 300 feet of the subject properties and published in the Morgan Hill Times and San Jose Mercury News. In addition, all developers taking part in the RDCS competition were notified of the pending appeals.

ALTERNATIVE ACTIONS:

The Council could decide to grant the appeal to **RDCS2017-0013: Cochrane-MWest** and award a multi-year award thereby reducing the maximum available building allotments for future competitions.

The Council could decide to grant the appeal to **RDCS2017-000014: Monterey/Central-ECA** and award a full or partial request thereby reducing the maximum available building allotments for **RDCS2017-0015 Diana-Hanalei**. This alteration in RDCS distribution would only impact the appellant's RDCS projects. There would be no impact to other RDCS applicants.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission awarded building allotments on May 22, 2018. The staff report and allotment distribution for FY2019/20 has been provided (Attachment 7).

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the RDCS, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074). The City of Morgan Hill must conduct environmental analysis before a project is approved. Award of allotments is not considered approval of a project, but rather authorizes an applicant to apply for entitlements. Environmental analysis shall be completed and considered by the appropriate decision-making body prior to granting of any entitlements, including but not limited to a tentative subdivision map, design review, a Development Agreement, or a building or grading permit.

LINKS/ATTACHMENTS:

1. Resolution to Deny Appeal
2. PC Res. No. 18-13
3. City Council Reso. 17-066
4. MWest Letter of Justification
5. DivcoWest SVI City Council Supplemental RDCS Appeal Letter 6.14.18v2
6. Monterey-Central-ECA Letter of Justification
7. PC Staff Report (web link)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEALS SUBMITTED BY MWEST PROPCO XXIII LLC FOR RDCS2017-0013: COCHRANE-MWEST AND BY ECA PARTNERS LLC FOR RDCS20017-0014: MONTEREY/CENTRAL-ECA AND REAFFIRMING THE DISTRIBUTION OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM BUILDING ALLOTMENTS FOR FISCAL YEAR 2019/2020

WHEREAS, the people of the City of Morgan Hill approved and enacted by initiative measure that certain Residential Development Control System codified at Chapter 18.78 (Residential Development Control System) of Title 18 (Zoning) of the Morgan Hill Municipal Code (the "RDCS"); and

WHEREAS, the City Council determined that the Planning Commission may award RDCS residential building allotments based on scoring of projects using the criteria established within the RDCS Competition Manual and as deemed necessary to respond to changes in the housing market (such as changes in the build-out rate for existing projects, lack of applications in set-aside categories, and increased demand for particular housing types, etc.); and

WHEREAS, building allotment requests pursuant to the RDCS were made for Fiscal Year 2019/20 and such requests were considered by the Planning Commission at its regular meeting of May 22, 2018, at which time said Planning Commission distributed the RDCS building allotments in accordance with City Council Resolution No. 17-066; and

WHEREAS, two certain applicants, MWest Propco XXIII LLC for RDCS2017-0013: Cochrane-MWest and ECA Partners LLC for RDCS20017-0014: Monterey/Central-ECA, filed an appeal of the Planning Commission's decision on their respective applications to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code (RDCS2017-0013 and RDCS2017-0014 are collectively referred to as the "Applications"); and

WHEREAS, at the time and place noticed for a hearing on these appeals, the City Council of the City of Morgan Hill conducted a *de novo* appeal hearing on the Applications, provided all interested persons an opportunity to be heard, and received, reviewed and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THESE APPEALS AT THE PUBLIC HEARING CONDUCTED FOR THESE APPEALS, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Following are the relevant facts in connection with Application RDCS2017-0013:

- A. On January 4, 2018, City received an RDCS Application for 379 residential building allotments on undeveloped property located at Jarvis Drive and Monterey Road;
- B. The project was amongst the highest scoring projects within the 2017 RDCS competition; and,
- C. At their meeting of May 22, 2018, the Planning Commission awarded the project through the 2017 RDCS competition, 71 FY 2019/20 building allotments.

- D. The Planning Commission did not award multi-year status to the project because the Commission could not make the findings required pursuant to Morgan Hill Municipal Code Section 18.78.140 as a result of the dynamic environment with the State changing the rules with respect to affordable housing and based on the following:
1. It is unknown what the State rules with respect to building affordable housing will be in years to come;
 2. The action taken by the Commission is based on what is before it at the time of application submittal;
 3. The Commission desires to protect the RDCS initiative in future years, to be fair to the development community, but remain as flexible as possible to provide for a competition in future years; and
 4. Fulfill its duties as a Planning Commission as the body awarding the allotments so as to allow the City to meet its Regional Housing Needs Allocation (RHNA) numbers in the future.

SECTION 2. Following are the relevant facts in connection with Application RDCS2017-0014:

- A. On January 4, 2017, City received an RDCS Application for 12 residential building allotments on the real property located at Monterey Road and Central Avenue;
- B. The Planning Commission has determined that although the project received a qualifying score to receive RDCS residential allotments, it is the lowest scoring project within the RDCS competition and the project design and score should be improved to better align with the General Plan goals and requirements of the RDCS Competition Manual.

SECTION 3. Based upon the above facts, the City Council finds as follows:

- A. An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the RDCS, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074). The City of Morgan Hill must conduct environmental analysis before a project is approved. Award of allotments is not considered approval of a project, but rather authorizes an applicant to apply for entitlements. Environmental analysis shall be completed and considered by the appropriate decision-making body prior to granting of any entitlements, including but not limited to a tentative subdivision map, design review, a Development Agreement, or a building or grading permit; and
- B. The facts set forth above are true and correct and new facts have not been provided to the City Council through the public hearing(s) conducted on the appeals related to the Applications that negate or materially alter the relevant facts set forth above or that would otherwise support a determination that the appeals should be granted, such that the City Council finds that:
 1. The MWest Propco XXIII LLC (RDCS2017-0013: Cochrane-MWest) received 71 allotments which is an equitable distribution of allotments for the 2017 RDCS Competition.

2. The ECA Partners LLC project (RDSCS20017-0014: Monterey/Central-ECA) was the lowest scoring project and is not entitled to building allotments.

SECTION 4. Based upon the above facts and findings the City Council determines as follows:

- A. The distribution of allotments granted by the Planning Commission on May 22, 2018 were made consistent with City Council Resolution 17-066 and Morgan Hill Municipal Code Section 18.78.120. Therefore, the appeals submitted regarding the RDSCS Building Allotments for Fiscal Year 2019/20 should not be approved.
- B. The Planning Commission distribution of allotments as set forth in Planning Commission Resolution No. 18-13, attached hereto as Exhibit A and incorporated herein by this reference, is hereby reaffirmed and approved.

SECTION 5. For the reasons set forth above, the appeals are **DENIED**.

**PASSED AND ADOPTED THIS ____ DAY OF _____, 2018 AT A
REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:**

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on _____, 201__.

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

DATE: _____

Attachment: Resolution to Deny Appeal (1808 : RDSCS Appeal)

EXHIBIT A

RESOLUTION NO. 18-13

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING BUILDING
ALLOTMENTS FOR THE RESIDENTIAL
DEVELOPMENT CONTROL SYSTEM (RDCS)
OPEN/MARKET COMPETITION FOR FISCAL YEAR
2019/2020**

WHEREAS, the Planning Commission has received six project applications requesting residential building allotments pursuant to Chapter 18.78 (Residential Development Control System) of the Morgan Hill Municipal Code; and

WHEREAS, each residential project has been evaluated according to a specific set of standards and criteria established in the RDCS Competition Manual; and

WHEREAS, RDCS2017-0016 Watsonville-Blackrock did not receive a qualifying RDCS score to be eligible to receive RDCS residential building allotments; and

WHEREAS, the City Council has determined that the Planning Commission may award RDCS residential building allotments based on scoring of projects using the criteria established within the RDCS Competition Manual and as deemed necessary to respond to changes in the housing market (such as changes in the build-out rate for existing projects, lack of applications in set-aside categories, and increased demand for particular housing types, etc.); and

WHEREAS, the Planning Commission has determined that although RDCS2017-0014 Monterey/Central-ECA has received a qualifying score to receive RDCS residential allotments, it is the lowest scoring project within the RDCS competition and the project design and score should be improved to better align with the General Plan goals and requirements of the RDCS Competition Manual; and,

WHEREAS, testimony received at duly-noticed public hearings, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, on May 22, 2018, the Planning Commission did duly adopt a Resolution approving the distribution for Residential Development Control System building allotments for Fiscal Year 2019/2020; and

NOW, THEREFORE, BE IT RESOLVED BY THE MORGAN HILL PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to City Council Resolution No. 17-066, the Planning Commission may adjust the distribution of allotments, which have been adjusted as follows:

Attachment: Resolution to Deny Appeal (1808 : RDCS Appeal)

Fiscal Year 2019/2020

Competition Category	Allotment
Affordable Housing	39
Micro	0
Small	0
Multi-Family Rental	0
Open/Market	136
Senior Housing	0
Monterey Corridor	0
Custom Lots	0
On-Going	59
Unassigned	97
Total	195

SECTION 2: The basis and the findings are set forth in the staff report of the Planning Commission meeting dated May 22, 2018 which were duly considered by the Commission and are hereby adopted. Pursuant to the Residential Development Control System, the award and distribution of residential building allotments for the 2017 RDCS Competition shall be as follows:

Fiscal Year 2019/2020

Project	Allotment Award
On-Going	
RDCS2016-0014 Laurel-DeRose	20
RDCS2016-0015 Cochrane-Borello	25
RDCS2016-0018 Condit- Presidio Evergreen	14
Open/Market Competitors	
RDCS2017-0012 E. Dunne-Young	20
RDCS2017-0013 Cochrane-MWest	71
RDCS2017-0015 Diana-Hanalei	23
RDCS2017-0017 Hill-Morgan Hill Devco	22
Total	195

SECTION 3: The Planning Commission did not award multi-year status to RDCS2017-0012: E. DUNNE – YOUNG ET AL or RDCS2017-0013: COCHRANE – MWEST PROP CO. because the Commission could not make the findings required pursuant to Morgan Hill Municipal Code Section 18.78.140 as a result of the dynamic environment with the State changing the rules with respect to affordable housing and based on the following: it is unknown what the State rules with respect to building affordable housing will be in years to come; the action taken by the Commission on this date is based on what is before it at the time of application submittal; the Commission desires to protect the RDCS initiative in future years, to be fair to the development committee, but remain as flexible as possible to provide for a competition in future years; and

Resolution No. 18-13
Page - 3 -

to fulfill its duties as a Planning Commission as the body awarding the allotments so as to allow the City to meet its Regional Housing Needs Allocation (RHNA) numbers in the future.

PASSED AND ADOPTED THIS 22nd DAY OF MAY, 2018, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

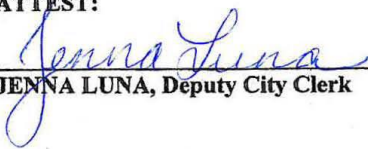
**AYES: COMMISSIONERS: MCKAY, DOWNEY, MUELLER, MARTINEZ
BELTRAN, MUNOZ MORRIS**

NOES: COMMISSIONERS: NONE

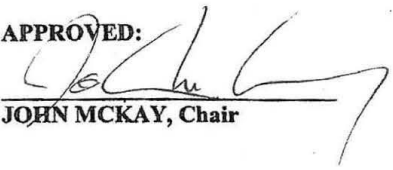
ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: TANDA, HABIB

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


JOHN MCKAY, Chair

Attachment: Resolution to Deny Appeal (1808 : RDCS Appeal)

RESOLUTION NO. 18-13

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING BUILDING
ALLOTMENTS FOR THE RESIDENTIAL
DEVELOPMENT CONTROL SYSTEM (RDSCS)
OPEN/MARKET COMPETITION FOR FISCAL YEAR
2019/2020**

WHEREAS, the Planning Commission has received six project applications requesting residential building allotments pursuant to Chapter 18.78 (Residential Development Control System) of the Morgan Hill Municipal Code; and

WHEREAS, each residential project has been evaluated according to a specific set of standards and criteria established in the RDSCS Competition Manual; and

WHEREAS, RDSCS2017-0016 Watsonville-Blackrock did not receive a qualifying RDSCS score to be eligible to receive RDSCS residential building allotments; and

WHEREAS, the City Council has determined that the Planning Commission may award RDSCS residential building allotments based on scoring of projects using the criteria established within the RDSCS Competition Manual and as deemed necessary to respond to changes in the housing market (such as changes in the build-out rate for existing projects, lack of applications in set-aside categories, and increased demand for particular housing types, etc.); and

WHEREAS, the Planning Commission has determined that although RDSCS2017-0014 Monterey/Central-ECA has received a qualifying score to receive RDSCS residential allotments, it is the lowest scoring project within the RDSCS competition and the project design and score should be improved to better align with the General Plan goals and requirements of the RDSCS Competition Manual; and,

WHEREAS, testimony received at duly-noticed public hearings, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, on May 22, 2018, the Planning Commission did duly adopt a Resolution approving the distribution for Residential Development Control System building allotments for Fiscal Year 2019/2020; and

NOW, THEREFORE, BE IT RESOLVED BY THE MORGAN HILL PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to City Council Resolution No. 17-066, the Planning Commission may adjust the distribution of allotments, which have been adjusted as follows:

Attachment: PC Res. No. 18-13 (1808 : RDSCS Appeal)

Fiscal Year 2019/2020

Competition Category	Allotment
Affordable Housing	39
Micro	0
Small	0
Multi-Family Rental	0
Open/Market	136
Senior Housing	0
Monterey Corridor	0
Custom Lots	0
On-Going	59
Unassigned	97
Total	195

SECTION 2: The basis and the findings are set forth in the staff report of the Planning Commission meeting dated May 22, 2018 which were duly considered by the Commission and are hereby adopted. Pursuant to the Residential Development Control System, the award and distribution of residential building allotments for the 2017 RDCS Competition shall be as follows:

Fiscal Year 2019/2020

Project	Allotment Award
On-Going	
RDCS2016-0014 Laurel-DeRose	20
RDCS2016-0015 Cochrane-Borello	25
RDCS2016-0018 Condit- Presidio Evergreen	14
Open/Market Competitors	
RDCS2017-0012 E. Dunne-Young	20
RDCS2017-0013 Cochrane-MWest	71
RDCS2017-0015 Diana-Hanalei	23
RDCS2017-0017 Hill-Morgan Hill Devco	22
Total	195

SECTION 3: The Planning Commission did not award multi-year status to RDCS2017-0012: E. DUNNE – YOUNG ET AL or RDCS2017-0013: COCHRANE – MWEST PROP CO. because the Commission could not make the findings required pursuant to Morgan Hill Municipal Code Section 18.78.140 as a result of the dynamic environment with the State changing the rules with respect to affordable housing and based on the following: it is unknown what the State rules with respect to building affordable housing will be in years to come; the action taken by the Commission on this date is based on what is before it at the time of application submittal; the Commission desires to protect the RDCS initiative in future years, to be fair to the development committee, but remain as flexible as possible to provide for a competition in future years; and

Resolution No. 18-13

Page - 3 -

to fulfill its duties as a Planning Commission as the body awarding the allotments so as to allow the City to meet its Regional Housing Needs Allocation (RHNA) numbers in the future.

PASSED AND ADOPTED THIS 22nd DAY OF MAY, 2018, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

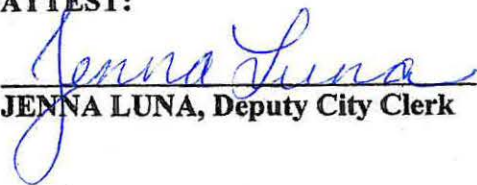
**AYES: COMMISSIONERS: MCKAY, DOWNEY, MUELLER, MARTINEZ
BELTRAN, MUNOZ MORRIS**

NOES: COMMISSIONERS: NONE

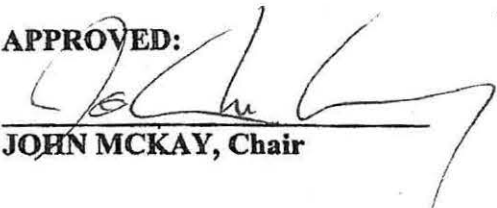
ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: TANDA, HABIB

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


JOHN MCKAY, Chair

Attachment: PC Res. No. 18-13 (1808 : RDCS Appeal)

RESOLUTION NO. 17-066**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING COMPETITION CATEGORIES FOR THE 2017 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION**

WHEREAS, on April 19, 2017, per Section 18.78.110 of the RDCS Ordinance, the City Council approved 195 Fiscal Year 2019/20 residential allotments for the 2017 RDCS Competition; and

WHEREAS, Section 18.78.090 of the RDCS Ordinance provides guidance regarding the establishment of RDCS Competition Categories and identification of the number of available allotments within each Category, including ensuring that an adequate number of allotments are available for affordable housing projects; and

WHEREAS, on May 24, 2017, the City Council supported Planning Commission's April 25, 2017 recommendation to set-aside 59 allotments for On-going Measure C transitional projects and supported a 20 percent set-aside (39 allotments) for affordable housing projects; and

WHEREAS, 97 allotments remain available for other types of residential projects and competition will be encouraged by leaving these allocations unassigned; and

WHEREAS, Measure S (Morgan Hill Municipal Code section 18.78.090) provides that projects within a competition category will compete for allotments only with other projects in the same competition category; and

WHEREAS, the City Council has reviewed recommendations contained in the June 13 and 27, 2017 Staff Reports and the recommendations of the Planning Commission, all as submitted to the City Council for consideration in connection with the adoption of this Resolution, together with any and all testimony and other evidence submitted to the City Council through the public hearing conducted by the Council on July 26, 2017 for this item, and has determined that the recommended distribution of building allotments contained herein is consistent with the General Plan and the City's Municipal Code requirements under Chapter 18.78 of the Morgan Hill Municipal Code; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL THAT:

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

SECTION 2. Pursuant to Section 18.78.090 of the Municipal Code, the City Council hereby approves:

A. A portion of the residential allotments shall be reserved for affordable, unassigned, and on-going competition categories as outlined in Exhibit "A" attached hereto and incorporated herein by this reference.

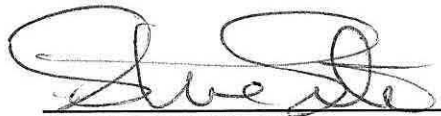
B. The Planning Commission shall award allotments based on scoring of projects using the criteria established in the RDCS Competition Manual and as deemed necessary to respond to changes in the housing market such as changes in the build-out rate for existing projects, lack of applications in competition categories, and increased demand for particular housing types, etc.

C. The RDCS Competition Manual, Section IV.E. Competition Categories and Ongoing Projects, shall be modified to reflect the competition categories and distribution of building allotments as set forth in Exhibit "A".

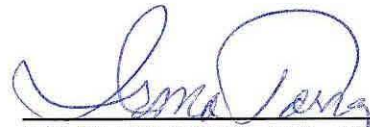
PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 26th day of July, 2017.

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

APPROVED:


 STEVE TATE, Mayor

ATTEST:


 IRMA TORREZ, City Clerk

☞ **CERTIFICATION** ☞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 17-066, adopted by the City Council at a regular meeting held on July 26, 2017.

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

DATE:

7/31/2017

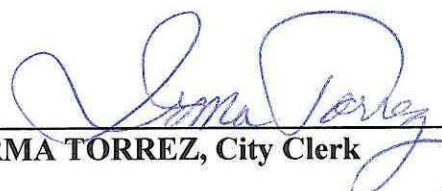

 IRMA TORREZ, City Clerk

EXHIBIT A
Fiscal Year 2019/20

<u>Competition Category</u>	<u>Allotments</u>
Affordable Housing	39
Micro	0
Small	0
Multi-family Rental	0
Open/Market	0
Senior Housing	0
Monterey Corridor	0
Custom Lots	0
On-going Projects	59
Unassigned	97
Total	195



June 4, 2018

VIA EMAIL (cityclerk@morganhill.ca.gov)

Mayor Steve Tate, and
Members of the Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA 95037

RE: DivcoWest SVI Appeal Letter: Request for RDCS Multi-Year Allotments for FY 2019 - 2024

Honorable Mayor Tate and City Councilmembers:

On behalf of DivcoWest Silicon Valley Investments (“Divco”), we are appealing the Planning Commission’s decision not to award multi-year allotments to the Divco project in the FY 2019/2020 RDCS competition. The proposed Project, known as Butterfield Village, is a 22.8-acre, 389-unit multi-family apartment community (APN 726-25-061, 066, 067, 078, 079) located at the southeasterly quadrant of Monterey Road and Jarvis Drive in Morgan Hill.

Butterfield Village offers a resort-style community of 389 apartments directly adjacent and within walking/biking distance to the City’s core job center. The Project is part of Divco’s larger 58-acre master plan that includes 550,000 SF of premier industrial space, a 3.2-acre public park, and the long-awaited extension of Sutter Road to Digital Drive. Our goal is to help the City attract and retain jobs by providing a highly-attractive alternative to costly homeownership in Morgan Hill.

This is our 3rd time through the competition; the Project received just 10 allotments last year, despite achieving the 2nd highest score (181 points). We are the only project required to compete under both Measure C and Measure S, which necessitated recalibrating the project to maximize points under the new system. We are also the only rental project in the competition. This year, the Project again received the second highest score (179 points), including 2 “Project Excellence Points”.

The Multi-Year Award is essential to the feasibility of MF rental projects under Measure S

One of the primary goals of Measure S was to make the competition more conducive to rental housing. Measure S gives the City the ability to grant up to 5 years of allotments, a critical policy change intended to provide projects with certainty by eliminating the need to compete year after year. One of the by-products of Measure C was that projects could only secure up to 2 years of allotments, and therefore most had to be constructed in phases. This is economically viable for subdivisions and townhomes, but the system didn’t make economic sense for apartment communities, which incur high front end costs and cannot be efficiently broken up into phases. Consequently, the vast majority of new housing in Morgan Hill over the past 25 years has been higher end, single-family homes, making the City an increasingly costly place to live and less attractive to prospective employers.

Divco is requesting 379 multi-year allotments over 5 years to achieve project buildout. Given how apartment communities of this scale are financed and constructed, the project is not feasible without the certainty of a full multi-year allotment. The Project needs significant upfront capital to fund grading, on-site and off-site infrastructure, a recreation/leasing center, swimming pool and other amenities, interior roads, and surface parking. Thus, the construction and lease-up of units is required as quickly as possible to provide for a return on investment capital and to amortize debt, which often doesn’t occur until the

Attachment: MWest Letter of Justification (1808 : RDCS Appeal)

project is completed, fully leased, and rents are stabilized. Starting and stopping construction would add millions of dollars to the overall project cost, and expose the Project to significant risks, including a shift in the market, declining rents, labor shortages, rising construction costs and interest rates, and other factors beyond the project's control. For example, construction costs for the Project have increased by approximately 20 percent just since 2016. Further, without a multi-year award, the Project would have to compete again next year, with no guarantee of receiving additional allotments. Since construction must start within 30 months of the award, the Project would risk losing the allotments already received. Neither investors nor lenders will provide capital or debt without assurances that building can proceed to completion unhindered.

Finally, dragging out the construction period is an imprudent strategy for the City; it would prolong the disturbance to neighbors and serve as a significant disincentive to other developers looking to invest in Morgan Hill. The City also risks losing the many community and fiscal benefits of the project, as well as the chance that the project could falter part-way through, leaving the City with an unfinished project and incomplete public and private infrastructure improvements.

Butterfield Village will help satisfy the City's Moderate Income RHNA Requirement

Morgan Hill is currently out of compliance with its Regional Housing Needs Allocation ("RHNA") requirements. According to the Planning Commission Staff Report dated May 22, 2018, the City is short 322 affordable units in the current 8-year Housing Element cycle which concludes in 2022. Of this total, approximately 128 units must be affordable to Moderate-Income households (80% to 120% of median), and the remaining 194 units must be affordable to Very Low-Income (VLI) households (50% of median). To get credit for producing units under new State housing law (SB 35), projects must receive building permits prior to the end of the cycle.

City Staff and the Planning Commission have recommended against awarding multi-year allotments this year. We respectfully submit that this recommendation is ill-advised. The stated rationale is that the City needs to reserve future allotments under the annual RDCS to accommodate RHNA compliant projects that meet its obligations by 2022. As explained in the attached letter from Holland & Knight LLP, this is a short-sighted approach that could have unintended consequences, such as halting perfectly good projects like Butterfield Village that would provide other types of needed housing in the City, and it also misconstrues how the new State housing law relates to and interacts with Morgan Hill's growth control ordinance (Measure S), as discussed further below.

Moreover, the Staff Report does not acknowledge that Butterfield Village will *help* the City meet its Moderate-Income RHNA numbers. Based on: (1) the 2017 Housing and Community Development (HCD) Rent and Income Limits for Santa Clara County, (2) current median market rents in Morgan Hill, and (3) Divco's projected rents, a sizeable portion of the units at Butterfield Village should qualify as Moderate-Income, which would substantially if not wholly reduce the City's overall RHNA deficit to just the 194 VLI units. At the May 22, 2018 Planning Commission hearing, Staff stated that they did not credit Butterfield Village for meeting the moderate RHNA requirement because the units are not proposed to be deed restricted. However, as explained in the attached letter from Holland & Knight, State law does not require moderate rental units to be deed restricted; therefore, HCD would indeed give the City credit for the moderate units produced by Butterfield Village. Although Staff said the City typically requires deed restrictions on moderate units through the RDCS process, this would be a voluntary commitment upon the part of the developer and is not needed for the City to get back into compliance with HCD.

Frankly, we are at a loss to understand Staff's logic here. The primary goal is to get Morgan Hill back into compliance with HCD in *both* the Very Low-Income and Moderate-Income categories. Butterfield Village is one of the first moderate rental projects in the City in virtually 30 years, and we received one of the highest scores in the competition for the past 2 years, including 2 "Project Excellence points." Denying the allotments the Project needs to move forward (the bird in the hand) - to reserve them for a

hypothetical qualifying future project - will hurt, not help, the City's case with HCD, and it will certainly not alleviate its vulnerabilities under SB 35.

In-Lieu Contribution to City's Affordable Housing Fund could help City meet VLI requirement

The RDCS Competition Narrative seeks to incentivize affordable housing production by awarding points for both inclusionary housing and the payment of BMR in-lieu fees. DivcoWest SVI elected to provide 8 percent of units (31) as inclusionary housing affordable to Low-Income households. The Staff Report, however, states that "Because the City has already reached the required quota for Low Income units, these units would not be included in this annual reporting period." (SR p. 2) Therefore, the City's priority is to produce the 194 VLI units.

Typically, VLI and ELI units are provided by affordable housing developers who rely on federal, state, county and local subsidies. If the City would prefer, instead of providing 31 inclusionary Low-Income units (for which the project received 20 points in the competition), Divco is willing to make an in-lieu payment to the City's Affordable Housing Fund in an amount equal to "110% of Baseline" (which would also qualify for 20 points) based on the City's current Baseline Fee per Square Foot of \$12.92. This contribution would generate approximately \$5.3 million in funding which would help the City provide critical gap financing to affordable developers seeking to build VLI/ELI units in the City. Further, the City might be able to leverage these funds to provide double or even triple the number of units provided through inclusionary housing. Rebecca Garcia, the City's Housing Manager, stated at the May 22, 2018 Planning Commission hearing that the City has only about \$1.5 million in funds currently available, which limits the amount of subsidy the City can offer any given project to about \$375,000. Therefore, an in-lieu fee contribution from the Divco project would generously replenish the City's Housing Fund and go a long way towards helping the City meet its RHNA targets for VLI.

The City Council can make the necessary findings to award Multi-Year Allotments

Under Section 18.78.140 of the Morgan Hill Municipal Code and the RDCS Competition Manual, the City may award multi-year allotments upon making certain findings.¹ The Staff Report states: "The multi-year requests would not provide for an adequate number of allotments into future years and would hinder the ability for additional affordable units to be constructed within the RDCS program. For these reasons, Staff does not believe all the required findings can be made and it is not recommended that the multi-year requests be granted." We believe the City Council can and should make these findings for the reasons described below.

The production of affordable units will not be hindered by the award of multi-year allotments

The City Council's approval of a multi-year award for Butterfield Village will not hinder the construction of affordable units, as affordable housing projects with at least a 50% affordable commitment are not currently subject to the annual cap under Measure S. Such projects can proceed independently of the RDCS under SB 35 because the City is out of compliance with State Law. Moreover, the Divco Project will *help* the City improve its standing with HCD by providing the Moderate-Income units the City needs to get back into compliance with State law.

As explained in the attached letter from Holland & Knight, when jurisdictions have made insufficient progress toward their Lower Income RHNA, these jurisdictions are subject to SB 35 (Chapter 366,

¹ Required findings are that: 1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing; 2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development; 3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and 4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

Statutes of 2017) which requires permit streamlining for proposed developments with at least 50% affordability. *It should be noted that due to its deficiency of VLI units, Morgan Hill is currently subject to permit streamlining.* This means that under State Law, any affordable housing developer, or any other type of applicant, that comes forward with a commitment to make at least 50% of its units affordable to LI, VLI and/or ELI households, does not need to compete in the RDCS. Further, such a project would not require CEQA, Planning Commission or City Council approval; it must only comply with certain “objective measures” under the City’s Municipal Code. The City’s annual cap under Measure S of 215 units would have no impact on such a project’s ability to move forward and therefore granting a multi-year award to Divco would not hinder an affordable project.

An adequate number of allotments will remain in future years to accommodate a range of housing types

For the 2014-2022 Housing Element Cycle, the City has already produced an ample supply of Above Moderate housing (mostly SF attached/detached for-sale) and has satisfied its Low Income RHNA quota. With a multi-year award, Butterfield Village will help the City diversify its housing stock with the addition of a high-quality apartment community and help satisfy its deficiency of 128 Moderate-Income units this cycle as well. Under SB 35, projects with at least 50% affordable units can proceed independently and outside of the RDCS competition until at least 194 VLI building permits are issued, regardless of the number of allotments granted each year. Therefore, the Commission *can* make the necessary finding to support multi-year allotments that the City will be able to provide for a range of housing types required to meet Morgan Hill’s needs.

Notwithstanding the above, if the City Council grants Divco’s request, an adequate number of allotments *will remain* in future years to accommodate 194 VLI units if the City wishes to deduct those units from the annual cap. As shown in the attached Exhibit A “Suggested RDCS Building Allotment Multi-Year Distributions,” with the following adjustments to its approach, the City would have sufficient allotments available over the next several years to distribute to projects of all housing types:

1. Given that Morgan Hill is out of compliance with State law, and California is experiencing the biggest housing crisis in its history, the City should consider awarding the maximum number of annual allotments under Measure S (215 units per year) to show HCD it is serious about addressing the housing shortage.
2. At least temporarily, the City should consider eliminating the “On-Going” category of 15 units per year. With multi-year awards, this category may no longer be needed anyway.
3. The Affordable Set-Aside is calculated at 20% of the total allotment. By awarding 215 instead of 195 allotments each year, this brings the affordable set-aside up from 39 to 43 units per year.
4. For FY 2020/21, the Staff Report includes 42 units for a downtown project known as “Hale Lumber”. Per Section 18.78.060 re: Downtown set-asides, 500 units are set-aside through 2035 for housing within the Downtown Specific Plan. Under Sect. 18.78.110, these units may be awarded *in addition* to the annual allotment maximum.

Again, given that Morgan Hill is out of compliance with State Law, we suggest these 42 units be taken out of the total annual cap to free up additional allotments to satisfy the City’s other needs.

Conclusion

Divco respectfully requests that the City Council award Butterfield Village a multi-year allotment of 379 units over 5 years. With the allotments in hand, we are ready and eager to move forward with the Project and to help the City resolve its RHNA predicament.

As stated above, without a multi-year allotment, the Project is simply not feasible. A decision not to grant our multi-year request will not “save the City” from the threat of SB 35. On the contrary, such a move would be short-sighted, counter-productive and could place the City in a *more serious and punitive position* with HCD under State Law. Legislation at the State level is intended to spur housing production at all levels and to discourage cities from obstructing the expansion of the housing supply overall. Butterfield Village is a medium density apartment community affordable to moderate income households and located in direct proximity to jobs, in a city that is deficient in moderate income housing. As such, Butterfield Village *is exactly the type of project that State Law encourages cities like Morgan Hill to approve and move forward.*

Finally, Butterfield Village brings significant economic benefits to the city; it will bolster the City’s competitiveness and ability to attract high-quality jobs by achieving one of the City’s key economic development objectives - the activation of the industrial portion of the master plan. Thank you for your time and consideration in reviewing our request and the opportunity to provide these comments.

Very Truly Yours,

Kerry M. Williams

Kerry M. Williams, Project Director
MWest PropCo XXIII LLC

cc: Leslie Little, Asst. City Manager, Community Development Agency
Don Larkin, City Attorney
Rebecca Garcia, Housing Manager
Gina Paolini, Interim Principal Planner
Ryan McDaniel, Vice President, DivcoWest SVI
Tamsen Plume, Managing Partner, Holland & Knight LLP
Jennifer Hernandez, Partner, Holland & Knight LLP

Attachment: MWest Letter of Justification (1808 : RDCS Appeal)

EXHIBIT A

Suggested RDCS Building Allotment Multi-Year Distribution

	Product Type	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Annual Allotment (units)		195	215	215	215	215
On-going	n/a	n/a	0	0	0	0
Set-Aside for Measure C Transitional Projects	Above Moderate For-Sale & Rental	59	25	25	25	25
Morgan-Hill Devco	Above Moderate For Sale	22	0	0	0	0
Cochrane-MWest	Moderate Income Rental Housing	71	45	45	109	109
E Dunne-Young	Above Moderate For-Sale	20	13	13	0	0
Diana-Hanalei	Above Moderate For-Sale	23	0	0	0	0
Monterey-Central	Above Moderate For-Sale	0	0	0	0	0
TOTAL UNITS COMMITTED		195	83	83	134	134
Affordable Set-Aside (20% of Annual Total)	Affordable Low and VLI	n/a	43	43	43	43
REMAINING AVAIL ALLOTMENTS (includes affordable set-aside)		0	132	132	81	81
Hale Lumber/Latala Homes: Downtown Set-Asides do not compete for allotments and are subject to cap of 500 units thru 2035.	Uncertain	0	42	0	0	0

NOTES:

1. Per SB 35, while City remains out of RHNA compliance, affordable projects are not required to compete in RDCS.
2. Assumes City produces 194 VLI units outside of the RDCS competition.
3. Assumes City elects not to set-aside On-Going units.
4. Assumes City elects to award max 215 allotments to enable City to meet annual RHNA requirements.
5. Cochrane-MWest fulfills City's Moderate RHNA requirement by meeting short-fall of 128 units.
6. Total Units Committed includes Measure C Transitional, E. Dunne-Young & Cochrane-MWest multi-year awards.
7. Remaining Units Available for Allocation includes 20% affordable set-aside.
8. Per Municipal Code Sect. 18.78.060 re: Downtown Set-asides, through 2035, 500 units are set-aside for housing within the Downtown Specific Plan. No more than 100 allotments can be awarded within a single year. See also Sect. 18.78.110, set-aside allotments may be awarded in addition to the annual allotment maximum.

Holland & Knight

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May 21, 2018

VIA EMAIL

Leslie Little
Assistant City Manager,
Community Development Agency
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

Re: 2017 Development Residential Control System (RDCS) Competition/Allotments
Planning Commission Hearing – May 22, 2018, Agenda Item

Dear Ms. Little:

This office represents DivcoWest Silicon Valley Investments (“Divco”) in connection with the above matter. On behalf of Divco, we are submitting these comments on the Staff Report dated May 22, 2018, that includes recommendations to the Planning Commission for the award of building allotments under the 2017 RDCS competition for Fiscal Year 2019/20. These comments are in addition to the written comments being concurrently submitted directly by Divco.

Divco is the developer of the proposed 389-unit Butterfield Village apartment community referred to in the Staff Report as RDCS2017-0013: Cochrane-MWEST PROP CO. (“Butterfield Village”). Based on Staff’s analysis, the Staff Report recommends that Butterfield Village be awarded a one year allocation of 71 building allotments, instead of its requested 379 multi-year allotment over 5 years (10 allotments were previously awarded in a prior competition) (p.26).

We believe that the Staff Report analysis and resulting recommendation with respect to Butterfield Village may be based, in part, upon some confusion regarding Morgan Hill’s ability to satisfy its RHNA requirement by the end of the current RHNA cycle (end F/Y 2022). The Staff Report determines that Butterfield Village (referred to as “Project 2”) should be credited, for RHNA purposes, as providing 31 low income units, but makes no mention that, as a medium density apartment community in Morgan Hill, the Project will also include moderate income units that would help the City meet its current deficiency in this category.

We believe staff may be confusing RHNA reporting standards for very low income units with reporting standards for moderate income units. We understand that, based on recent conversations among Kerry Williams of Divco, you and Rebecca Garcia, the City believes that there must be a deed restriction in order for the City to receive credit toward its RHNA requirement for moderate income units. However, no such requirement for any deed restriction exists under California law with respect to moderate income

Attachment: MWest Letter of Justification (1808 : RDCS Appeal)

Leslie Little
May 21, 2018
Page 2

units. *See, e.g.,* Health and Safety Code Section 50093 (defining moderate income households and not including any requirement for deed restriction); Gov't Code section 65400 and HCD's regulations (requiring annual municipal reports on progress in meeting RHNA requirements and not including any requirement for deed restriction). To this same effect is HCD's own Housing Element Annual Progress Report Frequently Asked Questions that responds to the question "How should I distinguish between moderate and above moderate income units *without a deed restriction?*" as follows:

"Rents or sales prices or market conditions can be used to determine whether the units are affordable to moderate or above moderate income households."

Similarly, no requirement for such a deed restriction appears in the RDCS or the Morgan Hill Housing Element.

The Staff Report also recommends against awarding Butterfield Village's request for a multi-year allotment (totaling 379 units) on the apparent ground that it would hinder the ability of the City to award sufficient future allotments under its RDCS to satisfy its RHNA requirement for 194 very low income units by the end of FY 2022 (pp.26-27). However, and as correctly noted in Divco's comments, HCD recently determined that Morgan Hill has made insufficient progress toward meeting their RHNA for Lower Income units (very low and low income) and therefore is subject to SB 35 "streamlining" for any proposed development with $\geq 50\%$ affordability (low, very low and/or extremely low income). Any such affordable project, regardless of unit count, can and will proceed independently under the preemptive streamlined ministerial approval process of SB 35, and need not participate in the RDCS competition and will not be subject to the City's population cap. *See* Cal. Const. Art. XI, § 7 (prohibits general law cities from enacting ordinances that conflict with general state law); *Legislature v. Deukmejian*, 34 Cal.3d 658, 675 (1983) (constitutional preemption applies to measures adopted either by the legislative body or by local voters directly through an initiative). Therefore, the City's award of the requested multi-year allotment for Butterfield Village will have no effect whatsoever on the City's ultimate ability to meet its RHNA for very low income units. Utilizing such reasoning to not award moderate income units also creates a risk that HCD determines the City is "playing off" one affordability category against another, and thwarting express California and City policy of providing a range of housing for all income levels.

In light of the above, and Divco's comment letter, a multi-year award for Butterfield Village would benefit, not hinder, the City's ability to satisfy its RHNA requirement by the end of the current RHNA cycle.

Sincerely yours,

HOLLAND & KNIGHT LLP



Tamsen Plume

cc: Don Larkin, City Attorney
Rebecca Garcia, Housing Manager
Jennifer Carmen, Community Development Director
Gina Paolini, Interim Principal Planner

Attachment: MWest Letter of Justification (1808 : RDCS Appeal)



June 14, 2018

VIA EMAIL (cityclerk@morganhill.ca.gov)

Mayor Steve Tate, and
Members of the Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA 95037

RE: DivcoWest SVI Supplemental Appeal Letter re: Request for RDCS Multi-Year Allotments for FY 2019 - 2023

Honorable Mayor Tate and City Councilmembers:

On behalf of DivcoWest Silicon Valley Investments (“Divco”), we respectfully submit the following supplemental information to our formal RDCS Appeal Letter dated June 4, 2018. We respectfully request that the City Council grant the proposed Project, known as Butterfield Village, a multi-year allotment for FYs 2019/20 through 2022/2023. Butterfield Village is a 22.8-acre, 389-unit multi-family apartment community located at the southeasterly quadrant of Monterey Road and Jarvis Drive.

As noted in our June 4th letter, this is our 3rd time through the competition, and the Project received just 10 allotments in the last two competitions despite receiving the 2nd highest score (181 points and 179 points, including 2 “Project Excellence Points”). Divco is requesting 379 multi-year allotments over four (4) years to achieve Project buildout and is proposing to modify its affordable housing component to include 20% (78) Very Low Income (“VLI”) inclusionary units as described in more detail below to help the City meet its Regional Housing Needs Assessment (“RHNA”) requirements.

Butterfield Village is a Unique Project in Morgan Hill

There are 4 primary factors that make Butterfield Village a unique project in Morgan Hill:

1. Scale: The Project is part of Divco’s larger 58-acre master plan that includes 550,000 SF of industrial space, a 3.2-acre public park (“Butterfield Park”), and the long-awaited extension of Sutter Road to Digital Drive.
2. Housing Type: The Project, a “resort-style” community, includes 389 MF units on 19.0 acres, consisting of 19, 3 story corridor buildings with stacked flats of 12 – 22 units each, and 10, 2/3 story townhome-style buildings of 4 – 6 units each, as well as a Recreation and Leasing Center, adult swimming pool and children’s wading pool, fitness center, pocket parks, landscaping, public trails, surface parking, interior roads, and associated infrastructure. Butterfield Park, as well as the Sutter Extension, will be constructed concurrently with the apartments.
3. Rental Housing: The Project is 100% rental and would be one of the few apartment communities to be built in Morgan Hill in the past 30 years. Butterfield Village is the only rental project in this year’s competition.
4. Measure C and Measure S: The Project was the only project required to compete under both Measure C and Measure S, which necessitated recalibrating the Project to maximize points under the new system.

Anticipated Development Schedule

Unlike the many subdivisions the City has approved over the years, a project of this type and scale cannot be efficiently phased, which is why very few apartment communities have been built in Morgan Hill under the City's Growth Control Ordinance.

At this time, Divco anticipates we would rough grade the entire 58.0-acre site to prepare the Sutter Road Extension, 3.2-acre Butterfield Park and the apartments for construction. The Project also requires filling an existing 8-acre, 4 to 5-foot temporary retention basin on the site near Monterey Road and Jarvis Drive¹. Once the site is ready, we will begin constructing a portion of the new Main Street off Jarvis Drive and building out the Recreation and Leasing Center, swimming pool and other amenities, which need to be in place at the outset to successfully market and lease the project. This initial work substantially front loads costs and makes it imperative that the project is completed in one continuous phase once it has begun to secure the financing necessary for the Project. As we begin constructing the individual apartment buildings and associated infrastructure and parking, we will move as quickly around the site as possible to finish the units, Sutter Extension and Butterfield Park. The entire construction process is anticipated to take about 26 to 30 months, with approximately 3 to 5 months of initial site preparation and the remainder for vertical construction. The schedule anticipates a rolling occupancy of units as each building is completed; total lease-up of units is anticipated to take about 20 months.

The Project Requires A Multi-Year Allotment Award to be Feasible

Given how apartment communities of this scale are financed and constructed, the project is simply not feasible without the certainty of a full multi-year allotment and knowing that the project can proceed in one continuous phase once the first building permits are issued. The construction and lease-up of units is required as quickly as possible to provide for a return of investment capital and to amortize debt, which often doesn't occur until the project is completed, fully leased, and rents are stabilized. Starting and stopping or intentionally slowing the pace of construction or occupancy would add millions of dollars to the overall project cost and expose the Project (and City) to significant risks that would render it unfinanceable. Neither investors nor lenders will provide capital or debt without assurances that building can proceed continuously and expeditiously to full completion and occupancy. Moreover, purposefully dragging out the construction period will only prolong the disturbance to neighbors and the perception of persistent construction activity.

Butterfield Village Will Help the City Meet its RHNA Obligations

Based on recent communications with Rebecca Garcia, the City's Housing Manager, we understand that Morgan Hill needs to issue building permits for 193 VLI Units (50% AMI) by the end of the current Housing Element Cycle (December 31, 2022) to meet the City's RHNA requirements in compliance with State law. In addition, the City may be short up to 128 moderate income units (120% AMI). Based on 2018 HCD income limits and rents for Santa Clara County, and Divco's projected rents, we believe a significant portion of the Project would qualify as moderate income.

Since learning of Morgan Hill's RHNA compliance needs a few weeks ago, Divco has been working to see how we might be able to reposition the Project to help the City make significant progress towards its RHNA obligations. Under State and Federal law, tax exempt bonds and low-income housing tax credits are available to qualifying rental projects that set aside 20% of units for households earning 50% of median income ("20-50" financing). In lieu of our current proposal of providing 8% Low Income units (80% AMI), Divco is willing to set aside 20% of the total 389 unit project (78 units) for VLI households earning 50% AMI. To accomplish this, Divco will need the following:

¹ The 8-acre temporary retention area was created by the City to provide overflow for the existing 9-acre detention basin. Now that the City has completed the Butterfield Channel improvements, the overflow basin is no longer needed.

- (1) The City's commitment to cooperate with Divco to apply for and secure the "20-50" bond financing.
- (2) The Project qualifying for Federal and State "20-50" bond financing and tax credits. Given the nature of the Project and its location, the Project would be in an excellent position to qualify.
- (3) The City's commitment to allow Divco to proceed immediately with Design Review and all other entitlements, to secure building permits for all 389 units, to construct the project in one continuous phase, and to occupy the units when completed. Depending on the financing requirements, the building permits may all need to be pulled at one time or may be broken down by building for the vertical construction.

Requested Multi-Year Allotment Distribution

Based on the anticipated Development Schedule outlined above, we respectfully request that the City Council grant the Multi-Year Allotment Distribution shown on Exhibit A (attached), and allow for the continuous, uninterrupted construction and occupancy of the Project. (We have tried to balance interests in our proposed distribution of the allocations but acknowledge that the City Council may propose an alternative that achieves the same goal.) Ultimately, we need to be able to pull building permits for all 389 units, including the 78 VLI units, which must be distributed throughout the Project in accordance with State bond financing requirements. Note that under our proposal, the proposed allotment distribution assumes that the Project's VLI units will count towards the City's annual 20% affordable set-aside. Depending upon the pace of entitlements and construction, and upon how the City Council decides to award the allotments, allotted units may be ready for construction and occupancy sooner than the designated Fiscal Year.

We hope this proposal further demonstrates Divco's commitment to finding creative solutions that benefit the City and allow for the Project to move forward. We have worked hard over the past four years to create a vision for the site that addresses some of the City's highest needs and priorities. We are proud of the Project and believe Butterfield Village offers Morgan Hill a unique opportunity to gain high quality rental housing within walking/biking distance of the City's core job center and the Downtown, to jumpstart key infrastructure necessary to catalyze development of the industrial land, to gain a new public park with amenities accessible to existing residents and Morgan Hill Ranch businesses, and to make significant progress towards meeting the City's RHNA obligations for Very Low-Income households.

Thank you for your consideration and the opportunity to provide these comments.

Very Truly Yours,

Kerry M. Williams

Kerry M. Williams, Project Director
MWest PropCo XXIII LLC

cc: Christina Turner, City Manager
Leslie Little, Asst. City Manager, Community Development Agency
Don Larkin, City Attorney
Rebecca Garcia, Housing Manager
Jennifer Carmen, Community Development Director
Gina Paolini, Interim Principal Planner
Ryan McDaniel, Vice President, DivcoWest SVI
Tamsen Plume, Partner, Holland & Knight LLP
Jennifer Hernandez, Partner, Holland & Knight LLP

EXHIBIT A

BUTTERFIELD VILLAGE MULTI-YEAR DISTRIBUTION						
	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	TOTAL
On-Going						
MC/MS Transitional	59					
East Dunne-Young	20	13	13			46
Cochrane-MWest	71	90	90	50		301
Diana-Hanalei	23					
MH Devco	22					
VLI Affordable (MWest)		39	39			78
Set-aside for VLI units needed to meet RHNA	n/a	40	40	35		115
Downtown	DOWNTOWN ALLOTMENTS DO NOT APPLY TO CAP					
SUBTOTAL	195	182	182	85	0	
AVAILABLE	0	33	33	110	195	
TOTAL	195	215	215	195	195	
Total Butterfield Village						379
Total VLI						193

*** Depending upon the pace of entitlements and construction, allotted units may be ready for occupancy sooner than the designated Fiscal Year.*

The project received 10 allotments in the 2016/2017 competition. This brings the total to 389.

Assumes that the City maximizes the number of allotments in FY 20/21 and 21/22, and then returns to 195 thereafter.



MH engineering Co.

16075 Vineyard Blvd., Morgan Hill, CA 95037
(408) 779-7381/226-3050; Fax (408) 226-5712

June 4, 2018

MH 213064

Monterey Central
RDCS 2017-0004
Appeal Letter

In the staff report for the recommended allocations to the planning commission it was stated by staff that this ECA Partners, LLC project for 12 units could be designed better and score better in the Measure S criteria. This is not a fair statement as the project has been designed per staff recommendations from the beginning and is complicated by the presence of the existing donut shop located on the corner of Central Avenue and Monterey Road.

This project was very nearly completed and ready for construction before it lost its 12 allocations due to Measure C timelines. The final map and project improvement plans are complete and have been reviewed by public works department. It will take a very short time for this project to be finalized and in construction if given the 12 allocations it needs.

We respectfully ask that you consider our appeal for 12 allocations.

DEVELOPMENT
SERVICES
JUN 04 2018
CITY OF MORGAN HILL

Attachment: Monterey-Central-ECA Letter of Justification (1808 : RDCS Appeal)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 20, 2018

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

ACQUISITION OF 41% INTEREST IN MORGAN HILL TRANSIT CENTER LOT

RECOMMENDATION(S)

1. Authorize the transfer at no cost, of the 41% interest for future parking, subject to negotiation of compensation agreement and approval of the Successor Agency and Oversight Board; or
2. Authorize the transfer of the property by purchase and compensation agreement for the 2011 value of the asset of \$1,489,218. Or, should this not be negotiable and or supported by the Department of Finance,
3. Authorize the transfer and sale of the property to the City of Morgan Hill, for up to \$2.6 million, as supported by the 2018 appraisal prepared by Valbridge/Hulberg and Associates.
4. Adopt resolution approving an amendment to the Fiscal Year 2018-19 Fund 255 Housing Fund budget for the purchase of the 108,408-sf (41%) Successor Agency interest in the jointly owned Valley Transportation Authority/Successor Agency parking and transit facility located at 17295 Butterfield Blvd. up to the fair market appraised value of \$2.6 million, for future development at a time when replacement parking can be required of the development and important transit operation functions considered;
5. Authorize the City Manager to prepare and execute any and all related documents to affect the purchase; and
6. Direct staff to forward the recommendation to the Morgan Hill Successor Agency, Oversight Board, and subsequently the state Department of Finance (DOF) for review and concurrence, consistent with AB 1484, the California Redevelopment Dissolution Act.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2018 Strategic Priorities

Regional Initiatives

GUIDING DOCUMENTS

Downtown Specific Plan
General Plan/Housing Element

REPORT NARRATIVE:

Pursuant to Health and Safety Code Section 34191.5, and in accordance with laws governing the dissolution of redevelopment agencies, the Successor Agency submitted and received approval of Morgan Hill's Long Range Property Management Plan

(LRPMP) from the Morgan Hill Oversight Board on November 30, 2013, and subsequently received approval by the Department of Finance (DOF) in December of that year.

Site 6 of the LRPMP is a 41% interest in a larger 6.07-acre parcel located at 17295 Butterfield Boulevard, that was acquired jointly by the former Morgan Hill Redevelopment Agency (RDA) and Santa Clara County Transit District (SCCTD), now Valley Transportation Agency (VTA), in 1993. The property was acquired and developed for the express purpose of providing parking and transit center services to VTA and Caltrain.

In 1994, the former RDA and SCCTD entered into a Cooperative Agreement (attached) which contemplated that if either party ever elected to sell its interest, that the other party shall have the right of first refusal to buy the selling party's interest in the property before any conveyance to anyone else. The Successor Agency staff recommend that the City step into and replace the Successor Agency interest in the property and propose to purchase the lot for future affordable housing at a time when replacement parking is guaranteed, and the project appropriately designed to make transit operation expansion a priority.

This property interest is part of the Morgan Hill transit center, which collectively consists of a 465-space parking lot and bus operations area. Recent development and job growth have led to the substantial increase in transit activities at the Center, providing a vital service for Morgan Hill's commuters. The Transit Center is now regularly parked at 85% of daily capacity, with other Downtown parking lots also experiencing daily commuter parking use as well. Public parking is at a premium and the lot is integral to transit operations in Morgan Hill. All buses use the lot as a terminus and parking layover, with delivery and pick up locations for passengers. Monterey/Salinas Transit (MST) and private commuter buses utilize the facility in increasing numbers. Ongoing discussions regarding electrification of the Union Pacific Railroad (UPRR) rail line from Tamien Station to Gilroy anticipate significant two-way service initiation and frequency increases for Caltrain, and exciting new rail option opportunities. The station is critical to support these anticipated changes.

At the time the LRPMP was approved by the Department of Finance, the Successor Agency had an option for the purchase of the Downtown property that is now under development by City Ventures (Site 3). This site was intended to be used to replace the existing transit parking. Within the schedule and summary of disposition contained in the LRPMP, the Successor Agency was supposed to initiate the development of a compensation agreement for Site 3. Although it approved the LRPMP, the Oversight Board rejected the proposal for a compensation agreement and directed the sale of the Successor Agency's option on Site 3. As such, Site 3 is no longer available for replacement parking.

In 2013, once replacement parking was constructed, Site 6 was considered to be a Transit Oriented Development (TOD) opportunity, proposed to support higher density development consistent with the Morgan Hill Priority Development Area (PDA) and Downtown Specific Plan. Fast forward five short years, no replacement parking has

been constructed, but the facility is a fully-utilized, vibrant transit center.

The LRPMP states that the site should only be developed when the existing parking supply is relocated to Site 3. Because Site 3 is no longer available for parking, that precondition can no longer be met.

Now, more than ever, the parking supply and facility support consideration is paramount to any development which may undermine the transit/train service expansion opportunities which are so badly needed in South County. At the time the LRPMP was developed, the plan definitively identifies that the purpose of original acquisition and joint Cooperative Agreement with VTA was “to construct the Morgan Hill Caltrain Station and park and ride lot in a location suitable for transit patronage including Caltrain and bus patronage, park and ride lot users, bike locker users, car poolers and other users typical with County Transit and Peninsula Corridor Joint Powers Board (Caltrain) operations and railroad operations.”

The LRPMP further states that this site is a viable candidate for transit- oriented development (TOD). It says, “Site 6 provides the best opportunity for a residential TOD project within the Morgan Hill Downtown” and qualifies this paragraph by stating that “in order for this vision to become a reality, the existing parking supply must be relocated first.” The plan says that this is proposed to occur on Site 3 of the LRPMP, however, Site 3 was held by the former RDA as an option only, not public ownership, and subsequently the option was sold by the Oversight Board in 2015. To maintain stewardship of the property, consistent with the LRPMP, the City should purchase the former RDA interest and take over the position of the former RDA contained within the Cooperative Agreement. This action is supported by California redevelopment dissolution law.

Health & Safety Code, § 34180 (f) states:

“(1) If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained.

(2) If no other agreement is reached on valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by an independent appraiser approved by the oversight board.”

This section operates independently of the LRPMP provisions, contains no time limitations, and has been used by other cities and counties to purchase former RDA properties. The City proposes to purchase the property utilizing this authority.

The 2011 value of the property as stated in the LRPMP is \$1,489,218. The City proposes to seek a compensation agreement with the taxing entities for the purchase of this property consistent with this provision. This provision has been used by many public entities throughout the state and most recently in Sacramento, where a property was acquired by the City and resold, without requirement that the sale proceeds above the 2011 purchase price be shared.

California Health and Safety Code Section 34181 (a) further states that the “oversight board shall direct the successor agency to do all of the following”:

(a)(1) Dispose of all assets and properties of the former redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to

transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and, in a manner, aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.

The City Council is being requested to recommend and authorize:

- 1) first, the transfer at no cost, of the 41% interest for future parking, subject to negotiation of compensation agreement and approval of the Successor Agency and Oversight Board; or
- 2) transfer the property by purchase and compensation agreement for the 2011 value of the asset of \$1,489,218. Or, should this not be negotiable and or supported by the Department of Finance,
- 3) Authorize the transfer and sale of the property to the City of Morgan Hill, for up to \$2.6 million, as supported by the attached 2018 appraisal prepared by Valbridge/Hulberg and Associates.

Further, the City Council is requested to forward their recommendation to the Morgan Hill Successor Agency at their June 20, 2018 meeting and Oversight Board for approval at their next meeting.

Should the City Council at their regular meeting of June 20, 2018, decline the opportunity to purchase the property, consistent with the "first right of refusal" provisions of the 1994 "Cooperative Agreement between the Santa Clara County Transit District and the Redevelopment Agency of the City of Morgan Hill for the San Jose to Gilroy Caltrain Extension Project Morgan Hill Park and Ride Lot," VTA has received authority to acquire the site for future development through their joint development fund.

FISCAL AND RESOURCE IMPACT:

The transfer of the property at no cost would produce no new revenue but would reflect the fact that the requirements of the LRPMP cannot be met and that alternative/replacement parking cannot be provided the City as contemplated. If approved, at either the \$1,489,218 or \$2.6 million sales price, proceeds will be divided between the county taxing agencies, proportionate to each entity's share of the tax rate. Morgan Hill will receive approximately 10% of the net sale proceeds. Costs associated with this consideration are contained on the ROPS 17-18 and include appraisal fees (17-18 A - \$15,000) and legal services for the LRPMP (17-18 B - \$30,000).

The City Council is being requested to authorize the purchase of the 41% interest for future housing development, utilizing funds from fund 255 Housing Fund, for up to \$2.6 million dollars. As a future parking and housing site, the City could set the requirements for development, including requiring replacement public parking, and the ratio of parking to living units for any future housing development. With this acquisition, the City could plan for future development in a manner which accommodates vital transit needs. This acquisition was not contemplated as part of the Fiscal Year 2018-19 budget and

therefore this action requires a budget amendment. A budget amendment resolution and scorecard are attached. The acquisition of this site will impact the Housing Program's ability to contribute to future affordable housing projects beyond the currently budgeted \$1.5 million, until future in-lieu fee payments are received.

Should the City decline the opportunity to purchase the property, VTA has received authority to acquire the site for future development through their joint development fund.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended purchase of the 41% interest.

ALTERNATIVE ACTIONS:

Alternatively, should the City Council decline to acquire the 41% interest in this real property, the VTA Board has authorized the acquisition of the interest, consistent with the 1994 Cooperative Agreement between the then Santa Clara County Transit Agency and the former Morgan Hill Redevelopment Agency.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no previous actions on this item.

CEQA (California Environmental Quality Act):

On November 4, 2009, the City Council of the City of Morgan Hill, pursuant to the requirements of CEQA considered, certified and made required findings related to that certain Final Master Environmental Impact Report prepared for the Morgan Hill Downtown Specific Plan by adoption of resolution No. 6282. The proposed acquisition of this certain real property is consistent with the programs, policies, goals, and other provisions in the Morgan Hill General Plan and the Morgan Hill Downtown Specific Plan.

LINKS/ATTACHMENTS:

1. Appraisal Update VTA Lot
2. Resolution - budget amendment vta
3. 001-VTA Parking Lot Acquisition Fund 255
4. Executed Letter to County VTA-City
5. Cooperative Agreement

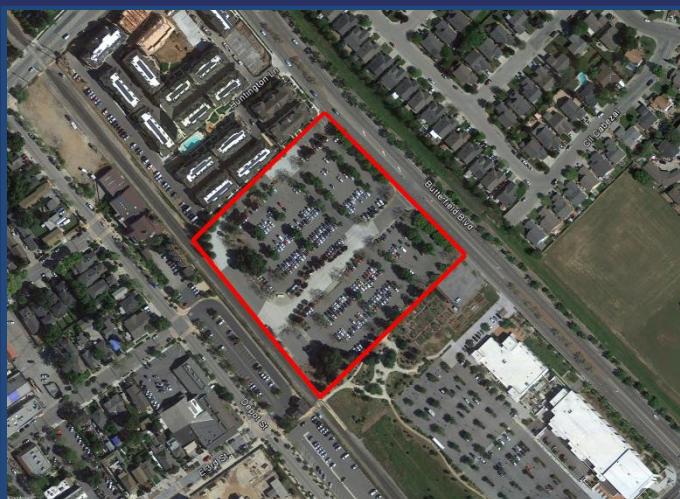


Valbridge
PROPERTY ADVISORS

Appraisal Report

41% Interest in VTA Parking Lot
17295 Butterfield Boulevard
Morgan Hill, Santa Clara County, California 95037

Report Date: June 1, 2018



FOR:

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

Valbridge Property Advisors

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

Valbridge File Number:
CA02-17-0038-002

Attachment: Appraisal Update VTA Lot (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)



55 South Market Street, Suite 1210
 San Jose, CA 95113
 408.279.1520 phone
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June 1, 2018

Josh Fronen, MAI
 408.279.1520 x7113
 jfronen@valbridge.com

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

RE: Appraisal Report
 41% Interest in VTA Parking Lot
 17295 Butterfield Boulevard
 Morgan Hill, Santa Clara County, California 95037

Dear Ms. Little:

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

The subject property, as referenced above, is located at 17295 Butterfield Boulevard, Morgan Hill, Santa Clara County, California 95037 and is further identified as Assessor Parcel Number (APN) 726-15-071. The Park and Ride site contains 264,409 gross square feet or 6.07 gross acres and is asphalt paved and striped for ± 471 parking spaces. It is currently used as a public Park and Ride lot with bus stop/bus turnaround and Caltrain platform access.

The subject is a 41% physical division of a larger property that measures 264,409 square feet. Thus, the subject site area to be transferred measures 108,408 square feet (or 264,409 x 41%). Since the subject is part of a larger property, we have valued the entire 264,409 square feet and have allocated that price per square foot to the subject 108,408 square feet.

The Park and Ride property is encumbered by a Cooperative Agreement (dated January 27, 1994) between the Santa Clara County Transit District and the Redevelopment Agency of the City of Morgan Hill. The Cooperative Agreement intended for the Park and Ride property to be used for the San Jose-to-Gilroy Caltrain Extension Project and the Morgan Hill Park and Ride Lot. The agreement effectively limits the use of the subject property to a public Park and Ride lot. The client intends to use this appraisal in a possible sale of its 41% interest in the Park and Ride property to VTA via a right of first refusal in the Cooperative Agreement. It is unknown at this time if the Cooperative Agreement could be cancelled or if it would survive a sale between the parties, or a 3rd party. As such, we have employed certain assumptions per our client's request (as outlined below) related to the ability to cancel the Cooperative Agreement.

We have appraised the market value of a 41% portion of the entire lot, assuming that the lot has already been subdivided and that the Cooperative Agreement can be terminated. The site is therefore assumed to be available for development to alternative uses. We have assumed the site is already physically partitioned, which is a hypothetical condition. We have also assumed that the existing Cooperative Agreement that is in place can be terminated, thereby allowing redevelopment to the property's highest and best use, which is an extraordinary assumption.

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

Leslie Little with the City of Morgan Hill is our client in this assignment. The intended users are the City of Morgan Hill, Successor Agency, and Valley Transportation Authority (VTA) and no others. The intended use is for decision making purposes regarding a possible purchase of the property by VTA and no other use. The value opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

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

Extraordinary Assumptions:

- We have assumed the Cooperative Agreement can be terminated, thereby allowing redevelopment to the property's highest and best use.

Hypothetical Conditions:

- We have assumed the subject property is already physically partitioned as to a 41% physical division and that the 41% physical division is its own legal parcel.



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

Value Conclusions

Value Type	Market Value
Property Rights Appraised	Fee Simple
Date of Value	April 6, 2018
Value Conclusion	\$2,600,000
Land area	108,408 sf
Value per SF of Land	\$24 psf

Respectfully submitted,
Valbridge Property Advisors

Josh Fronen, MAI
Senior Appraiser
California Certified License #AG028548

Norman C. Hulberg, MAI
Senior Managing Director
California Certified License #AG003542

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Summary of Salient Facts

Property Identification

Property Name	VTA Parking Lot
Property Address	17295 Butterfield Boulevard Morgan Hill, Santa Clara County, California, 95037
Latitude & Longitude	37.130351, -121.650055
Census Tract	5123.12
Tax Parcel Number	726-15-071
Property Owner	Jointly owned by VTA and the Successor Agency of the former Morgan Hill Redevelopment Agency

Site

Zoning	Central Business District (CBD)
FEMA Flood Map No.	06085C0444H
Flood Zone	X
Usable Land Area	6.070 acres

Valuation Opinions

Highest & Best Use - As Vacant	Residential development
Reasonable Exposure Time	6 months

Value Indications

Approach to Value

Sales Comparison	\$2,600,000
------------------	-------------

Value Conclusions

Value Type	Market Value
Property Rights Appraised	Fee Simple
Date of Value	April 6, 2018
Value Conclusion	\$2,600,000
Land area	108,408 sf
Value per SF of Land	\$24 psf

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

Extraordinary Assumptions:

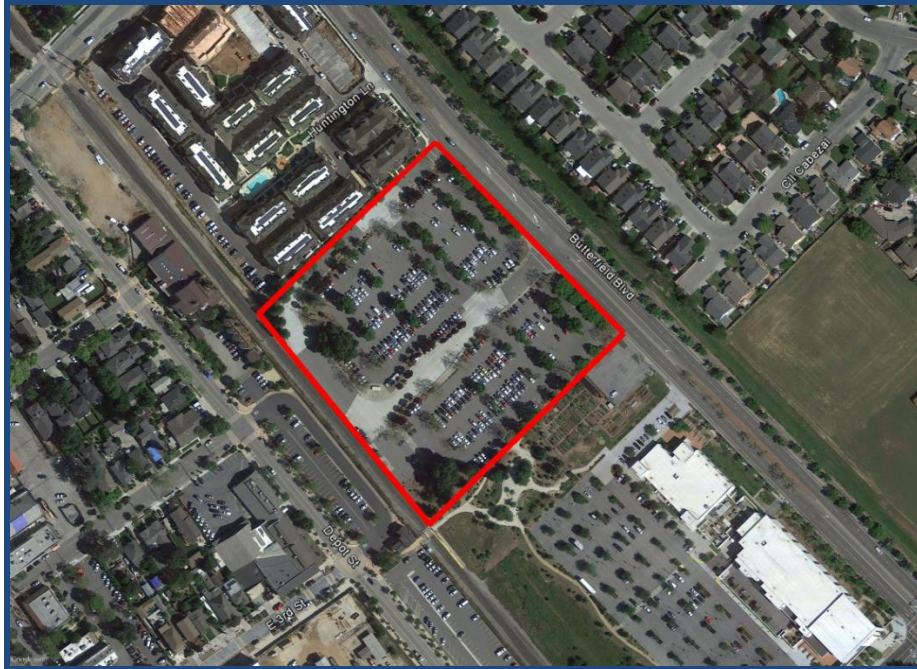
- We have assumed the Cooperative Agreement can be terminated, thereby allowing redevelopment to the property's highest and best use.

Hypothetical Conditions:

- We have assumed the subject property is already physically partitioned as to a 41% physical division and that the 41% physical division is its own legal parcel.

Aerial and Front Views

AERIAL VIEW OF PARK AND RIDE PROPERTY



GROUND LEVEL VIEW



A map of California highlighting major cities and transportation routes. Major cities labeled include San Francisco, San Jose, Sacramento, Fresno, Los Angeles, San Diego, and San Antonio. The map shows a network of interstate highways (red and blue shields) and state routes (yellow circles). Key geographical features like the Golden Gate Bridge, Mount Diablo, and various lakes are also depicted. A red pin with a white 'S' is placed near Morgan Hill.

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Introduction

Client and Intended Users of the Appraisal

Leslie Little with the City of Morgan Hill is our client in this assignment and will be the sole intended user of this appraisal and report and no others.

Intended Use of the Appraisal

The intended use of this report is for decision making purposes regarding a possible purchase of the property by VTA and no other use.

Real Estate Identification

The Park and Ride property is located at 17295 Butterfield Boulevard, Morgan Hill, Santa Clara County, California 95037. The Park and Ride property is further identified by Assessor Parcel Number (APN) 726-15-071.

The subject property consists of the southern 41% of the Park and Ride property.

Legal Description

We assume that the legal description for the entire Park and Ride lot corresponds to the subject's Assessor Parcel Number (APN). A legal description for the subject's 41% physical portion was not available.

Use of Real Estate as of the Effective Date of Value

As of the effective date of value, the subject was a Park and Ride parking lot for the Morgan Hill Caltrain Station.

Use of Real Estate as Reflected in this Appraisal

Same as above.

Ownership of the Property

According to our client, the subject property is jointly owned by VTA and the Successor Agency of the Morgan Hill Redevelopment Agency ("Successor Agency"). The Successor Agency owns a 41% undivided interest and the VTA owns a 59% undivided interest.

We are unaware of sales, listings or offers for any portion of the subject property within three years of the valuation date. We have considered and analyzed the known history of the property in the development of this appraisal.

Type and Definition of Value

The purpose of this appraisal is to develop an opinion of the market value of the subject property. "Market Value," as used in this appraisal, is defined as "The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably,

and for self-interest, and assuming that neither is under undue duress.”¹ Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- *Buyer and seller are typically motivated.*
- *Both parties are well informed or well advised, each acting in what they consider their own best interests;*
- *A reasonable time is allowed for exposure in the open market;*
- *Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.”*

The “as is” value is the value of the property in its present condition under market conditions prevalent on the date of the appraisal, subject to the assumptions identified earlier in this report.

Please refer to the Glossary in the Addenda section for additional definitions of terms used in this report.

Valuation Scenario, Property Rights Appraised, and Effective Dates of Value

Per the scope of our assignment we developed opinions of value for the subject property:

Valuation Scenarios	Effective Date of Value
Market Value Based on Highest and Best Use	April 6, 2018
Assuming Cooperative Agreement can be cancelled	

We have appraised a 100% fee simple interest for the subject scenario and completed an appraisal inspection of the subject property on January 30, 2017. We assume no substantial physical changes since our last inspection.

Date of Report

The date of this report is June 1, 2018, which is the same as the date of the letter of transmittal.

List of Items Requested but Not Provided

- Preliminary Title Report

¹ *The Dictionary of Real Estate Appraisal*, Sixth Edition, pg 141

Assumptions and Conditions of the Appraisal

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

Extraordinary Assumptions

- We have assumed the Cooperative Agreement can be terminated, thereby allowing redevelopment to the property's highest and best use.

Hypothetical Conditions

- We have assumed the subject property is already physically partitioned as to a 41% physical division and that the 41% physical division is its own legal parcel.

Scope of Work

The elements addressed in the Scope of Work are (1) the extent to which the subject property is identified, (2) the extent to which the subject property is inspected, (3) the type and extent of data researched, (4) the type and extent of analysis applied, (5) the type of appraisal report prepared, and (6) the inclusion or exclusion of items of non-realty in the development of the value opinion. These items are discussed as below.

Extent to Which the Property Was Identified

The three components of the property identification are summarized as follows:

- Legal Characteristics - The subject was legally identified via an address and Assessor Parcel Number (APN) provided by the client.
- Economic Characteristics - Economic characteristics of the subject property were identified via information provided by the client, as well as a comparison to properties with similar locational and physical characteristics.
- Physical Characteristics - The subject was physically identified via a physical property inspection by Josh Fronen, MAI and Norman C. Hulberg, MAI.

Extent to Which the Property Was Inspected

We inspected the subject on January 30, 2017.

Type and Extent of Data Researched

We researched and analyzed: (1) updated market area data, (2) property-specific market data, (3) zoning and land-use data, and (4) current data on comparable listings and transactions. We also interviewed people familiar with the subject property type.

Type and Extent of Analysis Applied (Valuation Methodology)

We observed surrounding land use trends, the condition of any improvements, demand for the subject property, and relevant legal limitations in concluding a highest and best use. We then valued the subject based on that highest and best use conclusion.

There are four primary methodologies available for the estimation of land value: (1) Sales Comparison, (2) Land Residual Method, (3) Ground Rent Capitalization, and (4) Subdivision Development Method (Discounted Cash Flow). While other methods, such as Extraction and Allocation, are applicable under limited conditions, one or more of these approaches are used in most circumstances to derive an indication of land value.

- Sales Comparison Approach - In the sales comparison approach, value is indicated by recent sales and/or listings of comparable properties in the market, with the appraiser analyzing the impact of material differences in both economic and physical elements between the subject and the comparables.

- Direct Capitalization: Land Residual Method - The land residual methodology involves estimating the residual net income to the land by deducting from total potential income the portion attributable to the improvements, assuming development of the site at its highest and best use. The residual income is capitalized at an appropriate rate, resulting in an indication of land value.
- Direct Capitalization: Ground Rent Capitalization – A market derived capitalization rate is applied to the net income resulting from a ground lease. This can represent the leased fee or fee simple interest, depending on whether the income potential is reflective of a lease in place or market rental rates.
- Yield Capitalization: Subdivision Development Method – Also known as Discounted Cash Flow Analysis (DCF), the methodology is most appropriate for land having multiple lot development in the near term as the highest and best use. The current site value is represented by discounting the anticipated cash flow to a present value, taking into consideration all necessary costs of development, maintenance, administration, and sales throughout the absorption period.

All of these approaches to value were considered. We assessed the availability of data and applicability of each approach to value within the context of the characteristics of the subject property and the needs and requirements of the client. Based on this assessment, we relied upon the sales comparison approach. Further discussion of the extent of our analysis and the methodology of each approach is provided later in the respective valuation sections.

Appraisal Conformity and Report Type

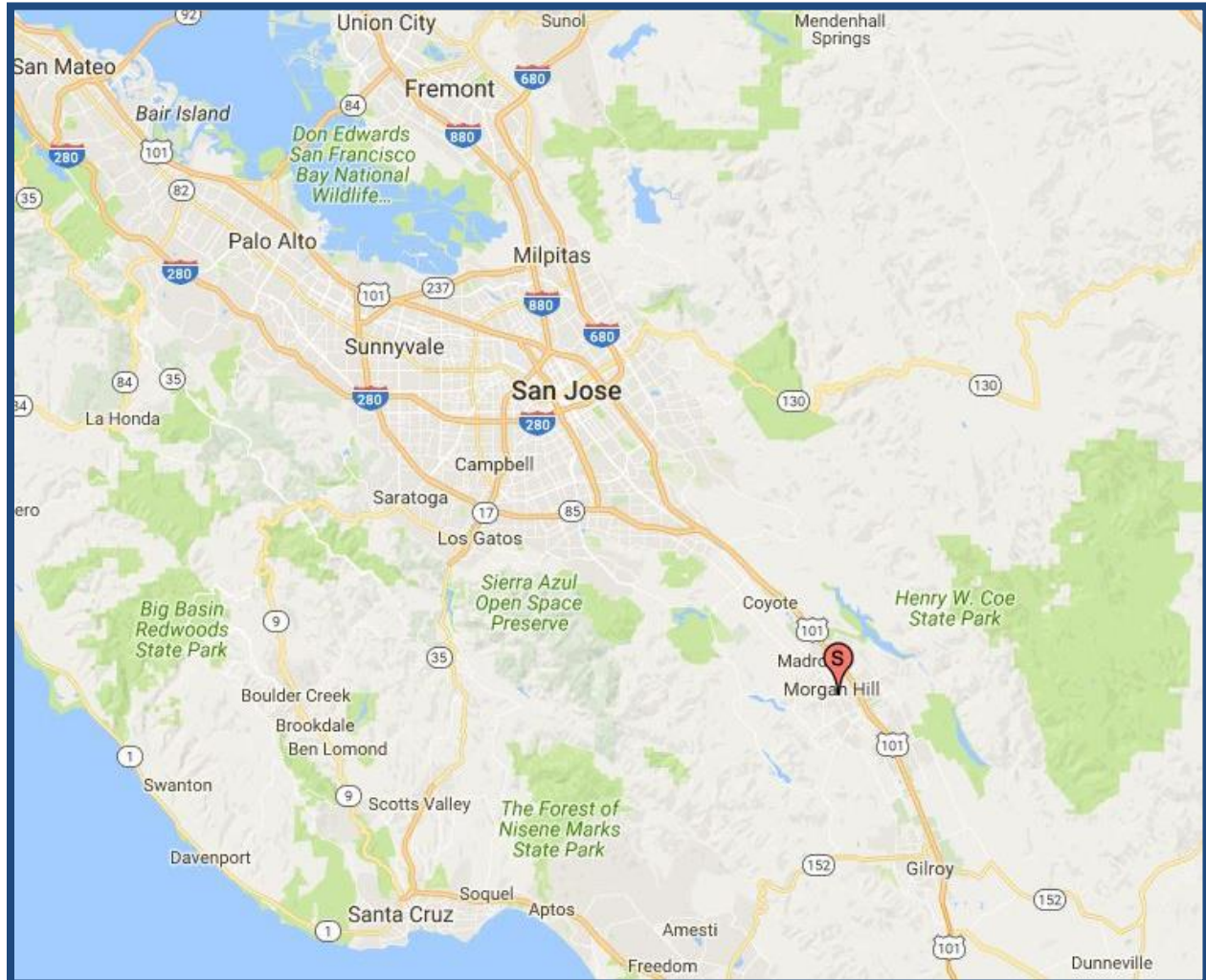
We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them. This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Personal Property/FF&E

All items of non-realty are excluded from this analysis. The opinion of market value developed herein is reflective of real estate only.

Regional and Market Area Analysis

REGIONAL MAP



Overview

The client is familiar with the location, and thus only a brief overview is provided. The subject property is located in the San Francisco Bay Region, an area which is comprised of the nine counties bordering the San Francisco Bay.

Population

Santa Clara County is the most populous of the nine counties comprising the San Francisco Bay Region, with an estimated 1,958,087 residents as of the end of December 2017 according to the State of California Department of Finance. San Jose is the largest city in the county and the third largest in California, surpassing San Francisco.

Employment by Industry - Morgan Hill

Industry	2017 Estimate	Percent of Employment
Agriculture/Mining	240	5.20%
Construction	511	11.10%
Manufacturing	719	15.60%
Wholesale trade	129	2.80%
Retail trade	410	8.90%
Transportation/Utilities	157	3.40%
Information	69	1.50%
Finance/Insurance/Real Estate Services	212	4.60%
Services	2,041	44.30%
Public Administration	124	2.70%
Total	4,608	100.1%

Source: Site-to-Do-Business (STDB Online)

Unemployment

While the unemployment rate was affected by the most recent recession, it has recovered significantly in recent years, particularly in the Bay Area. Santa Clara County's rate is currently less than the rates of the state and nation. The County unemployment rate was 2.6% as of December 2017 (most recent available). The State of California was at 4.6% while the nation was at 4.1% for the same time period. Unemployment rates locally and nationwide have been on a decreasing trend over the last several years, as shown in the table below.

Unemployment Rates

Area	2010	2011	2012	2013	2014	2015	2016	Dec 2017
United States of America	9.3%	8.5%	7.9%	6.7%	5.6%	5.0%	4.7%	4.1%
California	11.0%	9.6%	8.0%	6.6%	5.6%	5.1%	4.2%	4.6%
Santa Clara County	8.4%	7.0%	5.5%	4.3%	3.7%	3.3%	2.6%	2.6%
City of Morgan Hill	9.3%	7.7%	6.1%	4.8%	4.1%	3.7%	2.9%	2.9%

Source: Bureau of Labor Statistics - Year End - National & State Seasonally Adjusted

The most recent UCLA Anderson Forecast anticipates a sunny 2018, and a cloudy 2019. It states, the national GDP is growing at a strong rate and is expected to continue to do so into through the second quarter of 2018, but then as the unemployment rate drops below 4% and employment growth slows due to a shortage of labor, growth will drop back to the 2% growth rate seen previously. By the end of 2019, the cloudy prediction is for a growth rate of 1.5%, or lower.

The California Forecast

The forecast for California's unemployment is "continued growth", but that is likely due to the federal administration's difficulty getting legislation through Congress and a result of more job seekers brought into the market, rather than more jobs being available. The tightening of immigration rules is expected to have a significant effect in California, however due to protections already in place, not as big an effect as they might have otherwise had. California is expected to grow at a rate slightly faster than the US as a whole, and be at a 4.5% unemployment rate by the end of 2019.

Immediate Environs

The subject neighborhood has good access to local and regional transportation. Dunne Avenue is a primary arterial that provides access to Highway 101. Monterey Highway, one of the primary commercial thoroughfares, is located a block to the west of the subject, and passes through downtown Morgan Hill.

The area has primarily commercial uses along major arterials with residential uses along secondary roadways. Most improvements in the subject's immediate environs are considered to be in average to good condition, with good appeal. The subject is an attractive area for a variety of uses including commercial, public uses, mixed-use, and residential and benefits from its location in downtown Morgan Hill.

Conclusions

Historically, the Santa Clara County region has been considered a desirable place to both live and work. Physical features and a strong local economy attract both businesses and residents. It is a worldwide leader in technology and a regional employment center, with an increasingly diversified economy. While traffic congestion will continue to be a problem, residents remain among the most affluent in the country. The subject benefits from its downtown location.

Site Description

The subject Park and Ride site is located in Morgan Hill, CA. The characteristics of the site are summarized as follows:

Site Characteristics

Location:	17295 Butterfield Boulevard, Morgan Hill, Santa Clara County, California 95037
Gross Land Area:	6.07 Acres or 264,409 SF; a 41% physical division thus consists of 108,408 square feet (or 264,409 x 41%)
Usable Land %:	100.0%
Shape:	Rectangular
Average Depth:	490 feet
Topography:	Level and at grade with fronting streets
Drainage:	Assumed adequate
Grade:	Above grade
Utilities:	All available to the site
Off-Site Improvements:	Butterfield Boulevard is a fully improved roadway with sidewalks, curbs, gutters, streetlights, and landscaping. This roadway carries two lanes of traffic in each direction, north and south. Caltrain rail lines run north to south along the western side of the subject and connect to the San Martin station to the south and the Blossom Hill station to the north and generally parallel Monterey Highway.
Interior or Corner:	Interior
Signalized Intersection:	No traffic signal at, or near, the site

Street Frontage / Access

Frontage Road	Primary
Street Name:	Butterfield Boulevard
Street Type:	Mixed Use
Frontage (Linear Ft.):	540
Number of Curb Cuts:	2
Traffic Count (Cars/Day):	±10,000

Flood Zone Data

Flood Map Panel/Number: 06085C0444H
 Flood Map Date: 05-18-2009

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

Other Site Conditions

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

Environmental Issues: We make no representations as to the presence of toxins and hazardous materials on the subject site. We are appraising the site as if clean. If this is of concern to any reader of this report, it is our recommendation that an environmental report be obtained from the appropriate professionals qualified to issue such opinions.

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

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

Adjacent Land Uses

North: Residential
 South: Community garden
 East: Residential
 West: Commercial/Caltrain platform

Site Ratings

Access: Average
 Visibility: Average

Zoning Designation

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

Zoning Comments:

The subject property is under the jurisdiction of the City of Morgan Hill and is zoned Central Business District. The General Plan land use designation is Mixed Use. The subject is part of the Downtown Specific Plan and is designated as Block 16.

The purposes of the Central Business District are to implement the goals and objectives of the Downtown Morgan Hill Specific Plan; support traditional architectural styles and features, while also allowing for design creativity and use of contemporary materials in a manner found to be compatible with the downtown vision and character; provide a variety and inter-mixture of residential, commercial, and public activities in the downtown core; provide additional housing stock, and conserve housing stock in residential areas west of Monterey Road; and increase residential and commercial densities in the Downtown Core.

Permitted uses include commercial service, financial services, home occupations, live/work units, mixed use residential (residential use above some other use), business support services, hospital, medical office, administrative and professional offices, public parking lot or structures, and other conforming uses.

There are no minimum or maximum density requirements for the subject. There is no ground floor commercial requirement at the subject location.

Since 1977, the City of Morgan Hill has utilized a Residential Development Control System (RDCS) to ensure that new development can be served by existing infrastructure and public services. The RDCS includes a competitive system for residential entitlements. A surplus of residential allocations existed in the Downtown in previous years under Measure C.

However, the City's new residential growth measure (voted in during the November 2016 election and effective date March 1, 2017), Measure S, will set aside 500 units for Downtown through 2035; with no more than 100 allotments per year.

To be eligible to receive these Downtown allotments, a project must receive at least 80 percent of the total maximum score in the RDCS competition criteria. However, eligible Downtown projects are not required to compete for set-aside allotments. Instead, allotments are issued to eligible projects on a first-come, first-served basis (up to 100 allotments each year). This will place additional risk and uncertainty in developing downtown properties with residential use (such as the subject) since allocations must be attained.

Analysis/Comments on Site

The Park and Ride site consists of a single parcel located along the west side of Butterfield Boulevard in downtown Morgan Hill. The site has a rectangular shape and an interior lot configuration with

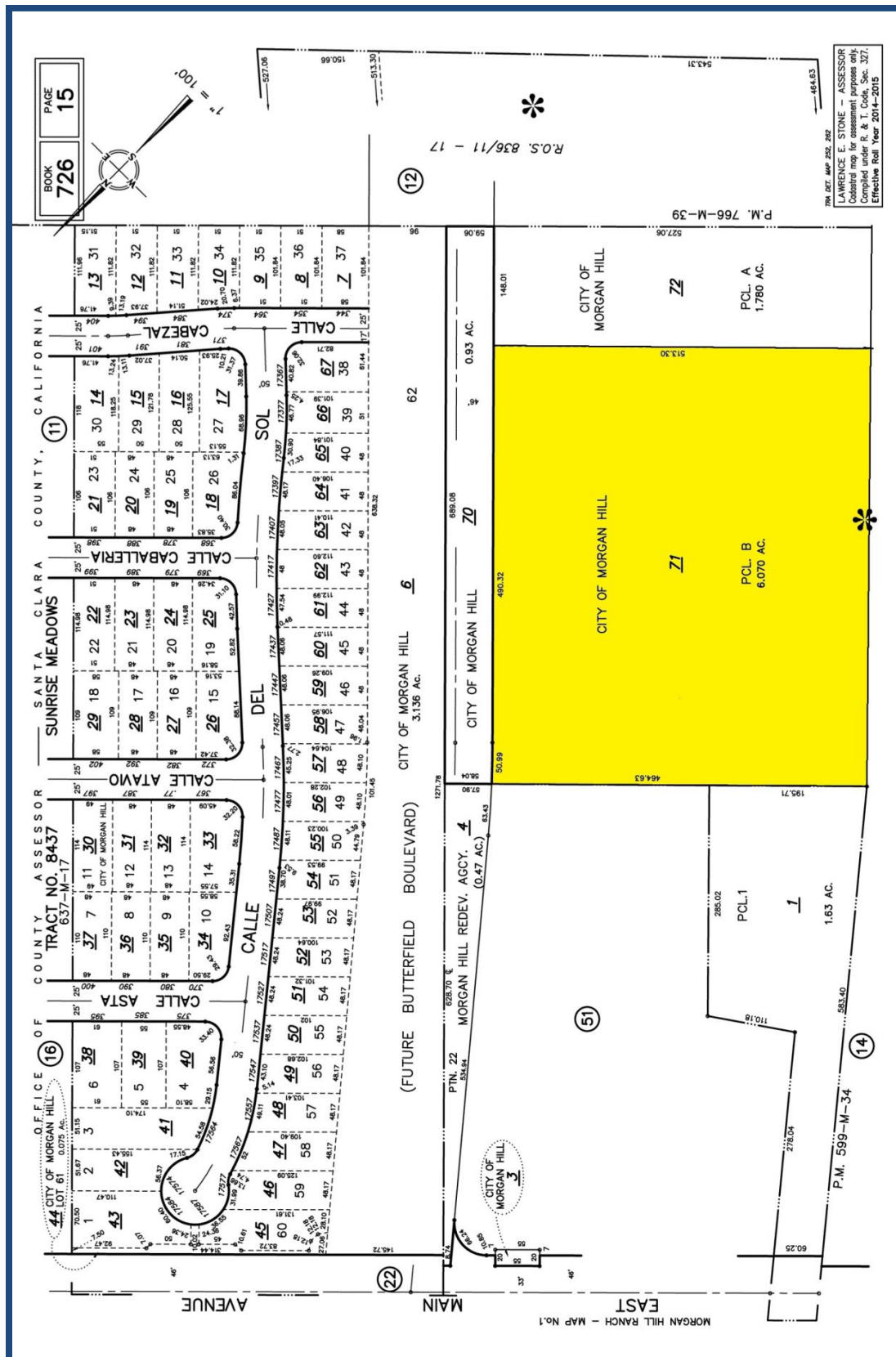
approximately 540 feet of frontage along Butterfield Boulevard and an average depth of 490 feet. The site benefits from its downtown Morgan Hill location, nearby amenities, and its proximity to the Morgan Hill Caltrain station.

The underlying site contains 264,409 gross square feet or 6.07 gross acres. The property is zoned Central Business District and the General Plan land use designation is Mixed Use.

For the purpose of this appraisal, a 41% physical division is appraised, reflecting a land area of 108,408 square feet. The 41% interest reflects the City's portion of initial Park and Ride development costs. In the event of sale, the 41% physical division would be located at the southern portion of the subject property.

The subject site is level with average access and would be physically well suited to a wide variety of legally permissible uses.

TAX/PLAT MAP OF THE PARK AND RIDE SITE



Attachment: Appraisal Update VTA Lot (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)

Subject Photos



Subject Park and Ride lot



Subject Park and Ride lot



View of Caltrain platform from subject lot



Butterfield Boulevard, looking south

Cooperative Agreement

The subject property is encumbered by a Cooperative Agreement ("Agreement") dated January 27, 1994, between the Santa Clara County Transit District and the Redevelopment Agency of the City of Morgan Hill.

The Cooperative Agreement intended for the subject property to be used for the San Jose-to-Gilroy Caltrain Extension Project and the Morgan Hill Park and Ride Lot.

The Agreement limits the use of the subject property to a public Park and Ride lot. There is no provision to charge for parking and thus the parking must remain free, which was confirmed with our client. Each party shall share in security and maintenance expenses.

Given that there are 471 surface parking spaces on the entire Park and Ride property, we have estimated that a 41% physical division of the entire site would result in ± 193 parking spaces on the subject parcel.

The client intends to use this appraisal in a possible sale of its 41% in the subject property to VTA via a right of first refusal in the Cooperative Agreement. The right of first refusal is silent on appraisal methodology, terms or price. The Cooperative Agreement does state that any division of the property should not create a flag parcel and that in the case of division, the Redevelopment Agency will acquire the southern portion of the property (this is the subject 41% for this appraisal).

It is unknown at this time if the Cooperative Agreement could be cancelled or if it would survive a sale between the parties, or a 3rd party. As such, we have employed certain assumptions per our client's request related to the ability to cancel the Cooperative Agreement, as well as whether a physical division would occur as part of a sale. Please refer to the valuation sections and letter of transmittal for additional details.

Assessment and Tax Data

Assessment Methodology

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

Assessed Values and Property Taxes

The subject property is not currently taxed because it is under government ownership. When the property sells into private ownership in the future, it will be re-assessed at full market value and taxed at rates similar to other properties in the area.

General Taxes

The amount of General Taxes due is quantified by multiplying the assessed value by the tax rate. In the State of California, real estate is assessed at 100% of market value as determined by the County Assessor's Office. The tax rate consists of a base rate of 1% plus any bonds or fees approved by the voters. The County Tax Rate for the subject property area is 1.21515%.

Direct Assessments

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

Current and Future Taxes

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

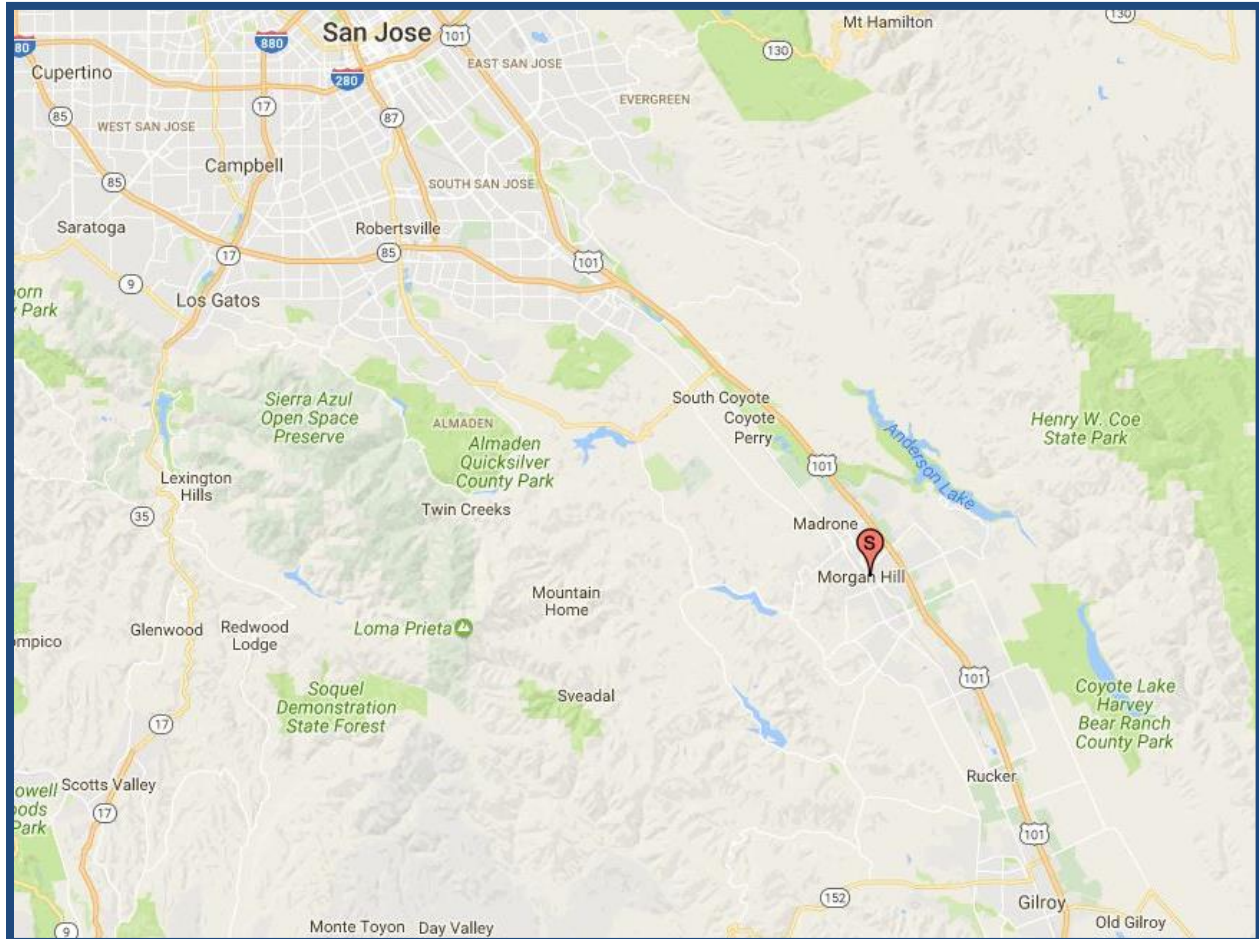
Proposition 8, which passed in 1979, states that the Assessor shall lower tax roll values to fair market value whenever the assessed value exceeds fair market value. It mandates that the lower of fair market value or factored base value be placed on the assessment roll. When fair market values are enrolled, the Assessor reassesses the property annually until such time as fair market value again equals or exceeds the factored base year value. For properties that have been owned for several years, the assessed value may not reflect the current fair market value. Furthermore, due to adjustments following a Prop 8 reduction, increases in assessed value can increase substantially more than 2% per year until the assessment again matches the factored base year value.

Conclusions

The subject property is not currently taxed because it is under government ownership. If the property sells into private ownership in the future, it will be re-assessed at full market value and taxed at rates similar to other properties in the area.

Market Analysis

MARKET AREA MAP



The highest and best use for the property as vacant and unencumbered is a residential use. We have, therefore, provided a residential land use market overview below.

Morgan Hill Residential Land Market

Land values for residential land in Morgan Hill currently range from $\pm\$15$ to $\pm\$30$ per square foot of land area, depending on location, entitlements/allocations, density, and overall appeal.

The Bay Area residential market has historically experienced demand and value levels amongst the strongest in the nation. Consistent growth experienced in 1985 to 1989 was followed by a recession from 1990 through 1994, and in 1996, as capital became available, the first signs of growth appeared with the strengthening residential market yielding heavy sales and significant value increases through 1999. The first three quarters of 2000 were characterized by short marketing periods and sales prices well in excess of listing prices. By March 2001 the demand for residential space had declined, and the attacks of September 11th pushed the economy into recession. Declines in demand for both "for sale" and "for rent" products continued until December 2003. What follows is a three year period of appreciation whereby median and average home prices increases of 20% per year or

more were not unusual. Stabilization occurred in mid-2005 and in 2007 single-family construction fell to the lowest point in 25 years. Increased affordability due to price decreases and the historically low mortgage rates have helped to spur the local housing market in 2012.

As stated, the Bay Area marketplace has historically been characterized as among the most expensive housing markets in the nation. The following table highlights median prices for both detached and attached housing within the City of Morgan Hill and Santa Clara County, as reported by clickhome.rereport.com, which utilizes statistics from the local Multiple Listing Service.

Median SFR & Condo Home Sale Prices

City of Morgan Hill & Santa Clara County								
		Feb-15	Feb-16	% Change	Feb-17	% Change	Feb-18	% Change
SFRs	Morgan Hill	\$797,500	\$830,000	4.1%	\$941,999	13.5%	926,000	-1.7%
	Santa Clara County	\$925,000	\$930,000	0.5%	\$1,082,000	16.3%	\$1,380,000	27.5%
Condos	Morgan Hill	\$432,750	\$614,500	-13.6%	None	N/A	645,000	N/A
	Santa Clara County	\$548,000	\$645,000	17.7%	\$670,000	3.9%	\$831,500	24.1%

The preceding table supports price increases in single-family homes (SFR) and condominiums (condo) since February 2015. In the condo market, a -13.8% decrease in medium prices reported in Morgan Hill. No condo sale transactions occurred in Morgan Hill in February 2017. In 2018, the median price was \$645,000; a 16.1% overall increase from February 2015 to 2018. Similar median price increases are reported also in the County. The following table illustrates monthly market activity of detached single-family homes in the City of Morgan Hill from December 2016 to February 2018. The table illustrates the following trends:

- Marketing periods have been steady, averaging 35 days on market.
- The median monthly sale price indicates an uncertainty in the market as the median sale price in December 2016 to February 2018 indicates a 2.89% overall increase.
- The percentage of sale-to-list prices has been above 100% for most of 2017, suggesting good market demand with sellers receiving multiple offers.

Residential land values are directly tied to supply and demand of current housing product. As an increasing number of markets and property types continue to see occupancy rates rise and space options of tenants decline, a growing number of investors are contemplating adding new supply.

City of Morgan Hill - SFR Market

Month	Median Sale Price	M-o-M Change	Sale to List Price	DOM
Feb-18	\$926,000	3.2%	102.3%	25
Jan-18	\$897,500	-12.0%	101.1%	30
Dec-17	\$1,020,390	5.7%	101.8%	34
Nov-17	\$965,000	2.4%	100.2%	31
Oct-17	\$942,500	-1.2%	100.7%	35
Sep-17	\$954,000	3.6%	100.9%	30
Aug-17	\$920,938	-10.2%	100.1%	32
Jul-17	\$1,025,000	12.9%	100.8%	36
Jun-17	\$907,500	2.3%	100.6%	31
May-17	\$887,500	16.8%	100.4%	15
Apr-17	\$760,000	-14.6%	102.4%	27
Mar-17	\$889,500	-5.6%	99.5%	36
Feb-17	\$941,999	12.1%	99.3%	53
Jan-17	\$840,000	-6.7%	99.2%	61
Dec-16	\$900,000	1.8%	99.1%	55

Land values vary depending on location, size, permitted uses, entitlements, and allowable density. Although land values are down from the market highs during the 2006-2007 timeframe, we have seen a significant rebound over the past three to four years. This is due to greater optimism on the

part of developers and their opinion that the economy and housing market have turned the corner. The market for residential land appears to be rebounding with the real estate market in general.

Residential land is typically purchased contingent on project approvals (entitlements and allocations). This contingency reduces risk to a developer (uncertainty as to what can eventually be built). Prices for land purchased without this contingency are typically lower than for land purchased subject to receipt of entitlements. The price differential may be especially large as development risk increases. On the other hand, entitlements may have little or no value if the development horizon is likely several years away. We note that public participation in planning activities is high in certain municipalities, and the approval process for residential projects can become political, long and arduous. It is not uncommon for new projects to take three to four years for development approval.

The value of entitlements depends on the risk, cost and time to get them. In some cities, for example Los Gatos and Palo Alto, the approval process is excruciating. On the other hand, Milpitas and San Jose are fairly developer-friendly. Similarly, allocations for development, which are hard to get in the South County area, significantly impact the value of a site with properties with allocations for development selling significantly above those without.

Buyer types range from the individual developer to large-scale national builders, depending on the size of the site. Small-scale developers are typical buyers for sites less than five acres in size, who will purchase a single-family site and develop a home for their own residence.

The South County area is a more affordable market, but overall, less desirable than the rest of the Santa Clara County due to longer commute times to employment bases and fewer commercial services. Morgan Hill is more desirable than Gilroy, due to its proximity to the rest of Silicon Valley. Nonetheless, a site with allocations in place and entitlements is much more desirable than speculative land. Entitled and allocated sites are currently selling quickly; significant activity has been noted in the past two years for fully entitled sites and finished sites, or lots that are ready to be built.

Due to the limited number of sales in the South County area, and Santa Clara County in general, there are no statistics that show the extent to which land values have increased and decreased over the past five years. We can, however, say that residential land values appear to parallel finished product increases and decreases. As we saw earlier, home prices in Morgan Hill fluctuated between 2008 and 2010, but we are now experiencing a market turn around as of the past 24 months. In addition, there is pent up demand, with limited new product coming in the market and with an inventory of less than one month in the resale market. This tight housing market has put significant upward pressure on land values.

We have spoken with brokers and real estate professionals for insights and opinions, as there have been few recent land transactions in the Bay Area. Most brokers indicate that deal velocity is currently on the rise, and there have been a good number of land deals in South County in the past couple of years. While brokers are hesitant to give definitive opinions of value, they indicate that land values have increased over the past year and will soon reach the values during the peak in 2007.

John Telfer, a very knowledgeable Realtor in the South County area, specializing in residential land, indicated that demand for land is up, especially land in the R1-7000 zoning category as there is a very small amount of this type of land that still remains in Morgan Hill. Mr. Telfer indicated that land prices sank about 40% in Morgan Hill during the recession from the peak of the market, but the market has recovered and is now even above the peak achieved back in 2006.

Stanley Perry, Principal with SP Commercial Real Estate, indicated that the Morgan Hill market will continue to see demand because of its more advantageous price point in relation to the rest of the Silicon Valley area. Therefore, the long-term outlook for the subject property is good, and the subject is expected to perform at par or better than its competition within the submarket.

Residential Development & Construction

The previous discussion has primarily related to demand for residential product. More crucial to the subject is the projected development within the subject's marketplace. The amount of new construction that is currently taking place in Morgan Hill and Gilroy is the most visible example that the South County is sharing in the residential recovery that is now well under way in Silicon Valley cities located to the north. As of the date of value, several subdivisions were under development in the South County area, most of which were, however, single-family home subdivisions. Only two attached projects are currently under development or planned.

The South County area is different from the rest of the Santa Clara County market. In contrast to rental heavy cities to the north, for-sale dominates the South County market. Projects are usually smaller, with only few homes coming in the market every year, because of restrictive growth measures. Also single-family detached homes, rather than dense townhomes and condo project are more common. The following table summarizes requests for residential building allotments as reported by the City of Morgan Hill Planning Department and reflects the full development pipeline for the City:

REQUEST FOR RESIDENTIAL BUILDING ALLOTMENTS				
Fiscal Year 2017-2018				
MC-15-05	Cochrane-Borello	244 SFR	728-34-027	MH Creekside, Inc.
MC-15-06	Laurel-DelRose	65 Condos	726-01-008	Tri Point
MMC-15-07	DeWitt-Murray	4 SFR	773-08-064	Scott Murray
MMC-15-08	Price -Conn	1 SFR	773-08-081	Joe Conn
MMC-15-09	Peak-Finamore	2 Att	764-36-007	Rick Finamore
MC-15-10	Walnut Grove-Newland	9 SFR	726-07-023 & 024	Newland Homes
MC-15-11	San Pedro-Presidio	12 SFR	817-01-001	Presidio Mana Monterey LLC
MC-15-12	Jarvis-Mwest	374 Rental	726-25-078, 79, 66, 67	Mwest PropCo
MC-15-13	Lantana-Standard Pacific	135 SFR	728-36-014 & 13	Mission View Drive
MC-15-14	Montere-UHC	39 Affordable	817-36-032 & 33	Urban Housing Communities
MC-15-15	Butterfield- MH Butterfield	78 SFR	726-26-005	MH Butterfield Investors LLC
MC-15-16	Dunne-Mana	32 SFR	726-02-014	Mana
MC-15-17	Pedro-Presidio	79 Condos	817-12-009	Presidio Evegreen LLC
MC-15-18	Pedro-Presidio	168 Rental	817-12-006	Presidio Evegreen LLC
Total		1,242		

While residential interest in Morgan Hill, especially for single-family homes, is off the charts lately, the city's downtown has yet to see a burst of new commercial or housing construction like other Valley downtowns such as Campbell, Palo Alto and Mountain View. Nonetheless, attached development in the City is increasing, with a couple of projects currently selling more affordable, attached product in the city.

We do note, however, that the City is definitely moving to denser development themes, as it was recently reported in local news that a local development team backed by Mana Investments received key zoning approvals for a roughly 175-unit apartment community as well as a 75-unit for-sale townhouse component on Condit Road, adjacent to the City's Outdoor Sports Complex. This project

would alleviate the pent up demand generated from the lack of apartment development in the past 15 years in Morgan Hill. At present, apartment complexes in Morgan Hill have a vacancy rate of 1%, with some employers complaining that the employees do not have affordable housing options.

We note that structured parking or below-grade parking is not feasible in Morgan Hill as prices and rents would not support the costs of development. The market sweet spot in terms of density is currently 18 units per acre, for a townhouse product. A development up to 30 units per acre is the maximum density that could be achieved without providing structured or subterranean parking.

According to Scott Murray, demand for rentals is coming from existing residents who are looking for newer product, as well as people coming from the north, displaced by high rents in those areas, and looking for larger spaces. The Morgan Hill market thrives when home prices in the San Jose area become increasingly less affordable. That is what is currently occurring. In the past two years, according to information provided by MLS Listings, the median home price in the city of San Jose has increased over \$100,000 and, the sale-to-list price ratio remained doggedly above 100%. San Jose and environs are not producing enough new homes to keep pace with demand. More peripheral communities, like Morgan Hill and Gilroy, benefit as buyers are willing to move farther away from job centers to find affordable housing and a less hectic lifestyle.

Conclusion

The residential land market in Santa Clara County has improved along with the real estate market in general. Looking forward, well-located sites in the county are expected to be in strong demand. The most desirable sites are in-fill sites that provide a good balance of public amenities.

The long-term outlook for the subject property and the subject submarket of Morgan Hill is generally positive.

Highest and Best Use

The Highest and Best Use of a property is the use that is legally permissible, physically possible, and financially feasible which results in the highest value. An opinion of the highest and best use results from consideration of the criteria noted above under the market conditions or likely conditions as of the effective date of value. Determination of highest and best use results from the judgment and analytical skills of the appraiser. It represents an opinion, not a fact. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

This valuation reflects a site that is a separate legal parcel measuring 108,408 square feet located at the southerly end of the Park and Ride property. Under this scenario, we have assumed that the Cooperative Agreement can be terminated and that the property can be developed to other uses.

Analysis of Highest and Best Use As If Vacant

The primary determinants of the highest and best use of the property as if vacant are the issues of (1) Legal permissibility, (2) Physical possibility, (3) Financial feasibility, and (4) Maximum productivity.

Legally Permissible

The subject site is zoned CBD, Central Business District which controls the general nature of permissible uses but is appropriate for the location and physical elements of the subject property, providing for a consistency of use with the general neighborhood. The location of the subject property is appropriate for the uses allowed, as noted previously, and a change in zoning is unlikely. There are no known easements, encroachments, covenants or other use restrictions that would unduly limit or impede development.

We have assumed the site is already physically partitioned, which is a hypothetical condition. We have also assumed that the existing Cooperative Agreement that is in place can be terminated, thereby allowing redevelopment to the property's highest and best use, which is an extraordinary assumption. The legally permissible uses, therefore, are defined by the Zoning and General Plan designations.

Physically Possible

The physical attributes allow for a number of potential uses. Elements such as size, shape, availability of utilities, known hazards (flood, environmental, etc.), and other potential influences are described in the Site Description have been considered. There are no items of a physical nature that would materially limit appropriate and likely development.

Financially Feasible

The probable use of the site for residential development conforms to the pattern of land use in the market area. A review of published yield, rental and occupancy rates suggests that there is a balanced supply and demand is sufficient to support construction costs and ensure timely absorption of additional inventory in this market. Therefore, near-term speculative development of the subject site is financially feasible.

Maximally Productive

Among the financially feasible uses, the use that results in the highest value (the maximally productive use) is the highest and best use. Considering these factors, the maximally productive use as though vacant is for residential use.

Conclusion of Highest and Best Use As If Vacant

The conclusion of the highest and best use as if vacant is for residential use.

Most Probable Buyer

As of the date of value, the most probable buyer of the subject property is a developer.

Highest and Best Use As Improved

The subject property is an improved parking lot. These improvements do not contribute toward the highest and best use. The highest and best use as improved, therefore, is for residential use, for a medium density project.

Valuation

Methodology

This valuation assumes that the subject is a separate legal parcel available for its highest and best use, and that the Cooperation Agreement can be terminated. The site is valued, therefore, based on its redevelopment potential to residential use.

The subject is a 41% physical division of a larger property that measures 264,409 square feet. Thus, the subject site area to be transferred measures 108,408 square feet (or 264,409 x 41%). Since the subject is part of a larger property, we have valued the entire 264,409 square feet and have allocated that price per square foot to the subject 108,408 square feet.

Site Value is most often estimated using the sales comparison approach. This approach develops an indication of market value by analyzing closed sales, listings, or pending sales of properties similar to the subject, focusing on the difference between the subject and the comparables using all appropriate elements of comparison. This approach is based on the principles of supply and demand, balance, externalities, and substitution, or the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership.

Unit of Comparison

The unit of comparison depends on land use economics and how buyers and sellers use the property. The unit of comparison in this analysis is the price square foot of land.

Elements of Comparison

Elements of comparison are the characteristics or attributes of properties and transactions that cause the prices of real estate to vary. The primary elements of comparison considered in sales comparison analysis are as follows: (1) property rights conveyed, (2) financing terms, (3) conditions of sale, (4) market conditions, (5) location, and (6) physical characteristics.

Comparable Sales Data

To obtain and verify comparable sales of vacant land properties, we conducted a search of public records, field surveys, interviews with knowledgeable real estate professionals in the area, and a review of our internal database.

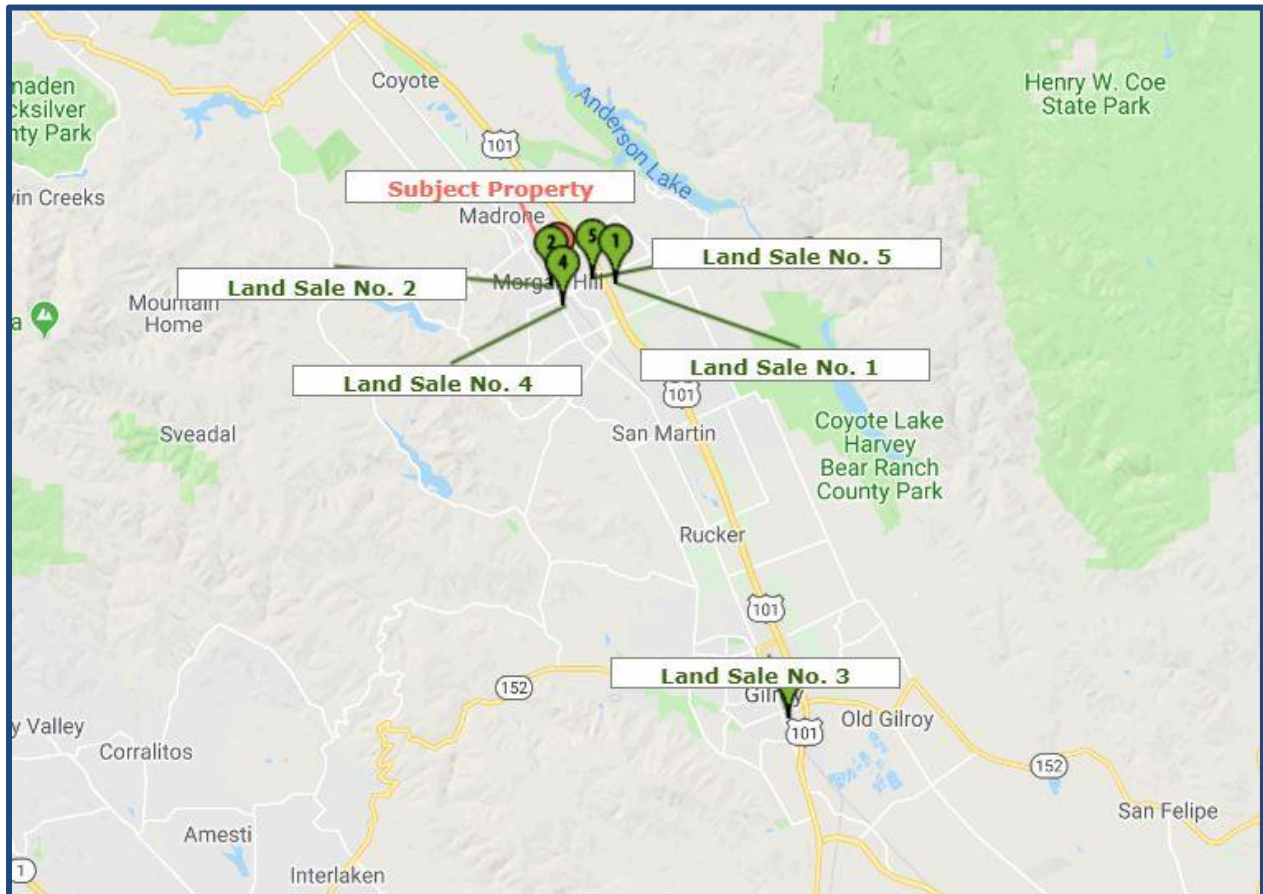
We included several sales in our analysis, as these sales were judged to be the most comparable to develop an indication of market value for the subject property.

The following is a table summarizing each sale comparable and a map illustrating the location of each in relation to the subject. Details of each comparable follow the location map.

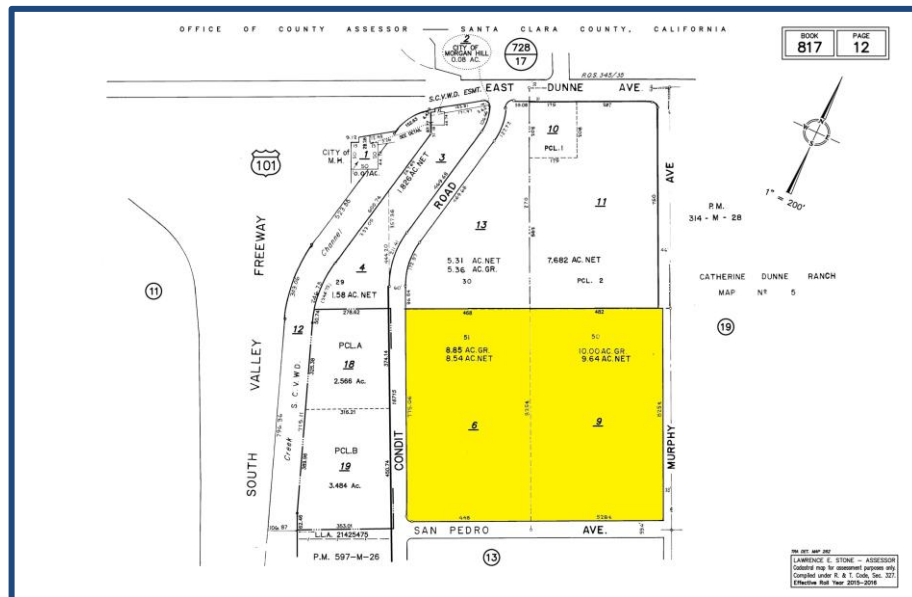
Land Sales Summary

Comp. No.	Date of Sale	Usable Acres	Gross Sq. Ft.	Location	Zoning	Sales Price Actual	Per Unit	Per Sq. Ft.
1	Nov-17	18.850	821,106	NEC Condit Rd & San Pedro Ave	Morgan Hill	CG	\$12,700,000	\$50,800
2	Oct-15	0.265	11,530	17440 Monterey Rd	Morgan Hill	CBD	\$294,476	N/A
3	Feb-14	6.290	273,992	199 Banes Ln	Gilroy	DED	\$5,630,000	\$21,489
4	Feb-18	1.624	70,736	16800-16840 Monterey Hwy	Morgan Hill	PUD	\$2,400,000	\$61,538
5	Sep-16	6.820	297,079	Laurel Rd	Morgan Hill	R2 & PUD	\$6,150,000	\$94,615

COMPARABLE SALES MAP



LAND COMPARABLE 1



Property Identification

Property/Sale ID	65842/412430
Property Type	Retail
Address	NEC Condit Road and San Pedro Avenue
City, State Zip	Morgan Hill, California 95037
County	Santa Clara
Latitude/Longitude	37.129982/-121.628255
Tax ID	817-12-020

Transaction Data

Sale Date	November 14, 2017	Grantee	Mana Investments/Presidio Development
Sale Status	Recorded	Recording Number	23800498
Grantor	Evergreen Investment Group II	Sale Price	\$12,700,000

Property Description

Gross Acres	18.85	Use Designation	Residential Attached Medium Density (16-24 du/ac) and Residential Attached Low Density (6-16 du/ac)
Gross SF	821,106	Zoning Jurisdiction	City of Morgan Hill
No. of Units	250	Zoning Code	CG
Density (Units/Ac)	13.26	Zoning Description	General Commercial
Corner/Interior	Corner		
Shape	Rectangular		

Indicators

\$/Gross SF	\$15.47
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Attachment: Appraisal Update VTA Lot (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)

Remarks

This property consists of two vacant parcels of land located along the east side of Condit Road, just east of Highway 101, in Morgan Hill. The site has a rectangular shape and a corner lot configuration at the intersection of Condit Road and San Pedro Avenue. The site has approximate 775 feet of frontage along Condit Road and 975 feet of frontage along San Pedro Avenue. The site is level and situated just north of the Morgan Hill Sports Center and has no freeway visibility.

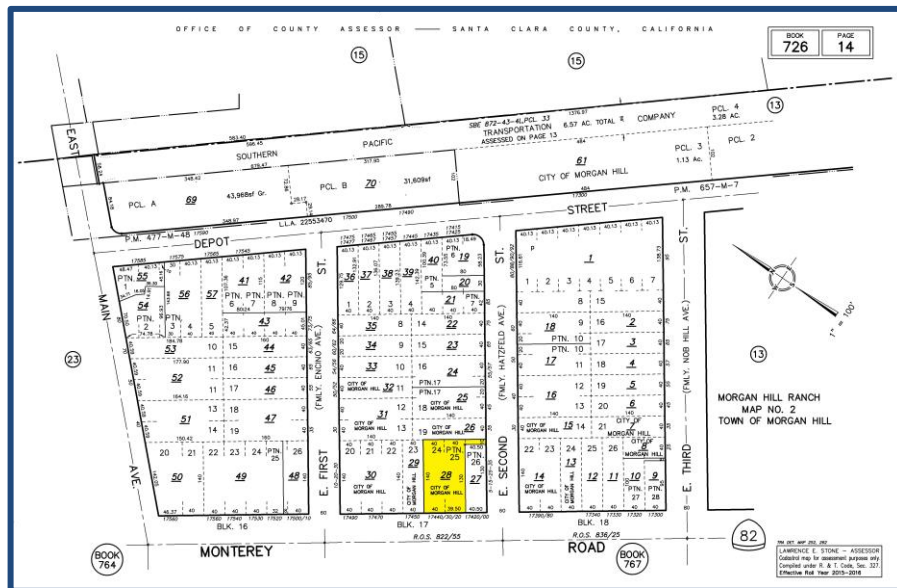
The underlying site contains 821,106 gross square feet or 18.85 gross acres and 791,921 net square feet or 18.18 net acres. The property is zoned General Commercial and the General Plan land use designation is split between Residential Attached Medium Density (16-24 du/ac) and Residential Attached Low Density (6-16 du/ac).

This property was listed for \$12 million in 2016. According to the listing agent, the transaction of this property, which was in escrow back in 2009, fell through, as the pending buyer could not get the General Plan changed to coincide with their desires of a mix of residential and commercial. A new developer put in an offer, and the property has been in escrow since July 2013. The property had a General Plan of Commercial, but the new developer worked with the city to change it to Residential Attached Medium Density combined with Residential Attached Low Density. Between amending the General Plan, conducting an Environmental Impact Report and having to go through the Measure C Allocation process, escrow was not expected to conclude until mid-2016. The plan is to construct 180-200 apartment units and 75-80 duets.

The property was purchased in November 2017 for \$12,700,000, \$673,740 per gross acre and \$15.47 per gross square foot of land. The Silicon Valley Business Journal reported the transaction and stated that Mana Investments received rezoning approvals for 175-unit apartment complex and 75-unit for sale townhome component. The project called Condit Evergreen is proposed for a site where others have failed to gain approvals for residential development. San Jose homebuilder UCP tried to get approvals for 99 units but the city officials considered the density to be very low. In addition, the proposed residential development is part of a master plan with the adjacent retail center. A pedestrian path through the development will connect the proposed development with the existing Sports Center. Due to Measure C requirements and restrictions, the apartment allocation will be requested first and construction completion is anticipated in 2018. The for-sale component would be constructed in partnership with Van Daele Homes.

In 2017, the City approved the developer's final plans and includes a 168-unit apartment complex and a for sale 74 unit subdivision, which will be built in east Morgan Hill.

LAND COMPARABLE 2



Property Identification

Property/Sale ID	79431/427427
Property Type	Commercial
Property Name	Granada Theater
Address	17440 Monterey Road
City, State Zip	Morgan Hill, California 95037
County	Santa Clara
Latitude/Longitude	37.129305/-121.653086
Tax ID	726-14-028

Transaction Data

Sale Date	October 7, 2015	Grantee	Granada Theatre
Sale Status	Recorded	Recording Number	23116104
Grantor	City of Morgan Hill	Sale Price	\$294,476

Property Description

Gross Acres	0.26	Use Designation	Mixed Use
Gross SF	11,530	Zoning Jurisdiction	City of Morgan Hill
Corner/Interior	Interior	Zoning Code	CBD
Shape	L-Shaped	Zoning Description	Central Business District

Indicators

\$/Gross SF	\$25.54
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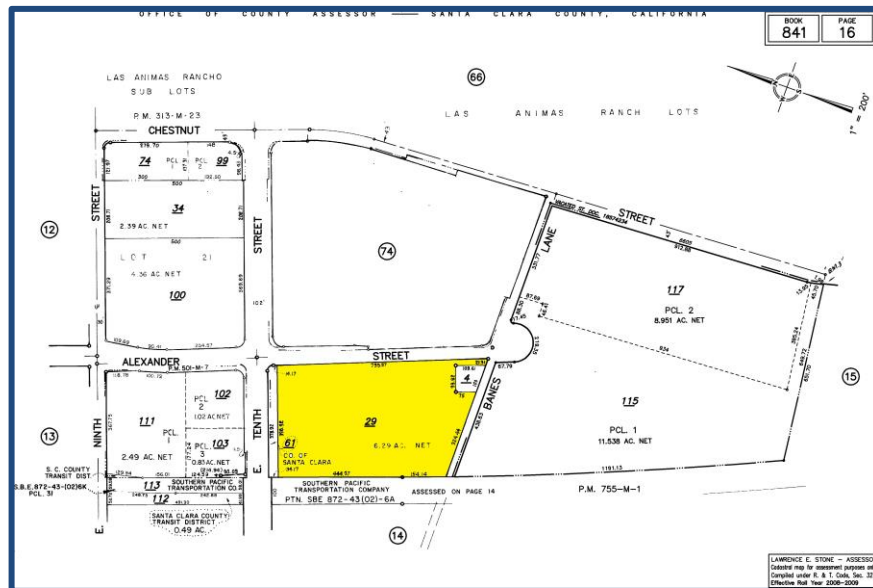
Remarks

This property consists of a single parcel improved with the Grande Theater located along the east side of Monterey Road in downtown Morgan Hill. The site has an L-shape and an interior lot configuration with approximately 80 feet of frontage along Monterey Road and a depth of 140 feet. The site has a 10 foot wide ingress/egress strip extending to East Second Street (with one curb cut). A city owned public parking lot is adjacent to the rear of the property.

The underlying site contains 11,530 gross square feet or 0.27 gross acres. The improvements contain 9,750 square feet and were originally constructed circa 1951. The property is Zoned Central Business District (CBD) and the General Plan land use designation is Mixed Use.

Granada Theater purchased this property in October 2015 from the City of Morgan Hill. The sale price was \$294,476 or \$25.54 per square foot of land. The property was purchased for land value and the price was based on an appraisal.

LAND COMPARABLE 3



Property Identification

Property/Sale ID	108611/423326
Property Type	Mixed Use Land
Property Name	Multi family Land
Address	199 Banes Lane
City, State Zip	Gilroy, California 95020
County	Santa Clara
Latitude/Longitude	36.999132/-121.563230
Tax ID	841-16-029, 841-16-004, and 841-16-061

Transaction Data

Sale Date	February 11, 2014	Grantee	Gilroy Pacific Associates
Sale Status	Recorded	Recording Number	22768886
Grantor	Ken & Jill Gimelli	Sale Price	\$5,630,000

Property Description

Gross Acres	6.29	Use Designation	Downtown Expansion District
Gross SF	273,992	Zoning Jurisdiction	City of Gilroy
No. of Units	262	Zoning Code	DED
Density (Units/Ac)	41.65	Zoning Description	Downtown Expansion District
Corner/Interior	Corner		
Shape	Generally Rectangular		

Indicators

\$/Gross SF	\$20.55
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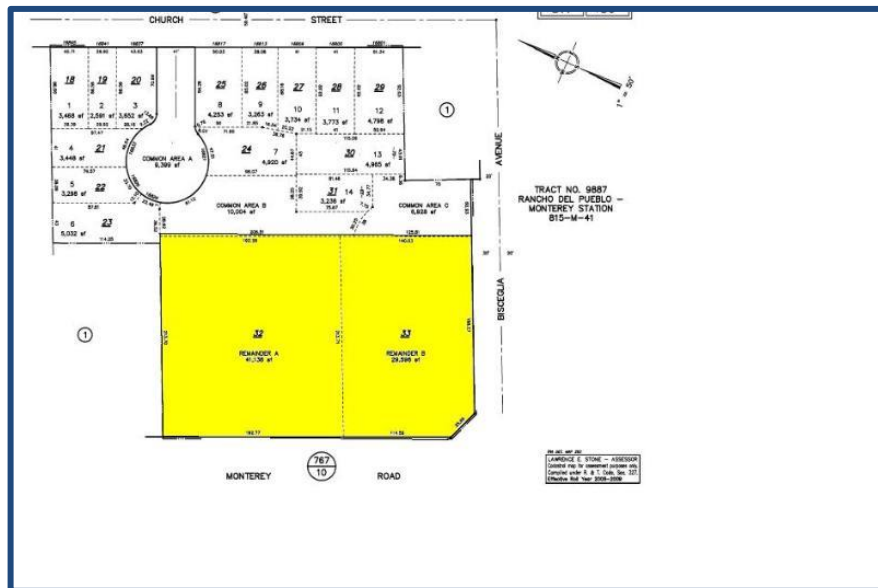
Remarks

This property consists of three contiguous parcels located along the south side of East 10th Street in Gilroy. The site has a nearly rectangular shape and a corner lot configuration at the signalized intersection of East 10th Street and Alexander Street. The site has approximately 400 feet of frontage along East 10th Street and 800 feet of frontage along Alexander Street. The site is generally level and at street grade with all utilities available. The property is proximate to the Gilroy Caltrain Station.

In the early 2000's, the property was improved with an old metal warehouse building that was occupied by Indian Motorcycles. The improvements were demolished. The site was formerly zoned Light Industrial (ML) which has since changed to Downtown Expansion District (DED). The new zoning allows for mixed-use and encourages residential development.

Gilroy Pacific Associates purchased this property in February 2014 from Ken & Jill Gimelli. The sale price was \$5,630,000 or \$20.55 per square foot of land. The property was purchased by a developer who plans to construct an affordable housing project with 262 units, indicating a density of 41.65 units per acre. 27 units will be leased at 50% of AMI and 233 units at 60% of AMI. The manager's unit will be at market. The proposed project would be five-stories. The permits were received in late summer of 2014 per David Bischoff with the city of Gilroy Planning Department. The project is financed with California Tax Credits and a tax-exempt multifamily affordable housing bond. The site was not officially listed for sale on the open market. The buyer reported the price was set at market rate.

LAND COMPARABLE 4



Property Identification

Property/Sale ID	102362/419972
Property Type	Residential (Single-Family)
Property Name	Crossings on Monterey
Address	16800-16840 Monterey Highway
City, State Zip	Morgan Hill, California 95037
County	Santa Clara
Latitude/Longitude	37.123063/-121.648220
Tax ID	817-36-032 and -033

Transaction Data

Sale Date	February 7, 2018	Communities	Communities
Sale Status	Recorded	Recording Number	23880053
Grantor	Alcini Partnership	Sale Price	\$2,400,000
Grantee	Urban Housing		

Property Description

Gross Acres	1.62	Shape	Generally Rectangular
Gross SF	70,736	Use Designation	Mixed Use
No. of Units	39	Zoning Jurisdiction	City of Morgan Hill
Density (Units/Ac)	24.02	Zoning Code	PUD
Corner/Interior	Corner	Zoning Description	Planned Unit Development

Indicators

\$/Gross SF	\$33.93
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Remarks

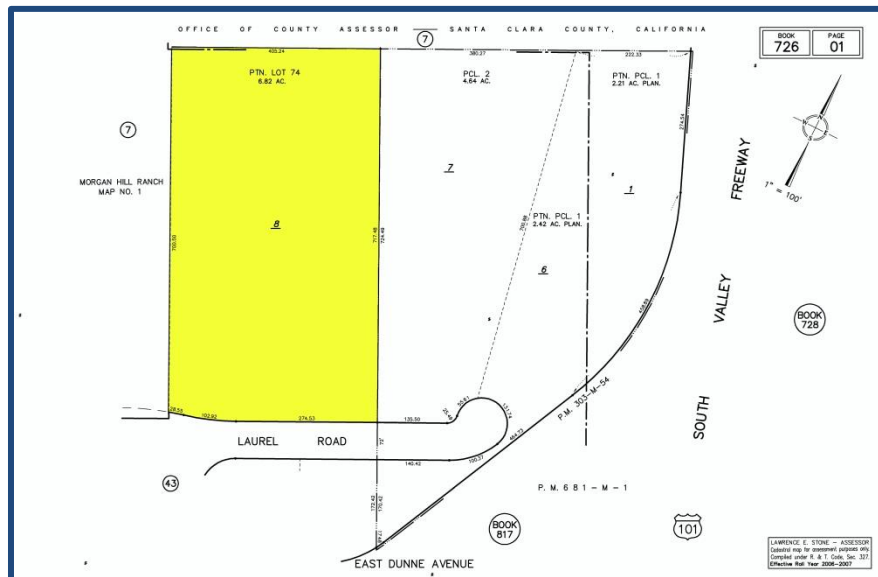
The property consists of two parcels located at the intersection of Monterey Highway and Bisceglia Avenue. The site has a rectangular configuration and corner lot configuration. There is an easement over the rear portion of APN -032 to lot -033 from Bisceglia Avenue.

The underlying site has 70,736 gross square feet, or 1.62 gross acres. The property is Zoned Planned Unit Development and the General Plan land use designation is Mixed Use.

The buyer purchased this property to construct 39 affordable housing units as part of a previously entitled project. The entitlements were amended and approved in February 2018 by the City Council to include affordable housing units in a three story building with 36 surface parking spaces, and 39 carport parking spaces (tucked-under the building). Allotments were received during escrow.

The purchased by the Urban Housing Communities in March 2018 for \$2,400,000, or \$33.93 per square foot of land area. It is one of the first projects in Santa Clara county to benefit from Measure A, of which \$5.5 million has been awarded to this project, Crossroads on Monterey. Additionally, the City of Morgan Hill has committed \$750,000 to the development.

LAND COMPARABLE 5



Property Identification

Property/Sale ID	130959/435975
Property Type	Residential (Single-Family)
Property Name	Madison Gate
Address	Laurel Road
City, State Zip	Morgan Hill, California 95037
County	Santa Clara
Latitude/Longitude	37.131765/-121.637242
Tax ID	726-01-008

Transaction Data

Sale Date	September 28, 2016	Grantee	Tri Pointe Homes Inc
Sale Status	Recorded	Recording Number	23445978
Grantor	Merietta D Barnes	Sale Price	\$6,150,000

Property Description

Gross Acres	6.82	Zoning Jurisdiction	City of Morgan Hill
Gross SF	297,079	Zoning Code	R2 & PUD
Corner/Interior	Interior	Zoning Description	Medium Density Residential/Planned Unit Development
Shape	Rectangular		
Use Designation	Residential Attached Medium (16-24 du/ac)		

Indicators

\$/Gross SF	\$20.70
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Attachment: Appraisal Update VTA Lot (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)

Remarks

The property consists of one parcel of vacant residential land. The site has a rectangular shape and interior lot configuration.

The underlying site contains 297,079 gross square feet or 6.82 gross acres. The property is Zoned Medium Density Residential/Planned Unit Development and its General Plan land use designation is Residential Attached Medium (16-24 du/ac).

Merietta D Barnes sold this property in September 2016 to Tri Pointe Homes Inc. for \$6,150,000., \$901,759 per gross acre and \$20.70 per gross square foot of land

The buyer intends to build 65 units; 50 townhomes and 15 single family residences. The homes are expected to have GLA's between 1,689 to 2,446 square feet, have 3 to 4 bedrooms and 2.5 to 3 baths and are expected to sell in the \$700,00's. RDCS allotments for a portion of the project were received during escrow.

Land Sales Comparison Analysis

When necessary, adjustments were made for differences in various elements of comparison, including property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions, location, and other physical characteristics. If the element in comparison is considered superior to that of the subject, we applied a negative adjustment. Conversely, a positive adjustment was applied if inferior. A summary of the elements of comparison follows.

Transaction Adjustments

Transaction adjustments include (1) real property rights conveyed, (2) financing terms, and (3) conditions of sale. These items, which are applied prior to the market conditions and property adjustments, are discussed as follows:

Real Property Rights Conveyed

Real property rights conveyed influence sale prices and must be considered when analyzing a sale comparable. The appraised value and sale comparables all reflect the fee simple interest with no adjustments required.

Financing Terms

The transaction price of one property may differ from that of an identical property due to different financial arrangements. Sales involving financing terms that are not at or near market terms require adjustments for cash equivalency to reflect typical market terms. A cash equivalency procedure discounts the atypical mortgage terms to provide an indication of value at cash equivalent terms. All of the sale comparables involved typical market terms by which the sellers received cash or its equivalent and the buyers paid cash or tendered typical down payments and obtained conventional financing at market terms for the balance. Therefore, no adjustments for this category were required.

Conditions of Sale

When the conditions of sale are atypical, the result may be a price that is higher or lower than that of a normal transaction. Adjustments for conditions of sale usually reflect the motivations of either a buyer or a seller who is under duress to complete the transaction. Another more typical condition of sale involves the downward adjustment required to a comparable property's for-sale listing price, which usually reflects the upper limit of value. The sale comparables do not indicate any condition of sale adjustments were warranted for atypical conditions or for-sale listings.

Market Conditions Adjustment

Market conditions change over time because of inflation, deflation, fluctuations in supply and demand, or other factors. Changing market conditions may create a need for adjustment to comparable sale transactions completed during periods of dissimilar market conditions.

Market conditions have improved over the past few years. All of the comparables are adjusted upward, except Comparable Four, which is a recent sale.

Property Adjustments

Property adjustments are usually expressed quantitatively as percentages or dollar amounts that reflect the differences in value attributable to the various characteristics of the property. In some instances, however, qualitative adjustments are used. These adjustments are based on locational and physical characteristics and are applied after transaction and market conditions adjustments.

Our reasoning for the property adjustments made to each sale comparable follows. The discussion analyzes each adjustment category deemed applicable to the subject property.

Location

Location adjustments may be required when the locational characteristics of a comparable are different from those of the subject. These characteristics can include general neighborhood characteristics, freeway accessibility, street exposure, corner - versus interior-lot location, neighboring properties, view amenities, and other factors.

The subject is located in the downtown area and adjacent to Caltrain. Comparables One, Three and Four are located in inferior locations (outside of downtown or in Gilroy) and are adjusted upward. No other adjustments are warranted for this element of comparison.

Size

The size adjustment addresses variance in the physical size of the comparables and that of the subject, as a larger parcel typically commands a lower price per unit than a smaller parcel. This inverse relationship is due, in part, to the principle of "economies of scale."

The subject is appraised as part of a 264,409-square-foot property. The comparables are adjusted for this size, and then we have allocated that price per square foot to the subject 41% physical division, which measures 108,408 square feet.

Comparable One is adjusted upward due to larger size. Comparables Two and Four are adjusted downward due to smaller sizes.

Configuration

The subject is a rectangular parcel. Comparable Three is flag shaped and is adjusted upward. Comparables One, Two, and Four are similar and are not adjusted.

Density

We opine that the maximally productive density for the subject, based on current market conditions, is between 18 and 30 units per acre. Comparables One and Five are adjusted upward. Comparable Three is adjusted downward. No other adjustments are warranted for this element of comparison.

Land Use Approvals

The subject does not have land use approvals and must obtain allocations under the new Measure S. Comparables One and Four sold subject to the buyer's receipt of entitlements and are adjusted downward. Comparable Two sold at a time when residential allocations were exempt for the downtown area, and since the price paid was based on land value, Comparable Two is adjusted downward. Comparable Three sold subject to approvals and is adjusted downward and Comparable Five sold with partial approvals and is adjusted downward. No other adjustments are warranted.

Flood Zone

The subject is not in a flood zone. Comparables Two and Four are in flood zones and are adjusted upward. No other adjustments are warranted for this element of comparison.

Other

This category of adjustments is for other adjustments that are required but have not yet been made. Comparable Two is adjusted upward since it had a ground floor commercial requirement, which is not desirable in the subject market area. No other adjustments are warranted.

A qualitative adjustment analysis, shown for each comparable is provided below.

Qualitative Adjustment Analysis

Comparable One, at \$15.47 per square foot, is the sale of residential land in Morgan Hill in November 2017. This sale is adjusted slightly upward for market conditions and it is adjusted upward for location, size, and density. This sale is adjusted downward for land use approvals. Overall, the value indicated for the subject is higher than \$15.47 per square foot.

Comparable Two, at \$25.54 per square foot, is the sale of land in Downtown Morgan Hill in October 2015. This sale is adjusted upward for market conditions, requirement to build a commercial component, and flood zone. It is adjusted downward for size and land use approvals. Overall, a unit value that is slightly higher than \$25.54 per square foot is supported for the subject.

Comparable Three, at \$20.55 per square foot, is the sale of residential land in Gilroy in February 2014. This sale is adjusted upward for market conditions and location. It is adjusted downward for density and land use approvals. Overall, a unit value that is higher than \$20.55 per square foot is supported for the subject.

Comparable Four, at \$33.93 per square foot, is the sale of residential land in Morgan Hill. This sale is adjusted upward for location and flood zone. It is adjusted downward for size, and land use approvals. Overall, a unit value that is lower than \$33.93 per square foot is supported for the subject.

Comparable Five at, \$20.70 per square foot, is the sale of residential land in Morgan Hill. This sale is adjusted upward for market conditions, and density. It is adjusted downward for land use approvals. Overall, a unit value that is higher than \$20.70 per square foot is supported.

Conclusion

From the market data available, we used several land sales in competitive market areas which were adjusted based on pertinent elements of comparison.

Based on the above analysis, a unit value that is lower than \$25.54 (Comparable Two) and higher than \$20.70 per square foot (Comparable Five) is supported for the subject.

We have concluded to a unit value of \$24 per square foot of land area.

Based on this analysis, the land value indication is summarized as follows:

Sales Comparison Approach Conclusion

108,408	x	\$24.00 psf	=	\$2,601,792
		(Rounded)		\$2,600,000

As a test for reasonableness, we have considered the implied value per unit. The ultimate density for the subject is not known at this as there are no entitlements. However, assuming the upper end of the likely range of 18-30 units per acre, then there would be ±74 potential units at the subject property, or 2.49 acres x 30. The total value of \$2,600,000, therefore, equates to ±\$35,000 per unit (or \$2,600,000 / 74), which is in-line with the comparable sales data, and is thus reasonable.

Valuation Summary

The indicated value and our concluded market value for the subject property are summarized in the following table:

Value Indications	
Approach to Value	
Sales Comparison	\$2,600,000
Value Conclusions	
Value Type	Market Value
Property Rights Appraised	Fee Simple
Date of Value	April 6, 2018
Value Conclusion	\$2,600,000
Land area	108,408 sf
Value per SF of Land	\$24 psf

The most likely buyer for the subject is a developer, and we have employed the Sales Comparison Approach as there was ample data to derive a value from that approach.

Exposure Time and Marketing Periods

Based on statistical information about days on market, escrow length, and marketing times gathered through national investor surveys, sales verification, and interviews of market participants, marketing and exposure time estimate of 6 months, is considered reasonable and appropriate for the subject property.

General Assumptions and Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished to us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Hulberg and Associates, Inc. will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Hulberg and Associates, Inc. is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.

9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.
11. The information, estimates and opinions, which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Hulberg and Associates, Inc. and Client. The Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability or accountability to any third party.
15. Distribution of this report is at the sole discretion of the client, but third-parties not listed as an intended user on the face of the appraisal or the engagement letter may not rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Hulberg and Associates, Inc.

17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. The flood maps are not site specific. We are not qualified to confirm the location of the subject property in relation to flood hazard areas based on the FEMA Flood Insurance Rate Maps or other surveying techniques. It is recommended that the client obtain a confirmation of the subject property's flood zone classification from a licensed surveyor.
20. If the appraisal is for mortgage loan purposes 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income and Expense Projection" are anticipated.
21. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
22. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated. Should the client have concerns in these areas, it is the client's responsibility to order the appropriate inspections. The appraiser does not have the skill or expertise to make such inspections and assumes no responsibility for these items.
23. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.

24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.
27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.
28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.

29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | Hulberg and Associates, Inc. both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Hulberg and Associates, Inc. and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Hulberg and Associates, Inc. or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by such claimant shall be the amount actually received by Valbridge Property Advisors | Hulberg and Associates, Inc. for this assignment, and under no circumstances shall any claim for consequential damages be made.
36. Valbridge Property Advisors | Hulberg and Associates, Inc. shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Hulberg and Associates, Inc. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Hulberg and Associates, Inc. and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | Hulberg and Associates, Inc. harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | Hulberg and Associates, Inc. in such action, regardless of its outcome.
37. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Hulberg and Associates, Inc. Neither Valbridge Property Advisors, Inc., nor any of its affiliates has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.
38. If any claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages, and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.

39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.

Certification – Josh Fronen, MAI

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned has performed services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Josh Fronen, MAI has personally inspected the subject property.
10. No one provided significant real property appraisal assistance to the person signing this certification, unless otherwise noted.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the continuing education program for Designated Members of the Appraisal Institute.



Josh Fronen, MAI
Senior Appraiser
California Certified License #AG028548

Attachment: Appraisal Update VTA Lot (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)

Certification – Norman C. Hulberg, MAI

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned Norman C. Hulberg, MAI has not performed services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Norman C. Hulberg, MAI has inspected the subject property.
10. No one provided significant real property appraisal assistance to the person signing this certification, unless otherwise noted.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the continuing education program for Designated Members of the Appraisal Institute.



Norman C. Hulberg, MAI
Senior Managing Director
California Certified License #AG003542

Attachment: Appraisal Update VTA Lot (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)

Addenda

Glossary

Qualifications

- Josh Fronen, MAI - Senior Appraiser
- Norman C. Hulberg, MAI, Senior Managing Director

Information on Valbridge Property Advisors

Office Locations

Glossary

Definitions are taken from The Dictionary of Real Estate Appraisal, 6th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP), and Building Owners and Managers Association International (BOMA).

Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance, building reserves, and management; often a long-term lease to a credit tenant. (Dictionary)

Amortization

The process of retiring a debt or recovering a capital investment, typically through scheduled, systematic repayment of the principal; a program of periodic contributions to a sinking fund or debt retirement fund. (Dictionary)

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date. (Dictionary)

Base Rent

The minimum rent stipulated in a lease. (Dictionary)

Base Year

The year on which escalation clauses in a lease are based. (Dictionary)

Building Common Area

In office buildings, the areas of the building that provide services to building tenants but which are not included in the office area or store area of any specific tenant. These areas may include, but shall not be limited to, main and auxiliary lobbies, atrium spaces at the level of the finished floor, concierge areas or security desks, conference rooms, lounges or vending areas, food service facilities, health or fitness centers, daycare facilities, locker or shower facilities, mail rooms, fire control rooms, fully enclosed courtyards outside the exterior walls, and building core and service areas such as fully enclosed mechanical or equipment rooms. Specifically excluded from building common area are floor common areas, parking space, portions of loading docks outside the building line, and major vertical penetrations. (BOMA)

Building Rentable Area

The sum of all floor rentable areas. Floor rentable area is the result of subtracting from the gross measured area of a floor the major vertical penetrations on that same floor. It is generally fixed for the life of the building and is rarely affected by changes in corridor size or configuration. (BOMA)

Certificate of Occupancy (COO)

A formal written acknowledgment by an appropriate unit of local government that a new construction or renovation project is at the stage where it meets applicable health and safety codes and is ready for commercial or residential occupancy. (Dictionary)

Common Area Maintenance (CAM)

The expense of operating and maintaining common areas; may or may not include management charges and usually does not include capital expenditures on tenant improvements or other improvements to the property. (Dictionary)

The amount of money charged to tenants for their shares of maintaining a [shopping] center's common area. The charge that a tenant pays for shared services and facilities such as electricity, security, and maintenance of parking lots. Items charged to common area maintenance may include cleaning services, parking lot sweeping and maintenance, snow removal, security and upkeep. (ICSC – International Council of Shopping Centers, 4th Ed.)

Condominium

A multiunit structure, or a unit within such a structure, with a condominium form of ownership. (Dictionary)

Conservation Easement

An interest in real estate restricting future land use to preservation, conservation, wildlife habitat, or some combination of those uses. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature as well as some types of conservation-oriented development to continue, subject to the easement. (Dictionary)

Contributory Value

A type of value that reflects the amount a property or component of a property contributes to the value of another asset or to the property as a whole.

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. Also called deprival value in some countries. (Dictionary)

Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service (DCR = NOI/Im), which measures the relative ability of a property to meet its debt service out of net operating income; also called *debt service coverage ratio (DSCR)*. A larger *DCR* typically indicates a greater ability for a property to withstand a reduction of income, providing an improved safety margin for a lender. (Dictionary)

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Depreciation

- 1) In appraisal, a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.
- 2) In accounting, an allocation of the original cost of an asset, amortizing the cost over the asset's life; calculated using a variety of standard techniques. (Dictionary)

Disposition Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a specified time, which is shorter than the typical exposure time for such a property in that market.
- The property is subjected to market conditions prevailing as of the date of valuation;
- Both the buyer and seller are acting prudently and knowledgeably;
- The seller is under compulsion to sell;
- The buyer is typically motivated;
- Both parties are acting in what they consider to be their best interests;
- An adequate marketing effort will be made during the exposure time;
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

EIFS

Exterior Insulation Finishing System. This is a type of exterior wall cladding system. Sometimes referred to as dry-vit.

Effective Date

- 1) The date on which the appraisal or review opinion applies. (SVP)
- 2) In a lease document, the date upon which the lease goes into effect. (Dictionary)

Effective Gross Income (EGI)

The anticipated income from all operations of the real estate after an allowance is made for vacancy and collection losses and an addition is made for any other income. (Dictionary)

Effective Rent

Total base rent, or minimum rent stipulated in a lease, over the specified lease term minus rent concessions; the rent that is effectively paid by a tenant net of financial concessions provided by a landlord. (TIs). (Dictionary)

EPDM

Ethylene Propylene Diene Monomer Rubber. A type of synthetic rubber typically used for roof coverings. (Dictionary)

Escalation Clause

A clause in an agreement that provides for the adjustment of a price or rent based on some event or index. e.g., a provision to increase rent if operating expenses increase; also called *escalator clause*, *expense recovery clause* or *stop clause*. (Dictionary)

Estoppel Certificate

A signed statement by a party (such as a tenant or a mortgagee) certifying, for another's benefit, that certain facts are correct, such as that a lease exists, that there are no defaults, and that rent is paid to a certain date. (Black's) In real estate, a buyer of rental property typically requests estoppel certificates from existing tenants. Sometimes referred to as an *estoppel letter*. (Dictionary)

Excess Land

Land that is not needed to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately. (Dictionary)

Excess Rent

The amount by which contract rent exceeds market rent at the time of the appraisal; created by a lease favorable to the landlord (lessor) and may reflect unusual management, unknowledgeable or unusually motivated parties, a lease execution in an earlier, stronger rental market, or an agreement of the parties. (Dictionary)

Expense Stop

A clause in a lease that limits the landlord's expense obligation, which results in the lessee paying operating expenses above a stated level or amount. (Dictionary)

Exposure Time

- 1) The time a property remains on the market.
- 2) The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market. (Dictionary)

Extraordinary Assumption

An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 ed.)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Floor Common Area

In an office building, the areas on a floor such as washrooms, janitorial closets, electrical rooms, telephone rooms, mechanical rooms, elevator lobbies, and public corridors which are available primarily for the use of tenants on that floor. (BOMA)

Full Service (Gross) Lease

A lease in which the landlord receives stipulated rent and is obligated to pay all of the property's operating and fixed expenses; also called a *full service lease*. (Dictionary)

Furniture, Fixtures, and Equipment (FF&E)

Business trade fixtures and personal property, exclusive of inventory. (Dictionary)

Going-Concern Value

An outdated label for the market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the *market value of the going concern* or *market value of the total assets of the business*. (Dictionary)

Gross Building Area (GBA)

- 1) Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls of the above-grade area. This includes mezzanines and basements if and when typically included in the market area of the type of property involved.
- 2) Gross leasable area plus all common areas.
- 3) For residential space, the total area of all floor levels measured from the exterior of the walls and including the superstructure and substructure basement; typically does not include garage space. (Dictionary)

Gross Measured Area

The total area of a building enclosed by the dominant portion (the portion of the inside finished surface of the permanent outer building wall which is 50% or more of the vertical floor-to-ceiling dimension, at the given point being measured as one moves horizontally along the wall), excluding parking areas and loading docks (or portions of same) outside the building line. It is generally not used for leasing purposes and is calculated on a floor by floor basis. (BOMA)

Gross Up Method

A method of calculating variable operating expenses in income-producing properties when less than 100% occupancy is assumed. Expenses reimbursed based on the amount of occupied space, rather than on the total building area, are described as "grossed up." (Dictionary)

Gross Retail Sellout

The sum of the separate and distinct market value opinions for each of the units in a condominium, subdivision development, or portfolio of properties, as of the date of valuation. The aggregate of retail values does not represent the value of all the units as though sold together in a single transaction; it is simply the total of the individual market value conclusions. Also called the *aggregate of the retail values*, *aggregate retail selling price* or *sum of the retail values*. (Dictionary)

Ground Lease

A lease that grants the right to use and occupy land. Improvements made by the ground lessee typically revert to the ground lessor at the end of the lease term. (Dictionary)

Ground Rent

The rent paid for the right to use and occupy land according to the terms of a ground lease; the portion of the total rent allocated to the underlying land. (Dictionary)

HVAC

Heating, ventilation, air conditioning (HVAC) system. A unit that regulates the temperature and distribution of heat and fresh air throughout a building. (Dictionary)

Highest and Best Use

- 1) The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.
- 2) The use of an asset that maximizes its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid. (IVS)
- 3) [The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions) (Dictionary)

Hypothetical Condition

- 1) A condition that is presumed to be true when it is known to be false. (SVP – Standards of Valuation Practice, effective January 1, 2015)
- 2) A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 ed.) (Dictionary)

Industrial Gross Lease

A type of modified gross lease of an industrial property in which the landlord and tenant share expenses. The landlord receives stipulated rent and is obligated to pay certain operating expenses, often structural maintenance, insurance and real property taxes, as specified in the lease. There are significant regional and local differences in the use of this term. (Dictionary)

Insurable Value

A type of value for insurance purposes. (Typically this includes replacement cost less basement excavation, foundation, underground piping and architect's fees). (Dictionary)

Investment Value

The value of a property to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment criteria that are not necessarily typical of the market. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken. (Dictionary)

Leased Fee Interest

The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires. (Dictionary)

Leasehold Interest

The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease. (Dictionary)

Lessee (Tenant)

One who has the right to occupancy and use of the property of another for a period of time according to a lease agreement. (Dictionary)

Lessor (Landlord)

One who conveys the rights of occupancy and use to others under a lease agreement. (Dictionary)

Liquidation Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a short time period.
- The property is subjected to market conditions prevailing as of the date of valuation.
- Both the buyer and seller are acting prudently and knowledgeably.
- The seller is under extreme compulsion to sell.
- The buyer is typically motivated.
- Both parties are acting in what they consider to be their best interests.
- A normal marketing effort is not possible due to the brief exposure time.
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Loan to Value Ratio (LTV)

The ratio between a mortgage loan and the value of the property pledged as security, usually expressed as a percentage. (Dictionary)

Major Vertical Penetrations

Stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls. Atria, lightwells and similar penetrations above the finished floor are included in this definition. Not included, however, are vertical penetrations built for the private use of a tenant occupying office areas on more than one floor. Structural columns, openings for vertical electric cable or telephone distribution, and openings for plumbing lines are not considered to be major vertical penetrations. (BOMA)

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting the conditions and restrictions of a specified lease agreement, including the rental adjustment and revaluation, permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options and tenant improvements (TIs). (Dictionary)

Market Value

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Dictionary)

Marketing Time

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory)

Opinion 7 of the Appraisal Standards Board of the Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time.) (Dictionary)

Master Lease

A lease in which the fee owner leases a part or the entire property to a single entity (the master lease) in return for a stipulated rent. The master lessee then leases the property to multiple tenants. (Dictionary)

Modified Gross Lease

A lease in which the landlord receives stipulated rent and is obligated to pay some, but not all, of the property's operating and fixed expenses. Since assignment of expenses varies among modified gross leases, expense responsibility must always be specified. In some markets, a modified gross lease may be called a *double net lease*, *net net lease*, *partial net lease*, or *semi-gross lease*. (Dictionary)

Operating Expense Ratio

The ratio of total operating expenses to effective gross income (TOE/EGI); the complement of the net income ratio, i.e., $OER = 1 - NIR$ (Dictionary)

Option

A legal contract, typically purchased for a stated consideration, that permits but does not require the holder of the option (known as the *optionee*) to buy, sell, or lease real estate for a stipulated period of time in accordance with specified terms; a unilateral right to exercise a privilege. (Dictionary)

Partial Interest

Divided or undivided rights in real estate that represent less than the whole, i.e., a fractional interest such as a tenancy in common, easement, or life interest. (Dictionary)

Pass Through

A tenant's portion of operating expenses that may be composed of common area maintenance (CAM), real property taxes, property insurance, and any other expenses determined in the lease agreement to be paid by the tenant. (Dictionary)

Potential Gross Income (PGI)

The total income attributable to property at full occupancy before vacancy and operating expenses are deducted. (Dictionary)

Prospective Future Value Upon Completion

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. ... The prospective market value –as completed- reflects the property's market value as of the time that development is expected to be complete. (Dictionary)

Prospective Future Value Upon Stabilization

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report ...The prospective market value – as stabilized – reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties. (Dictionary)

Replacement Cost

The estimated cost to construct, at current prices as of a specific date, a substitute for a building or other improvements, using modern materials and current standards, design, and layout. (Dictionary)

Reproduction Cost

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the deficiencies, superadequacies, and obsolescence of the subject building. (Dictionary)

Retrospective Value Opinion

A value opinion effective as of a specified historical date. The term *retrospective* does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of

the type of value with this term is appropriate, e.g., "retrospective market value opinion." (Dictionary)

Sandwich Leasehold Estate

The interest held by the sandwich leaseholder when the property is subleased to another party; a type of leasehold estate. (Dictionary)

Sublease

An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another, the sublessee, for a specific period of time, which may or may not be coterminous with the underlying lease term. (Dictionary)

Subordination

A contractual arrangement in which a party with a claim to certain assets agrees to make his or her claim junior, or subordinate, to the claims of another party. (Dictionary)

Surplus Land

Land that is not currently needed to support the existing use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel. (Dictionary)

Triple Net (Net Net Net) Lease

An alternative term for a type of net lease. In some markets, a net net net lease is defined as a lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management; also called *NNN lease*, *net net net lease*, or *fully net lease*. (Dictionary)

(The market definition of a triple net lease varies; in some cases tenants pay for items such as roof repairs, parking lot repairs, and other similar items.)

Usable Area

The measured area of an office area, store area, or building common area on a floor. The total of all the usable areas for a floor shall equal floor usable area of that same floor. (BOMA)

Value-in-Use

The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually. (Dictionary)

Qualifications of Josh Fronen, MAI

Senior Appraiser

Valbridge Property Advisors | Northern California



Independent Valuations for a Variable World

State Certifications

Certified General
State of California

Education

Bachelor of Arts
History, Specializing in
Business
University of California Los
Angeles

Contact Details

408-279-1520 ext. 7113 (p)
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jfronen@valbridge.com (e)

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| Northern California
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Membership/Affiliations

Member: Appraisal Institute MAI Designation
Grader: Appraisal Institute Demonstration Appraisal Report Panel
Current
Chairman: Fall Conference Committee, Appraisal Institute, 2009
Member: Board of Directors, Nor- Cal Chapter of the Appraisal
Institute, 2009 – 2012
Board Member: Appraisal Institute Fall Conference, 2007 – Current.
Member: Toastmasters International, Competent Communicator (C

Experience

Senior Appraiser

Valbridge Property Advisors | Northern California
(2013-Present)

Senior Appraiser

Hulberg & Associates, Inc. (2004-2013) (joined to create Valbridge
in 2013)

Associate Appraiser

TMG Realty Advisors (2001-2004)

Market Researcher/Appraiser Assistant

Akiba Appraisal Services (2001)

Appraisal/valuation and consulting assignments include: Offices:
professional and medical/dental; suburban and high-rise.
Shopping centers: community, specialty, neighborhood, and strip.
Swap meets. Storefront retail buildings. Apartments,
condominiums, subdivisions, and single-family.

R&D, Light industrial, warehouses, food processing, and
manufacturing. Land and remnant appraisals. Retrospective
valuations. Fractional interest valuations. Arbitration, litigation,
estate work, tax appeals, contamination, rent loss, and diminution
in value. Has provided court testimony and is a qualified expert
witness.

Qualifications of Norman C. Hulberg, MAI

Senior Managing Director

Valbridge Property Advisors | Northern California



Independent Valuations for a Variable World

State Certifications

Certified General
State of California

Education

Masters Degree
Business Administration
San Jose State University

Bachelor of Science
Real Estate
San Jose State University

Contact Details

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408-279-3428 (f)
nhulberg@valbridge.com (e)

Valbridge Property Advisors |
Northern California
55 S. Market Street
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www.valbridge.com

Membership/Affiliations

Member: Appraisal Institute – MAI Designation
Member: Association of Independent Office Parks
Member: Rotary Club of San Jose/Board of Directors
Member: San Jose Silicon Valley Chamber of Commerce
Member: Santa Clara County Bar Association

Appraisal Institute & Related Courses

Continuing education courses taken through the Appraisal Institute and other real estate organizations.

Experience

Senior Managing Director

Valbridge Property Advisors | Northern California (2013-Present)

President

Hulberg & Associates, Inc. (1976-2013) (joined to create Valbridge in 2013)

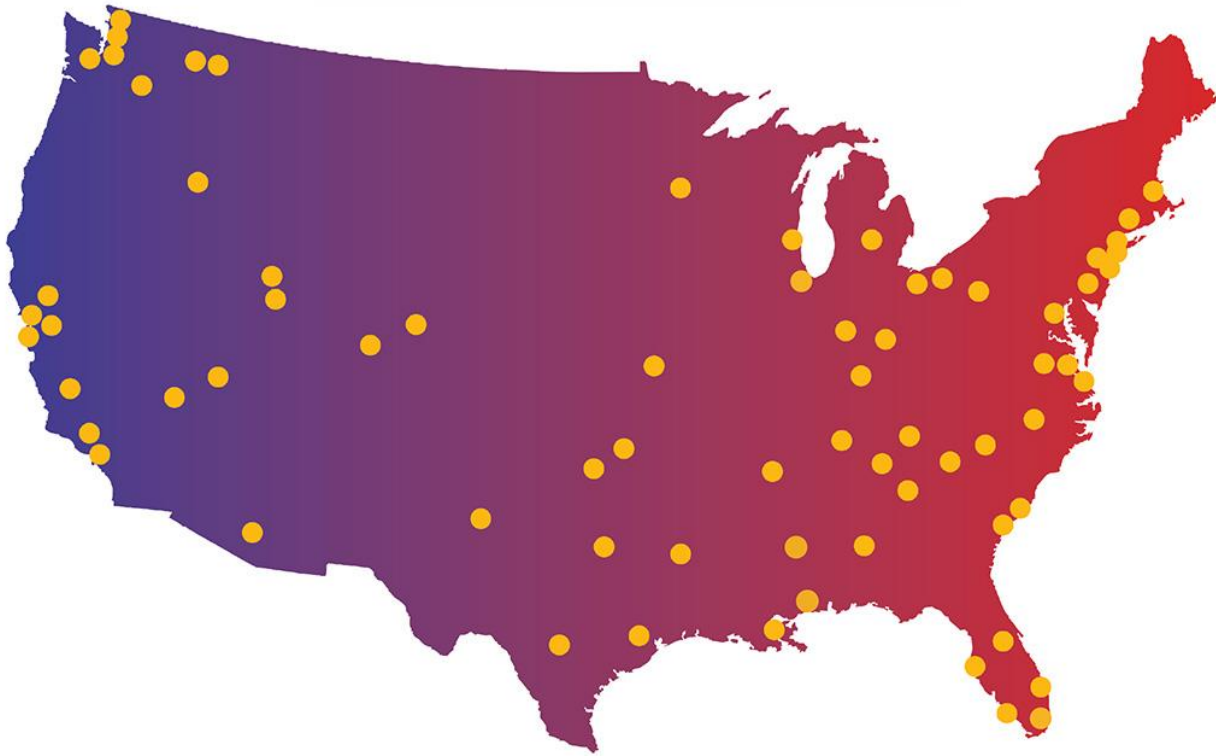
Appraisal/valuation and consulting assignments include: Single-family, condominium, apartments, land, mobile home parks. Office buildings, hotels/motels, service stations, retail, vacant land. Industrial plants, research and development, warehouses, vacant land. Fractional interest valuations, contaminated properties, special purpose properties, feasibility studies, market studies, condemnation, construction defects, litigation support, mediations, arbitrations and review appraisals.

Mr. Hulberg has provided valuation services in a wide variety of complex civil litigation including real estate, land use cases, condemnation, estate matters, property taxation, contract disputes, partnership and corporate disputes, environmental lawsuits, professional negligence cases, construction defect, and bankruptcy/creditors matters.

Qualified as an expert witness in most counties in the San Francisco and Monterey Bay and Central Valley areas, as well as and in the U.S. Tax Court in the U.S. District Courts in San Jose, San Francisco, Oakland, and Las Vegas. He is a highly experienced forensic appraiser, having provided testimony on over 300 occasions. This includes over 100 jury trials in state and federal courts in addition to numerous court trials. He has also testified in major arbitrations and before state and federal courts, as well as private arbitrations.



Valbridge
PROPERTY ADVISORS



FAST FACTS

COMPANY INFORMATION

- Valbridge is the largest independent national commercial real estate valuation and advisory services firm in North America.
 - Total number of MAI-designated appraisers (200+ on staff)
 - Total number of office locations (70+ across U.S.)
 - Total number of staff (675+ strong)
- Valbridge covers the entire U.S. from coast to coast.
- Valbridge services all property types, including special-purpose properties.
- Valbridge provides independent valuation services. We are not owned by a brokerage firm or investment company.
- Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.
- Valbridge is owned by our local office leaders.
- Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements.

Valbridge Property Advisors, Inc.

2240 Venetian Court • Naples, FL 34109 • Phone: (888) 981-2029

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Valbridge

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520.321.0000

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Suite 21
Pasadena, CA 91101
626.744.0428

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Suite 213
Sacramento, CA 95827
916.361.2509

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San Jose, CA 95113
408.279.1520

3160 Crow Canyon Place
Suite 245
San Ramon, CA 94583
925.327.1660

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303.443.9600

5345 Arapahoe Avenue
Suite 7
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303.443.9600

23272 Two Rivers Road
Unit 101
Basil, CO 81621
970.340.1016

1099 Main Avenue
Suite 311
Durango, CO 81301
970.340.1016

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6 Central Row
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860.246.4606

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Norwalk, CT 06853
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407.839.3626

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St. Petersburg, FL 33705
727.894.1800

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West Palm Beach, FL 33407
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208.336.1097

1875 N. Lakewood Drive
Suite 100
Coeur d'Alene, ID 83814
208.292.2965

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566 W. Lake Street
Suite 240
Chicago, IL 60661
312.288.8687

INDIANA

820 Fort Wayne Avenue
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317.687.2747

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313.986.3313.

2127 University Park Drive
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517.336.0001

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973.970.9333

3500 Route 9 South, Suite 202
Howell, NJ 07731
732.807.3113

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6666 South Sheridan Road
Suite 104
Tulsa, OK 74133
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King of Prussia, PA 19406
215.545.1900

4701 Baptist Road
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Pittsburgh, PA 15227
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864.233.6277

920 Bay Street
Suite 26
Beaufort, SC 29902
843.342.2302

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843.881.1266

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7400 Beaufort Springs Drive
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2927 Colby Avenue
Suite 100
Everett, WA 98201
425.258.2611

419 Berkeley Avenue
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Fircroft, WA 98466
253.274.0099

8378 W. Grandridge Boulevard
Suite 110-D
Kennewick, WA 99336
509.221.1540

506 Second Avenue
Suite 1001
Seattle, WA 98104
206.209.3016

324 N. Mullan Road
Spokane Valley, WA 99206
509.747.0999

WISCONSIN

12660 W. North Avenue
Brookfield, WI 53005
262.782.7990

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2018-2019 BUDGET IN THE HOUSING SUCCESSOR AGENCY FUND (FUND NO. 255) TO APPROPRIATE TWO MILLION SIX HUNDRED THOUSAND DOLLARS (\$2,600,000) THEREFORE

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2018-2019 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2018-2019 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2018-2019 Budget of City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 20th day of June, 2018.

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

APPROVED:

ATTEST:

 STEVE TATE, Mayor

 IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 18-XXX, adopted by the City Council at a regular meeting held on June 20, 2018.

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

DATE: _____

 IRMA TORREZ, City Clerk

Attachment: Resolution - budget amendment vta (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

001

FUND:

DEPARTMENT:

OBJECT:

255	Housing Successor Agency
7220	Housing
86100	ACQUISITION EXPENSE

AGENDA DATE:

AGENDA ITEM TITLE:

06/20/18
VTA Parking Lot Acquisition

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	3,469,413	2,386,006	919,241	4,936,178
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	2,600,000	(2,600,000)
RESULT OF RECOMMENDED ACTION	<u>3,469,413</u>	<u>2,386,006</u>	<u>3,519,241</u>	<u>2,336,178</u>

Attachment: 001-VTA Parking Lot Acquisition Fund 255 (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)



August 28, 2017

Mr. Jeff Smith, County Executive
County of Santa Clara
70 W. Hedding, 11th Floor
San Jose, CA 95110

RE: Morgan Hill Transit Center and Park and Ride Lot – Successor Agency/VTA Issues

Dear Mr. Smith:

The City of Morgan Hill in its capacity as successor to the former Morgan Hill Redevelopment Agency (Successor Agency) and the Santa Clara Valley Transportation Agency (VTA) believe that a change in circumstances as well as new information previously unknown to the parties warrants a reconsideration of the disposition strategy for the Morgan Hill Transit Center (Transit Center) property jointly owned by the Successor Agency and VTA. We are, therefore, jointly writing to express our desire to engage the County and the Oversight Board in a collaborative effort to ensure that the actions taken with regard to the Transit Center maximize benefits for all residents of the County.

The Transit Center consists of a 465 space parking lot and a bus operations area. Recent development and job growth have led to a substantial increase in transit activities at the Transit Center, providing a vital link for Morgan Hill's commuters. The Transit Center is now parked at 85% of daily capacity. Public parking is at a premium and the lot is integral to transit operations in Morgan Hill. All buses use the lot as a terminus and parking layover, with delivery and pick-up locations for passengers.

Consistent with the Long Range Property Management Plan (LRPMP), which contemplated the disposal of all of the former Morgan Hill Redevelopment Agency's assets, the Successor Agency and VTA met with the County Counsel's office to discuss the future of the Successor Agency's 41% undivided interest in land. During that meeting, the City and VTA provided information to the County about the robustness and high-level of current activity at the Transit Center. In addition to the fact that the parking is now nearing capacity (as noted above), the County appeared unaware of the following facts:

1. VTA operates several express bus routes through the Transit Center including to San Jose's Diridon Station, Lockheed Martin Transit Center, Redwood City, San Jose Convention Center, the Gilroy Transit Center (soon to include California High Speed Rail) and Gilroy Caltrain/Greyhound Station.
2. Monterey Salinas Transit (MST) operates several express buses through the Center as well, stopping at Diridon Station, Morgan Hill, Gilroy, Salinas and Monterey.
3. Caltrain operates 6 trains daily, with MST finishing design and completing station improvements in Salinas to support transit service to be operated by Altamont Commuter Express (ACE) with service by 4 additional trains per day, as well as weekend service through the Transit Center.

4. Local VTA service utilizing the Center includes Community Bus Route 16 and local bus Route 68 to Gilroy Transit Center, Santa Teresa Light Rail and Capitol Caltrain Stations.
5. The Transit Center also hosts private technology company commuter shuttles (40-50 per day) which are vital to connecting the Morgan Hill workforce to employment located in the central and northern reaches of the County, supporting the objectives of SB 375 greenhouse gas emission goals.
6. Finally, the City, through a grant from VTA, has recently prepared a draft Station Area Master Plan (SAMP) which relies upon the ongoing operation of the Transit Center and its parking, as local services to the station are limited, and regional transit and shuttle riders are forced to use automobiles to connect to the trains and buses.

In addition, at the time of the preparation of the LRPMP, the Successor Agency was unaware of the existence of a 1998 Cooperation Agreement that created a contractual relationship between the VTA and Redevelopment Agency (now the Successor Agency), regarding the use and potential sale of the Successor's 41% undivided interest in the Morgan Hill Transit Center/Caltrain parking facilities. VTA considers this agreement binding upon any purchaser of the property and will insist that its provisions are honored.

Within the past week, VTA has also received California High Speed Rail Authority (CHSRA) 15% engineering drawings for two Morgan Hill alignments for the High Speed Train (HST) in advance of the draft public document CHSRA intends to issue for public comment by the end of the year. One of the alignment alternative places the HST on an embankment east of the current Union Pacific/Caltrain track and would require a considerable take of property from the property in question for the CHSRA Project. The embankment and HST project would clearly have an impact on use, accessibility and the value of the Transit Center property.

We would like to schedule a meeting, at your convenience, to further discuss this important regional public asset and determine if there is an amicable solution to our concerns. We would be happy to arrange this meeting if you wish. Please feel free to contact Ms. Leslie Little, Morgan Hill Assistant City Manager (408-776-7384, leslie.little@morganhill.ca.gov), or Mr. Ron Golem, VTA Deputy Director, Real Estate & Joint Development (408-321-5791, ron.golem@vta.org) directly if you have additional questions or concerns.

Sincerely,



Steve Rymer
City Manager
City of Morgan Hill



Nuria Fernandez
General Manager/CEO
Santa Clara Valley Transportation Authority

cc: James R. Williams, County Counsel
Miguel Marquez, Chief Operating Officer
Mike Wasserman, Supervisor
Santa Clara County District 1

**COOPERATIVE AGREEMENT
BETWEEN THE SANTA CLARA COUNTY TRANSIT DISTRICT AND THE
REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL FOR THE
SAN JOSE TO GILROY CALTRAIN EXTENSION PROJECT MORGAN HILL
PARK AND RIDE LOT**

THIS AGREEMENT is made this 27th day of January, 199⁴3 by and between the SANTA CLARA COUNTY TRANSIT DISTRICT, hereinafter referred to as "SCCTD", and THE REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL, hereinafter referred to as "AGENCY";

RECITALS

- a. The San Jose to Gilroy CalTrain Extension Project, adopted by the SCCTD in 1989, included a proposed station and park and ride lot located at the southeast corner of Dunne Avenue and Railroad Avenue in the City of Morgan Hill.
- b. In April 1991, the AGENCY requested SCCTD to consider the relocation of the proposed station to a site north of Dunne Avenue between Main Avenue and Diana Avenue, which proposal included an offer to assist in funding the undertaking as a joint project through acquisition of the proposed alternative park and ride site and compensating the SCCTD for any additional estimated costs above those estimated costs required to develop the original Dunne Avenue site.
- c. SCCTD's intention is to develop a CalTrain station and park and ride lot in a location suitable for transit patronage including CalTrain and bus patronage, park and ride lot users, bike locker users, car poolers and other users typical with County Transit and Peninsula Corridor Joint Powers Board (JPB) operations and railroad operations and which is compatible with local land use plans.
- d. SCCTD has accepted AGENCY's proposal to relocate the station and park and ride lot and the parties' understanding is set forth in this agreement.

2. Morgan Hill CalTrain Station

SCCTD shall construct, at SCCTD expense, the Morgan Hill CalTrain Station which shall consist of a single boarding platform and a park and ride lot consisting of 471 spaces. The estimated costs are as shown and described in Exhibit E. The station facilities shall be of simple and functional design with standard appurtenances, amenities and landscaping typical of other San Jose to Gilroy CalTrain extension stations. The station facilities shall conform to applicable Americans with Disabilities Act requirements current at the time of construction. The park and ride lot shall be designed to provide for bus access to the boarding platform area. The station shall be designed to accommodate vehicular and pedestrian access from the east side of the site only, although the parties will collaborate on the design of a future pedestrian access from the west side of the SPTC tracks which shall not be precluded by the configuration of the current station design.

3. Sutter Boulevard

AGENCY shall design and construct at AGENCY's sole expense the portion of Sutter Boulevard between Main Avenue and East Dunne Avenue. It is the understanding of the parties that the construction commenced on or about April 5, 1993. AGENCY's development of Sutter Boulevard shall include: permanent access to the CalTrain station site on completion; temporary access for the construction of the CalTrain station and park and ride lot; signalization of the intersection with Dunne Avenue; and a drainage system designed to receive storm runoff from the CalTrain park and ride lot.

4. Station and Park and Ride Lot Administration, Security and Maintenance

a. The CalTrain station and park and ride lot will be administered and maintained by the JPB in accordance with the regulations and standards adopted by the JPB. Security will be provided by the SCCTD and/or the JPB. Should the JPB not conduct the administration and maintenance functions of the station, then the SCCTD at its election may perform these functions. Such administration shall include maintenance, security and necessary rehabilitation. The cost of providing security and maintenance for each party will be based upon a percentage determined by the amount of park and ride lot usage. This percentage will be reviewed annually to re-evaluate the AGENCY's use requirements. Initially, the parties agree that the AGENCY will only use that portion of the park and ride lot designated for weekend flea market use (115 parking spaces). The AGENCY costs attributable to this use will amount to seven percent (7%) of the yearly security and maintenance costs ($2/7 \times 115/471$). Initially, the annual JPB amount to be budgeted for the security and maintenance of the Morgan Hill Station will be \$54,000. Seven percent (7%) of this amount for a three (3) month period (April, May and June, 1994) is \$945 and will be invoiced for payment to the AGENCY. Subsequent AGENCY payments to SCCTD, determined by percentage adjustments made by annual re-evaluation of AGENCY's use requirements of the park and ride lot, shall be invoiced through June 30, by SCCTD and payable annually, by September 30, by AGENCY to

7. Compensation

- a. AGENCY agrees to compensate SCCTD for any costs of the station and park and ride lot development at the site shown in Exhibit C which exceed the estimated SCCTD funding for the original Dunne Avenue station and park and ride site whose estimated costs are shown in Exhibit E.
- b. AGENCY agrees to compensate SCCTD for security and maintenance costs as determined in Section 4a. of this agreement.
- c. AGENCY compensation for the SCCTD funding above that for the original Dunne Avenue station and park and ride site shall be payable to SCCTD within thirty (30) days after AGENCY receipt of invoice from SCCTD. AGENCY, at its option, may examine SCCTD records to verify the funding levels incurred by the SCCTD.

8. Selling of Property Interest

In the event that either party (SCCTD or AGENCY) elects to sell its interest in the property described in Paragraph 1 of this agreement, the other party shall have the right of first refusal to buy the selling party's interest in the property before any conveyance of the property to any other interested party.

The selling party shall deliver written notice to the other party of the selling party's interest to sell its interest in the real property together with the asking price and proposed terms of the sale. Within thirty (30) days after receipt of the above written notice from the selling party, the other party may exercise its right of first refusal by delivering written notice to the seller that it agrees to acquire the seller's interest upon the terms specified in the notice. If the other party does not, within the 30 days prescribed above, offer to purchase the seller's interest in the property upon the terms specified in the notice, the selling party may offer its interest in the property to any third party upon the same terms prescribed in the notice. If the selling party decides to reduce the purchase price by more than ten percent (10%) or change any other term of the proposed sale as set forth in the above notice, the selling party shall first provide the other party to this agreement with written notice of the intended price reduction or change in terms and a renewed 30-day period in which to exercise its right of first refusal.

In the event of the division of property between the SCCTD and AGENCY, the division of property shall be accomplished to ensure that no land-locked nor flag parcels are created for either party as a result of the above division of property formula. In the event of the division of property and to ensure an equitable distribution of property ownership along Sutter Boulevard, the SCCTD shall acquire the northern portion of the property and the AGENCY the southern portion of the property. Both parties will endeavor to arrive at a mutually agreeable resolution.

IN WITNESS WHEREOF, the parties have executed this Cooperative Agreement as follows:

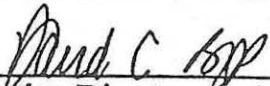
SCCTD Date: MAR 1 1994

SANTA CLARA COUNTY
TRANSIT DISTRICT

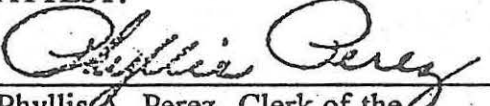
By 
Chairperson ROD DIRIDON
Santa Clara County Transit
District Board of Supervisors

AGENCY Date: 1/27/94

REDEVELOPMENT AGENCY OF THE
CITY OF MORGAN HILL

By 
Executive Director

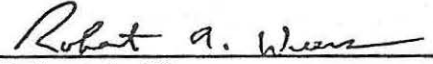
ATTEST:


Phyllis A. Perez, Clerk of the
Board of Supervisors and ex officio
Secretary of the Transit District
Board of Supervisors

Approved as to Form


Gary M. Baum
City Attorney & Agency General Counsel

APPROVED AS TO FORM AND LEGALITY


Robert A. Weers
Deputy County Counsel

Attachment: Cooperative Agreement (1823 : Acquisition of 41% Interest in Morgan Hill Transit Center lot)



Residential Development Control System (RDCS) Appeal Hearing June 20, 2018



2017 RDCS Competition Appeal



- Planning Commission approved Resolution No. 18-13 at the May 22, 2018 meeting, awarding 195 residential building allotments for Fiscal Year 2019/20.
- The Planning Commission awarded a specific number of building allotments to each of the competing projects with the exception of two projects.
- Seven (7) projects received allotments.
- RDCS2017-0013: Cochrane-MWest and RDCS2017-0014: Monterey/Central-ECA filed appeals of the final award of building allotments

2017 RDCS Competition Appeal



Fiscal Year 2019/2020

Project	Allotment Award
On-Going	
RDCS2016-0014 Laurel-DeRose	20
RDCS2016-0015 Cochran-Borello	25
RDCS2016-0018 Condit- Presidio Evergreen	14
Open/Market Competitors	
RDCS2017-0012 E. Dunne-Young	20
RDCS2017-0013 Cochran-MWest	71
RDCS2017-0015 Diana-Hanalei	23
RDCS2017-0017 Hill-Morgan Hill Devco	22
Total	195

2017 RDCS Competition Appeal



RDCS2017-0014:

MONTEREY/CENTRAL – ECA

Final Score: 169

Request: 12 Allotments

Received: 0

2017 RDCS Competition Appeal

- Lowest scoring project within the competition
- Awarded seven (7) allotments in FY 2015/16 and seven (7) allotments in FY 2016/17
- Project did not complete commence construction by the deadline of June 30, 2017
- Allotments expired

2017 RDCS Competition Appeal

- Appellant states:
 - the project is nearly completed and ready for construction
 - that the final map and project improvement plans are complete
- However, there has been no activity with the project since the last RDCS extension was denied

2017 RDCS Competition Appeal



- A Site Review application was filed on July 24, 2015.
- The application was dormant for 15-months.
- Revised Site Review plans submitted to the City on February 2, 2017, architecture plans on March 30, 2017 and landscape plans on April 12, 2017.
- Site Review was never completed
- Master building plans have not been submitted

2017 RDCS Competition Appeal

RDCS2017-0013:

COCHRANE – MWEST PROP CO.

Final Score: 179

Request: 379 Allotments (5-year request)

Received: 71 (no multi-year distribution)

2017 RDCS Competition Appeal



- MWest competed for three consecutive years:
 - First year - did not receive a qualifying score – 0 allotments
 - Second year – received 10 allotments
 - This year – 71 allotments - no multi-year allocation
- Appellant filed an appeal because the award did not include a multi-year award.
- The appellant is requesting the City Council award multi-year allotments (5-years) to complete the project.

2017 RDCS Competition Appeal



Multi-Year Findings

1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development;
3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

2017 RDCS Competition Appeal

The Planning Commission could not make the findings as a result of the dynamic environment with the State changing the rules with respect to affordable housing and based on the following:

1. It is unknown what the State rules with respect to building affordable housing will be in years to come;
2. The action taken by the Commission is based on what is before it at the time of application submittal;

2017 RDCS Competition Appeal



(Continued)

3. The Commission desires to protect the RDCS initiative in future years, to be fair to the development community, but remain as flexible as possible to provide for a competition in future years; and
4. Fulfill its duties as a Planning Commission as the body awarding the allotments so as to allow the City to meet its Regional Housing Needs Allocation (RHNA) numbers in the future.

2017 RDCS Competition Appeal



- The City Council and Planning Commission have expressed the desire to retain local control and maintain the RDCS program.
- Future allotments need to be preserved for projects where their affordability is certain, deed restricted, and metered through the RDCS program, where possible.

2017 RDCS Competition Appeal



DivcoWest Affordable Housing Proposal Supplemental Letter provided eve of 6/14/18

- Propose to modify affordable housing public benefit commitment
- Propose to provide 20% (78 units) of total 389 unit project for very low income households earning 50% AMI

2017 RDCS Competition Appeal



Affordable Housing Contingencies

1. City to cooperate with DivcoWest to apply for and secure “20-50” bond financing
2. The project qualifying for Federal and State “20-50” bond financing and tax credits

2017 RDCS Competition Appeal



Affordable Housing Contingencies

3. The City's commitment to allow:

- Immediate processing of Design Review and all other entitlements
- Securing of building permits for the construction of all 389 units
- Construction of project in one continuous phase
- Occupancy of units when completed (not FY)

2017 RDCS Competition Appeal



Bond Financing

1. Tax-exempt bonds lower interest rate paid to developers.
2. Projects awarded bond authority can apply for non-competitive tax credits.
3. Appellant's project would need to meet "20-50" test (20% or more of units occupied by tenants with incomes at 50% AMI).

2017 RDCS Competition Appeal



Bond Financing

4. City required to hold a TEFRA public hearing for project to use tax-exempt funding.
5. As designed, City does not know if project would meet the general qualifications or requirements for bond financing.

Issue

Commitment to provide 20%VLI units within the project should not be a contingency of bond financing if a multi-year allotment were awarded.

2017 RDCS Competition Appeal



Project Phasing

- Proposal does not align with RDCS program
- Allotments are to be allocated each year with the goal of maintaining a steady rate of growth
- Absent a defined phasing plan, request could lead to a spike in development within the City

2017 RDCS Competition Appeal



Multi-Year Findings

The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing

- Project to develop in one phase
- Building permits to be issued at one time
- Sudden spike of development in the general area of Jarvis Drive and Butterfield Boulevard
- Could exceed the City's RDCS 215 annual allotment cap

2017 RDCS Competition Appeal



Multi-Year Findings

The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing

Solution

- A plan for paced construction of the units aligned with a multi-year allotment schedule would be required
- Early start of construction consistent with RDCS program is possible

2017 RDCS Competition Appeal



Multi-Year Findings

The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development

- As proposed, the project is not a multi-year project

Solution

- Phasing plan consistent with the RDCS program would be required

2017 RDCS Competition Appeal



Multi-Year Findings

The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases

- As proposed, the project is not a multi-year project and the commitment for 20% VLI is contingent on bond financing

Solution

- Phasing plan consistent with the RDCS program would be required
- 20% VLI required equally spread through-out the multi-year allotment period of the project and required irrespective of bond financing

2017 RDCS Competition Appeal



Multi-Year Findings

An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs

- Proposal is for four years
- Does not include on-going or Downtown projects
- One phase of development
- Occupancy as project is completed
- Proposal is not consistent with the RDCS Program

2017 RDCS Competition Appeal



Multi-Year Findings

An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs

Solution

- Require a 5-year phasing plan consistent with the RDCS program
- Require plan to demonstrate that City can produce 193 VLI units in this housing cycle

2017 RDCS Competition Appeal

- Appellants Proposal (with ongoing set asides)
- 156 of 193 VLI provided
- Does not meet RHNA

Table 1: RDCS Building Allotment Multi-Year Projection w/ MWest contribution of 20% VLI contribution

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane- MWest	71	90	90	50	0
MWest 20% VLI	0	39	39		
Downtown	N/A	48	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	254	206	114	64
Total Affordable	0	78	78	39	39
Other Available for Future	0	0	0	81	131

2017 RDCS Competition Appeal

- City Proposal- Table 2
- 193 VLI provided
- 15 allotments available for other projects

Table 2: RDCS Building Allotment Multi-Year Projection w/ MWest contribution of 20% VLI contribution

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane- MWest	57	36	36	87	87
MWest 20% VLI	14	9	9	22	22
Downtown	N/A	48	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	170	122	173	173
Total Affordable	14	48	48	61	61
Other Available for Future	0	25	73	22	22

2017 RDCS Competition Appeal

- City Proposal- Table 3
- 193 VLI provided (balanced over housing cycle) - 32 allotments available for other projects
- Balances future housing performance

Table 3: RDCS Building Allotment Multi-Year Projection w/ MWest contribution of 20% VLI contribution

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane- MWest	57	26	29	94	95
MWest 20% VLI	14	19	16	15	14
Downtown	N/A	48	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	170	122	173	173
Total Affordable	14	58	55	54	53
Other Available for Future	0	25	73	22	22

2017 RDCS Competition Appeal



Fiscal Impacts

- Development Services Fund (206) would be impacted by the award of a multi-year application
- The project would utilize all or most of the City's allotments
- There would be no competition for allotments, or projects to diversify public improvement planning and construction related to new development projects
- Impacts would be up to 45% of planning permit revenue and 80% of land development engineering revenue for FY 2018/19 and FY 2019/20, respectively

2017 RDCS Competition Appeal



Fiscal Impacts

- Would require a significant decrease in the current and long range planning programs (such as Monterey Rd. Block Level Master Planning Process, General Plan Annexation EIR, High Speed Rail liaison activities, and Downtown parking plan)
- Modifications of staff work schedules
- Consideration of temporary reductions in force

2017 RDCS Competition Appeal



Recommendation

1. Deny the appeal, or
2. Grant the appeal contingent upon negotiating a Development Agreement

Questions?



2017 RDCS Competition Appeal



Santa Clara County Income Limits

TABLE I: HCD Income Tables (Published April 26, 2018)

Source: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k18.pdf>.

# of Persons	1	2	3	4	5	6	7	8
Extremely Low	27,950	31,950	35,950	39,900	43,100	46,300	49,500	52,700
Very Low	46,550	53,200	59,850	66,500	71,850	77,150	82,500	87,800
Lower	66,150	75,600	85,050	94,450	102,050	109,600	117,150	124,700
Median	87,650	100,150	112,700	125,200	135,200	145,250	155,250	165,250
Moderate	105,200	120,200	135,250	150,250	162,250	174,300	186,300	198,350

2017 RDCS Competition Appeal



	BELOW MARKET RATE (BMR) RENTAL RATES				
No. of Bedrooms	Extremely Low	Very Low	Lower	Median	Moderate
0 Bedroom (Efficiency)	\$699	\$1,164	\$1,654	\$2,191	\$2,630
1 Bedroom	\$799	\$1,330	\$1,890	\$2,504	\$3,005
2 Bedrooms	\$899	\$1,496	\$2,126	\$2,818	\$3,381
3 Bedrooms	\$998	\$1,663	\$2,361	\$3,130	\$3,756
4 Bedrooms	\$1,078	\$1,796	\$2,551	\$3,380	\$4,056



CITY COUNCIL STAFF REPORT
MEETING DATE: June 20, 2018

Item # 15
AGENDA DATE: 06/20/18
SUPPLEMENT # 1

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

SUPPLEMENT TO APPEAL (AAE2018-0006) RDCS2017-0013:
COCHRANE – MWEST PROP CO

RECOMMENDATION(S)

1. Receive supplemental information; and
2. Deny appeal or grant the appeal contingent upon negotiating a Development Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

1. Would the change in the RDCS commitments during a competition contravene the RDCS procedures which restrict modifications to applications after submittal?
2. Will consideration of this appeal preserve the voter approved pacing and population cap principles of Measure S?
3. Will an adequate number of allotments be available for affordable housing projects consistent with the City's Regional Housing Needs Allocation (RHNA) and adopted Housing Element?

REPORT NARRATIVE:

The City received a supplemental letter (Attachment 1) from the appellant DivcoWest, dba RDCS applicant MWest Propco XXIII LLC, proposing to modify their affordable housing public benefit commitment. In lieu of their current proposal of providing 8 percent Low Income units (80 percent AMI), they are proposing to set aside 20 percent of the total 389 unit project (78 units) for very low income (VLI) households earning 50 percent AMI contingent upon:

1. The City's commitment to cooperate with DivcoWest to apply for and secure "20-50" bond financing.

2. The Project qualifying for Federal and State “20-50” bond financing and tax credits.
3. The City’s commitment to allow DivcoWest to proceed immediately with Design Review and all other entitlements, to secure building permits for the construction of all 389 units, to construct the project in one continuous phase, and to occupy the units when completed. Depending on the financing requirements, the building permits may all need to be pulled at one time or may be broken down by building for the vertical construction.

Because this proposal was submitted the evening of June 14, 2018, after the regular agenda item staff report was completed for publication, this supplemental report was prepared to analyze the proposal contained within the appellant’s letter. The major considerations related to the proposal include:

- The appeal proposal would require the City Council to depart from certain rules and procedures established and adopted in the RDCS Competition Manual (Manual), including allowing a project proposal to be modified after competition. The City Council has the authority to modify non-voter approved provisions of Measure S (as these were adopted by an Ordinance of the City Council and may be modified by the City Council). The Council could modify the provisions of the Manual through a project statutory Development Agreement (DA).
- The DivcoWest multi-year proposal as presented creates spiking beyond the Measure S voter approved 215 allotments per year and seeks to use allotments over a 4-year period and does not leave sufficient allotments available within Measure S to reach RHNA goals (Table 1).
- Table 2 proposes a multi-year pacing that prevents spiking and allows the City sufficient allotments to use to reach RHNA goals for the current housing cycle. It leaves fifteen (15) additional allotments for market rate development.
- Table 3 proposes a second distribution of allotments for a multi-year application, which allows for a more balanced distribution of DivcoWest pledged VLI units into the next housing cycle, provides sufficient allotments for use to reach the current cycle RHNA goals, and a combined 32 market-rate unit allotments available for development.

1. Proposed Bond Financing

State and local governmental agencies and joint powers authorities can issue tax-exempt housing revenue bonds. These bonds assist developers of multifamily rental housing units to acquire land and construct new units or purchase and rehabilitate existing units. The tax-exempt bonds lower the interest rate paid by the developers. The developers in turn produce market rate and affordable rental housing for low and very low-income households by reducing rental rates to these individuals and families. Projects that receive an award of bond authority have the right to apply for non-

competitive 4 percent tax credits.

The California Debt Limit Allocation Committee (CDLAC) administers the tax-exempt private activity bond program for California. Federal and state revenues are not utilized in this program. Bonds issued are purchased by the private sector and repayment is not an obligation of the state or of the federal government. The 2018 State Ceiling for qualified private activity bonds is \$4,151,348,565.

Bond authority for Rental Projects is awarded to three sub-pools:

1. General Pool (Projects having more than 50 percent of total units designated as Restricted Rental Units);
2. Mixed Income Pool (Projects having 50 percent or fewer of total units designated as Restricted Rental Units); and
3. Rural Project Pool (Projects located in a rural area as defined by California Health and Safety Code Section 50199.21 but shall not include a Mixed Income Project).

Developers who agree to set aside a portion of a financed project's units for low or very-low income tenants are eligible for tax-exempt financing. In addition, Section 42 of the Internal Revenue Code provides tax credits to developers of qualifying properties. Tax-exempt multifamily housing bonds can be combined with low income housing tax credits (LIHTC) if 50 percent or more of the project's "eligible basis", is financed with the proceeds of the bonds.

The appellant proposes to request bond financing for the project meeting the "20-50" test which means that 20 percent or more of the units in the project would be occupied by tenants whose income is 50 percent or less of the area median gross income. They also propose to apply for tax credits. To accomplish this, they request City support.

For the project to use bond financing and apply for tax credits, the City would need to commit to hold a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing. This is a requirement for the project to use tax-exempt funding in Morgan Hill to finance the project.

A key factor to note is the City does not know if the project, as designed, meets the general qualifications and requirements to qualify for bond financing. The appellant states that providing the 20 percent very-low income units is contingent upon obtaining bond financing for the project.

2. Project Phasing

The appellant is requesting continuous, uninterrupted construction and occupancy of the Project. They are requesting one phase, the ability to pull building permits that would allow construction of all 389 units, including the 78 VLI units, which must be distributed throughout the Project in accordance with State bond financing requirements, and occupancy of the units sooner than the designated Fiscal Year.

This proposal does not align with the Residential Development Control System (RDCS) program as currently adopted. Allotments are to be allocated each year with the goal of maintaining a steady rate of growth. Absent a defined phasing plan, this request could lead to a spike in development within the City.

Specifically, Section 18.78.140 of the Morgan Hill Municipal Code, allows for the distribution of allotments to a single project over multiple years only upon making the following findings:

a. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing

- i. The appellant is requesting to develop the project in one phase, with the ability to have building permits for the entire project issued at one time. As proposed, the required finding could not be made because the project development could lead to a sudden spike of development in the general area of Jarvis Drive and Butterfield Boulevard and could exceed the City's RDCS annual allotment distribution of 215 per year. In addition, there are several other on-going residential development projects that have received RDCS allotments that would contribute to the City's residential growth.
- ii. For this finding to be met, the appellant would need to plan for paced construction of the units to align with a multi-year allotment schedule.
- iii. An early start of construction date is possible if the units are not completed and occupied until after the start of the fiscal year in which the allotments must be used. The construction schedule incorporated into the project development schedule shall ensure that dwelling units are not completed before the start of the fiscal year in which the allotments must be used. This would be consistent with the RDCS program.

b. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development

- i. The City would benefit only if an appropriate phasing plan consistent with the RDCS program is provided. As proposed, the project is not a multi-year project.

c. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases

- i. The City would benefit only if an appropriate phasing plan consistent with the RDCS program is provided and the 20 percent

VLI public benefit commitment is upheld.

d. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

- i. The proposed multi-year distribution provided by the appellant is for four years. The City's ordinance allows for a distribution for up to five years. The distribution proposed by the appellant also does not account for Measure C or Measure S on-going projects (Toll Brothers – Borello and Dunne-Young). In addition, as previously stated, the appellant is requesting to develop the project in one phase, with all building permits potentially being pulled at once and occupancy occurring as the project is completed.

Table 1 below, is similar to the appellant's proposal but includes set-aside allotments not included in the appellant's distribution.

Table 1: RDCS Building Allotment Multi-Year Projection w/ MWest contribution of 20% VLI contribution

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane- MWest	71	90	90	50	0
MWest 20% VLI	0	39	39		
Downtown	N/A	48	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	254	206	114	64
Total Affordable	0	78	78	39	39
Other Available for Future	0	0	0	81	131

This proposal does not appear to be a multi-year allotment request consistent with the RDCS program. The allotments proposed for FY2020/21 could potentially exceed the City's annual allotment cap. In addition, the appellant is requesting to occupy prior to the designated fiscal year.

Table 1, which uses the proposed allotment distribution by the appellant, only provides for 156 of the necessary 193 VLI units needed (78 in

2020/21 and 78 in 2021/22) and would fall short of meeting the State requirement by 37 VLI units, leaving 0 allotments for other development categories until 2022.

To better illustrate the appellant's proposal to provide a 20 percent VLI public benefit commitment within the project, and considering other housing commitments within the City, alternative housing distribution Tables consistent with the RDCS program have been provided for consideration. Per previous City Council directives, a maximum annual allotment of 195 has been assumed.

Table 2: RDCS Building Allotment Multi-Year Projection w/ MWest contribution of 20% VLI contribution

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39
Cochrane-MWest	57	36	36	87	87
MWest 20% VLI	14	9	9	22	22
Downtown	N/A	48	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	170	122	173	173
Total Affordable	14	48	48	61	61
Other Available for Future	0	25	73	22	22

Table 2 demonstrates a total of 208 allotments available between affordable set-asides and other available allotments (14 in FY 2019/20, 48 and 25 in FY 2020/21 and 48 and 73 in 2021/22). To meet RHNA, 193 of the 208 available allotments need to be set aside for VLI projects, leaving 15 allotments for other development categories.

Table 3: RDCS Building Allotment Multi-Year Projection w/ MWest contribution of 20% VLI contribution (balanced over housing cycle)

Set-Aside	FY2019/20	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Measure C Transitional (Borello Project)	59	25	25	25	25
On-Going (Dunne-Young)	20	13	13	0	0
Affordable (20%)	N/A	39	39	39	39

Cochrane-MWest	57	26	29	94	95
MWest 20% VLI	14	19	16	15	14
Downtown	N/A	48	Uncertain	Uncertain	Uncertain
Awarded	45	N/A	N/A	N/A	N/A
Total Proposed Commitment	195	170	122	173	173
Total Affordable	14	58	55	54	53
Other Available for Future	0	25	73	22	22

Table 3 demonstrates a total of 225 available allotments between affordable set-asides and other available allotments (14 in FY 2019/20, 58 and 25 in FY 2020/21 and 55 and 73 in 2021/22). To meet RHNA, 193 of the 225 allotments need to be set aside for VLI projects, leaving 32 for other development categories. Also, Table 3 demonstrates affordable units being constructed into the next housing cycle, to help balance future performance.

In Summary, the City must produce 193 VLI units in this housing cycle to meet our RHNA.

3. **Housing Accountability Act**

Under the Housing Accountability Act (Government Code § 65589.5), a local government may not reject or make infeasible affordable housing development projects that contribute to meeting the agency's RHNA requirements unless the governing body makes specific findings that:

- a. The agency is in compliance with its RHNA requirement in all of the affordability categories proposed in the development.
- b. The development would have a specific adverse impact on public health and safety and the impact cannot be mitigated without making the project infeasible.
- c. The denial or conditions are required by state or federal law.
- d. The project is proposed on land zoned for agriculture and surrounded on at least two sides by agricultural uses.
- e. The proposed project is inconsistent with both the zoning and general plan designation for the project site.

If DivcoWest can show that its project is affordable, and that it is contributing to the City's deficiency in Very Low-Income units through its 20% VLI commitment, it would qualify for protection under the Housing Accountability Act. In that case, the City could not make the required findings to deny the project or condition the project in a way that

renders it infeasible.

In the supplemental letter, DivcoWest asserts that its financing is contingent on obtaining multi-year allotments, and that a requirement that the project compete for future allotments would render the project infeasible. DivcoWest would need to demonstrate that unlike other large developers with multi-phased projects, with significant up-front infrastructure development commitments such as Toll Brothers, City Ventures, KB Homes, Lyon Homes, Monterey Dynasty, Cal Atlantic, and Dividend Homes that their project is uniquely financed, making phasing consistent with Measure S impossible.

To bridge the conflict between RDCS and the Housing Accountability Act, Council may consider granting the appeal, contingent upon negotiating a Development Agreement that 1) provides the requested allocations over a defined period of up to five years, 2) requires a construction schedule that will pace development over the term of the agreement, and 3) includes a guarantee that 20% of the units in the project will be restricted in the Very Low Income Category. There may be additional conflicts with RDCS that would need to be resolved through negotiation of the Development Agreement. Those conflicts and the proposed solution would be brought back to Planning Commission and the Council as part of the approval process.

4. Fiscal Impact

Revenues collected into the Development Services Fund (206) are a function of the level of development activity in the City. This fund would be impacted by the award of a multi-year application. With the size of the project utilizing all or most of the City's allocations, there would be no competition for allotments, or projects to diversify public improvement planning and construction related to new development projects. This will impact up to 45% of planning permit revenue and 80% of land development engineering revenue for FY 2018/19 and FY 2019/20, respectively, and would require a significant decrease in the current and long range planning programs (such as Monterey Rd. Block Level Master Planning Process, General Plan Annexation EIR, High Speed Rail liaison activities, and Downtown parking plan), as well as modifications of staff work schedules and consideration of temporary reductions in force.

LINKS/ATTACHMENTS:

1. DivcoWest SVI City Council Supplemental RDCS Appeal Letter 6.14.18v2



June 14, 2018

VIA EMAIL (cityclerk@morganhill.ca.gov)

Mayor Steve Tate, and
Members of the Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA 95037

RE: DivcoWest SVI Supplemental Appeal Letter re: Request for RDCS Multi-Year Allotments for FY 2019 - 2023

Honorable Mayor Tate and City Councilmembers:

On behalf of DivcoWest Silicon Valley Investments (“Divco”), we respectfully submit the following supplemental information to our formal RDCS Appeal Letter dated June 4, 2018. We respectfully request that the City Council grant the proposed Project, known as Butterfield Village, a multi-year allotment for FYs 2019/20 through 2022/2023. Butterfield Village is a 22.8-acre, 389-unit multi-family apartment community located at the southeasterly quadrant of Monterey Road and Jarvis Drive.

As noted in our June 4th letter, this is our 3rd time through the competition, and the Project received just 10 allotments in the last two competitions despite receiving the 2nd highest score (181 points and 179 points, including 2 “Project Excellence Points”). Divco is requesting 379 multi-year allotments over four (4) years to achieve Project buildout and is proposing to modify its affordable housing component to include 20% (78) Very Low Income (“VLI”) inclusionary units as described in more detail below to help the City meet its Regional Housing Needs Assessment (“RHNA”) requirements.

Butterfield Village is a Unique Project in Morgan Hill

There are 4 primary factors that make Butterfield Village a unique project in Morgan Hill:

1. Scale: The Project is part of Divco’s larger 58-acre master plan that includes 550,000 SF of industrial space, a 3.2-acre public park (“Butterfield Park”), and the long-awaited extension of Sutter Road to Digital Drive.
2. Housing Type: The Project, a “resort-style” community, includes 389 MF units on 19.0 acres, consisting of 19, 3 story corridor buildings with stacked flats of 12 – 22 units each, and 10, 2/3 story townhome-style buildings of 4 – 6 units each, as well as a Recreation and Leasing Center, adult swimming pool and children’s wading pool, fitness center, pocket parks, landscaping, public trails, surface parking, interior roads, and associated infrastructure. Butterfield Park, as well as the Sutter Extension, will be constructed concurrently with the apartments.
3. Rental Housing: The Project is 100% rental and would be one of the few apartment communities to be built in Morgan Hill in the past 30 years. Butterfield Village is the only rental project in this year’s competition.
4. Measure C and Measure S: The Project was the only project required to compete under both Measure C and Measure S, which necessitated recalibrating the Project to maximize points under the new system.

Anticipated Development Schedule

Unlike the many subdivisions the City has approved over the years, a project of this type and scale cannot be efficiently phased, which is why very few apartment communities have been built in Morgan Hill under the City's Growth Control Ordinance.

At this time, Divco anticipates we would rough grade the entire 58.0-acre site to prepare the Sutter Road Extension, 3.2-acre Butterfield Park and the apartments for construction. The Project also requires filling an existing 8-acre, 4 to 5-foot temporary retention basin on the site near Monterey Road and Jarvis Drive¹. Once the site is ready, we will begin constructing a portion of the new Main Street off Jarvis Drive and building out the Recreation and Leasing Center, swimming pool and other amenities, which need to be in place at the outset to successfully market and lease the project. This initial work substantially front loads costs and makes it imperative that the project is completed in one continuous phase once it has begun to secure the financing necessary for the Project. As we begin constructing the individual apartment buildings and associated infrastructure and parking, we will move as quickly around the site as possible to finish the units, Sutter Extension and Butterfield Park. The entire construction process is anticipated to take about 26 to 30 months, with approximately 3 to 5 months of initial site preparation and the remainder for vertical construction. The schedule anticipates a rolling occupancy of units as each building is completed; total lease-up of units is anticipated to take about 20 months.

The Project Requires A Multi-Year Allotment Award to be Feasible

Given how apartment communities of this scale are financed and constructed, the project is simply not feasible without the certainty of a full multi-year allotment and knowing that the project can proceed in one continuous phase once the first building permits are issued. The construction and lease-up of units is required as quickly as possible to provide for a return of investment capital and to amortize debt, which often doesn't occur until the project is completed, fully leased, and rents are stabilized. Starting and stopping or intentionally slowing the pace of construction or occupancy would add millions of dollars to the overall project cost and expose the Project (and City) to significant risks that would render it unfinanceable. Neither investors nor lenders will provide capital or debt without assurances that building can proceed continuously and expeditiously to full completion and occupancy. Moreover, purposefully dragging out the construction period will only prolong the disturbance to neighbors and the perception of persistent construction activity.

Butterfield Village Will Help the City Meet its RHNA Obligations

Based on recent communications with Rebecca Garcia, the City's Housing Manager, we understand that Morgan Hill needs to issue building permits for 193 VLI Units (50% AMI) by the end of the current Housing Element Cycle (December 31, 2022) to meet the City's RHNA requirements in compliance with State law. In addition, the City may be short up to 128 moderate income units (120% AMI). Based on 2018 HCD income limits and rents for Santa Clara County, and Divco's projected rents, we believe a significant portion of the Project would qualify as moderate income.

Since learning of Morgan Hill's RHNA compliance needs a few weeks ago, Divco has been working to see how we might be able to reposition the Project to help the City make significant progress towards its RHNA obligations. Under State and Federal law, tax exempt bonds and low-income housing tax credits are available to qualifying rental projects that set aside 20% of units for households earning 50% of median income ("20-50" financing). In lieu of our current proposal of providing 8% Low Income units (80% AMI), Divco is willing to set aside 20% of the total 389 unit project (78 units) for VLI households earning 50% AMI. To accomplish this, Divco will need the following:

¹ The 8-acre temporary retention area was created by the City to provide overflow for the existing 9-acre detention basin. Now that the City has completed the Butterfield Channel improvements, the overflow basin is no longer needed.

- (1) The City's commitment to cooperate with Divco to apply for and secure the "20-50" bond financing.
- (2) The Project qualifying for Federal and State "20-50" bond financing and tax credits. Given the nature of the Project and its location, the Project would be in an excellent position to qualify.
- (3) The City's commitment to allow Divco to proceed immediately with Design Review and all other entitlements, to secure building permits for all 389 units, to construct the project in one continuous phase, and to occupy the units when completed. Depending on the financing requirements, the building permits may all need to be pulled at one time or may be broken down by building for the vertical construction.

Requested Multi-Year Allotment Distribution

Based on the anticipated Development Schedule outlined above, we respectfully request that the City Council grant the Multi-Year Allotment Distribution shown on Exhibit A (attached), and allow for the continuous, uninterrupted construction and occupancy of the Project. (We have tried to balance interests in our proposed distribution of the allocations but acknowledge that the City Council may propose an alternative that achieves the same goal.) Ultimately, we need to be able to pull building permits for all 389 units, including the 78 VLI units, which must be distributed throughout the Project in accordance with State bond financing requirements. Note that under our proposal, the proposed allotment distribution assumes that the Project's VLI units will count towards the City's annual 20% affordable set-aside. Depending upon the pace of entitlements and construction, and upon how the City Council decides to award the allotments, allotted units may be ready for construction and occupancy sooner than the designated Fiscal Year.

We hope this proposal further demonstrates Divco's commitment to finding creative solutions that benefit the City and allow for the Project to move forward. We have worked hard over the past four years to create a vision for the site that addresses some of the City's highest needs and priorities. We are proud of the Project and believe Butterfield Village offers Morgan Hill a unique opportunity to gain high quality rental housing within walking/biking distance of the City's core job center and the Downtown, to jumpstart key infrastructure necessary to catalyze development of the industrial land, to gain a new public park with amenities accessible to existing residents and Morgan Hill Ranch businesses, and to make significant progress towards meeting the City's RHNA obligations for Very Low-Income households.

Thank you for your consideration and the opportunity to provide these comments.

Very Truly Yours,

Kerry M. Williams

Kerry M. Williams, Project Director
MWest PropCo XXIII LLC

cc: Christina Turner, City Manager
Leslie Little, Asst. City Manager, Community Development Agency
Don Larkin, City Attorney
Rebecca Garcia, Housing Manager
Jennifer Carmen, Community Development Director
Gina Paolini, Interim Principal Planner
Ryan McDaniel, Vice President, DivcoWest SVI
Tamsen Plume, Partner, Holland & Knight LLP
Jennifer Hernandez, Partner, Holland & Knight LLP

EXHIBIT A

BUTTERFIELD VILLAGE MULTI-YEAR DISTRIBUTION						
	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	TOTAL
On-Going						
MC/MS Transitional	59					
East Dunne-Young	20	13	13			46
Cochrane-MWest	71	90	90	50		301
Diana-Hanalei	23					
MH Devco	22					
VLI Affordable (MWest)		39	39			78
Set-aside for VLI units needed to meet RHNA	n/a	40	40	35		115
Downtown	DOWNTOWN ALLOTMENTS DO NOT APPLY TO CAP					
SUBTOTAL	195	182	182	85	0	
AVAILABLE	0	33	33	110	195	
TOTAL	195	215	215	195	195	
Total Butterfield Village						379
Total VLI						193

*** Depending upon the pace of entitlements and construction, allotted units may be ready for occupancy sooner than the designated Fiscal Year.*

The project received 10 allotments in the 2016/2017 competition. This brings the total to 389.

Assumes that the City maximizes the number of allotments in FY 20/21 and 21/22, and then returns to 195 thereafter.



DEVELOPMENT PROCESS CONSULTANTS

Jun 20, 2018

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

RE: Divco Appeal.

Dear Council Members,

Unfortunately I am unable to attend his evenings public hearing.

I have reviewed the Divco request to appeal the planning Commission's recommendation to grant a single year of 71 units. I have reviewed the letter filed by the applicant on June 14th requesting to secure building permits for all 389 units at one time based on information that was not specified in their 2017 RDCS narrative. Accepting such "New information" has never been allowed in any competition since my involvement in the process every year since 1984. Accepting new information is unfair to the other applicants and unjust.

There has always been a tight working relationship in this process between the members of the development community and City staff to award projects in phases which provides housing diversity throughout the city as well as within each project. Granting such a large amount of allocation to one project and holding off other developments was never the intent of the RDCS process. Also granting a high number of allocations to single housing type will set precedence that such a practice will be allowed or expected in future RDCS competitions.

This project retains a product that can be phased since it retains multiple buildings. This is not uncommon as many large phased developments exceeding 5 years have successfully recompeteted numerous times for additional allocations to complete their project. If the project wishes to provide commitments not specifically noted as such in their application, they should be included and scored accordingly in the upcoming Measure S competition.

I support the Planning Commission and Staff's recommendation.

Vincent R. Burgos

DEVELOPMENT PROCESS CONSULTANTS



Development Process Consultants

220 Live Oak Drive
Danville, CA. 94506

Item # 15

AGENDA DATE: 06/20/18
SUPPLEMENT # 3

From: Orville T. Power <op@manainv.com>
Sent: Wednesday, June 20, 2018 1:55 PM
To: Gina Paolini <Gina.Paolini@morganhill.ca.gov>
Cc: 'smurray@interorealestate.com' <smurray@interorealestate.com>
Subject: RDCS2017-0015 Diana-Hanalei Appeal Position

Hi Gina – Sorry for the last minute email. I was reading the staff report for tonight's RDCS appeal and have some concern. As the member representing the RDCS 2017-0015 Diana Hanalei application, I wanted to make it clear that we do not have interest in sharing our allocations with any other application, including the Monterey/Central ECA project. The current ownership of Diana Hanalei (Cuneo Family 1999 Trust/Cuneo Family 1997 Trust/Grossweiler Family Trust) does not economic interest in any other application (including Monterey/Central ECA) and Scott Murray has a conflict of Interest. Though I will not be attending the hearing tonight, I wanted to inform you of our position in advance.

Please confirm receipt.

Kind Regards,

Orville T. Power | Managing Partner
MANA INVESTMENTS, INC.
c. 619.876.6132
e. op@manainv.com

5927 Balfour Ct., Suite 208
Carlsbad, CA 92008
www.manainv.com

Item # 15

AGENDA DATE: 06/20/18

SUPPLEMENT # 4

From: Gina Paolini <Gina.Paolini@morganhill.ca.gov>

Date: June 20, 2018 at 5:02:27 PM PDT

To: Christina Turner <Christina.Turner@morganhill.ca.gov>, Leslie Little

<Leslie.Little@morganhill.ca.gov>, Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>

Cc: Donald Larkin <Donald.Larkin@morganhill.ca.gov>

Subject: RE: Questions re: Agenda item #15 /MWEST project

1. How is a project defined as 'affordable'? The proposed 20% of the units for VLI and other units for moderate income (by design). There are three levels of affordability, moderate, low and very low all based around percentages of AMI. For Santa Clara County the AMI is \$125,200.

	BELOW MARKET RATE (BMR) RENTAL RATES				
No. of Bedrooms	Extremely Low	Very Low	Lower	Median	Moderate
0 Bedroom (Efficiency)	\$699	\$1,164	\$1,654	\$2,191	\$2,630
1 Bedroom	\$799	\$1,330	\$1,890	\$2,504	\$3,005
2 Bedrooms	\$899	\$1,496	\$2,126	\$2,818	\$3,381
3 Bedrooms	\$998	\$1,663	\$2,361	\$3,130	\$3,756
4 Bedrooms	\$1,078	\$1,796	\$2,551	\$3,380	\$4,056

2. Did the appellant (MWEST) commit to having the VLI units deed-restricted? If not, would they have to do so and would they be willing to do so? For the bond financing and tax credits, the units would be restricted. In addition, the City would require the units to be deed restricted as part of the RDCS public benefit commitment.
3. How would the city be able to control that these 20% units would remain VLI? How would the city ensure compliance (e.g ensuring that the units would get rented to qualifying parties only)? The units would be monitored by the City's Housing Division. As part of the Below Market Rate unit program, the City would certify the units annually to guarantee each unit is being rented to qualifying income tenants.
4. Could these VLI units get sold at some point? This project is being developed as a rental project but there are laws in place that would

allow the project to be apply for a condominium conversion following stated requirements; however the income levels would still hold.

5. What if MWEST/Divco were to sell the property? Would the requirements for VLI remain in place? The public benefit commitments remain with the RDCS allotments and the DA would have set assignment provisions that regulate what transfers to other owners. The VLI would remain.
6. How will it get determined that this project qualifies for this special financing (as they propose it)? What, if that were to fall through? The project must apply for the bond financing and pass the "20-50" test, along with the general qualifications and requirements which is administered by the California Debt Limit Allocation Committee (CDLAC). An issue for tonight's discussion is the applicant states that providing the 20% within the project is contingent on the bond financing. If a multi-year request were to be granted, the 20% should be provided regardless of the financing mechanism. The DA would have to account for a scenario if financing were to fall through.
7. Would an appeal approval set a precedent for other projects? The appeal and award of a multi-year request, in the form proposed would impact other developers and could set a precedent for the future.
8. Would an appeal approval possibly cause issues with other developers that might get impacted during future years? Market rate projects would be unable to move forward and would be impacted by this appeal.
9. What do resident growth projections look like over the next 5 years per the different scenarios? How would we ensure a paced growth and measure against a paced growth?

We have been preparing information for our discussion on RDCS available allotments for the next RDCS cycle and this may help:

According to the California State Department of Finance, the estimated population of the City of Morgan Hill, as of January 1, 2018, was 44,513 and the average number of persons per household (PPH) was determined to be 3.15.

If all the awarded Measure C and A allotments were to commence and build by June 30, 2019, the estimated population would be approximately 48,047 determined as follows:

Measure C Allotments: 983 (# allotments - # units finalized)

Measure A Allotments: 139 (# allotments - # units finalized)
1,122

Adjusted population: 1,122 units x 3.15 PPH = 3,534 + 44,513 =
48,047 population

If you subtract the adjusted population (48,047) from the population cap (58,200) you get 10,153.

Divide 10,153 persons by 3.15 PPH to get 3,223 units.

3,223 units / 15 years (2020 to 2035) = 215 units/year.

Based on this information, the City would not exceed the population cap with an award of less 215 allotments. Where the population cap may become a concern is when an affordable project cannot be processed within the RDCS program because allotments are not available.

10. For table 2 and 3: How many allotments / year would be given out?
I'm counting more than 195. Need to better understand that. Tables 2 and 3 are limited to 195 allotments. We will go through this during the presentation tonight.

Gina Paolini

Interim Principal Planner

CITY OF MORGAN HILL

17575 Peak Avenue

Morgan Hill, CA 95037

(P)408-778-6480 (D)408-310-4676

Gina.Paolini@morganhill.ca.gov

From: Christina Turner

Sent: Wednesday, June 20, 2018 4:13 PM

To: Leslie Little <Leslie.Little@morganhill.ca.gov>; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Gina Paolini <Gina.Paolini@morganhill.ca.gov>

Cc: Donald Larkin <Donald.Larkin@morganhill.ca.gov>

Subject: Fwd: Questions re: Agenda item #15 /MWEST project

Please see below and draft responses. Thank you!

Begin forwarded message:

From: Rene Spring <Rene.Spring@morganhill.ca.gov>

Date: June 20, 2018 at 3:47:13 PM PDT

To: Christina Turner <Christina.Turner@morganhill.ca.gov>

Subject: Questions re: Agenda item #15 /MWEST project

Re: Agenda topic #15 - supplemental information/ Mwest

Christina,

Some questions:

1. How is a project defined as 'affordable'?
2. Did the appellant (MWEST) commit to having the VLI units deed-restricted? If not, would they have to do so and would they be willing to do so?
3. How would the city be able to control that these 20% units would remain VLI? How would the city ensure compliance (e.g ensuring that the units would get rented to qualifying parties only)?
4. Could these VLI units get sold at some point?
5. What if MWEST/Divco were to sell the property? Would the requirements for VLI remain in place?
6. How will it get determined that this project qualifies for this special financing (as they propose it)? What, if that were to fall through?
7. Would an appeal approval set a precedent for other projects?
8. Would an appeal approval possibly cause issues with other developers that might get impacted during future years?
9. What do resident growth projections look like over the next 5 years per the different scenarios? How would we ensure a paced growth and measure against a paced growth?
10. For table 2 and 3: How many allotments / year would be given out? I'm counting more than 195. Need to better understand that.

Likely more questions to come tonight. Sending this in in case you have time to prep answers.

Rene

Sent from my iPad



June Developmental Asset

Asset #15

Positive Peer Influence

Young person's best friends
model responsible behavior.

Tips on this asset

- Important to choose friends wisely
- Feel safe with each other
- Trust in every situation



How this relates to YAC?

- Model responsible behavior with other youth
- Make others feel welcome
- Build bonds with each other





June Complementary Asset

Asset #35

Resistance Skills

Young person can resist
negative peer pressure and
dangerous situations.

Why this is important?

- Ensure your safety and safety of others
- Lead to more responsible choices
- Set a good example for others to follow



What advice would you give a teen who feels peer pressured?

