



Special - Regular Meeting Agenda
City Council

Steve Tate - Mayor
Rich Constantine - Mayor Pro Tem
Larry Carr - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, October 17, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The Public Hearing regarding GPA2018-0001/ZA2018-0001/EA2018-0001: East Dunne - Ross, that was publicly noticed for consideration by the City Council at this meeting has been continued at the request of the applicant to date uncertain.

SPECIAL/REGULAR MEETING

(5:30 P.M. Closed Session/ 6:00 P.M. Workshop/ 7:00 P.M. Regular Meeting)

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a closed session and a Joint City Council/Planning Commission Workshop.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

WORKSHOP

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

Recommendation:

1. Receive a presentation from Lisa Wise Consulting (LWC) and Metrovation Brokerage on the Monterey Corridor Block-Level Master Plan,
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor, and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Constantine

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming October 20, 2018 as Arbor Day
Anthony Eulo, Program Administrator, Community Services Department

RECOGNITIONS

125th Birthday of the Morgan Hill United Methodist Church
Pastor Patrick Davis

PRESENTATIONS

Legislative Update
Assembly Member Anna Caballero

Anderson Dam Presentation
Board Member John Varela, Santa Clara Valley Water District

YAC PRESENTATION ASSET # 4 - CARING NEIGHBORHOOD, ASSET # 21 ACHIEVEMENT MOTIVATION, AND ASSET # 31- HEALTHY LIFESTYLE

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. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS – LODEN PLACE - TRACT NO. 10197

Recommendation:

1. Accept the Subdivision Public Improvements for Loden Place – Tract No. 10197;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

2. APPROVE IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC

Recommendation:

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

3. APPROVE FIRST AMENDMENT TO BRIGHTVIEW LANDSCAPE SERVICES, INC. AGREEMENT FOR LANDSCAPE SERVICES

Recommendation:

Approve the first amendment to the maintenance service agreement with Brightview Landscape Services, Inc. for additional services totaling \$1,200, for total contract amount of \$262,752.

4. APPROVE THIRD AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

Recommendation:

Approve the third amendment to the maintenance service agreement with West Coast Arborist, Inc. for additional services totaling \$110,000, for total contract amount of \$865,000.

5. AUTHORIZE CITY MANAGER TO APPROVE CHANGE ORDER FOR 2018 INFLOW AND INFILTRATION PROJECT

Recommendation:

Authorize the City Manager to execute a change order of up to \$170,000 with Pacific Underground Construction, Inc. for the 2018 Inflow and Infiltration Project, for a total project cost of up to \$931,035.

6. ADOPT THE 2018 STORM DRAINAGE SYSTEM MASTER PLAN

Recommendation:

Adopt the 2018 Storm Drainage System Master Plan.

7. ADOPT RESOLUTION ADOPTING THE FINAL RELOCATION IMPACT STATEMENT AND LAST RESORT HOUSING PLAN FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Adopt resolution for the following actions:

1. Adopt the Final Relocation Impact Statement and Last Resort Housing Plan for the Hale Avenue Extension Project; and
2. Authorize expenditure of an amount not to exceed \$98,000 for relocation assistance, from the Traffic Impact Fund (309).

8. ADOPT REVISED RESOLUTION OF NECESSITY REPLACING RESOLUTION 18-071

Recommendation:

Adopt revised resolution of necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Pacific Gas and Electric Company for the Hale Avenue Extension Project, and rescinding resolution 18-071.

9. JULY 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

10. ACCEPT RESIGNATION OF PARKS AND RECREATION COMMISSIONER

Recommendation:

1. Accept LaRene Green's resignation from the Parks and Recreation Commission effective immediately; and
2. Direct the City Clerk to continue recruitment efforts to fill an unexpired term ending April 1, 2022, on the Parks and Recreation Commission.

11. AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES

Recommendation:

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

12. ADOPT ORDINANCE APPROVING A ZONING AMENDMENT ZA2018-0004 TO AMEND THE ZONING ON HALF OF THE 0.29 ACRE PORTION OF DEPOT STREET LOCATED AT THE END OF DEPOT STREET AND EAST DUNNE AVENUE INTERSECTION, ADJACENT TO 17020 DEPOT STREET (APN 726-13-049)

Recommendation:

Waive the reading, adopt Ordinance No. 2282, 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.

13. ADOPT ORDINANCE AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) TO TITLE 5 (BUSINESS LICENSES GENERALLY) TO CLARIFY BUSINESS LICENSE REQUIREMENT AND REVOCATIONS FOR MASSAGE ESTABLISHMENTS AND SERVICES

Recommendation:

Waive the reading, adopt Ordinance No. 2283, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

14. ADOPT ORDINANCE AMENDING SECTION 2.08.040 (“POWERS AND DUTIES”) OF CHAPTER 2.08 (“CITY MANAGER”) OF TITLE 2 (“ADMINISTRATION AND PERSONNEL”) OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY THE POWERS AND DUTIES OF THE CITY MANAGER

Recommendation:

Waive the reading, adopt Ordinance No. 2284, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

15. ADOPT ORDINANCE AMENDING CHAPTER 3.04 (“PURCHASING”) OF TITLE 3 (“REVENUE AND FINANCE”) OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY PROVISIONS GOVERNING THE PURCHASE OF GOODS AND SERVICES

Recommendation:

Waive the reading, adopt Ordinance No. 2285, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

16. APPROVE THE SEPTEMBER 26, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

17. APPROVE THE OCTOBER 3, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

18. ECONOMIC DEVELOPMENT WEBSITE AND MARKETING CAMPAIGN UPDATE

Recommendation:

Receive economic development website and marketing campaign update, and provide feedback.

Estimated Time: 15 Minutes

PUBLIC HEARING

19. APPROVE DA2017-0008, EA2017-0016: LLAGAS - STROLATA - DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 773-32-013 LOCATED AT THE NORTHEAST END OF SABINI COURT

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the ordinance;
3. Introduce an ordinance approving the Development Agreement; and
4. Authorize the City Manager to execute and administer the Development Agreement.

Estimated Time: 5 Minutes

20. APPROVE DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DRIVE AND MONTEREY ROAD

Recommendation:

1. Open/close the public hearing;
2. Waive first and second reading of Development Agreement Ordinance;
3. Introduce Development Agreement Ordinance; and
4. Authorize the City Manager to execute and administer the Development Agreement.

Estimated Time: 15 Minutes

21. ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
 - A. Adds Chapter 14.08 to institute a Housing in-lieu fee of \$19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, \$13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, \$29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and \$14.50 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
 - B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Program Application Guide;
 - C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
 - D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

Estimated Time: 20 Minutes

OTHER BUSINESS

22. UPDATE ON AGRICULTURAL PRESERVATION STRATEGY AND POTENTIAL RELATED LAND USE CONSIDERATIONS

Recommendation:

1. Accept report on the City's Conservation Strategy; and
2. Provide policy direction to staff.

Estimated Time: 20 Minutes

23. AMEND AGREEMENT WITH MAGICAL BRIDGE FOUNDATION AND RECEIVE PROJECT UPDATE

Recommendation:

1. Receive update on Magical Bridge Morgan Hill Inclusive Playground Project;
2. Authorize the City Manager to execute and administer an amendment to the Consultant Services and Design Agreement with the Magical Bridge Foundation; and
3. Authorize the City Manager to execute and administer a Service Agreement for Design Professionals with the Magical Bridge Foundation.

Estimated Time: 20 Minutes

24. APPROVE UPDATED CONCEPTUAL DESIGN FOR LIBRARY EXPANSION PROJECT

Recommendation:

Approve the updated Conceptual Design for the Library Expansion Project.

Estimated Time: 10 Minutes

25. APPROVE UPDATE TO THE CENTENNIAL RECREATION CENTER EXPANSION PROJECT

Recommendation:

Direct staff to proceed with the completion of the project documents and bidding of the project.

Estimated Time: 10 Minutes

26. APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH EVERGREEN DEVCO, INC. FOR 20.43 ACRES LOCATED ON THE EASTERLY SIDE OF BUTTERFIELD BOULEVARD BETWEEN COCHRANE ROAD AND JARVIS DRIVE IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-32-021 AND 726-25-035.

Recommendation:

1. Approve an Impact Fee Freeze Agreement with Evergreen Devco, Inc. for the development of a 195,500 square foot retail center located at the corner of Butterfield Boulevard and Cochrane Road; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

Estimated Time: 15 Minutes

27. APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH BRIDGE GROUP INVESTMENTS FOR INDUSTRIAL DEVELOPMENT ON 7.9 ACRES LOCATED ON JARVIS DRIVE IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-30-013.

Recommendation:

1. Approve an Impact Fee Freeze Agreement with Bridge Group Investments, LLC. for the development of a 503,000 square foot corporate office/warehouse facility located on Jarvis Drive; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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



Sustainable Morgan Hill Vision

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

CITY COUNCIL ONGOING PRIORITIES

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

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

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



Economic Development and Telecommunications

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



Financial Stewardship

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



Infrastructure

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



Regional Initiatives

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



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: City Manager

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

RECOMMENDATION(S)

1. Receive a presentation from Lisa Wise Consulting (LWC) and Metrovation Brokerage on the Monterey Corridor Block-Level Master Plan,
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor, and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.



August Developmental Asset #4

Caring Neighborhood

Young person experiences
caring neighbors.

How can YOUTH interact with their neighbors



Ways to interact

- o Be present within your neighborhood.
- o Interact with your neighbors when you see them.
- o Plan communal events such as celebrations or projects.

Benefits

- o Youth feeling safer
- o More role models





September

Developmental Asset #21

Achievement Motivation

Young person is motivated to do well in school.

Ways to motivate YOUTH



- o Consistently check grades.
- o Look for resources to help them in classes they aren't doing well in.
- o Communicate with teachers.
- o Be supportive of their successes and failures.





October

Developmental Asset #31

Healthy Lifestyles

Parents tell youth it is important to have good health habits and an understanding of healthy sexuality.

How to maintain a healthy lifestyle



- o Attempt be physically active for a majority of the week.
- o Try to eat more natural foods over processed foods.
- o Aim to drink water over sweetened beverages..
- o Give yourself time each day to reflect and relax.
- o Inform and guide youth about the changes in their bodies according to their age. Search or consult with a professional on how to talk to them about healthy sexuality.



Out of these three assets, which one
do you consider the most
important?





CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS – LODEN PLACE - TRACT NO. 10197

RECOMMENDATION(S)

1. Accept the Subdivision Public Improvements for Loden Place – Tract No. 10197;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Loden Place - Tract 10197 is a 42-lot subdivision located on the east side of Hale Avenue, south of Llagas Road (see attachment no. 1- site map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and City Ventures Homebuilding, LLC, dated June 23, 2014, and as specifically set forth in the plans and specifications approved by the City.

To date, the total length of streets previously accepted by the City is 127.81 miles.

The streets and street lengths to be accepted as part of the development are as follows:

Street	Street Lengths
Christine Lynn Drive	0.11 mi
Del Monte Avenue	0.13 mi
Stoney Creek Way	0.13 mi
Total	0.37 mi

The value of the public improvements (including streets and other infrastructure) being accepted is \$2,124,830.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the project acceptance.

ALTERNATIVE ACTIONS: Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the Final Map, and Subdivision Improvements Agreement for Loden Place – Tract No. 10197, on June 4, 2014.

FISCAL AND RESOURCE IMPACT:

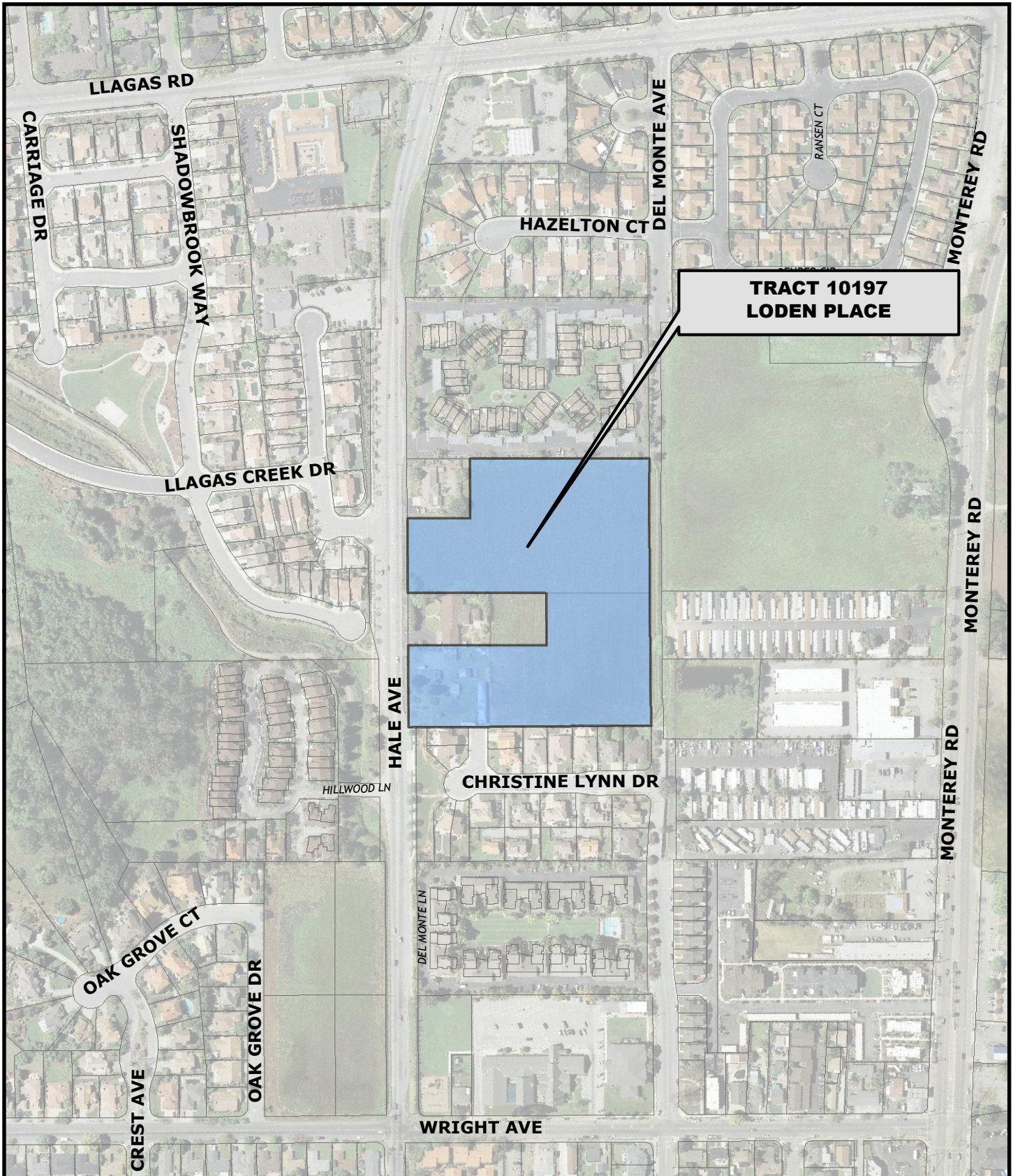
Staff time for this project was paid by the developer's land development fees.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration was adopted on May 5, 2013.

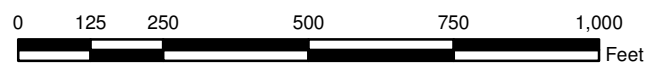
LINKS/ATTACHMENTS:

1. Site Map
2. Notice of Completion



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FINAL MAP APPROVAL **LODEN PLACE - TRACT 10197** **SITE MAP**



Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On **June 23, 2014**, the City of Morgan Hill, a Municipal Corporation, entered into a contract with **City Ventures Homebuilding, LLC** for the **Loden Place – TRACT NO. 10197** subdivision project located on the south side of Peral Drive and bounded by Del Monte Avenue and Monterey Road, Morgan Hill, California.
- 2) The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037
- 3) The contractor is **City Venture Homebuilding, LLC**.
- 4) The surety is **International Fidelity Insurance Company**.
- 5) The project was completed on **September 30, 2018** and accepted by the City Council of the City of Morgan Hill on **October 17, 2018**.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

APPROVE IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Gunter Lofts is a mixed-use development with 15 residential units and a commercial shell, located on Monterey Road and McLaughlin Road in the Downtown Core (Attachment No. 1). As required by the project's conditions of approval for Site Review, the developer is required to enter into an Improvement Agreement with the City of Morgan Hill and provide a financial guarantee covering the project's public improvements.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the proposed public improvements for the Gunter Lofts development. Staff recommends that City Council authorize the City Manager to sign an Improvement Agreement (Attachment No. 2) on behalf of the City and sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement (Attachment No. 3), pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT: Involve

On June 8, 2017, the Community Development Department approved the project's Site Review. Residents within a 300 feet radius were informed of the Department's recommendation to approve the Site Review for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over the Site Review requirements.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 28, 2017, the City Council approved the Development Agreement Amendment.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Project

A Mitigated Negative Declaration was adopted.

LINKS/ATTACHMENTS:

1. Site Map - Gunter Lofts
2. Improvement Agreement - Gunter Lofts
3. Stormwater BMP Operation and Maintenance Agreement



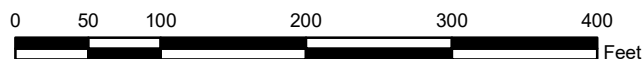
Attachment: Site Map - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)



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

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SITE MAP **GUNTER LOFTS**



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

GUNTER LOFTS, LLC
17620 MONTEREY ROAD
APN 726-23-008
GUNTER LOFTS

THIS AGREEMENT is made on this ____ day of _____, 2018, by the **CITY OF MORGAN HILL**, a municipal corporation ("CITY"), and **GUNTER LOFTS, LLC** a California limited liability company ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17620 Monterey Road** and the **APN 726-23-008** having the development name of **GUNTER LOFTS** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **GUNTER LOFTS** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.

6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. PROPERTY OWNER further agrees to maintain the securities described in Section 6 in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and

assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the City Engineer's estimated cost of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

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

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall

not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments. A portion of these sums shall be paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the attached Department of Public Works Fee Schedules attached hereto demonstrating a current Total Fee

Obligation of **\$591,380** (\$210,545 due at issuance of Development Permit; \$380,835 pro rated share due prior to occupancy of each residential unit). All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

15. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in

full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit and a general aggregate limit of ten million dollars (\$10,000,000.00), or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

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

(4) Pollution (Environmental) Liability: The performance of PROPERTY OWNER's work or service under this Agreement involves handling of hazardous materials,

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

(b) Required Endorsements. PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against CITY and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL policies except Workers Compensation:

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

(3) General Liability:

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

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

(c) Subcontractors. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

(e) Certificates. PROPERTY OWNER shall furnish CITY with copies of all policies or

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

Certificate Holder address:

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

16. **Non-Liability of Officials and Employees of CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
17. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.
18. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.
19. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
20. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.
21. **Conflict of Interest and Reporting.** PROPERTY OWNER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
22. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of PROPERTY OWNER is as follows:

Managing member Scott Murray/Orville Power
Gunter Lofts, LLC
175 E. Main Avenue, Suite 130
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

23. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

24. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

27. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

28. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

29. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

30. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.
32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
34. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
35. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

36. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

City Clerk, Michelle Wilson

City Manager, Christina Turner

Date: _____

Date: _____

APPROVED AS TO FORM:

“PROPERTY OWNER”

City Attorney

GUNTER LOFTS, LLC

Date: _____

Scott Murray, Managing Member

Date: _____

Attachment: Improvement Agreement - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)

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 APRIL 2017

Item	Description	Qty	Unit	Unit Price	Total
Schedule II- Water					
1	8" Ø DIP fire service	1	EA	\$ 5,000.00	\$ 5,000.00
2	8" Ø double detector check valve assembly	1	EA	\$ 10,000.00	\$ 10,000.00
3	2" Ø copper water service w/RBPB	3	EA	\$ 2,000.00	\$ 6,000.00
4	1" Ø copper water service	15	EA	\$ 1,500.00	\$ 22,500.00
5	8" DIP Water	444	LF	\$ 50.00	\$ 22,200.00
6	City std. blow off valve	2	EA	\$ 500.00	\$ 1,000.00
7	City std. fire hydrant	1	EA	\$ 4,000.00	\$ 4,000.00
Total Schedule II					\$ 70,700.00
Schedule III- Sanitary Sewer					
1	6" PVC sanitary sewer	400	LF	\$ 40.00	\$ 16,000.00
4	Sanitary sewer manholes	2	EA	\$ 3,500.00	\$ 7,000.00
Total Schedule III					\$ 23,000.00
Schedule V- Off-site Improvements					
1	Clearing and grubbing	1	LS	\$ 2,000.00	\$ 2,000.00
2	Pavement, curb, gutter & sidewalk removal & hauloff	1	LS	\$ 8,000.00	\$ 8,000.00
3	Grading	5,200	SF	\$ 0.50	\$ 2,600.00
4	4" AC on 12" AB	2,973	SF	\$ 6.00	\$ 17,838.00
5	Curb and gutter	295	LF	\$ 25.00	\$ 7,375.00
6	PCC sidewalk	1,611	SF	\$ 6.00	\$ 9,666.00
7	15" RCP	245	LF	\$ 60.00	\$ 14,700.00
8	City std. SDMH	2	EA	\$ 3,500.00	\$ 7,000.00
9	City std. CI	1	EA	\$ 3,000.00	\$ 3,000.00
Total Schedule V					\$ 72,179.00
Sub Total					\$165,879.00
10% Contingency					<u>\$16,587.90</u>
Total Construction Cost					<u>\$182,466.90</u>

Attachment: Improvement Agreement - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)

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 **GUNTER LOFTS, LLC** (hereinafter designated as "principal") have entered into an Improvement Agreement:

GUNTER LOFTS, LLC
GUNTER LOFTS, APN 726-23-008, 17620 MONTEREY ROAD

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2018, and identified as project **GUNTER LOFTS**, 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 eighty two thousand four hundred sixty six dollars (\$182,466)** 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

Performance Bond

Page 1 of 3

Version: December 2017

Attachment: Improvement Agreement - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)

performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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Performance Bond
Page 3 of 3
Version: December 2017

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 **GUNTER LOFTS, LLC** (hereinafter designated as "the principal") have entered into an Improvement Agreement:

GUNTER LOFTS, LLC
GUNTER LOFTS, APN 726-23-008, 17620 MONTEREY ROAD

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2018, and identified as project **GUNTER LOFTS**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **one hundred eighty two thousand four hundred sixty six dollars (\$182,466)**, 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:

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)

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.)

Labor and Material Bond

Page 2 of 3

Version: December 2017

Attachment: Improvement Agreement - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)

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County of **Santa Clara**

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WITNESS my hand and official seal.

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(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

**EXHIBIT “D”
FORM OF WARRANTY BOND
(50% of Engineer’s Estimate)**

Bond No.:

Premium: _____

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

**GUNTER LOFTS, LLC
GUNTER LOFTS, APN 726-23-008, 17620 MONTEREY ROAD**

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

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

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

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

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

Warranty Bond
Page 1 of 3
Version: October 2017

Attachment: Improvement Agreement - Gunter Lofts (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC)

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____

Date: _____

Donald A. Larkin, City Attorney

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Warranty Bond
Page 3 of 3
Version: October 2017



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

6/11/2018 DATE	FEE SCHEDULE: 01.15.2017	GUNTER LOFTS, LLC NAME
726-23-008 TRACT / APN	PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS	175 East Main Avenue, #130 MAILING ADDRESS
17620 Monterey Road ADDRESS / LOT		Morgan Hill, CA 95037 CITY, STATE, ZIP CODE
6,710 S.F. commercial unit 15 Family Units PROJECT DESCRIPTION		N/A - PER SETTLEMENT AGREEMENT FEE SCHEDULE EXPIRATION DATE
		PHONE NUMBER

NOTES:

GRADING/ENCHROACHMENT PERMIT FEE

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☒ THIS FEE SCHEDULE IS ESTIMATE ONLY

IF BOX ABOVE CHECKED: FEE SCHEDULE IS ONLY FOR ESTIMATE PURPOSES. FEE SCHEDULE CALCULATED BASED ON INFORMATION PROVIDED TO CITY BY APPLICANT. FINAL FEE SCHEDULE MAY DIFFER BASED UPON CHANGE IN SCOPE OF PROJECT.

CHARLIE HA
CALCULATED BY

CHARLIE HA
CHECKED BY

PWPR2017-0016
BUILDING PERMIT #

DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☐ COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☐ NOT IN RDA AREA BOUNDARY

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
TO ANNUAL CPI INCREASES.

☐ COMMERCIAL OR INDUSTRIAL SHELL

**RDA SEWER ALLOCATION
COMPLETED BY:**

(write initials below)

version 01.15.17 std

WATER FEES:

1. METER DEPOSIT:					650-37672
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1"	\$468	x	15	=	\$7,020
1 ½"	\$1,434	x	0	=	\$0
2"	\$1,619	x	3	=	\$4,857
3" or larger-Time & Material + Meter Cost					= \$0
METER CREDITS					
\$0 x 0					= \$0
SUBTOTAL =					\$11,877
2. BACKFLOW CONST. INSPECTION:					650-37859
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
\$62 x 4 Each					= \$248
3. WATER FRONTAGE CHARGE:					650-37663
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1 Side	\$66	x	0	LF	= \$0
2 Sides	\$37	x	294	LF	= \$10,878
4. WATER IMPACT FEE:					651-37648
(Auth: Res. #5592 approved 08.21.02, Increased 01.15.17)					
a) Residential					
\$3,751 /DU	x	0	DU	=	\$0
(Single Family)					
\$3,384 /DU	x	0	DU	=	\$0
(Multi Family)					
b) Commercial & Industrial					
(Includes Landscape Service)					
\$10,648 /AC x 0.6 AC					= \$6,389
WATER CREDITS					
\$0 x 0					= \$0
SUBTOTAL =					\$6,389
WATER FEE TOTALS =					\$29,392
5. ENGINEERING & INSPECTION FEE:					206-38734
(Minimum \$500.00):					
(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)					
ENGINEERING ESTIMATE:					\$182,466
DATE ENGINEERING EST. SUBMITTED:					
% APPLIES TO ENGINEER'S ESTIMATE					
13.3%	\$1	to	\$100,000	=	\$13,300
11.8%	\$100,001	to	\$200,000	=	\$9,731
10.3%	\$200,001	to	\$500,000	=	\$0
8.8%	OVER		\$500,000	=	\$0
ENGINEERING FEE					= \$23,031
DEPOSIT PAID					= \$10,000
ENGINEERING FEE TOTAL =					\$13,031
5A. LONG RANGE PLANNING FEE:					207-37912
LONG RANGE PLANNING FEE (15% of E&I) =					\$3,455

SEWER FEES:

6. SEWER FRONTAGE CHARGE:					640-37663
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1 Side	\$66	/LF	x 0	LF	= \$0
2 Sides	\$37	/LF	x 147	LF	= \$5,439
7. SEWER IMPACT FEE:					641-37648
(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.17).					
a) Residential					
\$14,680 /DU	x	0	DU	=	\$0
(Single Family)					
\$12,424 /DU	x	0	DU	=	\$0
(Multi Family)					
b) Commercial & Industrial					
\$50.26 /GPD x 1328 GPD					= \$66,745
\$50.26 /GPD x 0 GPD					= \$0
SEWER CREDITS					
\$0 x 0					= \$0
RDA ASSUMED SEWER OBLIGATION					
\$14,680 /DU	x	0	DU	=	\$0
(Single Family)					
\$12,424 /DU	x	0	DU	=	\$0
(Multi Family)					
\$50.26 /GPD x 1328 GPD					= -\$66,745
(Commercial & Industrial)					
SUBTOTAL =					\$0
SEWER FEE TOTALS =					\$5,439
STORM DRAIN FEES:					
8. STORM DRAIN FRONTAGE CHARGE:					304-37663
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1 Side	\$108	/LF	x 0	LF	= \$0
2 Sides	\$53	/LF	x 0	LF	= \$0
9. STORM DRAIN IMPACT FEE:					303-37648
(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.17)					
\$3,982 /DU x 10 DU					= \$39,820
(Single Family)					
\$2,071 /DU x 5 DU					= \$10,355
(Multi Family)					
\$43,364 /ACRE x 0.6 AC					= \$26,018
(Commercial & Office)					
\$31,572 /ACRE x 0 AC					= \$0
(Industrial)					
STORM CREDITS					
\$0 x 0					= \$0
SUBTOTAL =					\$76,193
STORM DRAIN FEE TOTALS =					\$76,193

10. UNDERGROUNDING UTILITIES:							350-37648
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)							
1 Side	\$681	x	0	LF	=	\$0	
2 Sides	\$343	x	0	LF	=	\$0	
11a. PARK IMPACT FEE:							301-37648
(Auth: Res. #5592 appr'v'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.17)							
\$5,566 /DU	x	0	DU	=	\$0		
(Single Family - Sub)							
\$4,047 /DU	x	0	DU	=	\$0		
(Single Family - No Sub)							
\$5,363 /DU	x	0	DU	=	\$0		
(Multi Family - Sub)							
\$3,903 /DU	x	0	DU	=	\$0		
(Multi Family - No Sub)							
11b. PARK MAINTENANCE DEV. FEE:							302-37649
\$0	x	0	EAC	=	\$0		
PARK CREDITS							
\$0	x	0		=	\$0		
PARK FEE TOTAL					=	\$0	
12. TRAFFIC IMPACT FEE:							309-37648
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.17).							
\$1,928 /DU	x	0	DU	=	\$0		
(Single Family)							
\$1,196 /DU	x	0	DU	=	\$0		
(Multi Family)							
\$1,928 /PHT	x	21.3	PHT	=	\$41,066		
(Commercial)							
\$1,928 /PHT	x	0	PHT	=	\$0		
(Industrial)							
TRAFFIC CREDITS							
\$0	x	0		=	\$0		
TRAFFIC FEE TOTAL					=	\$41,066	
13. LIBRARY IMPACT FEE:							348-37648
(Auth: Res. #5837 appr'v'd 09.01.04,Amdd by Res. 6326 4.28.10, Increased 01.15.17)							
\$2,044 /DU	x	0	DU	=	\$0		
(Single Family)							
\$1,969 /DU	x	0	DU	=	\$0		
(Multi Family)							
LIBRARY CREDITS							
\$0	x	0		=	\$0		
LIBRARY FEE TOTAL					=	\$0	
14. BURROWING OWL MITIGATION:							232-38145
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)							
\$200 /DU		15	DU	=	\$3,000		
(Residential)							
\$1,395 /IAC		0.6	AC	=	\$837		
(Commercial/Industrial)							

15a. MAP CHECK FEE:						206-38716	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)							
PARCEL MAP:	\$3,805	=		\$0			
TRACT MAP:	\$5,667	=		\$0			
16. POLICE IMPACT FEE:						311-37648	
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.17)							
\$794 /DU	x	0	DU	=		\$0	
(Single Family)							
\$767 /DU	x	0	DU	=		\$0	
(Multi Family)							
\$1,724 /ACRE	x	0.6	AC	=		\$1,034	
(Commercial)							
\$2,415 /ACRE	x	0	AC	=		\$0	
(Industrial)							
POLICE CREDITS							
\$0	x	0		=		\$0	
POLICE FEE TOTAL				=		\$1,034	
17. FIRE IMPACT FEE:						313-37648	
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.17)							
\$122 /DU	x	0	DU	=		\$0	
(Single Family)							
\$116 /DU	x	0	DU	=		\$0	
(Multi Family)							
\$1,604 /ACRE	x	0.6	AC	=		\$962	
(Commercial)							
\$1,604 /ACRE	x	0	AC	=		\$0	
(Industrial)							
FIRE CREDITS							
\$0	x	0		=		\$0	
FIRE FEE TOTAL				=		\$962	
18. PUBLIC FACILITIES IMPACT FEE:						347-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.17)							
\$530 /DU	x	0	DU	=		\$0	
(Single Family)							
\$510 /DU	x	0	DU	=		\$0	
(Multi Family)							
\$1,167 /ACRE	x	0.6	AC	=		\$700	
(Commercial)							
\$1,634 /ACRE	x	0	AC	=		\$0	
(Industrial)							
PUBLIC FACILITIES CREDITS							
\$0	x	0		=		\$0	
PUBLIC FACILITIES FEE TOTAL				=		\$700	
20. COMMNTY/REC CTRS IMPACT FEE:						360-37648	
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.17)							
\$3,791 /DU	x	0	DU	=		\$0	
(Single Family)							
\$3,326 /DU	x	0	DU	=		\$0	
(Multi Family)							
PUBLIC FACILITIES CREDITS							
\$0	x	0		=		\$0	
PUBLIC FACILITIES FEE TOTAL				=		\$0	

19. RDCS MEASURE C FEES:			
School Pedestrian Safety	(355-37655)	=	\$0
Public Facilities	(346-37649)	=	\$0
Park Development	(302-37649)	=	\$33,000
Public Fac. - Circulation	(346-37649)	=	\$0
TOTAL RDCS MEASURE C FEES		=	\$33,000

OTHER:			
LED Streetlight Fund	(010-37722)	=	\$0
Stormwater Runoff Management Plan Review	(206-38734)	=	\$1,628
SWPPP Document Review	(206-38734)	=	\$807
TOTAL FEES DUE		=	\$210,545

Notes & Comments: **DAA-06-06F; MC-05-03 (10 SF units, 5 MF units): RDCS commitments**

proposed site : 726-23-008, Approximate commercial site area (building and parking) = 0.60 AC

Approximate frontages: Monterey Road = 147 LF(water, sewer, over head utilities)

Approximate frontages: McLaughlin = 147 LF(water, overhead utilities)

Proposed project 10 SF, 5 MF, and 6,710 sf office building on 0.60 AC

per E20 memo:

sewer coefficient = 0.198 gpd/sf, traffic coefficient = 3.18 pht/1000sf

Sewer:

Office Shell = (6,710sf) (0.198 gpd/sf) = 1328 gpd

Traffic:

office shell = (6,710sf) (3.18 pht/1000sf) = 21.3 PHT

18.78.230 Public Facilities	Fee	No. of Units	Total
B 2f. Public out of tract improvements per unit=	\$4,400	x	15
(Deferred for public improvements)			Public Facilities =
			\$66,000

18.78.250 Parks and Paths	Fee	No. of Units	Total
6. Park fee in addition to standard park fee per unit =	\$2,200	x	15
			Park =
			\$33,000

18.78.300 Circulation Efficiency	Fee	No. of Units	Total
4 Dedication or out of tract improvements per unit =	\$2,200	x	15
18.78.355 Livable Communities			
2 b. Pay in-lieu cost of VTA bus stop improvements =	\$20,000	x	1
(Deferred for public improvements)			Circulation =
			\$53,000

****Project located within RDA and RDCS downtown areas.**

****OTHER FEE RESOLUTIONS:**

RESOLUTION 5006, EFFECTIVE 07.03.1996
 RESOLUTION 5128, EFFECTIVE 01.05.1998
 RESOLUTION 5658, EFFECTIVE 03.19.2003
 RESOLUTION 5686, EFFECTIVE 08.18.2003
 RESOLUTION 5765, EFFECTIVE 01.21.2004
 RESOLUTION 5837, EFFECTIVE 10.18.2004
 RESOLUTION 6080, EFFECTIVE 01.17.2007
 RESOLUTION 6133, EFFECTIVE 12.05.2007
 RESOLUTION 6326, EFFECTIVE 04.28.2010
 RESOLUTION 6671, EFFECTIVE 09.16.2013



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

6/11/2018	FEE SCHEDULE: 01.15.2017	GUNTER LOFTS, LLC
DATE	PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS	NAME
726-23-008		175 East Main Avenue, #130
TRACT / APN		MAILING ADDRESS
17620 Monterey Road		Morgan Hill, CA 95037
ADDRESS / LOT	7.14.17	CITY, STATE, ZIP CODE
15 Family Units	FEE SCHEDULE EXPIRATION DATE	PHONE NUMBER
PROJECT DESCRIPTION		

NOTES:

ENGINEERING IMPACT FEE

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☐ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

CHARLIE HA
CALCULATED BY

CHARLIE HA
CHECKED BY

PWPR2017-0016
BUILDING PERMIT #

DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☐ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
 TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ **RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA**

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
 TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☐ **NOT IN RDA AREA BOUNDARY**

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
 TO ANNUAL CPI INCREASES.

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

**RDA SEWER ALLOCATION
 COMPLETED BY:**

(write initials below)

version 01.15.17 std

WATER FEES:

1. METER DEPOSIT: 650-37672				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1"	\$468	x	0	= \$0
1 ½"	\$1,434	x	0	= \$0
2"	\$1,619	x	0	= \$0
3" or larger-Time & Material + Meter Cost				= \$0
METER CREDITS				
\$0	x	0	=	\$0
SUBTOTAL = \$0				
2. BACKFLOW CONST. INSPECTION: 650-37859				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
\$62	x	0	Each	= \$0
3. WATER FRONTAGE CHARGE: 650-37663				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1 Side	\$66	x	0 LF	= \$0
2 Sides	\$37	x	0 LF	= \$0
4. WATER IMPACT FEE: 651-37648				
(Auth: Res. #5592 approved 08.21.02, Increased 01.15.17)				
a) Residential				
\$3,751 /DU	x	10	DU	= \$37,510
(Single Family)				
\$3,384 /DU	x	5	DU	= \$16,920
(Multi Family)				
b) Commercial & Industrial				
(Includes Landscape Service)				
\$10,648 /AC	x	0	AC	= \$0
WATER CREDITS				
\$0	x	0	=	\$0
SUBTOTAL = \$54,430				
WATER FEE TOTALS = \$54,430				
5. ENGINEERING & INSPECTION FEE: 206-38734				
(Minimum \$500.00):				
(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)				
ENGINEERING ESTIMATE:				
DATE ENGINEERING EST. SUBMITTED:				
% APPLIES TO ENGINEER'S ESTIMATE				
13.3%	\$1	to	\$100,000	= \$0
11.8%	\$100,001	to	\$200,000	= \$0
10.3%	\$200,001	to	\$500,000	= \$0
8.8%	OVER		\$500,000	= \$0
ENGINEERING FEE				
DEPOSIT PAID				
ENGINEERING FEE TOTAL = \$0				
(SEE COMMENTS PAGE 4)				
5A. LONG RANGE PLANNING FEE: 207-37912				
LONG RANGE PLANNING FEE (15% of E&I) = \$0				
(SEE COMMENTS PAGE 4)				

SEWER FEES:

6. SEWER FRONTAGE CHARGE: 640-37663				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1 Side	\$66	/LF	x 0 LF	= \$0
2 Sides	\$37	/LF	x 0 LF	= \$0
7. SEWER IMPACT FEE: 641-37648				
(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.17).				
a) Residential				
\$14,680 /DU	x	10	DU	= \$146,800
(Single Family)				
\$12,424 /DU	x	5	DU	= \$62,120
(Multi Family)				
b) Commercial & Industrial				
\$50.26 /GPD	x	0	GPD	= \$0
\$50.26 /GPD	x	0	GPD	= \$0
SEWER CREDITS				
\$0	x	0	=	\$0
RDA ASSUMED SEWER OBLIGATION				
\$14,680 /DU	x	10	DU	= -\$146,800
(Single Family)				
\$12,424 /DU	x	5	DU	= -\$62,120
(Multi Family)				
\$50.26 /GPD	x	0	GPD	= \$0
(Commercial & Industrial)				
SUBTOTAL = \$0				
SEWER FEE TOTALS = \$0				
STORM DRAIN FEES:				
8. STORM DRAIN FRONTAGE CHARGE: 304-37663				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1 Side	\$108	/LF	x 0 LF	= \$0
2 Sides	\$53	/LF	x 0 LF	= \$0
9. STORM DRAIN IMPACT FEE: 303-37648				
(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.17)				
\$3,982 /DU	x	0	DU	= \$0
(Single Family)				
\$2,071 /DU	x	0	DU	= \$0
(Multi Family)				
\$43,364 /ACRE	x	0	AC	= \$0
(Commercial & Office)				
\$31,572 /ACRE	x	0	AC	= \$0
(Industrial)				
STORM CREDITS				
\$0	x	0	=	\$0
SUBTOTAL = \$0				
STORM DRAIN FEE TOTALS = \$0				

10. UNDERGROUNDING UTILITIES: 350-37649					
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1 Side	\$681	x	0	LF	= \$0
2 Sides	\$343	x	0	LF	= \$0
11a. PARK IMPACT FEE: 301-37648					
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.17)					
\$5,566	/DU	x	10	DU	= \$55,660
(Single Family - Sub)					
\$4,047	/DU	x	5	DU	= \$20,235
(Single Family - No Sub)					
\$5,363	/DU	x	0	DU	= \$0
(Multi Family - Sub)					
\$3,903	/DU	x	0	DU	= \$0
(Multi Family - No Sub)					
11b. PARK MAINTENANCE DEV. FEE: 302-37649					
\$0	x	0	EAC		= \$0
PARK CREDITS					
\$0	x	0			= \$0
PARK FEE TOTAL =					\$75,895
12. TRAFFIC IMPACT FEE: 309-37648					
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.17).					
\$1,928	/DU	x	10	DU	= \$19,280
(Single Family)					
\$1,196	/DU	x	5	DU	= \$5,980
(Multi Family)					
\$1,928	/PHT	x	0	PHT	= \$0
(Commercial)					
\$1,928	/PHT	x	0	PHT	= \$0
(Industrial)					
TRAFFIC CREDITS					
\$0	x	0			= \$0
TRAFFIC FEE TOTAL =					\$25,260
13. LIBRARY IMPACT FEE: 348-37648					
(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.17)					
\$2,044	/DU	x	10	DU	= \$20,440
(Single Family)					
\$1,969	/DU	x	5	DU	= \$9,845
(Multi Family)					
LIBRARY CREDITS					
\$0	x	0			= \$0
LIBRARY FEE TOTAL =					\$30,285
14. BURROWING OWL MITIGATION: 232-38145					
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)					
\$200	/DU		0	DU	= \$0
(Residential)					
\$1,395	/IAC		0	AC	= \$0
(Commercial/Industrial)					

15a. MAP CHECK FEE: 206-38716					
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
PARCEL MAP:	\$3,805	=			\$0
TRACT MAP:	\$5,667	=			\$0
16. POLICE IMPACT FEE: 311-37648					
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.17)					
\$794	/DU	x	10	DU	= \$7,940
(Single Family)					
\$767	/DU	x	5	DU	= \$3,835
(Multi Family)					
\$1,724	/ACRE	x	0	AC	= \$0
(Commercial)					
\$2,415	/ACRE	x	0	AC	= \$0
(Industrial)					
POLICE CREDITS					
\$0	x	0			= \$0
POLICE FEE TOTAL =					\$11,775
17. FIRE IMPACT FEE: 313-37648					
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.17)					
\$122	/DU	x	10	DU	= \$1,220
(Single Family)					
\$116	/DU	x	5	DU	= \$580
(Multi Family)					
\$1,604	/ACRE	x	0	AC	= \$0
(Commercial)					
\$1,604	/ACRE	x	0	AC	= \$0
(Industrial)					
FIRE CREDITS					
\$0	x	0			= \$0
FIRE FEE TOTAL =					\$1,800
18. PUBLIC FACILITIES IMPACT FEE: 347-37648					
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.17)					
\$530	/DU	x	10	DU	= \$5,300
(Single Family)					
\$510	/DU	x	5	DU	= \$2,550
(Multi Family)					
\$1,167	/ACRE	x	0	AC	= \$0
(Commercial)					
\$1,634	/ACRE	x	0	AC	= \$0
(Industrial)					
PUBLIC FACILITIES CREDITS					
\$0	x	0			= \$0
PUBLIC FACILITIES FEE TOTAL =					\$7,850
20. COMMNTY/REC CTRS IMPACT FEE: 360-37648					
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.17)					
\$3,791	/DU	x	10	DU	= \$37,910
(Single Family)					
\$3,326	/DU	x	5	DU	= \$16,630
(Multi Family)					
PUBLIC FACILITIES CREDITS					
\$0	x	0			= \$0
PUBLIC FACILITIES FEE TOTAL =					\$54,540

19. RDCS MEASURE C FEES:			
School Pedestrian Safety	(355-37655)	=	\$0
Public Facilities	(346-37649)	=	\$66,000
Park Development	(302-37649)	=	\$0
Public Fac. - Circulation	(346-37649)	=	\$53,000
TOTAL RDCS MEASURE C FEES = \$119,000			

OTHER:			
LED Streetlight Fund	(010-37722)	=	\$0
		=	\$0
		=	\$0
TOTAL FEES DUE = \$380,835			

Notes & Comments: **DAA-06-06F; MC-05-03 (10 SF units, 5 MF units): RDCS commitments**

proposed site : 726-23-008, Approximate commercial site area (building and parking) = 0.60 AC

Approximate frontages: Monterey Road = 147 LF(water, sewer, over head utilities)

Approximate frontages: McLaughlin = 147 LF(water, overhead utilities)

Proposed project 10 SF, 5 MF, and 6,710 sf office building on 0.60 AC

per E20 memo:

sewer coefficient = 0.198 gpd/sf, traffic coefficient = 3.18 pht/1000sf

Sewer:

Office Shell = (6,710sf) (0.198 gpd/sf) = 1328 gpd

Traffic:

office shell = (6,710sf) (3.18 pht/1000sf) = 21.3 PHT

18.78.230 Public Facilities	Fee		No. of Units	Total
B 2f. Public out of tract improvements per unit=	\$4,400	x	15	\$66,000
(Deferred for public improvements)			Public Facilities =	\$66,000

18.78.250 Parks and Paths	Fee		No. of Units	Total
6. Park fee in addition to standard park fee per unit =	\$2,200	x	15	\$33,000
(Paid at permit)			Park =	\$33,000

18.78.300 Circulation Efficiency	Fee		No. of Units	Total
4 Dedication or out of tract improvements per unit =	\$2,200	x	15	\$33,000
18.78.355 Livable Communities				
2 b. Pay in-lieu cost of VTA bus stop improvements =	\$20,000	x	1	\$20,000
(Deferred for public improvements)			Circulation =	\$53,000

****Project located within RDA and RDCS downtown areas.**

****OTHER FEE RESOLUTIONS:**

RESOLUTION 5006, EFFECTIVE 07.03.1996
 RESOLUTION 5128, EFFECTIVE 01.05.1998
 RESOLUTION 5658, EFFECTIVE 03.19.2003
 RESOLUTION 5686, EFFECTIVE 08.18.2003
 RESOLUTION 5765, EFFECTIVE 01.21.2004
 RESOLUTION 5837, EFFECTIVE 10.18.2004
 RESOLUTION 6080, EFFECTIVE 01.17.2007
 RESOLUTION 6133, EFFECTIVE 12.05.2007
 RESOLUTION 6326, EFFECTIVE 04.28.2010
 RESOLUTION 6671, EFFECTIVE 09.16.2013

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: 726-23-008

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 **GUNTER LOFTS, 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 Gunter Lofts, Old Homestead Tract, PG 39, Lot 29** prepared by **M.H. engineering Co.** and dated **July 18, 2017**, 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: **Scott Murray**

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"**ENTER TITLE**

**ENTER LEGAL DESCRIPTION;
(ATTACH PLAT AS NEEDED)**

Attachment: Stormwater BMP Operation and Maintenance Agreement (1778 : APPROVAL OF IMPROVEMENT AGREEMENT WITH GUNTER

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: October 17, 2018

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

APPROVE FIRST AMENDMENT TO BRIGHTVIEW LANDSCAPE SERVICES, INC. AGREEMENT FOR LANDSCAPE SERVICES

RECOMMENDATION(S)

Approve the first amendment to the maintenance service agreement with Brightview Landscape Services, Inc. for additional services totaling \$1,200, for total contract amount of \$262,752.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide the Council with an opportunity to consider a minor amendment to one of the City's landscaping contracts to extend maintenance services to a small area next to the Downtown Parking Garage.

Since 2014, the City has contracted with Brightview Landscape Services, Inc., formerly known as Valley Crest Landscape Maintenance, Inc, to provide landscape maintenance services for park mowing (Group 1), medians and miscellaneous sites (Group 3) and Downtown sites (Group 6). The dollar amount of the current agreement is \$261,552 for two years of service and ends on December 31, 2019.

City staff continue to evaluate the maintenance of the Downtown's streetscape and public facilities. At the time newly constructed facilities are brought online, City staff develop plans and strategies for their ongoing maintenance, however, these often require updates and corrections once the facilities begin being utilized. Another impact to Downtown maintenance is the increasing number of visitors utilizing the Downtown. This item specifically addresses a maintenance need that has arisen and can most efficiently be addressed using a landscape contractor.

There is a City-owned 1,500 sq. ft. bioswale immediately west of the Downtown Parking Garage that requires reseeding and monthly broadleaf spraying which was not included in the City's current agreement. If approved, this First Amendment will add the monthly maintenance of this bioswale to Downtown sites (Group 6) currently maintained by Brightview Landscape Services, Inc. per the agreement. The bioswale's monthly maintenance is an additional \$80 per month for 15 months to provide services through the end of the current contract term ending on December 31, 2019. This is an increase

of \$1,200 bringing the total dollar amount of the agreement to \$262,752.

COMMUNITY ENGAGEMENT: Not Applicable

Landscape maintenance services are normally expected to be performed at City facilities; no community engagement was completed for this contract.

ALTERNATIVE ACTIONS:

The Council could reject this First Amendment and provide direction to staff on alternative approaches to maintaining this bioswale such as in-house maintenance.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The original contract was approved by the City Council on December 6, 2017.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$262,752. Funding for the additional landscape maintenance services is within the amount included in the Fiscal Year 2018-2019 Budget for 010.5460.42231.

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 alternation of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Brightview Landscape Services Groups 1, 3, & 6 - 1st Amend

**FIRST AMENDMENT TO AGREEMENT
BRIGHTVIEW LANDSCAPE SERVICES, INC.**

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

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December 6, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of January 4, 2018, for services for a maximum compensation of TWO HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO AND NO/100 DOLLARS (\$261,552.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "2":

In addition to the services stated in the original MAINTENANCE SERVICE AGREEMENT, the services to be performed by SERVICE PROVIDER shall consist of the additional services set forth in Exhibit "2" dated September 18, 2018, and incorporated herein by this reference."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed TWO HUNDRED SIXTY-TWO THOUSAND SEVEN HUNDRED FIFTY-TWO AND NO/100 DOLLARS (\$262,752.00) and shall be billed based on the rate and basis set forth in revised **Exhibit B** dated September 18, 2018. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2, 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 First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

BRIGHTVIEW LANDSCAPE SERVICES, INC.

City Attorney

Date: _____

By:

Title: Brett Urban **CFO**

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 10/9/18

By:

Title: Fred Freund, VP Finance

Print Name and Title of Signer.

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

Date: 10/09/2018

MAINTENANCE SERVICE AGREEMENT **Brightview Landscape Services, Inc.**

THIS AGREEMENT is entered into and becomes effective on 1/4/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Brightview Landscape Services, 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 December 6, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2019 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be landscape maintenance and irrigation services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$261,552.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred sixty-one thousand five hundred and fifty-two 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:

Brightview Landscape Services, Inc.
450 Phelan Avenue
San Jose, CA 95112

Address of CITY is as follows:

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

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.

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Updated: October 2017

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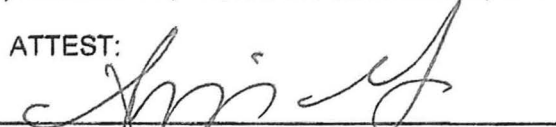
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

mw
 Michelle Wilson
 Print Name

Date: 1/5/18

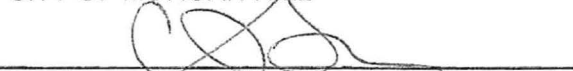
APPROVED AS TO FORM:


 City Attorney

Donald A. Larkin
 Print Name

Date: 1/3/2018

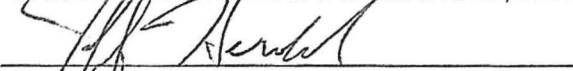
CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

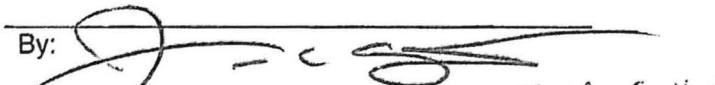
Date: 1/4/18

BRIGHTVIEW LANDSCAPE SERVICES, INC.


 By:

Jeff Herold
 Title: President - Landscape Services
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 11/27/2017

By: 
 Title: CFO - Landscape Services Jamie Gollo

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

Date: 11/27/2017

266211
 Contractor's License Number(s) (if applicable)

Expiration Date(s) 3/31/18

Seal:

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

1000005364
 Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 6/30/18

EXHIBIT A SCOPE OF SERVICES

The scope of work is the City of Morgan Hill's Landscape Groups 1, 3 and 6. Group 1 is Park Mowing and Edging, Group 3 is Street Medians and Group 6 is the Downtown Landscape Maintenance.

The City will regularly inspect the Contractor's work and rate it according to the maintenance standards in the Request for Proposals. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection.

The Contractor will be paid for work rated as "meets standards". Contractor will not be paid for work rated as "below standard" until conditions improve and rate as "meet standards" if the below standard work is attributed to neglect on the part of the Contractor. If an area does not meet City standards, it will be considered "below standard". Contractor will not be paid additional amounts for remedial work required to improve "below standard" areas if the below standard work is attributed to neglect on the part of the Contractor. City staff will work closely with Contractor's representatives to achieve the results described in the standards and inspection criteria. However, responsibility for meeting standards rests with the Contractor.

The Contractor shall be responsible for maintaining landscapes as described in this document and per the maintenance standards outlined in Exhibits A. The cost of maintaining the areas shall be included in the base bid unless otherwise called out as "extra work" in this Request for Proposals. During the first three (3) months of the contract, the Contractor will receive one hundred percent (100%) of the monthly contract payment. During this period, Contractor will inspect the sites at least monthly and will discuss inspections with City. This process and time frame will allow the Contractor time to become familiar with the individual locations. Following this period, the Contractor shall perform quality assurance inspections a minimum of every month, or more frequently if deemed necessary by the Contractor.

The Contractor will provide electronic versions of the monthly inspections to the City by the 10th of the following month as to each site's compliance with City standards. An action plan with deadlines must be provided to the City to indicate when corrections will be made if an area is deemed "below standard". Failure to turn in inspections by the deadline will result in a monthly payment being withheld until inspections are turned in, and one hundred dollar (\$100) deduction from their monthly payment.

There will be a financial impact to the Contract if any scheduled use, (including, but not limited to, special events or recreation programs) of City facilities are impacted by neglect on the Contractor's part. Any costs associated with re-scheduling the event/activity/program may be the responsibility of the Contractor for staffing and costs, including, but not limited to lost revenue, staff salaries and alternate contractor costs, etc.

The City will perform weekly inspection reports, which will be e-mailed to the Contractor. The first time a site fails to meet City Standards as a result of these inspections the Contractor will have two (2) weeks to bring the site back into compliance. For Group 6 – Downtown, the Contractor will have one (1) week to bring the site back into compliance. If the same site is not in compliance for the same standard at any time after the first warning, no warning will be given and penalties will be

incurred. If a site is not brought back into compliance within the allotted timeframe the following penalties will occur:

1. **First Penalty:** Contractor to receive warning.
2. **Second Penalty:** At the same site within twelve (12) months of the First Penalty Assessment, the Contractor will be assessed a \$25 monthly deduction per deficiency.
3. **Third Penalty:** At the same site within (12) months of the First Penalty Assessment, the Contractor will be assessed a \$75 monthly deduction per deficiency.

The parties will observe the following progressive problem resolution process:

1. Written notice of the problem.
2. Field conference with City inspector and Contractor's field representative to identify problem and agree on solution as presented by Contractor.
3. Conference between City's representative and Contractor's principal.
4. Imposition of penalties and/or correcting defect at Contractor's cost.
5. Termination of Contract.

1-21 INSPECTION OF SITE WORK

Contractors are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Contractors may apply to the City for additional information and explanation before submitting proposals. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy itself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.

Submission of a proposal by a Contractor shall constitute acknowledgment that the Contractor has relied, and is relying, on its own examination of: (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work and, on his/her own knowledge of existing facilities on and in the vicinity of the site of the work and not on any representation or warranty of the lack of knowledge of the above items.

2-1 NORMAL HOURS AND DAYS OF MAINTENANCE SERVICES

- A. For the Community & Cultural Center, Gavilan College & Morgan Hill Playhouse Parking Lots, unless otherwise specified, work hours shall be 7:00 am to 12:00 noon Monday through Friday.
- B. For the Third Street Creek Park and Nob Hill Trail Park work hours shall be every Monday and Thursday between 7:00am and 5:00 pm.
- C. At all other locations, the Contractor shall perform the required maintenance services between the hours of 7:00 a.m. and 5:00 pm Monday through Friday and on weekends with prior City approval.
- D. The Contractor shall conduct the work at all times in a manner which will not interfere with normal recreation programs, school programs, pedestrian traffic on adjacent sidewalks, or vehicular traffic on adjacent streets.
- E. Any modification in the hours and days of maintenance services as stated in the Contractor's service schedule is subject to approval by the City.

2-2 PERIODIC PROJECT INSPECTIONS

Upon request, the Contractor will walk the project with the City's representative to determine and confirm compliance with the specifications or to discuss required work. The Contractor's representative must be authorized to sign documents and make changes to the work.

2-3 PERFORMANCE DURING INCLEMENT WEATHER

During periods of excessive rainfall that hinders normal operations, the Contractor shall adjust its workforce to accomplish those activities that are not affected by weather. The prime factors in assigning work shall be the safety of the workforce and damage to parks and landscaping.

2-4 NOTICE TO PROCEED

As soon as practical after execution of the Contract, and after receipt of acceptable insurance certificates by City, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

2-5 ACCEPTANCE

- A. Acceptance by the City of any services furnished under the Contract shall occur only subsequent to the final review of authorized employees of the City.
- B. The City shall reject and refuse to pay for, any and all non-conforming services.
- C. Nothing in this section shall limit or restrict the warranty and remedy obligations of the Contractor specified in the Standard Consultant Agreement.

2-6 LICENSES REQUIRED FOR DURATION OF CONTRACT

- C-27 Landscape Contractor License
- City of Morgan Hill Business License
- Qualified Applicator License (includes Santa Clara County Registration)
- Registered with the California Dept. of Industrial Relations as a Public Works Contractor (PWC)

SAFETY

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations in performing the work under this Contract. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize themselves with the aforementioned safety provisions shall not relieve them from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

2-7 RESPONSE

Contract supervision shall be immediately available at all times when Contractor employees are working on sites, must be available from 7:00 am to 10:00 pm each day via telephone, and must respond to an emergency situation/major discrepancy in the Contract within two (2) hours of initial contact.

2-8 QUALIFIED CONTRACTOR SUPERVISION

All of Contractor's supervisors must be qualified, proficient in English, trained and capable of providing adequate supervision and direction to all Contractors' employees and must demonstrate verbal and written communication skills sufficient for the work required herein.

2-9 CONTRACTOR'S EMPLOYEES

This Contract is intended to be a "partnership" between the City and the Contractor. The Contractor and his/her employees are agents of the City of Morgan Hill and represent the City in the performance of their work. Only Contractor's employees or subcontractors are allowed on City premises where work is being performed. The City shall have the right to have Contractor remove

from assignment to City facilities such Contractor and/or subcontractor employees as shall be deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interest of the City. Contractor's employees and subcontractors shall not smoke tobacco on any City property.

2-10 EMPLOYER PROVIDED UNIFORMS

The Contractor shall provide each of its employees with uniforms. Uniform apparel shall be kept neat, clean, and in good repair. All uniforms shall include the Contractor's name and logo. Contractor and subcontractor personnel shall wear uniforms at all times.

2-11 CONTRACTOR'S EQUIPMENT

The on-site supervisor shall ensure that all contractor-supplied equipment is in good working order. Any damaged equipment or equipment in need of repair shall be removed from the site. Contractor shall be responsible for any damage to the work sites, City or private property, or any injuries caused by Contractor's equipment or personnel.

2-12 LOCKS AND KEYS

The Contractor shall be responsible for the series of keys assigned to it and shall assign these keys to its personnel for use in maintaining the facilities. The Contractor shall properly use and keep safe all keys or locks issued by the City to the Contractor.

The Contractor shall report all lost or stolen keys or locks to the City within twenty-four (24) hours of discovery. The Contractor shall reimburse the City for the total cost of replacement keys and/or locks that have been lost.

Upon termination or cancellation of the Contract, the Contractor shall immediately return all keys, cards, remotes, etc., to the City. The Contractor shall reimburse the City for the total cost of lost items.

2-13 VANDALISM AND ACCIDENTAL DAMAGE

City assumes responsibility for the cost of repairing or replacing appurtenances significantly damaged by persons other than the Contractor or its agents. Vandalism or accidental damage repair costs shall be based on unit costs submitted by Contractor in the proposal or on time and materials quotes for work not called out in the proposal. Contractor shall be responsible for reporting damage to City and repairing or replacing all appurtenances damaged by Contractor or Contractor's agents.

2-14 WATER MANAGEMENT PROGRAM

Monthly, from March through November, the Landscape Maintenance Contractor must provide to the City a report of irrigation controller settings for the current month in electronic format. This report will include the following information:

- A. All irrigation programs set on controllers.
- B. Irrigation schedule start times for each irrigation program.
- C. Irrigation run days for each irrigation program.
- D. Irrigation cycle length, in minutes for each station in an irrigation program.
- E. Number of repeat cycles for each station in an irrigation program.

All required scheduling and operation of the automatic irrigation controllers reflecting weather changes and water needs will be covered under this Contract. Contractor shall make all adjustments and setting of automatic controllers to establish frequency and length of watering periods. Any malfunction of controllers must be reported to the City along with a proposal for correction with costs.

All systems shall be programmed as needed to maintain plants in a healthy, vigorous condition. The irrigation controller program is to be sufficient to keep the plant material healthy without excessive water use.

- A. Controller programs shall incorporate the following conditions: Meet City Water Management requirements
- B. Program around Park and Facility use and events
- C. Reflect actual evapotranspiration (E.T.) requirements
- D. Reflect actual requirements of soil and plants
- E. Eliminate runoff onto streets, sidewalks, and other non-target areas

The Water Management Program is designed to optimize park and landscape water usage through field testing and irrigation schedule development. Soil moisture levels can be compared to irrigation schedules and plant water requirements to assist in responsible management of each park and landscape irrigation valve zone.

A. Irrigation Schedule Analysis:

Monthly during irrigation season (March through November), the Contractor will provide the City with the current month's irrigation schedules and monthly report on the required system check no later than the 10th day of the month. The irrigation schedules are analyzed by comparing the minutes of irrigation run time, plant water requirement and the level of environmental demand (evapotranspiration). Valve areas appearing to be over or under watered are to be further tested by the Contractor as outlined below.

B. Soil Moisture Testing:

Valve areas suspected to be over or under watered should be tested between May and October by the Contractor by removing a soil sample and testing the moisture content. Soil probing is conducted to determine soil moisture levels for automated overhead irrigation circuits.

C. Irrigation Base Schedule Development:

A monthly irrigation base schedule is developed based upon current controller settings and the feedback of moisture probing results. Adjustments are made at the controller either up or down where soil is found to be too dry or too wet. Once the Contractor has the correct run times for any given month, the starting "base schedule" is acquired. Adjustments to the "base schedule" shall occur throughout the month to accommodate changes in area use and/or environmental changes to individual sites.

D. Drought Impact on Irrigation:

The Contractor shall comply with all water use regulations and restrictions. In addition, Contractor shall comply with City directed changes in irrigation in response to drought conditions.

E. Irrigation System Evaluation:

Annually the City will turn off all landscape water accounts November through March (if warmed than expected weather occurs this might be altered). When accounts are turned back on in March each year the Contractor shall perform a complete system check of every irrigation system. The Contractor shall supply the City with a written report of every system as it is completed. Needed repairs shall occur throughout that same time period, and with the approval of the City, to ensure a fully operational system at the beginning of each spring. System evaluations of head, valves, quick couplers, etc. shall also occur monthly, at a minimum, March through November.

For any controller schedule or system check report not supplied by the 10th day of the current month by Contractor in any month, a \$50.00 penalty per controller will be assessed.

City will provide all the water and electricity necessary for the Contractor to perform the services except instances where excessive costs are incurred by the City due to waste or negligence by the Contractor. If the City determines that excessive utility costs due to waste or negligence have occurred and are a result of Contractor's actions, the City may withhold from payment to Contractor those funds necessary to reimburse the City for these additional costs. If there is a difference of opinion between the City and the Contractor as to the whether or not there has been waste due to the negligence of the Contractor, the opinion of the City will prevail.

Irrigation system repair shall occur and be compensated as stated below.

- A. Irrigation system repair will be the responsibility of the Contractor. All replacement materials are to be with new original types and models, unless a substitute is approved by the City. The Contractor shall implement repairs in accordance with all effective warranties, and no separate payment shall be made for repairs on equipment covered by warranties.
- B. Maintenance, repair, and replacement of malfunctioning sprinkler heads and quick couplers, including risers, swing joints, shall be included in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.
- C. Maintenance and repair of valves, filters, valve boxes, batteries and wiring shall be covered in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.
- D. Replacement of valves, filters, valve boxes, and wiring shall be considered "extra work" in their entirety. Decisions regarding repair verses replacement will be made by the Contractor and the City jointly. In the event that there is a disagreement with regards to how to proceed, the City's choice will prevail.
- E. Repair and replacement of lateral lines, main lines, check valves, and controllers shall be considered "extra work" in their entirety.
- F. Repairs and replacements of any irrigation component or property damaged by the Contractor or as a result of negligence, error, or omission by the Contractor shall not be submitted to the City for payment and are the responsibility of the Contractor.
- G. Repair and replacement of any irrigation components or property that is a result of vandalism, or unintentional damage, caused by the public shall be considered "extra work" in its entirety. All vandalized components must be presented to the City within one working day of the repair or replacement in order for the Contractor to be compensated for the repair or replacement. If the vandalized components are not presented within one working day the Contractor will be paid based on the above stated criteria for repair and replacement.
- H. When the Contractor observes or is notified of water waste due to excessive overspray, overwatering for irrigation system malfunction, he/she shall respond within 24 hours. Repairs/adjustments shall be completed promptly to prevent damage to the landscape.

2-15 PLANT LOSS

It is one of the Contractor's prime responsibilities to prevent loss of plants caused by pests, diseases, insects, soil conditions, nutrient, micro-climatic conditions, improper planting, or problems in irrigation.

Contractor agrees to be continuously alert in locating and defining problems and agrees to exercise prompt and proper corrective action. A preliminary written report shall be submitted for major corrective problems not covered in the Contract along with the costs.

Contractor agrees to replace, at the Contractor's cost, any dead, stunted, or damaged that are the result primarily of the Contractor's negligence including, but not limited to, irrigation malfunctions that are not addressed within a reasonable amount of time based on environmental conditions. Plants lost from Contractor's negligence shall be replaced, at the Contractor's expense, within thirty (30) days of discovery. Replacement plants shall be comparable in size to the lost plant up to a maximum size of a thirty-six (36) inch box, or if smaller, the size shall be approved by the City.

The Contractor shall not be held responsible for plant losses due to maladies beyond the Contractor's control; this includes, but is not limited to, disease or insect attack for which there is no legal recommended control, acts of vandalism, earthquakes, fires, storms, freezing/frost, and related events. Contractor shall report all such conditions to the City in writing within seventy-two (72) hours of occurrence, and submit a proposal for the work or repairs along with the costs. The Contractor shall obtain City's written permission/direction or authorization prior to proceeding with the work. Failure to notify the City within seventy-two (72) hours of occurrence will result in replacement at the Contractor's cost as if the cause was Contractor negligence.

The City shall approve all replacement plants that differ in species. However, it is agreed that replacing plants shall not be used by the Contractor as a substitute for proper care. The City will consider Contractor negligence a major breach of contract with full responsibility for costs and losses.

Dead plants and those in a state of decline shall be brought to the City's attention immediately and before removal. The City shall pay labor and material for plant replacement not caused by Contractor negligence, as deemed by the City, on an actual time and material basis.

All new plant material and irrigation installations or repairs shall be guaranteed for a period of ninety (90) days for unhealthy plant installation and/or poor workmanship. Exceptions include damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the Contractor has no control. Existing plants shall be replaced by Contractor if they die due to Contractor's negligence. All replacement plants and materials shall be inspected and approved by City prior to installation.

At the end or termination of the Contract, the City reserves the sole right to withhold final payment(s) in the amount necessary to replace any damaged or dying plant material that is a result of Contractor negligence or to restore any site which is in a condition that is worse than when the Contract was executed.

2-16 TURF AERATION

The Contractor shall perform core aerations of turf (no mow areas excluded) as part of the base bid. Two (2) aerifications are required in all turf areas each year. Aeration plugs shall be properly destroyed so as to not pose a safety issue or interfere with the use of parks and facilities. The aeration schedule shall be coordinated with the City during the first month of the contract period. Additional turf aerations may be proposed, as "extra work" by the Contractor, in order to meet the designated standard. All proposals, and costs, must be approved by the City prior to additional turf aerations occurring.

2-17 FERTILIZATION

The Contractor will be responsible for performing all fertilizations of turf and landscape and shall be included in the base bid. The fertilization schedule shall be coordinated with the City during the first month of the contract period.

All turf areas (excluding no-mow) shall receive fertilizer applications four times per year. Approximate dates of these are April 1, June 1, September 1, and November 1. Turf is to be maintained in good condition with horticultural acceptable growth and color, and additional fertilization may be required as extra work. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

All shrub, groundcover and no-mow turf areas shall receive fertilizer applications two times per year. Approximate dates of these are March 1 and September 1. Intent is to maintain plants in good condition with horticultural acceptable growth and color. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

2-18 BARK AND MULCH

The Contractor will be responsible for notifying the City when areas are in need of new bark or mulch. The City reserves the right to have the bark installed in any manner that it sees fit and by whomever it sees fit. In the event that the City requests that new bark mulch be added by the Contractor, it will be considered "extra work" in its entirety.

2-19 TREE PRUNING

The Contractor shall prune trees for clearance as part of the base bid. Pedestrian clearance shall be eight feet (8') and vehicular clearance shall be fifteen feet (15'). Responsibility for structural grid pruning, weight reduction pruning, etc. shall not be contained in the base bid and will be considered "extra work". The City reserves the right to perform this work in any manner that it deems appropriate.

2-20 MOWING AND EDGING

Lawn mowing and edging shall be performed as needed to meet the City landscape standards. When lawns cannot be cut on the scheduled day due to rain, they must be cut as soon as weather and ground conditions permit. This trimming shall include cutting all grass along walls, fences, foundations, curbs, sidewalks, shrubs, tree basins, poles, guy wires, irrigation & utility boxes, and any other object within or immediately adjacent to the lawn areas. Turf and plantings around sprinkler heads shall be trimmed to provide maximum water coverage. Trimming shall be done by power edgers or by hand, but in no case will herbicides be permitted without prior written approval. Clippings shall be removed from all adjacent walkways and other paved surfaces immediately after each mowing/edging.

Seed heads on no-mow turf shall be removed on an annual basis. No-mow turf shall be edged as needed to keep from encroaching on walls, fences, sidewalks, etc.

2-21 REFUSE DISPOSAL

All refuse and recycling materials are to be placed in the trash dumpsters and recycling containers located at the Morgan Hill Corporation Yard. Green waste is to be placed in bins provided by the City at the Bus Yard across the street from the Corporation Yard.

2-22 TRAFFIC CONTROL

Traffic control shall conform to the latest Caltrans Standards to ensure safe flow of traffic and safety of workers in traffic zones. All traffic control costs shall be included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

The Maintenance Manager shall be notified prior to any road closures. No traffic lanes on Dunne Avenue, Cochrane Road, Butterfield Blvd., Tennant Ave., or Monterey Road may be closed before 9:00 a.m. or after 3:00 p.m. without written permission from the Maintenance Manager. Access to driveways shall be maintained at all times.

When entering or leaving roadways which bear public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

The provisions in this section may be modified or altered if, in the opinion of the Maintenance Manager, public traffic will be better served and work expedited. Such modifications or alterations shall not be adopted until approved in writing by the Maintenance Manager.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Group 1: Park Mowing

	Monthly	# of months	Annual Amt.
Community Park	\$ 1,560.00	12.00	\$ 18,720.00
Galvan Park	\$ 390.00	12.00	\$ 4,680.00
Paradise Park	\$ 390.00	12.00	\$ 4,680.00
Diana Park	\$ 135.00	12.00	\$ 1,620.00
Howard Weicert	\$ 203.00	12.00	\$ 2,436.00
Nordstrom Park	\$ 65.00	12.00	\$ 780.00
Jackson Park	\$ 78.00	12.00	\$ 936.00
GRAND TOTAL			\$ 33,852.00

Group 3: Medians and Misc. Sites

	Monthly Maintenance	Irrigation	Annual Amt.
Arterial Medians	\$ 1,870.00	\$ 224.00	\$ 25,128.00
East Dunne at Peppertree	\$ 236.00	\$ 24.00	\$ 3,120.00
Friendly Inn & Lot	\$ 228.00	\$ 32.00	\$ 3,120.00
El Toro Youth Center	\$ 115.00	\$ 15.00	\$ 1,560.00
El Dorado	\$ 50.00	\$ 15.00	\$ 780.00
Sunrise Meadows	\$ 215.00	\$ 45.00	\$ 3,120.00
GRAND TOTAL	\$ 2,714.00	\$ 355.00	\$ 36,828.00

Group 6: Downtown

	Monthly Maintenance	Irrigation	Annual Amt.
3rd Street Landscape btwn Monterey and Depot	\$ 240.00	\$ 29.00	\$ 3,228.00
4th Street Landscape btwn Monterey and Depot	\$ 80.00	\$ 10.00	\$ 1,080.00
County Courthouse	\$ 240.00	\$ 29.00	\$ 3,228.00
Train Station West of Tracks	\$ 160.00	\$ 19.00	\$ 2,148.00
Third Street Creek Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Nob Hill Trail Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Railroad Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Downtown Parking	\$ 240.00	\$ 29.00	\$ 3,228.00
Depot Street btwn East Dunne and Main	\$ 358.00	\$ -	\$ 4,296.00
GRAND TOTAL	\$ 1,920.00	\$ 230.00	\$ 30,096.00

ANNUAL GRAND TOTAL FOR CONTRACTED SERVICES \$ 100,776.00

Extra Services Maximum Amount @\$30,000.00 per year or \$60,000.00 for two year term of contract

TWO-YEAR CONTRACT AMOUNT \$ 261,552.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Work to be scheduled per Exhibit A above in coordination with Maintenance Manager, Maintenance Coordinator or Maintenance Specialist.

BRIGHTVIEW LANDSCAPE SERVICES, INC.
FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT

Exhibit 2- Revised Scope of Services

September 18, 2018

Scope to include all of the services specified in the original MAINTENANCE SERVICE AGREEMENT dated January 4, 2018 and the following additional services:

Add to Group 6: Downtown

Monthly Maintenance of Bioswale west of downtown parking structure. Scope of work to include reseeding and broadleaf spraying.

BRIGHTVIEW LANDSCAPE SERVICES, INC.
 FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT
 EXHIBIT B - REVISED SCHEDULE OF COMPENSATION RATES
 September 18, 2018

Group 1: Park Mowing

	Monthly	# of months	Annual Amt.
Community Park	\$ 1,560.00	12.00	\$ 18,720.00
Galvan Park	\$ 390.00	12.00	\$ 4,680.00
Paradise Park	\$ 390.00	12.00	\$ 4,680.00
Diana Park	\$ 135.00	12.00	\$ 1,620.00
Howard Weicert	\$ 203.00	12.00	\$ 2,436.00
Nordstrom Park	\$ 65.00	12.00	\$ 780.00
Jackson Park	\$ 78.00	12.00	\$ 936.00
GRAND TOTAL			\$ 33,852.00

Group 3: Medians and Misc. Sites

	Monthly Maintenance	Irrigation	Annual Amt.
Arterial Medians	\$ 1,870.00	\$ 224.00	\$ 25,128.00
East Dunne at Peppertree	\$ 236.00	\$ 24.00	\$ 3,120.00
Friendly Inn & Lot	\$ 228.00	\$ 32.00	\$ 3,120.00
El Toro Youth Center	\$ 115.00	\$ 15.00	\$ 1,560.00
El Dorado	\$ 50.00	\$ 15.00	\$ 780.00
Sunrise Meadows	\$ 215.00	\$ 45.00	\$ 3,120.00
GRAND TOTAL	\$ 2,714.00	\$ 355.00	\$ 36,828.00

Group 6: Downtown

	Monthly Maintenance	Irrigation	Annual Amt.
3rd Street Landscape btwn Monterey and Depot	\$ 240.00	\$ 29.00	\$ 3,228.00
4th Street Landscape btwn Monterey and Depot'	\$ 80.00	\$ 10.00	\$ 1,080.00
County Courthouse	\$ 240.00	\$ 29.00	\$ 3,228.00
Train Station West of Tracks	\$ 160.00	\$ 19.00	\$ 2,148.00
Third Street Creek Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Nob Hill Trail Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Railroad Park	\$ 320.00	\$ 38.00	\$ 4,296.00
Downtown Parking	\$ 240.00	\$ 29.00	\$ 3,228.00
Depot Street btwn East Dunne and Main	\$ 358.00	\$ -	\$ 4,296.00
GRAND TOTAL	\$ 2,278.00	\$ 230.00	\$ 30,096.00

ANNUAL GRAND TOTAL FOR CONTRACTED SERVICES

\$ 100,776.00

TWO-YEAR CONTRACT AMOUNT

\$ 201,552.00

Extra Services @ \$30,000 per year or \$60,000 for two year contract term

\$ 60,000.00

ORIGINAL TWO-YEAR CONTRACT TOTAL \$ 261,552.00

Group 6: Downtown	Monthly Maintenance	Irrigation	Annual Amt.
Add Bioswale West of Parking Garage	\$ 80.00	0	\$ 960.00
ADDITIONAL AMOUNT FOR 15 MONTHS THROUGH DEC. 2019			\$ 1,200.00
REVISED CONTRACT TOTAL FOR 15 MONTHS THROUGH DEC. 2019			\$ 262,752.00

Attachment: Brightview Landscape Services Groups 1, 3, & 6 - 1st Amend [Revision 1] (1963 : Approve First Amendment Brightview



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

APPROVE THIRD AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

RECOMMENDATION(S)

Approve the third amendment to the maintenance service agreement with West Coast Arborist, Inc. for additional services totaling \$110,000, for total contract amount of \$865,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider an amendment to the City's contract for tree maintenance services with West Coast Arborist, Inc., that will, if approved, increase the amount of the four-year contract from \$755,000 to \$865,000.

The City has long contracted with tree maintenance specialty contractors for a variety of tree maintenance services including park tree maintenance, street tree grid pruning, tree removals, and on-call emergency tree response services. The City's current contract with West Coast Arborist, Inc., expires on June 30, 2019. The original amount of the Agreement was \$600,000 for four years. On March 1, 2017, the First Amendment to the Agreement increased the contract amount to \$625,827 to support additional work resulting from sidewalk repair projects. On March 7, 2018, the Second Amendment to the agreement increased the contract amount to \$755,000 to support additional sidewalk repair projects and respond to an increased demand for regular tree maintenance services necessitated by the drought.

Staff is recommending that a Third Amendment be approved in order to increase the contract by an additional \$110,000 up to a contract total of \$865,000. This \$110,000 increase is the result of staff now using the City's regular tree maintenance contractor to support special capital projects (such as street and sidewalk repair) and an ongoing increased demand for regular tree maintenance services required for public safety.

COMMUNITY ENGAGEMENT: Inform

As tree maintenance services are a regular and expected City service, no efforts were made to inform the community about this proposed contract amendment. The actual tree maintenance work resulting from this contract is shared via City communication tools, including “The Scoop,” weekly maintenance update on the City website and Next Door Morgan Hill.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to proceed with a request for proposals for tree maintenance services earlier than planned in order to have a new agreement in place when the funds in the existing agreement are exhausted.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the contract to West Coast Arborist, Inc. on July 15, 2015. The First Amendment to the agreement was approved on March 1, 2017 and the Second Amendment to the agreement was approved on March 7, 2018.

FISCAL AND RESOURCE IMPACT:

The funding for tree maintenance services is included in many areas of the City’s operating budget, including Street Maintenance, Landscape Assessment District, Park Maintenance, Downtown Maintenance, and the various Capital Improvement Projects. No increased budget appropriation is required to support the proposed amendment.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301(c) 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. WCA_Third Amendment_Executed

THIRD AMENDMENT TO AGREEMENT WEST COAST ARBORISTS, 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, WEST COAST ARBORISTS, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into based upon approval of the City of Morgan Hill City Council on _____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 16, 2015, for services for a maximum compensation of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of March 15, 2017, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to SIX HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$625,827.00).
4. The CITY and SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of March 15, 2018, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to SEVEN HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$755,000.00). The MAINTENANCE SERVICE AGREEMENT and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"In addition to the services stated in the MAINTENANCE SERVICE AGREEMENT dated July 16, 2015, the First Amendment to Agreement dated March 15, 2017, and the Second Amendment to the Agreement dated March 15, 2018, the services to be performed by SERVICE PROVIDER shall consist of the additional services set forth in Exhibit "2" dated September 25, 2018, and incorporated herein by this reference."

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

"4.1 **Amount.** Total compensation under this Agreement shall not exceed EIGHT HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$865,000.00) and shall be billed based on the rate and basis set forth in Exhibit "B" Schedule of Compensation Rates attached to the Maintenance Service Agreement made as of July 16, 2015."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson
 Print Name

 Christina J. Turner
 Print Name

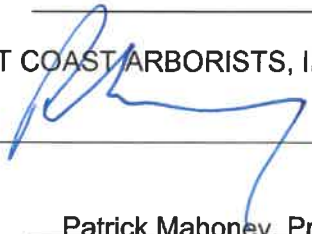
Date: _____

Date: _____

APPROVED AS TO FORM:

WEST COAST ARBORISTS, INC.

 City Attorney

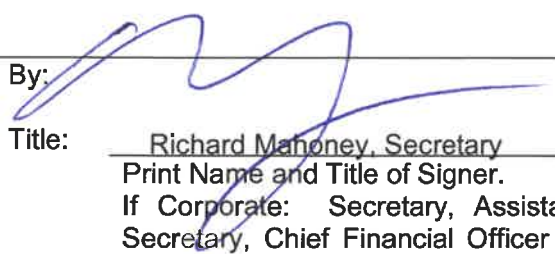
By: 

 Donald A. Larkin
 Print Name

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

Date: _____

Date: 9/25/18

By: 

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

Date: 9/25/18

WEST COAST ARBORISTS, INC.
THIRD AMENDMENT TO MAINTENANCE SERVICE AGREEMENT

Exhibit 2 – Revised Scope of Services

Dated September 25, 2018

Scope to include all of the services specified in the MAINTENANCE SERVICE AGREEMENT dated July 16, 2015, the First Amendment to Agreement dated March 15, 2017, the Second Amendment to the Agreement dated March 15, 2018, and the following additional services:

Additional work shall include anticipated tree maintenance needed in conjunction with Spring 2019 Sidewalk Repair Project and additional funding for annual services for Street Tree Pruning, Park Safety Pruning, Grid Pruning and Assessment District Safety Pruning.

**SECOND AMENDMENT TO AGREEMENT
WEST COAST ARBORISTS, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on March 15, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WEST COAST ARBORISTS, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon approval of the City of Morgan Hill City Council approval on March 7, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 16, 2015, for services for a maximum compensation of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of March 15, 2017, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to SIX HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$625,827.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "2" dated February 26, 2018, attached hereto and incorporated herein by this reference.

Tree maintenance needed in conjunction with Spring 2018 Sidewalk Repair Project.

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

"4.1 **Amount.** Total compensation under this Agreement shall not exceed SEVEN HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$755,000.00) and shall be billed based on the rate and basis set forth in Exhibit "B" Schedule of Compensation Rates attached to the Maintenance Service Agreement made as of July 16, 2015.

- C. Paragraph 9 shall be amended and replaced in its entirety by the following:

9. Compliance with Law.

- 9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 9.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 9.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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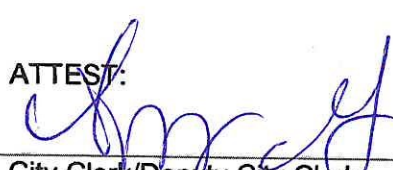
[Signatures on Next Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

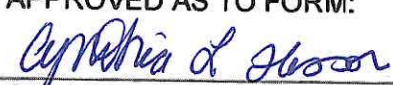
ATTEST:


 City Clerk/Deputy City Clerk

for Michelle Wilson
 Print Name

Date: 3/23/18

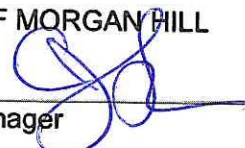
APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin
 Print Name

Date: 3-14-18

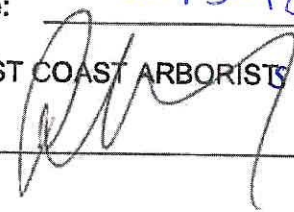
CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

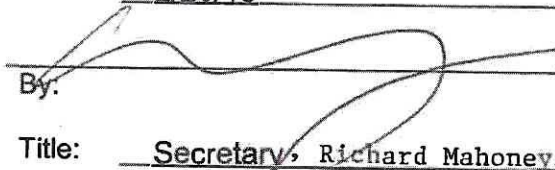
Date: 3-15-18

WEST COAST ARBORISTS INC.

By: 

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

Date: 2/26/18

By: 

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

Date: 2/26/18

Second Amendment to Agreement
West Coast Arborists, Inc.

Exhibit 2 Dated February 26, 2018

Additional work shall include anticipated tree maintenance needed in conjunction with Spring 2018 Sidewalk Repair Project and additional funding for annual services for Street Tree Pruning, Park Safety Pruning, Grid Pruning and Assessment District Safety Pruning.

EXHIBIT "1"**FIRST AMENDMENT TO AGREEMENT
ANNUAL TREE MAINTENANCE
WEST COAST ARBORIST, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 3/15/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WEST COAST ARBORIST, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to action of the Morgan Hill City Council taken on March 1, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 16, 2015, for services for a maximum compensation of \$600,000.00 ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:
 - 4.1. **Amount.** Compensation under this Agreement shall not exceed six hundred twenty-five thousand, eight hundred twenty-seven dollars (\$625,827).
2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy City Clerk

Date:

3/17/17

APPROVED AS TO FORM:

City Attorney

Date:

3/15/2017

CITY OF MORGAN HILL

City Manager

Date:

3/15/17

WEST COAST ARBORIST, INC.

By:

Title:

Patrick Mahoney, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

2/16/17

By:

Title:

Richard Mahoney, Assistant

Print Name and Title of Signer.

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

Date:

2/16/17

Exhibit B
Page 1 of 2

West Coast Arborist, Inc.
First Amendment to Maintenance Service Agreement

Scope of Work – Potential Tree Removals for Sidewalk Project

Tree Removal:	\$16,188.00
Tree Replanting	\$ 9,639.00
Total Amendment	\$25,827.00

The sidewalk repair project has 50 trees that may need to be removed as they are lifting sidewalks and the City would like to assure that trees that may cause future damage either have roots removed (where feasible) or trees removed to prevent future damage.

Scope of work will include:

- Coordinating with the Maintenance Manager of the City of Morgan Hill (or delegate) and sidewalk contractor to:
 - Inspect tree roots of 50 trees after removal of existing concrete and advise upon root removal, feasibility of sidewalk path re-route, or tree removal prior to re-installation of concrete walkway
 - Remove roots, where feasible
 - Remove trees, where required
 - Replant any removals with 15 gallon trees including root barriers

Trees are located in the following 5 locations:

- Llagas Creek Estates – 30 trees
- Monterey Road – 5 trees
- Downtown Area – 2 Trees
- East Dunne Area – 13

There is also one sidewalk location on Hayloft Court, near Jackson School that has had a large tree removed and the stump will need to be removed/ground down. The estimated size is 50+ inches.

Exhibit B
Page 2 of 2

The following is the size and number of trees to be inspected, and expected costs are based on existing contract prices, assuming all trees would need to be removed:

DBH	Number	Cost / In	Total Cost
6	1	\$27	\$162
7	1	\$27	\$189
8	5	\$27	\$1,080
9	4	\$27	\$972
10	12	\$27	\$3,240
11	10	\$27	\$2,970
12	6	\$27	\$1,944
13	5	\$27	\$1,755
14	1	\$27	\$378
15	1	\$27	\$405
17	1	\$27	\$459
19	1	\$27	\$513
28	1	\$27	\$756
35	1	\$39	\$1,365
Total	50	Total	\$16,188

Additionally, the installation of 15 gallon trees with root barriers @ \$189/tree, and there are 51 potential locations for replanting; net impact would be \$9,639, assuming every tree required removal.

We do not expect all trees to be removed, and these estimates are based on a worst case scenario, and cost of the work would be based only upon work performed.

128-04-15-015

**MAINTENANCE SERVICE AGREEMENT
ANNUAL TREE MAINTENANCE
WEST COAST ARBORIST, INC.**

THIS AGREEMENT is entered into and becomes effective on 7/16/15 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and WEST COAST ARBORIST, INC., a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 15, 2015
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2019 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be all supervision, labor, vehicles, materials, tools, equipment, barricades, traffic and warning devices and all other items necessary to provide tree pruning and other designated work as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$600,000.00. Total compensation under this Agreement shall not exceed \$600,000.00 dollars and shall be billed based on the rate and basis set forth in Exhibit B.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.
6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By

delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

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

7.1. **Insurance Types and Amounts.**

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

Exhibit A
Page 4 of 17

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. Compliance with Law.

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

9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections

1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

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

Address of SERVICE PROVIDER is as follows:

West Coast Arborists, Inc.
2220 E. Via Burton Street
Annahelm, CA 92806

Address of CITY is as follows:

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

14. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **Maintenance of Records.**
- 15.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at

the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

- 15.2. Access to and Audit of Records. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 15.3. Ownership of Work Product. All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
 - 20.1. Defense and Indemnification. SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 20.2. Exceptions. SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
 - 20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any

insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

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

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

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

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

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

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

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

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

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

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

ATTEST:


City Clerk/Deputy City Clerk

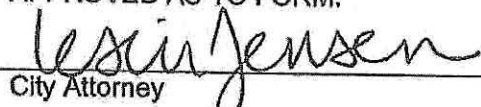
for Michelle Wilson

Print Name

Date:

7/16/15

APPROVED AS TO FORM:


City Attorney

for Renee Gurza

Print Name

Date:

07/16/15

CITY OF MORGAN HILL


City Manager

Steve Rymer

Print Name

Date:

8/16/15

WEST COAST ARBORISTS, INC.

By:

Title: Patrick Mahoney, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

6/30/15

By:

Title: Richard Mahoney, Assistant Secretary

Print Name and Title of Signer.

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

Date:

6/30/15

**EXHIBIT A
SCOPE OF SERVICES****RFP DOCUMENTS-SPECIAL PROVISIONS****SECTION 2
SCOPE OF WORK**

2-1 Scope of Work. This work shall consist of pruning street trees and park trees for traffic and pedestrian clearance, tree health, removing trees as designated, stump removal, tree planting, staking and inventory of trees as well as leaving the work site in a neat, clean, and orderly condition upon completion of the work or at the end of the day, in the area as specified in these specifications and the special provisions. The Contractor will cease all pruning activities when the designated number of trees has been pruned. Regardless of size of the tree the price to prune will be the same for all grid and park trees. This work also includes scheduled crew pruning on a daily basis as 12 well as emergency call outs, over and above the grid pruning. All green waste to be disposed of by the contractor and the cost to be included within the various bid items.

2-2 General Conditions. These general conditions which shall apply to this contract and shall be attached to the executed Maintenance Services Agreement. Contractor shall also comply with the International Society of Arboriculture Pruning Standards, latest revised edition of the Western Chapter, Standards for Nursery Stock by the American Association of Nurserymen and the American National Standards for tree care operations.

2-3 Estimated Annual Volume of Work. The estimated annual volume of work is \$150,000.

**SECTION 3
PRUNING SERVICES****3-1 Types of Pruning Services.**

3-1.1 Scheduled Service. The Contractor will furnish scheduled tree pruning service (complete trim) for trees designated by the City at the execution of the agreement. After executing of the agreement, City may add or delete other trees within the specified grids or within designated parks, at the same bid price.

3-1.2 Unscheduled Service. The Contractor will also provide, if required by the City, unscheduled tree pruning. The City will provide at least 24 hour notice for unscheduled pruning. Crew and equipment shall consist of 2 workers, 1 of which is an arborist, truck, and chipper plus all necessary pruning tools. The City may increase or decrease the quantity of these services at the same bid price.

3-1.3 Emergency Service. The Contractor will also respond to emergency calls for service at any and all times day or night during the term of this agreement within (3) hours of being notified. Crew and equipment shall consist of 2 workers, 1 of which is an arborist, truck, and chipper, plus all necessary pruning tools.

3-2 Work Schedule. As soon as notified of the award of the contract, the Contractor shall perform the activities as outlined by the Director of Community Services Tree Trimming/Maintenance Contract work schedule. Said schedule must show the dates of the expected start and completion of

the various items of the contract work. During a scheduling conference between the Contractor and the Director of Community Services, the work schedule will be discussed and modified, if necessary, by mutual agreement. The Contractor will cease all grid and park tree pruning once the designated number of trees has been pruned. 13

3-3 Temporary Stoppage of Tree Trimming/Maintenance Activities. The Director of Community Services shall have the authority to suspend the contract work, wholly or in part, for such a period of time as the Director may deem necessary, due to unsuitable weather, or to such other conditions as the Director considers unfavorable for the proper prosecution of the work, or for such time as the Director may deem necessary due to failure on the part of the Contractor or contractor's workers to carry out orders or to perform any of the requirements of the contract. The Contractor shall immediately comply with such an order from the Director of Community Services and shall not resume operations until so ordered in writing.

3-4 Extra Work . Extra work, when ordered in writing by the Director of Community Services and accepted by the Contractor, shall be paid for under written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and the Director of Community Services. All extra work shall be adjusted daily upon report sheets prepared for the Director of Community Services, furnished by the Contractor and signed by both parties, and said daily report shall be considered thereafter the true records of extra work done.

3-5 Authority of the Director of Community Services. The Director of Community Services shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed as to the manner of performance and rate of progress of the work, and any and all questions which may arise as to the interpretation of the plans and specifications. The Director of Community Services shall likewise decide any and all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the Director of Community Services shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly. For the purposes of routine and normal supervision and coordination of work the Director of Public Work is the City's authorized representative for all work within the scope of this agreement.

3-6 Interpretation of Specifications. Should it appear that the work to be done or any matter relative thereto, is not sufficiently detailed or explained in the specifications, the Contractor shall request the Director of Community Services for such further explanation as may be necessary, and shall conform to such explanation or interpretation as part of the contract, so far as may be consistent with the intent of the original specifications. In the event of doubt of questions relative to the true meaning of the specifications, reference shall be made to the Board of Directors, whose decision thereon shall be final.

3-7 Removal of Defective or Unauthorized Work . It is the intent of the specifications that only first-class work, materials and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the Director of Community Services, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the Director of Community Services made under the provisions of this paragraph, the Director of Community Services shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the

costs thereof from any moneys due or to become due the Contractor. Damage done to trees as a result of pruning practices not in compliance with the specifications shall result in replacement of the tree by the contractor with no additional compensation. Similar size tree will be provided and planted (up to 48" box).

3-8 Sound and Vibration Control Requirements. The contractor shall comply with all local sound control and noise level rules, regulations and ordinances. No internal combustion engine shall operate on the project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including, but not limited to truck, transit mixers or transit equipment that may or may not be owned by the Contractor.

3-9 Air Pollution Control. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, during compound, solvent or liquid asphalt shall be labeled to indicate the contents, fully complying with the applicable material requirements.

3-10 Cleaning up. Upon completion of the scheduled work or at the end of the day, whatever occurs first, the Contractor shall clean all the streets and grounds occupied by contractor in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat and presentable condition.

3-11 Public Convenience and Safety.

A. Attention is directed to Section 7-10 of the Standard Specifications and the Manual of Warning Signs, Lights and Devices for Use In Performing Work upon Highways, published by the California Department of Transportation.

Full compensation for conforming to the requirements of Section 7-10 of the Standard Specifications, the above referenced Caltrans Manual and these Special Provisions not otherwise provided for, shall be considered as included in the prices paid for the various contract items of work and not additional compensation will be allowed thereof.

B. **Warning and Protection Devices:** The Contractor will be responsible for providing placing and maintaining approved signs, barricades, pedestals, flashers, delineators, fences, barriers and flagmen where needed, and other necessary facilities in the vicinity of the maintenance area and where any dangerous conditions may be encountered as a result thereof, for the protection of the motoring public. The Contractor will not be allowed to proceed with the work until such time that a sufficient number of these protection devices have been delivered to the project site. Where parked vehicles are likely to interfere with the proposed work, the Contractor will supply and post at no less than 200' intervals on each side of the street "Temporary No Parking" signs 48 hours before the start of construction and to report the time of posting to the City's Police Department for the purpose of establishing "Tow Away" provisions. The Contractor shall be responsible for the removal of the temporary signs upon the completion of the Work. All signs shall be kept graffiti free at all times. Should the Contractor appear neglectful in furnishing warning and protection devices as outlines above, the Traffic Director of Community Services may direct attention to the existence of a hazard and the necessity of additional or different measures which shall be furnished and installed by the Contractor at Contractor's own expense, free of any cost to the City. Should the Contractor refuse or fail to act in a timely manner to correct a hazardous condition, the Traffic Director of Community Services may direct City forces to provide the necessary protective and warning devices as deemed appropriate by the Director of Community Services.

The cost accrued by the City in connection therewith will be deducted from the Contractor's contract payment. Any action or inaction on the part of the City in directing attention to the inadequacy of warning and protective measures or in providing additional protective warning devices shall not relieve the Contractor from responsibility for public safety or abrogate Contractor's obligation to furnish and pay for these devices.

The Contractor shall submit any and all work schedules and/or traffic control plans to the Director of Community Services for approval as needed.

3-12 Construction Yard. It shall be the Contractor's responsibility to locate any storage sites for materials and equipment needed and such sites either located on public or private property must be approved in advance by the Director of Community Services.

When storage sites are to be located upon private property, the Contractor shall be required to submit to the Director of Community Services, written approval from the record owner authorizing the use of the property by the Contractor.

3-13 Equipment Requirements. Prior to beginning of contractor operations, the Contractor shall furnish a current list indicating the equipment to be used for the project. All equipment shall be in safe and working condition. Prior to the beginning of aerial operations, the Contractor shall furnish, at no cost to the City, current certification for all aerial devices to be used in the completion of contract operations.

3-14 Preservation of Property. Existing improvements in areas adjoining the property whereon tree pruning work is being performed shall be protected from injury or damage resulting from operations of the Contractor.

3-15 Emergency Work

A. Emergency response - The contractor shall have the capability to receive and to respond immediately to calls of an emergency nature during normal working hours and during hours outside of normal working hours. Calls of an emergency nature received by the City shall be referred to the contractor for immediate disposition.

B. Emergency Work - In the event that emergency work is required, the Contractor shall notify the Director of Community Services or representative by telephone in advance before any emergency work is commenced. Non-emergency maintenance work requires written approval before the work is performed.

C. Emergency Personnel - In situations involving an emergency after normal work hours, the Contractor shall dispatch qualified personnel and equipment to reach the site within three (3) hours. Contractor's vehicle shall carry sufficient equipment to effect safe control of traffic. When the Contractor arrives at the site, the Contractor shall set up traffic warning and control devices, if deemed necessary, and proceed to accomplish the necessary work. The Contractor shall supply the City with name(s) and telephone number(s) of responsible person(s) representing the Contractor for twenty-four (24) hour emergency response. The above mentioned information shall remain current at all times. Any changes shall be forwarded to the City in writing within twelve (12) hours of any such change. Failure to maintain emergency information current shall result in a \$200.00 penalty for each occurrence.

D. Contractor's Response - The Contractor must maintain telephone service so that all calls from the City to the Contractor have no toll charge. Failure to respond by telephone or in person within one (1) hour of the City's attempt to contact the Contractor's representative may result in a \$200.00

penalty per incident. Failure to respond at any level will subject the Contractor to any primary or secondary costs arising from said emergencies.

E. Complaint Requests - The contractor must correct all complaint requests within twenty-four (24) hours. Failure to respond/correct as requested may result in termination of the contract.

3-16 Pruning Standards. All trimming/maintenance work shall be accordance with pruning standards as established by the latest edition of the International Society of Arboriculture Western Chapter. In all cases, the Director of Community Services shall have complete and sole discretion in determining conformance and acceptability of trees trimmed by the contractor. Trimmed trees rejected by the Director of Community Services shall be excluded from payment, and may need to be replaced per Section 3-7.

A. All trees, large and small, shall be given a complete trim by grid and park area (see specifications for "Complete Trim").

B. Contractor shall comply with Standards of CAL OSHA and the American National Standard Institute Safety Requirements. 17

C. The Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease and the appropriate utility company notified. Work shall then commence in accordance with instructions from the utility company. In the event that work causes excavation, contractor is responsible for appropriate notification of Underground Service Alert (USA).

D. No hooks, gaffs, spurs or climbers will be used by anyone employed for such trimming. Any vine plant growing on trees shall be removed at ground level.

E. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth.

F. Unless otherwise approved, trees are to be trimmed block by block, subject to the instructions of the Director of Community Services or authorized representative.

G. Contractor shall maintain at least one (1) English speaking arborist, on-site, at all times.

H. When trimming fungus, disease or fire blight infected limbs or fronds, all pruning tools shall be cleaned after each cut with alcohol or bleach.

I. Topping shall not be done without prior approval of the City.

3-17 Specifications for Complete Trim

A. Low branches overhanging streets shall be removed, where practical, to a minimum height above the street grade to fifteen feet (15'). Low branches overhanging sidewalks and parkway shall be removed to a minimum height of seven feet (7') and without detracting from the natural shape of the tree.

B. Shorten the length of limbs which extend beyond the natural perimeter of an otherwise symmetrical form.

C. Prune end branches to lighten end weight where such overburden appears likely to cause breakage of limbs. Remove cross limbs, water sprouts and suckers. Perform crown reduction to ISA Specifications to approximately a 25 percent reduction in total crown size.

D. All trees on which vines are growing shall have said vines removed. Vine tendrils shall be removed in a manner which will not injure trees or cause scarring of low branches and tree trunks.

3-18 Specifications for Removals

3-18.1 Specifications for Complete Tree Removal 18

A. Removal of entire tree, stump remaining shall be no higher than four (4) inches above soil grade and shall be removed within 24 hours after tree removal per the unit bid price contained within "Complete Tree Removal."

B. Work shall begin within 10 days after each request and be diligently pursued until completion.

C. Contractor shall make all arrangements necessary to have power or utility lines temporarily disconnected if necessary for the safe removal of the tree.

D. When the removal requires special or additional means, there shall be no additional units or overall cost to the City without the authorization of the Director of Community Services.

3-18.2 Tree Stump Removal

A. Type of Work: Provide complete tree stump and surface root removal.

B. Specifications for stump and surface root removal:

1. Removal of entire stump or grinding to a depth of 12 inches below average soil grade or deeper if specified by the Director of Community Services.

2. Removal of all lateral surface roots to a depth of 8 inches (8") below grade.

a) When sidewalk is present, remove all surface roots between the curb and sidewalk.

b) When no sidewalk is present, remove surface roots.

c) Backfill material shall be compacted to provide for minimal settling. It shall consist of an equal mixture of soil and stumped material which shall be three (3) inches above grade to provide for any soil settlement.

3-19 Climbing Techniques. Climbing and pruning practices should not injure the tree except for the pruning cuts. Climbing spurs shall not be used when pruning a tree, unless the branches are more than the throw-line distance apart. In such cases, the spurs should be removed once the climber is tied in. Spurs may be used to reach an injured climber and when removing tree.

Rope injury to thin barked trees from loading out heavy limbs should be avoided by installing a block in the tree to carry the load.

3-20 Competing Plant Materials. Competing plant material or plant material clinging to trunk, such as Ivy, volunteer trees, or woody shrubs shall be removed to provide a clear 19 area of at least 18", but not more than 24" around the trunk of the tree, and the root crown.

3-21 Tree Specifications. If applicable, each replacement tree shall be selected in accordance with the standards set forth in the American Standard for Nursery Stock.

3-22 Tree Stakes and Ties. If applicable, tree stakes shall be 3" diameter pressure treated wood poles. Tree ties shall be "VIT" twist brace ties in 18" or 24" lengths.

3-23 Disposal of Material. Excavation material determined as unsuitable fill material by the Director of Community Services shall become the property of the contractor and shall be legally disposed of outside the site of the work by and at the expense of the Contractor. The Contractor is required to recycle all green waste material generated from its operations, unless the Director of Community Services desires the material to be stock piled. Green waste receipts are required and are to be submitted for material.

Exhibit A
Page 15 of 17

3-24 Public Convenience. Contractor shall perform all tree trimming/maintenance operations in such a manner as to cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses and buildings along the line of the work shall be maintained at least each morning and evening and temporary approaches to crossings or intersecting streets shall be provided and kept in good condition.

3-25 Inventory. The Contractor will collect and maintain an entire tree inventory as part of this Agreement. The data will be collected by address and GPS coordinate and include tree species, land type, diameter at breast height, crown height, work information, botanical and common names, and other relevant information. Areas to be collected will include, but not limited to, Assessment Districts, Parks, Right-of-Ways, and City-owned Facilities. Inventory Information shall be available on-line to City staff and must allow for the production of reports on work histories and the printing of reports from the system. Upon request, data files shall be made available to the City in a standard format for integration with the City's GIS system and Microsoft Excel.

3-26 Quality Control Program. Contractor shall provide the City with a copy of their quality control program. This program shall address how the contractor will address citizen concerns; communicate with the City and contractor's employees. This program shall also include the contractor's methods for ensuring that work is completed in a satisfactory manner and that adequate follow-up work is accomplished.

3-27 Pictures. Contractor is to supply representative of "Before and After" trimming pictures that are suitable for reproduction when requested by the City.

3-28 Tree Planting Contractor to follow the guidelines as outlined in the City's Standard Tree Planting and Staking (L-17) standards and Tree Root Barrier (L-18) standards.

Exhibit A
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Exhibit B

Schedule of Compensation Rates

ITEM	DESCRIPTION	REFERENCE	UNIT	UNIT PRICE
1.	Residential Grid and Park Pruning (small, medium, and large trees)	3-16, 3-17	Per tree	\$64.00
2.	Full Trim Based on Service or Special Requests			
A	0" – 6" dbh	3-17	Per tree	\$45.00
B	7" – 12" dbh	3-17	Per tree	\$79.00
C	13" – 18" dbh	3-17	Per tree	\$119.00
D	19" – 24" dbh	3-17	Per tree	\$229.00
E	25" and over dbh	3-17	Per tree	\$329.00
3 – A	Complete Tree / Removal – Under 36" (including stump/roots)	3-18.1	Per dbh	\$27.00
3 – B	Complete Tree / Removal – Over 36" (including stump/roots)	3-18.1	Per dbh	\$39.00
4	Stump Removal (including roots)	3-18.2	Per diameter Inch	\$14.00
5 – A	Tree Planting – 15 gallon tree with linear root barrier	3-28	Per tree	\$189.00
5 – B	Tree Planting – 15 gallon tree without root barrier	3-28	Per tree	\$159.00
5 – C	Tree Planting – 24 Inch box tree with linear root barrier	3-28	Per tree	\$309.00
6 – A	Tree Inventory – with GPS	3-25	Per tree	\$3.00
6 – B	Tree Inventory – without GPS	3-25	Per tree	\$2.00
7	Evaluations by certified arborist with verbal recommendations		Hourly	\$119.00
8.	Tree Watering (per half day)			\$337.50
9	Crew Rental			
A	3 crew members with truck & equipment (regular time)	3-13	Hourly	\$207.00
B	3 crew members with truck & equipment (emergency response)	3-13, 3-15	Hourly	\$297.00

Exhibit A
Page 17 of 17

EXHIBIT C
SCHEDULE OF PERFORMANCE

All work shall be planned in advance on a schedule to be agreed upon by the City and Contractor.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

AUTHORIZE CITY MANAGER TO APPROVE CHANGE ORDER FOR 2018 INFLOW AND INFILTRATION PROJECT

RECOMMENDATION(S)

Authorize the City Manager to execute a change order of up to \$170,000 with Pacific Underground Construction, Inc. for the 2018 Inflow and Infiltration Project, for a total project cost of up to \$931,035.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

On April 18, 2018, City Council awarded a contract to Pacific Underground Construction, Inc. for the 2018 Inflow and Infiltration Project in the amount of \$691,850 with a construction contingency of \$69,185. The scope of work for this project includes: cleaning, pipe bursting, pipe lining, manhole rehabilitation, and sewer videoing at various locations within the City. This project included the repair of sewer mains at Llagas Road/Hale Avenue Intersection, Holiday Lakes neighborhood, and Jackson Oaks neighborhood. As part of this project, 19 sewer manholes will be sealed to prevent groundwater intrusion.

Project construction began in August of this year and is currently 75% complete. During recent sewer flushing by the City's utilities crew, an existing 6" sewer main pipe in West Dunne Avenue was discovered to require immediate attention. The existing 6" sewer main pipe was found to be cracked, pitted, and broken. City staff shared the findings with Pacific Underground Construction, Inc. and requested a cost proposal to repair this section of sewer main pipe. The scope of work includes the removal and installation of approximately 60 linear feet of new 6" sewer pipe, lining of 191 linear feet of 6" sewer main, lateral connections, rehabilitation of two manholes, trench restoration, replacement of traffic detector loops, and striping. Due to the location (Attachment No. 1) of the proposed work, staff has indicated to the contractor the work will be completed during night hours.

Staff recommends the approval of this change order in the amount of up to \$170,000 to ensure that the sewer main pipe is repaired promptly and in working order. Staff is

working with Pacific Underground Construction, Inc. to finalize the specific work in the change order, but to due the urgency of the repair is requesting the Council delegate authority to the City Manager to approve a change order for this “up to” amount.

COMMUNITY ENGAGEMENT: Inform

The 2018 Inflow and Infiltration Project is located within residential neighborhoods in Morgan Hill. Staff and contractor will provide email and door notifications prior to construction activities.

ALTERNATIVE ACTIONS:

City Council could elect to reject the approval of this change order. However, delays to the replacement of this sewer line may compromise the sewer system if not repaired immediately. Should the line fail, very costly measures would need to be taken to reroute sewer flow until a repair can be made.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

April 19, 2017 – City Council approved staff implementation of projects to repair leaking sewer manholes and sewer pipes and maximize flow in the existing sewer trunk line on Highland Avenue.

October 18, 2017 – City Council adopted the 2017 Sewer System Master Plan.

April 18, 2018 – City Council awarded contract for 2018 Inflow and Infiltration Project

FISCAL AND RESOURCE IMPACT:

The change order for the sewer repair at West Dunne Avenue is in the amount of up to \$170,000. If approved, the project total would be \$931,035, which includes the original contract amount, 10% contingency, and this change order of up to \$170,000 (\$691,850 + \$69,185 + \$170,000). The change order work for this project is sufficiently funded from CIP Project 302N15. Additional appropriations are not needed at this time.

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 to those facilities.

LINKS/ATTACHMENTS:

1. Vicinity Map 10-17-18



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

G:\R-14\Proj\GIS\John\Yat_DunneSewerRepair2.mxd

DUNNE AVE. SEWER REPLACEMENT 2018 INFLOW AND INFILTRATION PROJECT

0 25 50 100 150 200
 Feet





CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT THE 2018 STORM DRAINAGE SYSTEM MASTER PLAN

RECOMMENDATION(S)

Adopt the 2018 Storm Drainage System Master Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Upon the completion of the 2035 General Plan in 2016, the City's utility master plans were updated to reflect the infrastructure needs associated with the growth anticipated in the General Plan. The 2018 Storm Drainage System Master Plan prepared by Akel Engineering, was included in this effort and is the subject of this staff report.

The Storm Drainage System Master plan becomes the City's blueprint for expanding the storm water infrastructure to meet the community's current and future needs. In addition to identifying future infrastructure, the Storm Drainage System Master Plan also identifies existing system deficiencies to allow the City to plan for the resources necessary for both maintaining the existing systems and to build out the future infrastructure.

The total capital costs projected in the 2018 Storm Drainage System Master Plan are \$18.5 million with approximately two-thirds of that amount paid for by future development. The remainder is paid for by non-development impact funds.

On October 3, 2018, staff presented the 2018 Storm Drainage System Master Plan to the City Council for their review, questions, and input.

Staff now recommends that City Council adopt the 2018 Storm Drainage Master Plan so that the recommended improvements can be incorporated into the Capital Improvement Program.

COMMUNITY ENGAGEMENT: Inform

The Storm Drainage Master Plan was prepared as a subcontract to the General Plan 2035 effort. The Storm Drainage Master Plan was made available for public viewing on the City's website, however, no comments were received.

ALTERNATIVE ACTIONS:

No alternative action is proposed due to the importance of having a utility master plan adopted.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On October 18, 2017, City Council adopted the Water System and Sewer System Master Plans.
- On October 3, 2018, City Council was introduced to the 2018 Storm Drainage Master Plan.

FISCAL AND RESOURCE IMPACT:

The adoption of the Storm Drainage System Master Plan has no direct fiscal or resource impact. The recommendations contained in the master plan will be used to guide future Capital Improvement Program (CIP) spending, which will ultimately impact fees charged to developers. The City is currently in the process of reviewing its impact fees and anticipates bringing an update to the Council in late 2018 or early 2019. The capital project expenses in the updated Master Plan are lower than those in the previous Master Plan, that were used to establish the current storm drain impact fees.

CEQA (California Environmental Quality Act):

The 2018 Storm Drainage System Master Plan is consistent with the development assumptions in the 2035 General Plan.

On July 27, 2016 the Morgan Hill City Council adopted Resolution No. 16-127, certifying the Final EIR for the Morgan Hill 2035 General Plan consistent with the requirements of the California Environmental Quality Act (CEQA) and adopting a Statement of Overriding Considerations regarding environmental impacts and a related Mitigation Monitoring and Reporting Program (MMRP).

LINKS/ATTACHMENTS:

1. 2018 Storm Drainage System Master Plan (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT RESOLUTION ADOPTING THE FINAL RELOCATION IMPACT STATEMENT AND LAST RESORT HOUSING PLAN FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

Adopt resolution for the following actions:

1. Adopt the Final Relocation Impact Statement and Last Resort Housing Plan for the Hale Avenue Extension Project; and
2. Authorize expenditure of an amount not to exceed \$98,000 for relocation assistance, from the Traffic Impact Fund (309).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

The General Plan Circulation Element calls for the extension of Hale Avenue from Main Avenue at the north end to Spring Avenue at the south end. The project is being designed as a two-lane roadway with a median, bike lanes, and a pedestrian walkway, in conformance with the City's multi-modal arterial standard. This reach of roadway has been a planned arterial since the 1960's.

On August 22, 2018, City Council approved a Conveyance Agreement with the Santa Clara County for portions of properties (APN's 767-06-034 and 767-06-035) required for the project. A condition of the conveyance agreement is to relocate the tenant(s) prior to construction of the roadway. In addition, the California Relocation Assistance Act of 1970 requires that fair and equitable treatment is afforded to persons displaced as a result of the public entity's actions. Thus, a relocation consultant was retained to assist staff to provide the required relocation assistance and/or benefits to the occupants of the property who are entitled to such as a consequence of being displaced by the project.

Subsequently, a Draft Relocation Impact Statement and Last Resort Housing Plan (Attachment No. 1) was completed by Associated Right of Way Services in June 2018. The Draft Relocation Impact Statement and Last Resort Housing Plan determined that the project will impact one single family dwelling (Attachment No. 2) with two adults living in the household at 230 Warren Avenue (APN 767-06-035). It has been determined that the tenants are eligible for relocation assistance since they have been living at the residence since 1986 and are required to move due to the project impacts. Relocation assistance typically includes; a relocation adviser to assist the occupant in locating a replacement dwelling, moving related costs, and replacement housing/rent differential payments. The total probable cost to relocate the tenants is estimated between \$76,000 and \$98,000. The Draft Relocation Impact Statement and Last Resort Housing Plan was circulated for public comment between August 1, 2018 and September 1, 2018 and no comments were received. Thus, a final version was prepared and is attached to this staff report for adoption.

Therefore, staff recommends that the City Council adopt the Final Relocation Impact Statement and Last Resort Housing Plan and approve the expenditure of up to \$98,000 in order to relocate the tenants per Title 25, Chapter 6 of the California Code of Regulations.

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. More recently, an Environmental Impact Report was prepared and circulated for public comment in 2017. In 2018, the Draft Relocation Impact Statement and Last Resort Housing Plan was advertised for public comment in the newspaper, as required, for 30 days. No comments were received.

ALTERNATIVE ACTIONS:

No alternative actions. The tenants are currently living in a home that will require demolition when the Hale Avenue Extension project is constructed. In addition, the City is required to relocate the tenants per the Santa Clara County Conveyance Agreement and per the California Code of Regulations, Title 25, Chapter 6.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On August 22, 2018, City Council approved a Conveyance Agreement with Santa Clara County for properties (APN's 767-06-034 and 767-06-035) required for the project.

FISCAL AND RESOURCE IMPACT:

Sufficient funds for the not to exceed \$98,000 relocation costs have been budgeted for the project. The project is budgeted in the approved Fiscal Year 2018-19 Capital Improvement Program under CIP #546007 with \$19,650,000 from the Traffic Impact Fund (309).

CEQA (California Environmental Quality Act): Project

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

LINKS/ATTACHMENTS:

1. FINAL Relocation Impact Statement
2. Project Relocation Map
3. Resolution

Final Relocation Impact Statement and Last Resort Housing Plan

Hale Avenue Extension Project

Prepared for

The City of Morgan Hill

Submitted by

Associated Right of Way Services, Inc.

September 2018



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Introduction

The City of Morgan Hill (City) is moving forward with its plan to construct a multimodal, two-lane roadway that is intended to relieve traffic congestion along Monterey Road through the downtown area and surrounding neighborhoods. In order to construct the Hale Avenue Extension Project (Project), the City will need to acquire several properties throughout Morgan Hill, including the impacted property located on Warren Avenue (Subject Property). The Subject Property is improved with a 1,178 square foot Single Family Residence (SFR), which resides on a 0.21 acre parcel. The Project will require a full take of the SFR, and the occupants of this residence will be required to permanently relocate.

The City has contracted with Associated Right of Way Services, Inc. (AR/WS) to prepare and implement this Relocation Impact Statement and Last Resort Housing Plan (the Statement). This Statement documents the results of a needs assessment survey, a housing resource study, and provides details of the City's Residential Relocation Assistance Program. The Project will be funded by the Traffic Impact Funds as part of the City's Capital Improvement Program. Therefore, this Statement sets forth policies and procedures necessary to conform with statutes and regulations established by the California Relocation Assistance Law, California Government Code Section 7260 et seq. and the California Relocation Assistance and Real Property Acquisition Guidelines, Title 25, California Code of Regulations, Chapter 6, Section 6000 et seq., and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. Sections 4601 et seq., and its implementing regulations, 49 CFR Part 24. No displacement activities will take place prior to the required reviews and approval of this Statement.

This Statement addresses the specific housing needs that the displaced household will require in order to permanently relocate from the Project site. The housing resource survey conducted for this Statement has demonstrated that there is an adequate number of available replacement rental units in the local area to accommodate the needs of the household. The City will need to provide advisory and monetary assistance to allow this household to secure and move to a Decent, Safe and Sanitary dwelling.

Project Scheduling. The City is anticipated to present the property owner with an offer to purchase their property around August or September of 2018. The Draft Statement was circulated for a 30-day public review and comment period from August 1, 2018 to September 1, 2018. No comments were submitted during that time. If this Statement is approved by Council, the household would be provided with at least 90 days advance written notice of when they must relocate and the Subject Property must be vacated.

Project Assurances. The City is committed to providing relocation assistance to each permanently displaced person who is in legal occupancy prior to the City's initiation of negotiations for the acquisition of the Property. It is the City's intent that:

- This Statement will be made available to the public, including the displaced persons and any other interested parties for review and comment.
- The displaced persons, members of the public, and Project Area Committee had a 30-day review and comment period.
- All persons displaced as a result of this project shall receive fair and equitable treatment.
- No displaced person will suffer disproportionate damages as a result of a project proposed for the public's benefit.
- No eligible displaced person will be required to move unless adequate replacement housing is available to the displaced person, regardless of race, color, religion, sex, or national origin.
- No displaced person will be required to relocate unless comparable, affordable replacement housing is available within the City of Morgan Hill.
- Each impacted household will be assisted by a Relocation Advisor who will assist the occupant through each step of the relocation process.
- No eligible permanently displaced person will receive a 90-Day Notice to Vacate or be required to relocate without first receiving a Notice of Eligibility for Relocation Assistance, a Conditional Entitlement Letter, a Relocation Brochure, and referrals to available, comparable replacement sites.
- A Relocation Advisor will provide each permanently displaced person with a Relocation Brochure which will explain all relocation assistance available and a Conditional Entitlement Letter which explains the specific assistance and options available. A calculation of any monetary assistance will be included in each Conditional Entitlement Letter.
- Relocation assistance payments will be made in a timely manner. Payments for replacement housing will be based on the City's Housing Valuation Study and "spend-to-get" requirements.
- Eligible benefits and payments as required by governing regulations will be provided to all impacted households.
- The City's relocation assistance program is adequate to provide orderly and timely relocation of all impacted households.
- The City will secure funds to pay all required moving costs, replacement housing payments, and other relocation benefits, including Last Resort Housing payments.

- Any person that is required to relocate temporarily will be treated fairly and equitably and will receive all reasonable and necessary out of pocket expenses, including any increased housing costs, payment for moving expenses, and storage of personal property as needed.

Assessment of Needs

The impacted household was interviewed in order to determine the Project impact and the feasibility of permanently relocating the occupants into the surrounding community. The household provided information for assessment and consideration regarding household size, income and replacement housing needs. Available housing rental information was gathered through online rental research sites, rental agencies, and by contacting property management companies.

Occupant Characteristics. There are a total of two adults living in the household. The original occupant on the lease moved into the dwelling in 1986 and has resided there ever since. The occupants plan to move together and reside in similar type housing in the area.

- Locational Needs. The household reported that they had moved into the residence in 1986 and would like to continue to reside in Morgan Hill.
- Household Income. During the process of interviewing the household for this Statement, the household's annual income was discussed. Household income information and documentation will be required to determine income levels in comparison to the Area Median Income in the City of Morgan Hill and will be used in calculating an actual replacement housing payment for the household, if necessary.
- Current Rent. The reported rent for the two-bedroom SFR is \$800 per month which is considered to be a below-market rate for the area. All utilities are paid by the tenant.
- Overcrowded Conditions. The household is currently not living in overcrowded conditions based upon the City's housing occupancy standards for relocation programs (two persons per bedroom). A comparable two-bedroom SFR for rent would suffice.
- Language. The household speaks English as their primary language.

Special Circumstances. In some cases special circumstances may need to be considered in the moving or relocation process that would result in a need for additional Advisory Assistance to be provided to the displaced household. These circumstances may include, but are not limited to, occupants with physical, mental, or emotional limitations. Based on the interviews with the household and information obtained from the landlord, no special circumstances were identified.

However, if special circumstances exist, the Relocation Advisor will be available to meet with the occupants in their home and will offer to meet with family members if requested. In addition the Relocation Advisor will take into consideration the type of replacement housing needed to accommodate any access and/or safety concerns.

Available Housing. A Housing Resource Study was conducted in May/June of 2018 to identify available comparable two-bedroom housing in the Project area. The survey indicated that in the local area there are an adequate amount of dwellings available for rent. Rent for two-bedroom dwellings in Morgan Hill range from \$1,975 to \$3,100 per month plus utilities.

In summary, the survey indicates there is a sufficient amount of two-bedroom housing units available to accommodate the household being permanently displaced. Therefore, it is anticipated that during the displacement period, there will be enough comparable housing available. Since the rental rates for the available sites are significantly higher than the current rent being paid by the household potentially displaced, the higher rents may not be affordable and Last Resort Housing provisions may apply.

The following list details examples of comparable units that are currently available in the local market. No determination has yet been made as to their direct comparability to the Subject Property.

**Two-Bedroom Available Dwellings
May/June 2018**

Address	Bedroom/Bath	Rent	Comments
16765 Barnell Avenue, Unit 1, Morgan Hill	2 bed/1 bath	\$1,975	Apartment
17641 Crest Avenue, #2, Morgan Hill	2 bed/1 bath	\$2,200	Apartment
113 La Crosse Drive, Morgan Hill	2 bed/2 bath	\$2,395	Condo
76 W. 5 th Street #B, Morgan Hill	2 bed/1 bath	\$2,500	Townhouse
17475 Depot Street, Morgan Hill	2 bed/2 bath	\$2,550	Single-family residence
18350 Shadowbrook Way, Morgan Hill	2 bed/2 bath	\$2,595	Single-family residence
213 Del Monte Lane, Morgan Hill	2 bed/2 bath	\$2,950	Condo
56 East 4 th Street, Morgan Hill	2 bed/1 bath	\$3,000	Condo
17172 Creekside Circle, Morgan Hill	2 bed/2.5 bath	\$3,100	Condo

Project Cost Estimate. The following estimate is for budgeting purposes only. These figures should not be interpreted as firm, “not to exceed”, or actual entitlement costs. These figures are based on the data obtained through occupant interviews, current project scope, replacement site availability, market rent research, and the judgment and experience of the writer. They do not include payments to consultants or to contractors.

	Most Probable Cost	High Estimate
Cost to Permanently Relocate Household:	\$76,000	\$98,000

Relocation Assistance Program

This portion of the Statement summarizes the City of Morgan Hill's Relocation Assistance Program as it pertains to the occupants displaced from the Property. This summary of benefits has been provided for general information purposes only and it is not meant to be interpreted as law.

Legal Residency

Individuals seeking relocation assistance must certify that he or she is either a citizen, or national of the United States, or an alien who is lawfully present in the United States.

Definition of Terms

This Statement uses various acronyms and terminology that may be unfamiliar to some readers. Therefore, the definitions of various terms and conditions have been presented in this section in order to provide the reader with a greater understanding of the Relocation Assistance Program available to the displaced persons.

Comparable Replacement Dwelling. A definition of a comparable replacement dwelling is a dwelling that is of similar size and type to the acquired dwelling. A more specific definition would include:

- Decent, safe, and sanitary as described below.
- Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living.
- In an area not subject to unreasonable adverse environmental conditions from either natural or manmade sources.
- Available to all persons regardless of race, color, religion, sex, marital status, or national origin.
- Within the financial means of the displaced person (housing costs do not exceed 30% of the household's average monthly income), either by their own means or through assistance from the City.

Decent, Safe, & Sanitary (DS&S) In order to meet decent, safe and sanitary requirements, a replacement site must meet the following criteria:

- Be structurally sound, clean, weather tight, in good repair, and adequately maintained.
- Contain a safe electrical wiring system adequate for lighting and other devises.
- Contain a safe heating system capable of sustaining a healthful temperature.
- Be adequate in size with respect to the number of rooms and area of living space to accommodate the displaced persons. This shall be interpreted to mean that no more than two persons shall occupy a bedroom.
- Have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- Contain unobstructed egress to safe, open space at ground level. If the dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.
- Be free of any barriers which prevent reasonable ingress, egress, or use of the dwelling by such displaced person.

Displaced Person. Persons who are required to move permanently for the project are displaced persons. These households will be eligible to receive Relocation Advisory Assistance, Moving Cost Assistance, and Replacement Housing Payments.

Persons Not Displaced. A person who is required to move temporarily from the property is not considered to be a Displaced Person if they are provided reasonable notice, their reasonable out of pocket expenses are covered by the City and they are provided with Decent, Safe and Sanitary temporary replacement housing.

Summary of Benefits for Permanently Displaced Persons

The City has adopted the following Relocation Assistance Program in order to provide eligible displaced person with the benefits to which they are entitled under governing regulations.

- A. Relocation Advisory Assistance.** A Relocation Advisor will work with each household and will be the principal contact in all relocation matters. The Relocation Advisor shall provide ongoing advisory assistance by assisting the occupant in locating and securing a comparable replacement dwelling. In addition, the Relocation Advisor shall ensure that each household receives the following:

1. Each household will receive written documentation informing them of their rights and the availability of relocation assistance.
2. Each household shall be interviewed by their Relocation Advisor in order to ascertain replacement needs. The Relocation Advisor shall request documentation concerning length of occupancy, occupant income, public assistance, and other pertinent information.
3. A Housing Valuation Study will be prepared on the availability of replacement housing in the area. Consideration will be given to the condition of the dwellings and whether or not they compare favorably to the Property. A determination will then be made as to the reasonable cost for each type of comparable replacement dwelling needed. Each household will then receive a Conditional Entitlement Letter that will explain the specific relocation benefits to which they are entitled.
4. The development of this project shall be so scheduled that no displaced person lawfully occupying the Property shall be required to move from their dwelling without a written 90 days' notice from the City of the date by which such a move is required. The 90-Day Notice to Vacate will also include a list of referrals to available replacement sites in the area. The Relocation Advisor shall also inform each household of the vacate policies that will be pursued in order to carry out the project.
5. Each household shall receive current and continuing information on the availability of comparable replacement sites in the area.
6. A Relocation Advisor will work with each household as a liaison with prospective landlords, realtors, and the City. The Relocation Advisor shall provide documentation to prospective landlords concerning Replacement Housing Payments. In addition, the Relocation Advisor shall help each household complete relocation claims that will be submitted to the City. The Relocation Advisor shall also coordinate delivery of relocation payments to the households or to their assignee.
7. Should a household have a grievance against the City in regards to relocation policies and procedures, the Relocation Advisor will provide the household with information concerning the City's grievance procedures.
8. The Relocation Advisor shall inspect the replacement site for each household to ensure that the unit meets decent, safe, and sanitary standards.
9. The Relocation Advisor shall provide any services required to ensure that the relocation process does not result in different or separate treatment of occupants on account of race, color, religion, national origin, sex, marital status, or other arbitrary circumstances.

10. The Relocation Advisor shall provide referrals to other local assistance programs to the households in order to minimize their hardships. When needed, referrals to housing, finance, employment, training, health and welfare, and other assistance programs will be provided.

- B. Moving Cost Assistance** Each household is entitled to receive a moving payment from the City to move their personal property to their replacement home. Each household may elect one of the two options for cost reimbursement as outlined below or a combination of the two options:

Fixed Moving Expense and Dislocation Allowance. A household may choose to move their own personal property to the replacement site and to submit a claim based on the following Moving Expense and Dislocation Allowance Schedule published by the Code of Federal Regulations.

Occupant owns Furniture - Number of Rooms of Furniture									Occupant does not own furniture	
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms	Additional room	1 room no furn.	Addt' room/ no furn.
\$725	\$930	\$1,165	\$1,375	\$1,665	\$1,925	\$2,215	\$2,505	\$265	\$475	\$90

Actual Reasonable Moving Costs and Related Expenses. The City will pay actual moving expenses based on the lower of at least two acceptable moving bids from qualified professional moving carriers. The City will pay all reasonable costs to pack, move, and unpack all personal property up to 50 miles from the displacement site. The City can make a direct payment to the professional moving carrier under this option. The City will allow reimbursement to the household for any one-time utility reconnection fees, such as phone, gas, electric, and cable.

- C. Replacement Housing Payments for Permanently Displaced Persons.** A Rent Differential Payment up to \$5,250 is available to assist tenants in either renting or purchasing a replacement dwelling. To be eligible, a tenant must have been living in the acquired dwelling at the initiation of negotiations between the City and the property owner, and he/she must rent or purchase and occupy a decent, safe, and sanitary replacement dwelling within 12 months after moving.

The assistance needed for one month is determined by subtracting the "base monthly rent" for the present home from the cost of rent and utilities for the new home (or a comparable replacement home, if that cost is lower). That monthly need, if any, is multiplied by 42 to determine the total amount of the Rent Differential Payment. This amount will be paid directly to the tenant or to the tenant's designee. The City will provide the assistance in a lump sum, monthly installments, or other periodic payments.

Generally, the base monthly rent for the present home is the lesser of: (1) the monthly rent and average monthly cost for utilities, or (2) thirty (30%) percent of the gross monthly household income if the household is determined to be Low Income by the U. S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs.

The City will conduct a Housing Valuation Study to determine the cost of a comparable replacement dwelling. The household will receive a Conditional Entitlement Letter that describes all relocation benefits and the maximum Rent Differential Payment to which the household is entitled. The Letter will also explain the “**spend to get**” requirement. The “spend to get” requirement means that benefit payments will be made by the City only when the tenant demonstrates that entitlement amounts have been or will be spent. Rent Differential Payments must be used for reasonable and necessary expenses related to replacement housing.

A Rent Differential Payment when used to purchase a replacement dwelling must be applied to the down payment and/or non-recurring closing costs for a decent, safe, and sanitary replacement dwelling. The City will deposit down payments directly into the escrow account to purchase the replacement property.

The Last Resort Housing Program

Housing of Last Resort is a program that allows for the implementation of certain regulations to ensure that comparable replacement housing is within the financial means of the displaced person. Last Resort Housing is a procedure wherein the City, based upon additional documentation, may exceed the \$5,250 monetary limit to enable a displaced person to rent a comparable replacement dwelling. Several methods to provide Last Resort Housing to qualified displaced persons are available to the City:

1. Provide supplemental funds in excess of the standard limit to allow occupants to replace their current home with an affordable dwelling. All payments are based on the most comparable replacement property as approved in the City's Housing Valuation Studies. As with all other replacement housing payments, occupants must meet spend to get requirements in order to claim payments.
2. Build new replacement housing or rehabilitate existing units or provide funds for private parties to rehabilitate existing units for occupancy by displaced households.

Recommended Action. The most flexible of the Last Resort Housing options is for the City to pay Rent Differential Payments in excess of \$5,250 for qualified displaced persons, as necessary. Since there are adequate replacement dwellings available, building replacement housing units and managing the property is not recommended at this time. It is also highly unlikely that construction of new replacement units could be completed to meet the project's schedule.

A survey of the local housing market indicates that there will be an adequate supply of replacement dwellings available during the expected displacement period. Some of these units, however, would not be affordable to the household if the standard relocation payment was made. The recommended course of action is for the City to provide supplemental replacement housing funds to bring the unit within the financial means of the displaced person.

Appeal and Grievance Process

If a displaced person believes that a claim has been unfairly administered, the claimant may request review by the Director of Engineering & Utilities, or his/her designee. Review may also be brought before the Relocation Appeals Board if the claimant wishes to forego review by the Director of Engineering & Utilities or is unsatisfied with the Director of Engineering & Utilities' determination. The Relocation Appeals Board, after holding a hearing, will make a final determination. If still unsatisfied, the claimant may then seek judicial review. Any appeal must be filed within 18 months following the date of displacement.

Eviction Policy

Should the property owner evict an occupant for failure to meet any obligations or for violating the terms and conditions of their lease or rent agreement prior to the City acquiring the Property, then under the applicable relocation law, the evicted tenant(s) will not be considered a "displaced person" and, therefore, will not be eligible for relocation benefits. Eviction will not affect a tenant's eligibility for relocation benefits if a tenant is evicted as a last resort to remove the tenant from the Property.

Claim Processing and Distribution of Payments

All claims are to be filed through a Relocation Advisor. The Relocation Advisor will assist the displaced person in completing their claim forms, will notify each displaced person of the documentation needed in order to file the claim, and will inspect all replacement properties as needed. Each claim will be submitted along with documentation to the City for review and processing. Checks will be available for approved claims within three weeks of the date all documentation is submitted to the Relocation Advisor. Checks will be delivered to the project occupant or to the project occupant's designee. The City shall provide advance payments when

necessary to secure replacement housing in a time frame that may be dictated by new landlords and whenever a later payment would result in financial hardship.

Relocation Advisor Contact Information

The Relocation Advisor may be contacted at the following location and during the following times:

Address:	Associated Right of Way Services, Inc. 2300 Contra Costa Boulevard, Suite 525 Pleasant Hill, CA 94523
Phone:	(800) 558-5151 toll free
Office Hours:	Monday – Friday, 8:30 am – 5:00 pm

Citizen Participation/Statement Review

A Draft Statement was provided to each displaced person and made available to the public for the mandatory 30-day review period; no comments were received. The Final Relocation Impact Study and Last Resort Housing Plan will be submitted to the City of Morgan Hill City Council for approval.

Governing Regulations

This project is being funded by the local Traffic Impact Funds. Therefore, the City will administer the Relocation Assistance Program in compliance with the statutes and regulations established by California Relocation Assistance Law, California Government Code Section 7260 et seq. and the California Relocation Assistance and Real Property Acquisition Guidelines, Title 25, California Code of Regulations, Chapter 6, Section 6000 et seq., and in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. Sections 4601 et seq., and its implementing regulations, 49 CFR Part 24.

Appendix

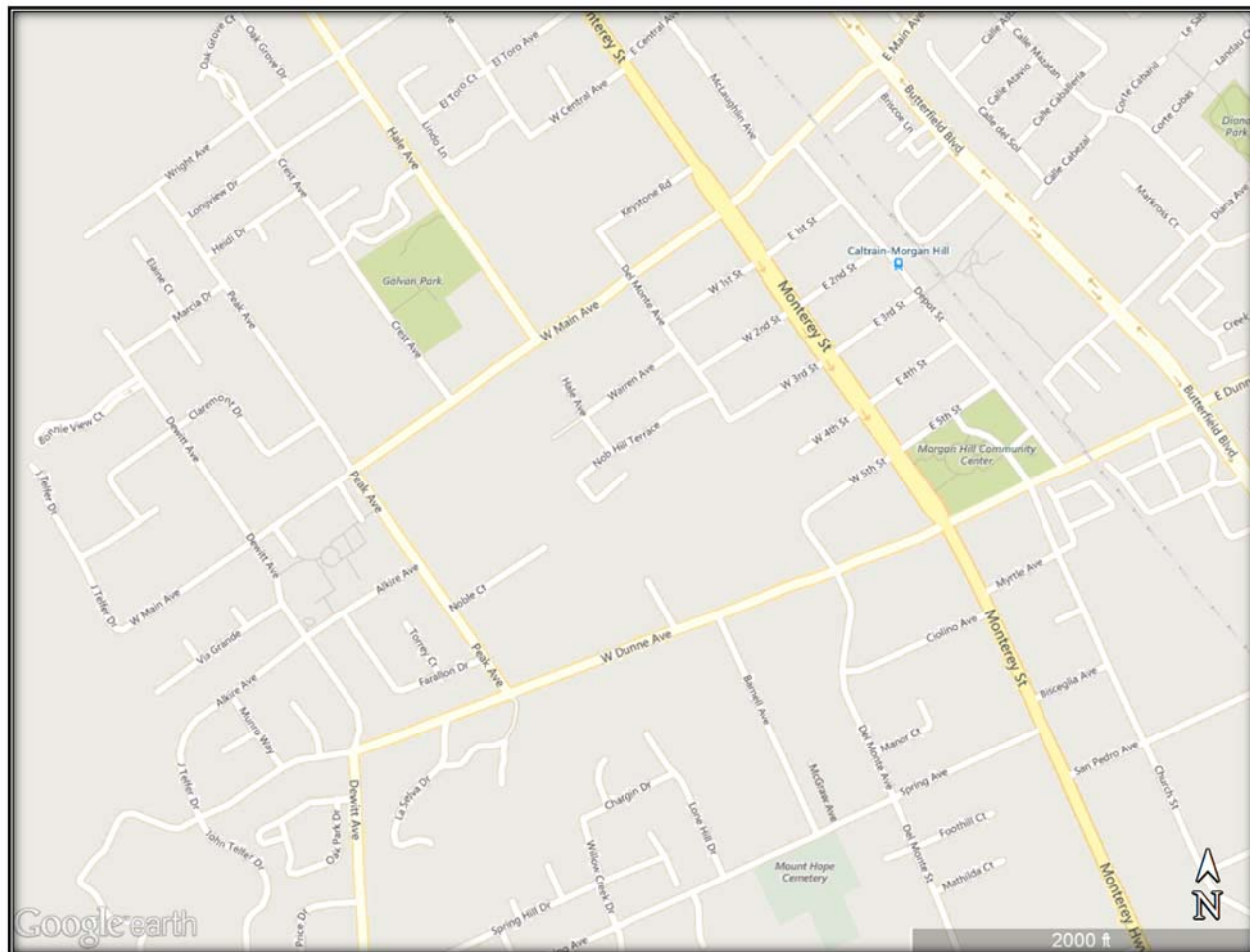
Appendix A - Project Area Map

Appendix B - Relocation Brochure – Assistance Available to Residential Displaced Persons

Appendix C - Summary of Public Comment

Appendix A

Map of Hale Avenue Extension Project Area



Relocation Assistance Handbook

Occupants of Rental Property



This handbook is presented to you as a courtesy of City of Morgan Hill and Associated Right of Way Services, Inc. and is intended to summarize your rights under the California Relocation Assistance Act of 1970 (Gov. Code §7260 *et seq.*) and implementing regulations found in the Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, §6000 *et seq.*). A Relocation Advisor will also be available to help explain the assistance that is available through this program. This summary has been provided for general information purposes only and it is not meant to be interpreted as law.

Relocation Assistance for Occupants of Rental Property

This handbook provides information to persons who are renting residential property that might be developed for a public project. Public property acquisition and relocation efforts are governed by state laws and regulations. These laws and regulations can be found under the California Relocation Assistance Act of 1970 (Gov. Code §7260 *et seq.*) and implementing regulations found in the Relocation Assistance and Real Property Acquisition Guidelines (Cal. Code Regs., tit. 25, §6000 *et seq.*). A Relocation Advisor will also be available to work with each affected household to help them to understand the assistance that is available to you through this program.

It is important that each household meet with a Relocation Advisor to understand their rights and responsibilities under the Relocation Assistance Program ("Program") described herein. If a household is determined to be eligible to receive Relocation Assistance under the Program, then the household will be given a **Notice of Eligibility** and later a **Conditional Entitlement Letter**. Each household will also be given a copy of this **Relocation Assistance Handbook**. These documents will identify all of the benefits and conditions for receipt of benefits by the household. These benefits and conditions are briefly described below.

Si usted necesita una traducción de esta carta, favor de llamar
AR/WS a 1-800-558-5151.

Relocation Advisory Assistance

The City of Morgan Hill ("City") is prepared to provide the following Relocation Assistance Program in order to provide displaced persons with the benefits to which they are entitled under governing regulations. The Relocation Assistance Program was developed in compliance with the following laws and regulations:

Law: California Government Code Section 7260, et seq.

Regulations: California Code of Regulations, Title 25, Chapter 6, Section 6000, et seq.

The State of California has determined that any person being affected by a publicly funded project has the right to receive assistance in understanding the laws and regulations that protect them if they are required to move for a project. A knowledgeable Relocation Advisor must be available to each household to help them through the process, to provide them with notices as required, and to provide them with verbal and written information. Ms. Emily Plurkowski of Associated Right of Way Services, Inc. ("AR/WS") will be providing Relocation Advisory Assistance for the households affected by this project and will be available to answer questions and to help the households throughout this process.



A Relocation Advisor is available to find comparable, decent, safe, and sanitary replacement housing within the financial means of each affected household. The housing must be available to the displaced persons. A Relocation Advisor will provide advisory assistance in obtaining housing of their choice, including assistance in the referral of complaints of discrimination to the appropriate Federal, State or local fair housing enforcement agency. Each affected household should meet with their Relocation Advisor and provide them with information as requested so that assistance can be provided as needed. A Relocation Advisor will also prepare claim forms on behalf of each household and will help to file those claims for reimbursement under the Relocation Assistance Program ("Program").

All services will be provided in such as way as to ensure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, marital status, familial status, or any basis protected by state and federal anti-discrimination laws, or any other arbitrary circumstances.

Definition of Terms. This Program incorporates certain language that may be unfamiliar to the reader. Therefore, the following terms have been defined.

Comparable Replacement Dwelling. A definition of a comparable replacement dwelling is a dwelling that is of similar size and type to the acquired dwelling. A more specific definition would include:

- Decent, safe, and sanitary as described below.
- Functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living.
- In an area not subject to unreasonable adverse environmental conditions from either natural or manmade sources.
- Available to all persons regardless of race, color, religion, sex, marital status, or national origin.
- Within the financial means of the displaced person (housing costs do not exceed 30% of the household’s average monthly income), either by their own means or through assistance from the Relocation Program.

Decent, Safe, & Sanitary (DS&S). In order to meet decent, safe, and sanitary requirements, a replacement site must meet the following criteria:

- Be structurally sound, clean, weather tight, in good repair, and adequately maintained.
- Contain a safe electrical wiring system adequate for lighting and other devices.
- Contain a safe heating system capable of sustaining a healthful temperature.
- Be adequate in size with respect to the number of rooms and area of living space to accommodate the displaced persons.
- Have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- Contain unobstructed egress to safe, open space at ground level. If the dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.
- Be free of any barriers which prevent reasonable ingress, egress, or use of the dwelling by such displaced person.

Displaced Person/Household. Lawful occupants who are required to move from a property that the City of Morgan Hill will be developing. Displaced persons will be eligible to receive Relocation Advisory Assistance, Moving Expense Payments, and Replacement Housing Payments (eligibility for replacement housing payments will be determined on a case-by-case basis with consideration given to length of occupancy and income).

Moving Cost Assistance

Each displaced household is entitled to receive a moving payment to cover the cost to move their personal property to their replacement home. The Relocation Program covers specific costs related to the move. Each household may elect one of the three options for cost reimbursement as outlined below for each move:

Fixed Moving Expense and Dislocation Allowance. A household may choose to move their own personal property to the replacement site and to submit a claim based on the following Moving Expense and Dislocation Allowance Schedule published by the Code of Federal Regulations.

Occupant owns Furniture - Number of Rooms of Furniture									Occupant does not own furniture	
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms	Additional room	1 room no furn.	Addt' room/ no furn.
\$725	\$930	\$1,165	\$1,375	\$1,665	\$1,925	\$2,215	\$2,505	\$265	\$475	\$90

Actual Reasonable Moving Costs and Related Expenses. Payment is made to reimburse actual moving expenses based on the lower of at least two acceptable moving bids from qualified professional moving carriers. Compensable costs include all reasonable costs to pack, move, and unpack all personal property. A direct payment can be made to the professional moving carrier under this option and will allow reimbursement to the displaced household for any one-time utility reconnection fees, such as phone, gas, electric, and cable.

Combination of Options. A displaced person can be reimbursed using a combination of the two moving options, depending upon specific circumstances.

Storage Costs. A displaced person may be reimbursed for certain costs to store personal property in a professional storage facility for a period not to exceed 12 months. The need for such storage must be determined to be reasonable and necessary. Only property that is currently located at the affected site would be eligible for storage cost reimbursement. This option is available to persons who do not choose to be reimbursed under the Fixed Moving Payment and Dislocation Allowance option.

Replacement Housing Payments

A Rent Differential Payment up to \$5,250 is available to assist permanently displaced households in either renting or purchasing a replacement dwelling. To qualify for this payment, an eligible displaced person must have lived in the affected property as a legal resident for 90 days prior to the initial written offer to purchase the property. In addition, the person must be able to demonstrate that the property was their primary residence for that 90-day period. To claim the payment, the displaced person must occupy a decent, safe, and sanitary replacement dwelling within 12 months after moving to a replacement property.

The purpose of Replacement Housing Payments is to provide assistance with actual and reasonable increased housing costs so that replacement housing is available within the financial means of the affected household. The assistance is calculated as shown below and is available to help with actual increased housing costs for 42 months. This amount will be paid directly to the tenant or to the tenant's designee. Assistance may be paid as a lump sum, monthly installments, or other periodic payments.

Computation for Monthly Replacement Housing Payments	
<i>Lesser of:</i>	
	Cost to Rent Comparable Replacement Housing + Estimated Utility Costs
	or
	The Actual Cost to Rent Comparable Replacement Housing + Estimated Utility Costs
<i>Minus the Lesser of:</i>	
	Current Rent + Average Monthly Utilities
	or
	30% of the Household's Adjusted Gross Monthly Income

A Housing Valuation Study will be prepared for the type of housing unit needed to determine the cost of a comparable replacement dwelling. Each household will receive a Conditional Entitlement Letter that describes all relocation benefits and the maximum Rent Differential Payment to which the household is entitled. The Letter will also explain the “**spend to get**” requirement. The “spend to get” requirement means that benefit payments will be made only when the household demonstrates that entitlement amounts have been or will be spent for reasonable and necessary expenses related to replacement housing.

A Relocation Advisor is available to provide specific information about entitlement in writing to each eligible household. The Relocation Advisor will also contact property owners, landlords, lenders, and Realtors as needed and as directed by the household to help to secure replacement housing and to explain the assistance that is available under the Relocation Program. Any person with special needs should communicate these needs to a Relocation Advisor early in the search for housing so that those needs can be accommodated.

Purchasing a Replacement Dwelling. If a displaced household chooses to buy (rather than rent) a replacement dwelling, the Replacement Housing Payment could be converted into a down payment to purchase a decent, safe, and sanitary replacement home within one year of the date the household moves from the affected property. The amount of the down payment shall not exceed the amount of a reasonable down payment for a comparable dwelling plus expenses incident to the purchase. For additional information regarding this payment option, please contact a Relocation Advisor.

The Last Resort Housing Program

Housing of Last Resort is a program that allows for the implementation of certain regulations to ensure that comparable replacement housing is within the financial means of the displaced person. Last Resort Housing is a procedure wherein the Replacement Housing Payment may exceed the \$5,250 monetary limit to enable a displaced person to rent comparable replacement housing within their financial means. Several methods to provide Last Resort Housing to qualified displaced persons are available:

1. Provide supplemental funds in excess of the standard limit to allow occupants to replace their current home with an affordable dwelling. All payments are based on the most comparable replacement property as approved in the Housing Valuation Study. As with all other replacement housing payments, displaced occupants must meet spend to get requirements in order to claim payments.
2. New replacement housing could be constructed, existing housing could be rehabilitated, or funds could be provided for private parties to rehabilitate existing units for occupancy by displaced households.

The City of Morgan Hill has determined that it will provide supplemental replacement housing funds to bring the most comparable replacement housing within the financial means of each eligible displaced household. The actual amount of assistance will be determined once a Housing Valuation Study has been completed and each household has provided financial information. All households who are eligible to receive assistance under Housing of Last Resort, will be notified in writing.

Additional Program Information

Appeal and Grievance Process. As required under the relocation guidelines, displaced persons will have the right to ask for administrative review when they believe themselves aggrieved by a determination as to eligibility, payment amounts, or the failure to provide comparable replacement housing referrals or the City of Morgan Hill's property management practices.

Eviction Policy. Should an occupant be evicted for failure to meet any tenant obligations or for violating the terms and conditions of their lease or rent agreement, then under the applicable relocation law, the evicted tenant(s) will not be considered a "displaced person" and, therefore, will not be eligible for relocation benefits. Eviction will not affect a tenant's eligibility for relocation benefits if a tenant is evicted as a last resort to remove the tenant from the affected property.

Claim Processing and Distribution of Payments. All claims are to be filed through a Relocation Advisor. The Relocation Advisor will assist the displaced person in completing their claim forms, will notify each displaced person of the documentation needed in order to file the claim, and will inspect all replacement properties as needed. Each claim will be submitted along with documentation to City of Morgan Hill for review and processing. Checks will be available for approved claims within 30 days of the date all documentation is submitted to the Relocation Advisor. Checks will be delivered to the household or to the household's designee. Advance payments may be provided whenever a later payment would result in financial hardship.

Relocation Payments are Not Considered Income. Government Code §7269 states that no payment required under the Relocation Assistance Program shall be considered as income for the purposes of Personal Income Tax Law, Part 10 (commencing with Section 17001). Nor are payments considered as income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any other provisions of law. Please consult your tax advisor for additional information.

This is not a notice to vacate. No eligible household will be required to move until there is comparable replacement housing available to within their financial means and they have received at least 90 days advance written notice of the date by which they must vacate.

Current Rental Agreement. It is important that each household continues to pay rent to their Landlord. Failure to pay rent can result in a deduction from payments owed to the household and/or eviction. If a household receives a Notice to Vacate from the City and the City is required to take legal action to move the household from the property, the City of Morgan Hill will seek rent and damages.

Please understand that this is a summary of the assistance that may be available to eligible displaced persons. No handbook summarizing relocation law can anticipate every circumstance or question regarding the Relocation Program. It is important that each household works closely with a Relocation Advisor to identify any special circumstances that need to be addressed when searching for replacement housing. No household should commit to renting or purchasing a replacement dwelling until the home has been inspected by a Relocation Advisor. A Relocation Advisor is available to assist in the relocation process and will explain each person's rights and help to obtain the relocation payments and other assistance for which they are eligible.

[illegible]

Appendix C - Summary of Public Comment

Relocation Impact Study and Last Resort Housing Plan for the City of Morgan Hill – Hale Avenue Extension

The Draft Relocation Plan was circulated for review and comment from August 1, 2018 through September 1, 2018 in accordance with California law Plan circulation requirements.

Property occupants were provided with a copy of the Draft Relocation Plan and were notified of their right to review the Draft Plan and provide comments. The Draft Relocation Plan was also available for public review at City offices and the City Library. As a result of this process, City staff hoped to acquire a better understanding of any potential concerns the public may have, including those persons that may be impacted by the Project. No questions or comments were presented to AR/WS or the City during the public comment period.



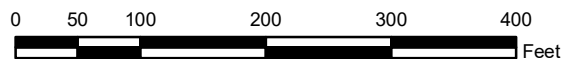
Attachment: Project Relocation Map (1990 : Adopt Relocation Plan for Hale Extension)



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

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SITE MAP RELOCATION OF TENANT



RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING THE FINAL RELOCATION IMPACT STATEMENT AND LAST RESORT HOUSING PLAN FOR THE HALE AVENUE EXTENSION PROJECT AND AUTHORIZING AN EXPENDITURE IN THE NOT TO EXCEED AMOUNT OF \$98,000 FROM THE TRAFFIC IMPACT FUND (309) FOR THE RELATED RELOCATION ASSISTANCE

WHEREAS, the California Relocation Assistance Act of 1970 as amended (Cal. Gov. Code Section 7260 *et. seq.*) and the California Relocation Assistance and Real Property Acquisition Guidelines promulgated thereunder California Code of Regulations, Title 25, Chapter 6 and in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C., Sections 4601 *et seq.*, and its implementing regulations, 49 CFR Part 24, were designed to ensure that uniform, fair and equitable treatment is afforded to persons displaced from their homes, farm operations or businesses as a result of the actions of a public entity in order that such persons should not suffer disproportionate injury as a result of an action taken for the benefit of the public as a whole; and to ensure consistent and fair treatment for property owners; and

WHEREAS, since the Hale Avenue Extension Project (“Project”) will result in displacement of persons from their homes, farm operations or businesses, pursuant to Title 25 of the California Code of Regulations §6038, the City of Morgan Hill (“City”) has caused to be prepared a Draft Relocation Impact Statement and Last Resort Housing Plan, general noticed of which has been provided to the owners and/or occupants of the properties to be impacted by the Project and that no comments having been received; and

WHEREAS, the City now desires to adopt the Final Relocation Impact Statement and Last Resort Housing Plan for the Hale Avenue Extension Project.

NOW, THEREFORE, the City Council of the City of Morgan Hill does hereby find, determine, resolve and order as follows:

SECTION 1. Pursuant to Section 6038 of Title 25 of the California Code of Regulations, the Final Relocation Impact Statement and Last Resort Housing Plan for the Hale Avenue Extension Project, dated September 2018 is hereby adopted as the Relocation Plan (as defined by §60238) for the Project.

SECTION 2. Authorize expenditure of an amount not to exceed \$98,000 for relocation assistance.

SECTION 3. The City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project (“Project”) by Resolution No. 17-070 adopted on August 23, 2017.

The Final Environmental Impact Report concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would mitigate all of those significant effects to a less than significant level.

The City Council finds and determines that the project that is the subject of this Resolution is within the scope of the FEIR, as further modified and approved pursuant to the Mitigation and Monitoring Report.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of October 2018 by the following vote:

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 the meeting held on October 17, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution (1990 : Adopt Relocation Plan for Hale Extension)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT REVISED RESOLUTION OF NECESSITY REPLACING RESOLUTION 18-071

RECOMMENDATION(S)

Adopt revised resolution of necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Pacific Gas and Electric Company for the Hale Avenue Extension Project, and rescinding resolution 18-071.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

On September 5, 2018, City Council adopted Resolution 18-071; (1) determining that the public interest and necessity require the acquisition by eminent domain of real property from Pacific Gas and Electric Company for the Hale Avenue Extension project, (2) authorizing the City Attorney to file suit in eminent domain, and (3) approving the expenditure of \$869,000 for said properties for deposit into the State Condemnation Deposit Fund.

While preparing the court documents for eminent domain, three statutory requirements (1240.610, 1240.650 and 1240.410) were inadvertently missing from the Resolution 18-071 (Attachment No. 1). In addition to the missing statutory requirements, the revised resolution (Attachment No. 2) contains descriptions of the four (4) fee take areas and six (6) slope easements to clarify their purpose and need for the project. The revised Resolution merely clarifies and does not change the scope of acquisitions nor changes any of the findings made by City Council in support of Resolution 18-071.

Thus, staff recommends that City Council rescind resolution 18-071 and adopt the revised Resolution, which has been updated to include all of the necessary statutory requirements and fee/easement descriptions in order to file for eminent domain action.

COMMUNITY ENGAGEMENT: Inform

Numerous community engagement and design meetings were held throughout the early planning and design phases of the project. In addition, the Environmental Impact Report (EIR) process also included opportunities for the community to provide input regarding the scope, content, and potential environmental impacts from the project.

ALTERNATIVE ACTIONS:

None

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 5, 2018, City Council adopted Resolution 18-071.

FISCAL AND RESOURCE IMPACT:

None

CEQA (California Environmental Quality Act):

Project

The City Council adopted Resolution 17-071, which certified the Final Environmental Impact Report and adopted a Mitigation Monitoring and Report Program for the Hale Avenue Extension project and the Hale Avenue Plan Line in accordance with the City of Morgan Hill's procedures for compliance with the California Environmental Quality Act (CEQA). All the environmental documents for this Project are incorporated herein by reference and made a part of this staff report and are available for review.

LINKS/ATTACHMENTS:

1. Resolution 18-071
2. Resolution-PG&E
3. Exhibits A and B
4. Project Location Map

RESOLUTION NO. 18-071**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT (HALE AVENUE EXTENSION PROJECT) AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS**

WHEREAS, it is the public interest and necessary for the City of Morgan Hill (hereinafter the "City") to acquire certain real property, more particularly described in Exhibits A and B, attached hereto and incorporated herein by this reference, for the Hale Avenue Extension Project ("Project"); and

WHEREAS, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Section 37350.5 of the California Government Code, and Sections 1240.010, 1240.125 and 1240.220 of the California Code of Civil Procedure; and

WHEREAS, On August 23, 2017, the City Council approved Resolution 17-071 which certified the Final Environmental Impact Report (EIR) and Mitigation Monitoring and Report Program, which completes the CEQA requirements for this project; and

WHEREAS, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, notice has been duly given to Pacific Gas and Electric Company, whose portion of properties are to be acquired by eminent domain and whose names and addresses appear on the Santa Clara County Equalized Assessment Roll, and the property owners have been given a reasonable opportunity to appear and be heard before the City Council; and

WHEREAS, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owners of record to acquire the subject property for the amount which it has established to be just compensation therefore; now

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill finds and determines as follows:

1. The public interest and necessity require the acquisition for the Project.
2. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The acquisition of property as shown in Exhibits A and B of this Resolution are necessary for said Project.
4. The Project is for a public use and the use to which said property is to be applied.
5. Said use is a use authorized by law.
6. The taking of the said property is necessary to such use.
7. All environmental review required by law has been prepared and adopted.

8. The offer required by Section 7267.2 of the California Government Code has been made to the owners of record of the real property.
9. The City's attorney or his or her duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the estates and interests aforesaid and to take such actions as he or she may deem advisable or necessary in connection therewith.
10. The City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the subject property.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 5th day of September 2018.

AYES:	COUNCIL MEMBERS:	Steve Tate, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Larry Carr
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. 18-071, adopted by the City Council at a regular meeting held on September 5, 2018.

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

DATE: 9/11/18


 for IRMA TORREZ, City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 92, as shown on that certain RECORD OF SURVEY, filed June 18, 1979 in Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

Commencing at the southeast corner of said LOT 92; thence along the southerly line of said LOT 92, South 55°06'29" West, a distance of 38.78 feet to the **Point of Beginning**; thence continuing along said southerly line, South 55°06'29" West, a distance of 69.99 feet to the beginning of a non-tangent curve concave to the west, having a radius of 724.50 feet and a chord bearing North 15°50'05" West, a distance of 32.35 feet; thence leaving said southerly line, northerly through a central angle of 2°33'31", a distance of 32.35 feet along said curve; thence North 17°06'50" West, a distance of 288.72 feet to a line parallel with and lying 10.00 feet southwesterly of the northeasterly line of said LOT 92; thence along said parallel line, South 34°54'01" East, a distance of 216.06 feet; thence leaving said parallel line, South 17°06'50" East, a distance of 82.99 feet to the beginning of a tangent curve concave to the west, having a radius of 790.50 feet and a chord bearing South 16°42'59" East, a distance of 10.97 feet; thence southerly through a central angle of 00°47'43", a distance of 10.97 feet along said curve to the **Point of Beginning**.

Subject to an electrical easement, granted to Coast Counties Gas and Electric Company, recorded May 23, 1946, in Book 1360, Page 62, Official Records of Santa Clara County.

Containing 13,695 square feet or 0.31 acres, more or less.

Assessor's Parcel Number: 767-04-009

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Tim T. Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

SEPT. 22, 2017

Date

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
CB	CHORD BEARING
CH	CHORD DISTANCE
ROS	RECORD OF SURVEY
o	DIMENSION POINT
	AREA TO BE ACQUIRED

L1 S55°06'29"W 38.78'
L2 S55°06'29"W 69.99'
L3 S17°06'50"E 82.99'

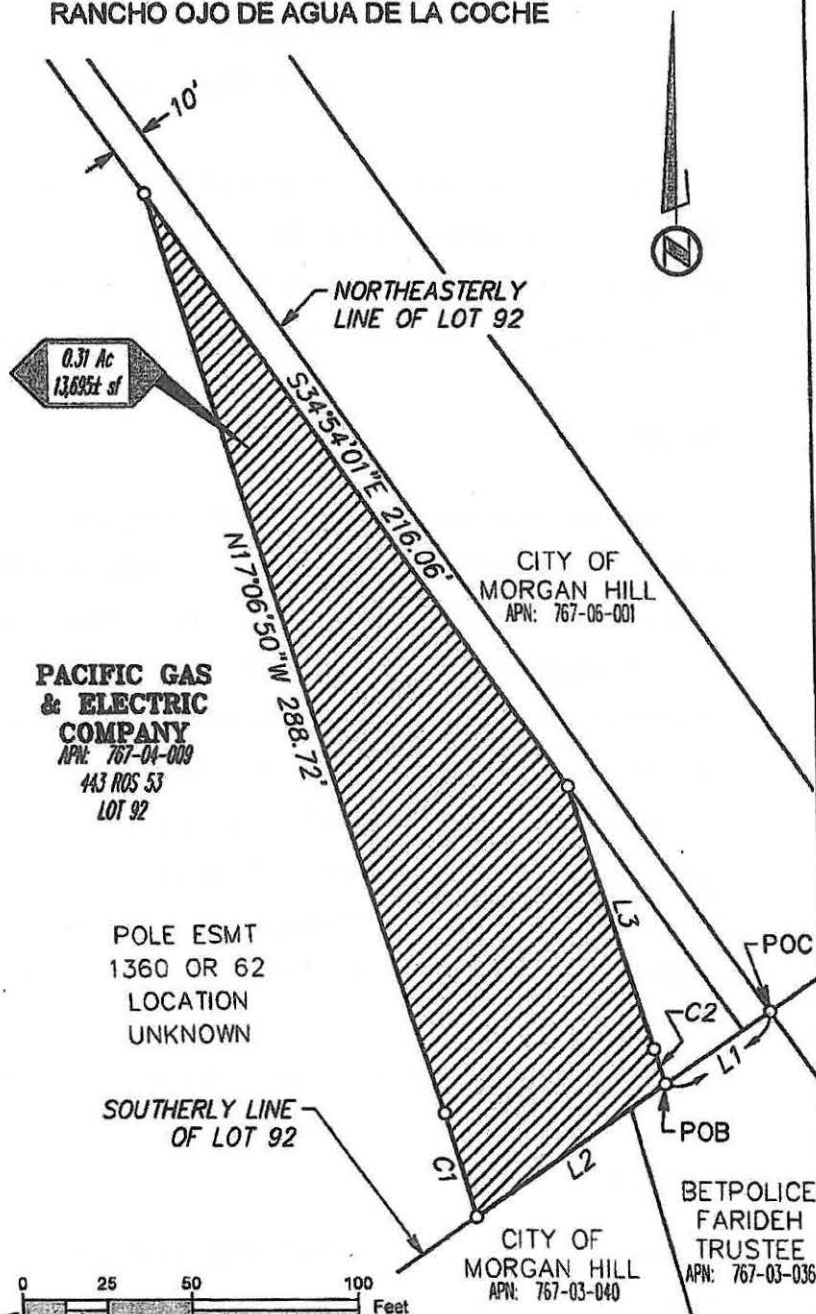
$R = 724.50'$
 $\Delta = 02^\circ 33' 31''$
 C1 $L = 32.35'$
 $CB = N15^\circ 50' 05'' W$
 $CH = 32.35'$

$R = 790.50'$
 $\Delta = 00^\circ 47' 43''$
 C2 $L = 10.97'$
 $CB = S16^\circ 42' 59'' E$
 $CH = 10.97'$



Tin Tin B

PORTION OF
RANCHO OJO DE AGUA DE LA COCHE



SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 50'
Date Sept. 2017
Drawn By BRM
Checked By TTB

Exhibit B
FEE

APN 767-04-009

**Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California**



CITY OF MORGAN HILL

EXHIBIT "A-1"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as PARCEL 1 and PARCEL 2 below:

PARCEL 1

Commencing at the southeast corner of said LOT 92; thence along southerly line of said LOT 92, South 55°06'29" West, a distance of 10.00 feet to the Point of Beginning; thence continuing along said southerly line, South 55°06'29" West, a distance of 28.78 feet to the beginning a non-tangent curve concave to the west, having a radius of 790.50 feet and a chord bearing North 16°42'59" West, a distance of 10.97 feet and a point here and after described as Point "A"; thence leaving said southerly line, northerly through a central angle of 00°47'43", a distance of 10.97 feet along said curve; thence North 17°06'50" West, a distance of 82.99 feet to a line parallel with and lying 10.00 feet southwesterly of the northeasterly line of said LOT 92; thence along said parallel line, South 34°54'01" East, a distance of 89.45 feet to the Point of Beginning.

PARCEL 1 Containing 1,284 square feet or 0.03 acres, more or less.

PARCEL 2

Commencing at said Point "A" on said southerly line; thence along said southerly line, South 55°06'29" West, a distance of 69.99 feet to the Point of Beginning; thence continuing along said southerly line, South 55°06'29" West, a distance of 22.17 feet; thence leaving said southerly line, the following six (6) courses:

1. North 07°09'14" West, a distance of 30.88 feet; thence

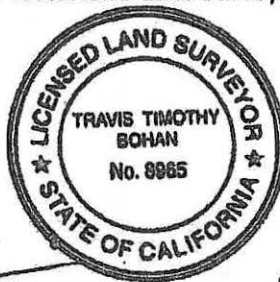
2. North 15°53'01" West, a distance of 74.07 feet; thence
 3. North 14°42'44" West, a distance of 25.18 feet; thence
 4. North 14°27'05" West, a distance of 170.22 feet; thence
 5. North 19°56'59" West, a distance of 39.78 feet; thence
 6. North 19°14'11" West, a distance of 14.82 feet to a line parallel with and lying
 10.00 feet southwesterly of the northeasterly line of said LOT 92;
 thence along said parallel line, South 34°54'01" East, a distance of 27.69 feet; thence
 leaving said parallel line, South 17°06'50" East, a distance of 288.72 feet to the beginning
 a tangent curve concave to the west, having a radius of 724.50 feet and a chord bearing
 South 15°50'05" East, a distance of 32.35 feet; thence southerly through a central angle
 of 02°33'31", a distance of 32.35 feet along said curve to the Point of Beginning.

PARCEL 2 Containing 3,991 square feet or 0.09 acres, more or less.

Subject to an electrical easement, granted to Coast Counties Gas and Electric Company,
 recorded on May 23, 1946, in Book 1360, Page 62, Official Records of Santa Clara
 County.

Assessor's Parcel Number: 767-04-009

This real property description has been prepared at Mark Thomas, by me, or under my
 direction, in conformance with the Professional Land Surveyors Act.



[Handwritten Signature]

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

EXHIBIT "A-2"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 91 and LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL ONE

Beginning at the intersection of the southeasterly right of way line of West Main Avenue with the easterly line of said LOT 91; thence along said easterly line, South 34°53'57" East, a distance of 161.88 feet to the beginning of a non-tangent curve concave to the west having a radius of 547.50 feet and a chord bearing South 08°53'43" East, a distance of 164.73 feet; thence leaving said easterly line, southerly through a central angle of 17°18'16", a distance of 165.36 feet along said curve; thence South 00°14'35" East, a distance of 6.45 feet to the northerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said northerly line, South 55°06'29" West, a distance of 17.11 feet to the northwest corner of said DEED; thence along the westerly line of said DEED, South 34°53'57" East, a distance of 24.75 feet; thence leaving said westerly line, South 00°14'35" East, a distance of 132.68 feet to the beginning of a tangent curve concave to the east, having a radius of 596.00 feet and a chord bearing South 02°01'22" East, a distance of 37.02 feet; thence southerly through a central angle of 03°33'35", a distance of 37.03 feet along said curve to the centerline of Warren Avenue, as shown on said RECORD OF SURVEY; thence along said centerline, South 55°06'29" West, a distance of 75.82 feet to the beginning of a non-tangent curve concave to the east having a radius of 775.50 feet and a chord bearing North 02°10'51" West, a distance of 52.45 feet; thence leaving said centerline, the following fourteen (14) courses, curves, and distances:

1. Northerly through a central angle of $03^{\circ}52'33''$, a distance of 52.46 feet along said curve; thence
2. North $00^{\circ}14'35''$ West, a distance of 24.64 feet; thence
3. South $89^{\circ}45'25''$ West, a distance of 72.66 feet; thence
4. North $00^{\circ}12'27''$ West, a distance of 127.44 feet; thence
5. North $89^{\circ}45'25''$ East, a distance of 72.58 feet; thence
6. North $00^{\circ}14'35''$ West, a distance of 44.83 feet to the beginning of a tangent curve concave to the west, having a radius of 484.50 feet and a chord bearing North $16^{\circ}06'29''$ West, a distance of 264.90 feet; thence
7. northerly through a central angle of $31^{\circ}43'49''$, a distance of 268.31 feet along said curve; thence
8. South $57^{\circ}47'25''$ West, a distance of 10.00 feet to the beginning of a non-tangent curve concave to the southwest, having a radius of 474.50 feet and a chord bearing North $32^{\circ}25'28''$ West, a distance of 7.56 feet; thence
9. northwesterly through a central angle of $00^{\circ}54'45''$, a distance of 7.56 feet along said curve to the beginning a compound curve concave to the southwest, having a radius of 5.00 feet and a chord bearing North $55^{\circ}42'00''$ West, a distance of 3.88 feet; thence
10. northwesterly through a central angle of $45^{\circ}38'19''$, a distance of 3.98 feet along said curve; thence
11. North $78^{\circ}31'10''$ West, a distance of 11.20 feet to the beginning of a tangent curve concave to the south, having a radius of 5.00 feet and a chord bearing South $78^{\circ}19'33''$ West, a distance of 3.93 feet; thence
12. westerly through a central angle of $46^{\circ}18'35''$, a distance of 4.04 feet along said curve; thence
13. South $55^{\circ}10'16''$ West, a distance of 20.00 feet; thence
14. North $34^{\circ}53'31''$ West, a distance of 2.01 feet to said southeasterly right of way line, also being a point on the northwesterly line of said LOT 91;

and along said southeasterly right of way and northwesterly lines, North 55°06'29" East, a distance of 81.10 feet to the Point of Beginning.

Containing 40,685 square feet or 0.93 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

Subject to a 25' Pole Line Easement, granted to the City of Morgan Hill, recorded on April 3, 1951, in Book 2184, Page 431, Official Records of Santa Clara County.

PARCEL TWO

Beginning at the intersection of the centerline of Warren Avenue with the westerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said westerly line North 34°53'57" West 41.13 feet to the beginning of a non-tangent curve concaved to the southeast, having a radius of 42.00 feet and a chord bearing South 25°30'48" West, a distance of 83.28 feet; thence leaving said westerly line, southeasterly through a central angle of 164°58'58", a distance of 120.94 feet along said curve to a point on said centerline; thence along said centerline North 55°06'29" East 72.42 feet to the Point of Beginning.

Containing 3,800 square feet or 0.09 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

PARCEL THREE

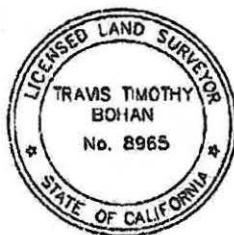
Commencing at the southwest corner of said LOT 91; thence along the southwesterly line of said LOT 91, North 34°54'01" West, a distance of 120.63 feet to the Point of Beginning; thence continuing along said southwesterly line, North 34°54'01" West, a distance of 215.21 feet to the beginning of a non-tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 16°22'12" East, a distance of 20.14 feet; thence leaving said southwesterly line, southerly through a central angle of 01°29'17", a distance of 20.14 feet along said curve; thence South 17°06'50" East, a distance of 11.78 feet to a line parallel with and lying 10.00 feet southwesterly of said southwesterly line; thence along said parallel line, South 34°54'01" East, a distance of 216.06 feet; thence leaving said parallel line, North 17°06'50" West, a distance of 32.74 feet to the Point of Beginning.

Containing 2,159 square feet or 0.05 acres, more or less.

Assessor's Parcel Number: 767-05-001

City of Morgan Hill
Resolution No. 18-071
Page 13 of 33

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Travis T. Bohan".

Travis Timothy Bohan, LS 8965

1/11/2018

Date

Attachment: Resolution 18-071 (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-2"

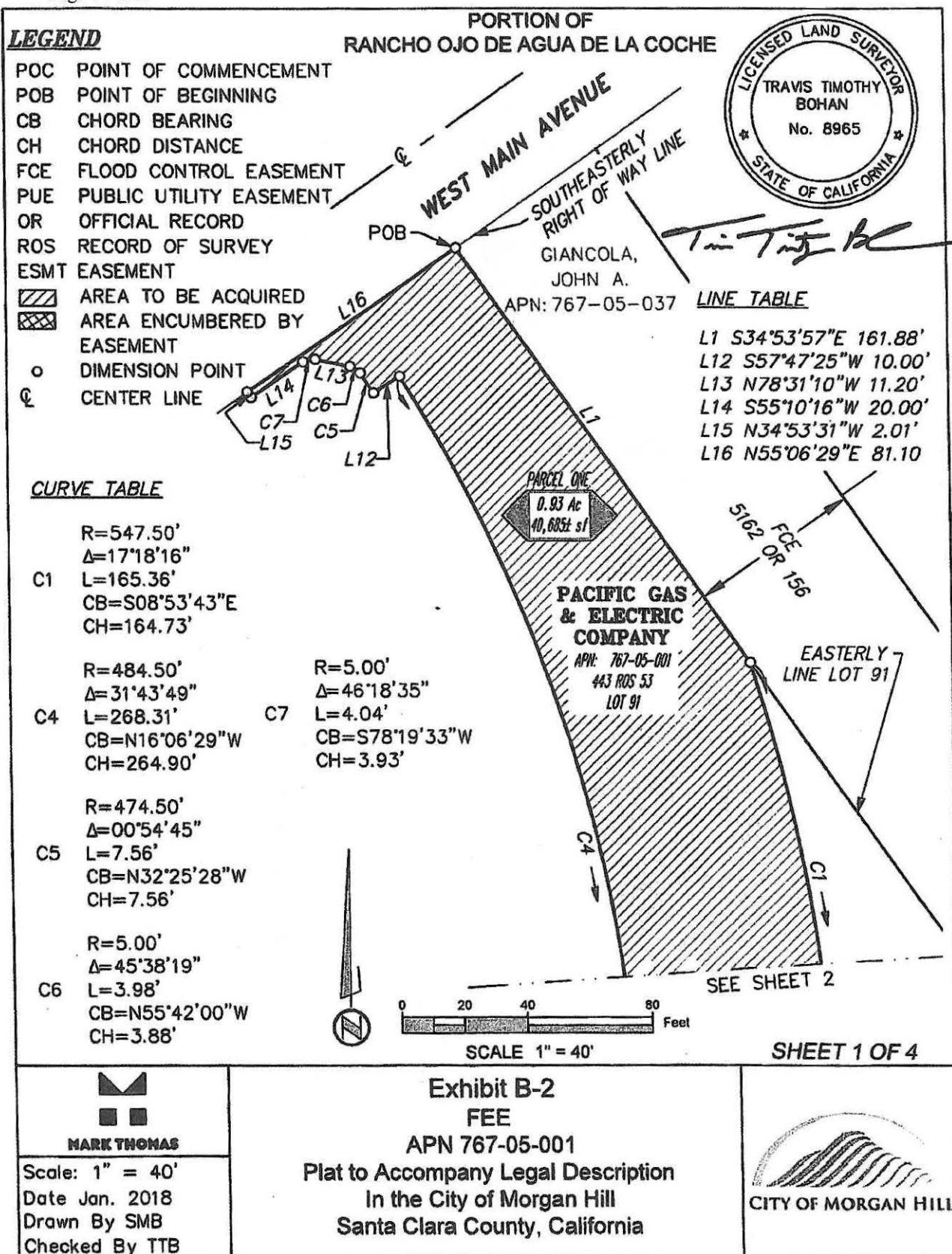


Exhibit "B-2"

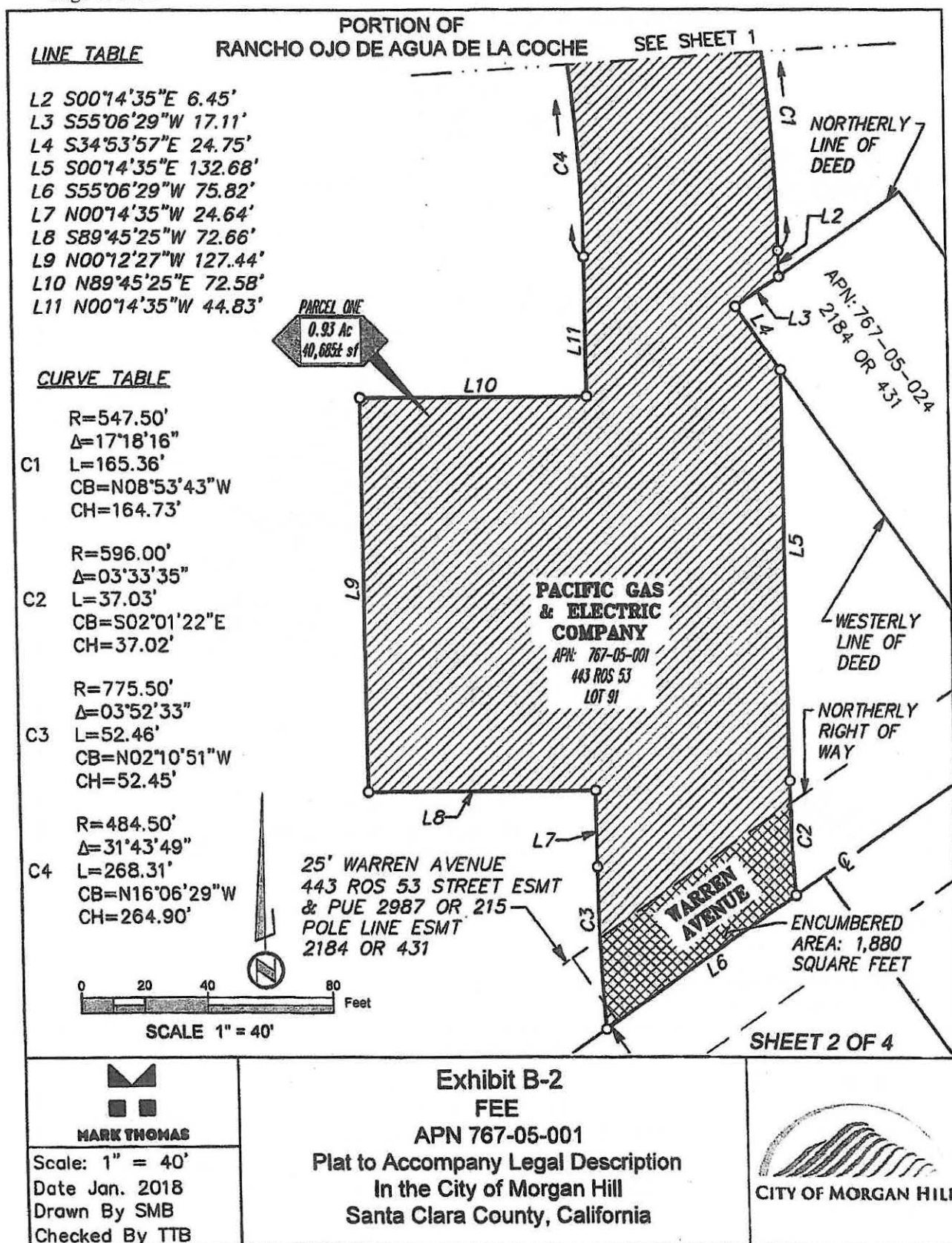


Exhibit "B-2"

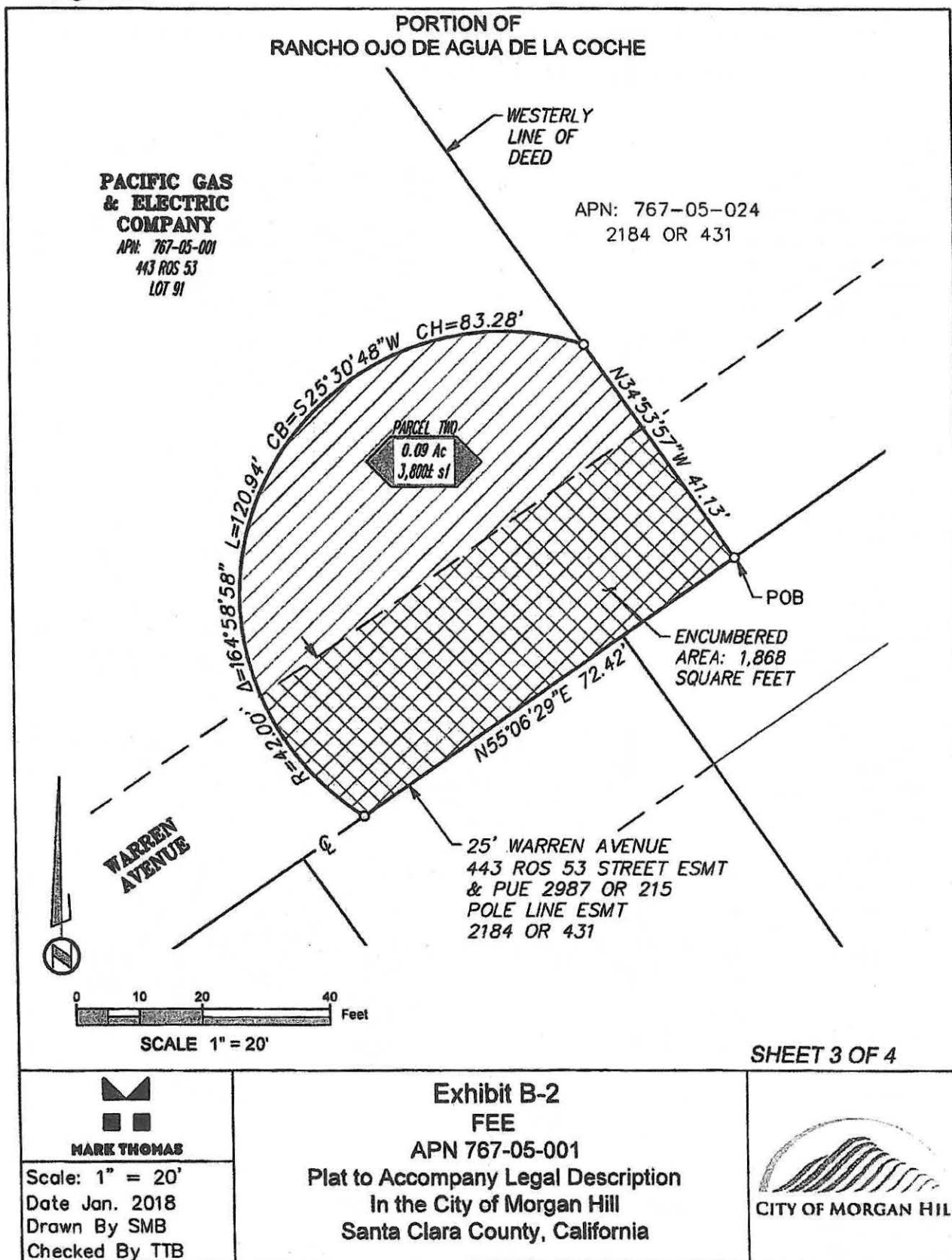


Exhibit "B-2"

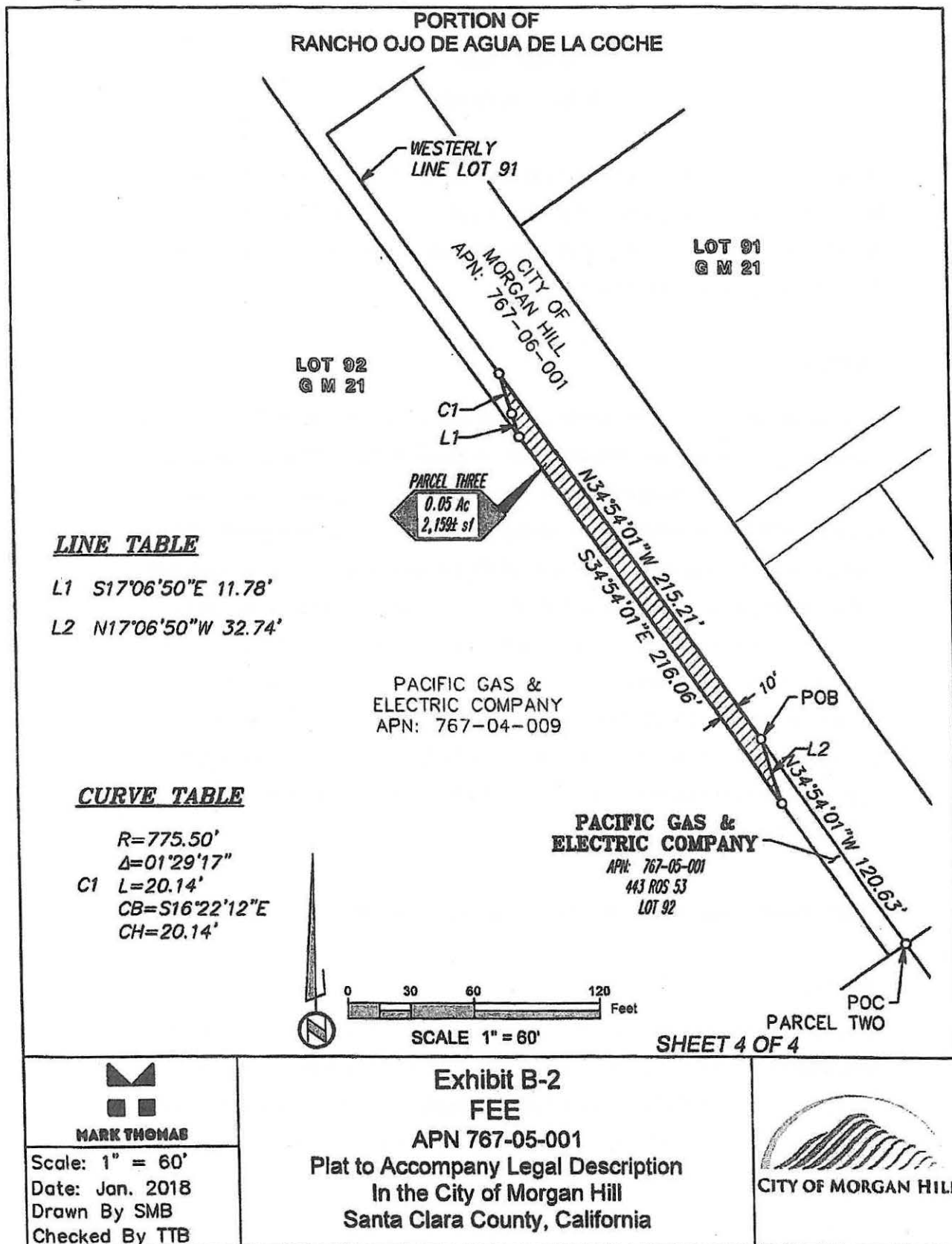


EXHIBIT "A-3"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL 1

Commencing at the southwest corner of LOT 91, as shown on said RECORD OF SURVEY; thence along the southeasterly line of said LOT 92, South 55°06'29" West, a distance of 5.54 feet to the **Point of Beginning**; thence continuing along said southeasterly line, South 55°06'29" West, a distance of 4.46 feet to a line parallel with and lying 10.00 feet southwesterly of the westerly line of said LOT 91; thence leaving said southeasterly line and along said parallel line, North 34°54'01" West, a distance of 89.45 feet to a point here and after described as Point "A"; thence leaving said parallel line, North 17°06'50" West, a distance of 32.74 feet to a point on said westerly line; thence along said westerly line, South 34°54'01" East, a distance of 90.40 feet; thence leaving said westerly line, South 19°42'04" East, a distance of 13.99 feet; thence South 27°02'30" East, a distance of 14.56 feet; thence South 37°47'33" East, a distance of 2.29 feet to the **Point of Beginning**.

PARCEL 1 Containing 945 square feet or 0.02 acres, more or less.

PARCEL 2

Commencing at said Point "A", being a point on a line parallel with and lying 10.00 feet southwesterly of said westerly line; thence along said parallel line, North 34°54'01" West, a distance of 216.06 feet to the **Point of Beginning**; thence continuing along said parallel line, North 34°54'01" West, a distance of 27.80 feet to the beginning a non-

tangent curve concave to the east, having a radius of 708.08 feet and a chord bearing North 17°46'06" West, a distance of 24.08 feet; thence leaving said parallel line, northerly through a central angle of 01°56'55", a distance of 24.08 feet along said curve; thence North 16°47'38" West, a distance of 9.00 feet; thence North 09°55'08" West, a distance of 0.26 feet to said westerly line; thence along said westerly line, South 34°54'01" East, a distance of 29.28 feet to the beginning of a non-tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 16°22'12" East, a distance of 20.14 feet; thence leaving said westerly line, southerly through a central angle of 01°29'17", a distance of 20.14 feet along said curve; thence South 17°06'50" East, a distance of 11.78 feet to the Point of Beginning.

PARCEL 2 Containing 287 square feet or 0.01 acres, more or less.

Assessor's Parcel Number: 767-05-001

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Tim T. Bohan".

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

Attachment: Resolution 18-071 (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-3"

LEGEND

- POC POINT OF COMMENCEMENT
POB POINT OF BEGINNING
ROS RECORD OF SURVEY
○ DIMENSION POINT
▨ SLOPE EASEMENT

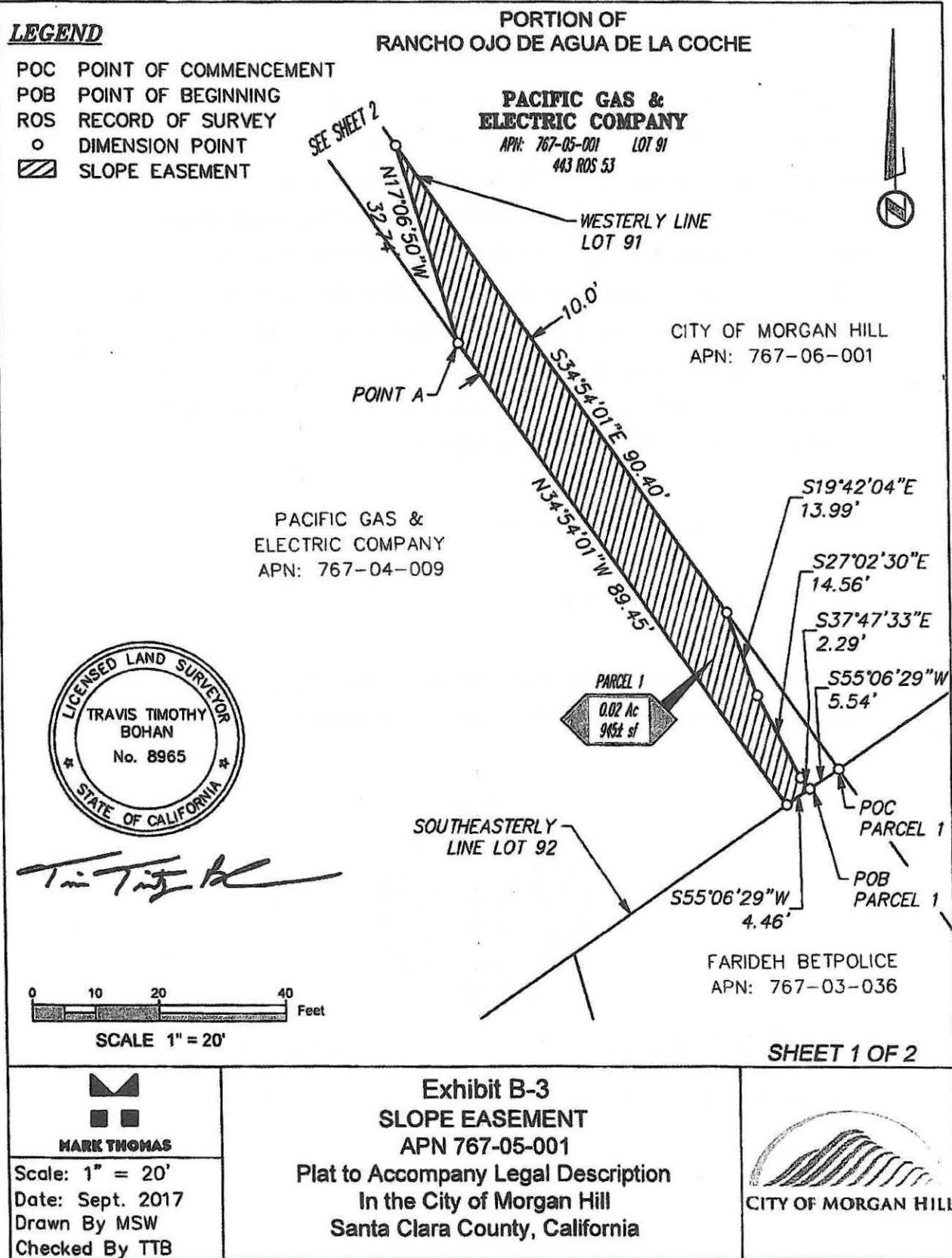
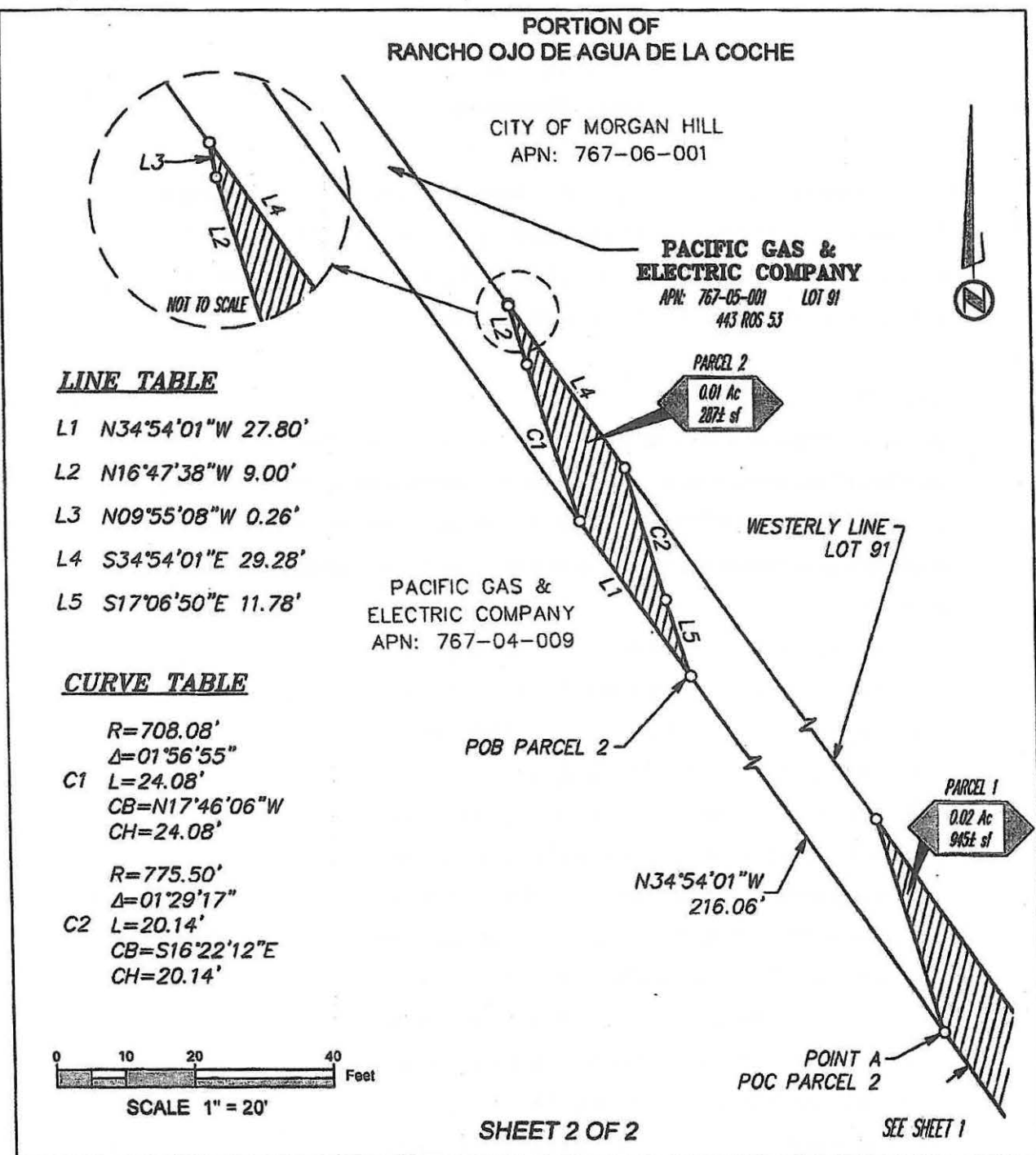


Exhibit "B-3"



MARK THOMAS

Scale: 1" = 20'
Date: Sept. 2017
Drawn By MSW
Checked By TTb

**Exhibit B-3
SLOPE EASEMENT
APN 767-05-001
Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California**



EXHIBIT "A-4"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 91 and LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL ONE

Commencing at the southwest corner of said LOT 91, also being a point on the centerline of Warren Avenue, as shown on said RECORD OF SURVEY; thence along said centerline, North 55°06'29" East, a distance of 52.09 feet to the **Point of Beginning**; thence leaving said centerline, the following twenty-seven (27) courses, curves, and distances:

1. North 10°05'30" West, a distance of 27.69 feet; thence
2. North 07°41'14" East, a distance of 3.93 feet; thence
3. North 13°21'07" East, a distance of 24.43 feet; thence
4. North 10°47'27" East, a distance of 6.27 feet; thence
5. North 03°53'45" West, a distance of 17.55 feet; thence
6. North 07°59'14" West, a distance of 2.84 feet; thence
7. South 89°45'25" West, a distance of 68.42 feet; thence
8. North 00°12'29" West, a distance of 137.98 feet; thence
9. North 89°45'25" East, a distance of 53.18 feet; thence
10. North 00°14'35" West, a distance of 46.47 feet; thence
11. North 01°31'28" East, a distance of 35.40 feet; thence
12. North 00°32'48" West, a distance of 20.40 feet; thence
13. North 09°21'22" West, a distance of 24.22 feet; thence
14. North 07°38'39" West, a distance of 46.53 feet; thence
15. North 14°31'39" West, a distance of 20.31 feet; thence

16. North 23°12'24" West, a distance of 59.39 feet; thence
 17. North 29°20'26" West, a distance of 56.16 feet to the beginning of a non-tangent curve concave to the southwest, having a radius of 5.00 feet and a chord bearing South 53°26'01" East, a distance of 3.51 feet; thence
 18. southeasterly through a central angle of 41°06'21", a distance of 3.59 feet along said curve to the beginning a compound curve concave to the southwest, having a radius of 474.50 feet and a chord bearing South 32°25'28" East, a distance of 7.56 feet; thence
 19. southeasterly through a central angle of 00°54'45", a distance of 7.56 feet along said curve; thence
 20. North 57°47'25" East, a distance of 10.00 feet to the beginning of a non-tangent curve concave to the west, having a radius of 484.50 feet and a chord bearing South 16°06'29" East, a distance of 264.90 feet; thence
 21. southerly through a central angle of 31°43'49", a distance of 268.31 feet along said curve; thence
 22. South 00°14'35" East, a distance of 44.83 feet; thence
 23. South 89°45'25" West, a distance of 72.58 feet; thence
 24. South 00°12'27" East, a distance of 127.44 feet; thence
 25. North 89°45'25" East, a distance of 72.66 feet; thence
 26. South 00°14'35" East, a distance of 24.64 feet to the beginning of a tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 02°10'51" East, a distance of 52.45 feet; thence
 27. southerly through a central angle of 03°52'33", a distance of 52.46 feet along said curve to a point on said centerline;
- thence along said centerline, South 55°06'29" West, a distance of 13.69 feet to the **Point of Beginning.**

PARCEL ONE Containing 7,161 square feet or 0.16 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

Subject to a 25' Pole Line Easement, granted to the City of Morgan Hill, recorded on April 3, 1951, in Book 2184, Page 431, Official Records of Santa Clara County.

PARCEL TWO

Commencing at the intersection of the southeasterly right of way line of West Main Avenue with the easterly line of said LOT 91; thence along said easterly line, South 34°53'57" East, a distance of 161.88 feet to the Point of Beginning; thence continuing along said easterly line, South 34°53'57" East, a distance of 29.18 feet; thence leaving said easterly line, the following four (4) courses, curves, and distances:

- 1. South 15°09'30" East, a distance of 64.57 feet; thence**
- 2. South 02°39'18" East, a distance of 53.50 feet; thence**
- 3. South 26°40'12" West, a distance of 23.61 feet to the beginning a non-tangent curve concave to the west, having a radius of 547.50 feet and a chord bearing North 08°59'51" West, a distance of 162.79 feet; thence**
- 4. northerly through a central angle of 17°05'59", a distance of 163.40 feet along said curve to the Point of Beginning.**

PARCEL TWO Containing 1,568 square feet or 0.04 acres, more or less.

Assessor's Parcel Number: 767-05-001

City of Morgan Hill
Resolution No. 18-071
Page 25 of 33

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Travis T. Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

Attachment: Resolution 18-071 (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-4"

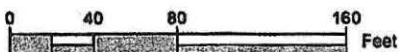
LEGEND

POC POINT OF COMMENCEMENT
POB POINT OF BEGINNING
CB CHORD BEARING
CH CHORD DISTANCE
OR OFFICIAL RECORD
FCE FLOOD CONTROL EASEMENT
PUE PUBLIC UTILITY EASEMENT
ESMT EASEMENT
CL CENTER LINE
○ DIMENSION POINT
▨ SLOPE EASEMENT
▩ SLOPE ENCUMBERED BY EASEMENT
ROS RECORD OF SURVEY

**LINE AND CURVE
TABLE:**
SEE SHEET 4



Travis Timothy Bohan



SCALE 1" = 80'



Scale: 1" = 80'
Date: Sept. 2017
Drawn By MSW
Checked By TTB

Exhibit B-4
SLOPE EASEMENT
APN 767-05-001
Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



SHEET 1 OF 5

PORTION OF
RANCHO OJO DE AGUA DE LA COCHE

SOUTHEASTERLY
RIGHT OF WAY LINE CL
WEST MAIN AVENUE

GIANCOLA,
JOHN A.
APN:
767-05-037

5162 OR 156
FCE

**PACIFIC GAS
& ELECTRIC
COMPANY**
APN: 767-05-001
LOT 91
443 ROS 53

KERR,
SUSAN L. &
ROBERT A.
APN:
767-05-024

MATCH LINE SHEET 2
MATCH LINE SHEET 3

WESTERLY
LINE LOT 91

0.16 Ac
7,161± sf
PARCEL ONE

POB
N55°06'29"E
52.09'
POC
PARCEL ONE

WARREN AVENUE

Exhibit "B-4"

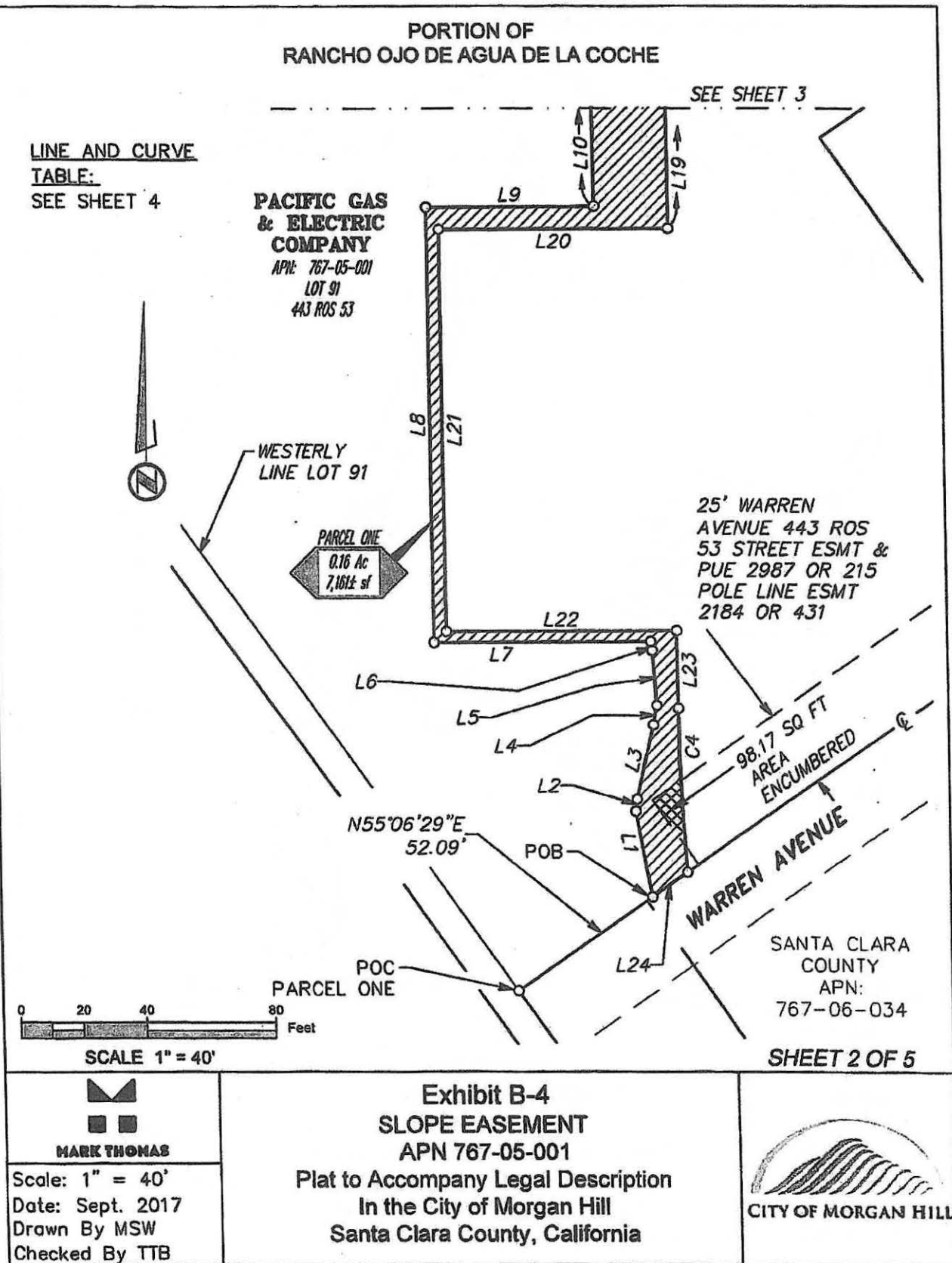


Exhibit "B-4"

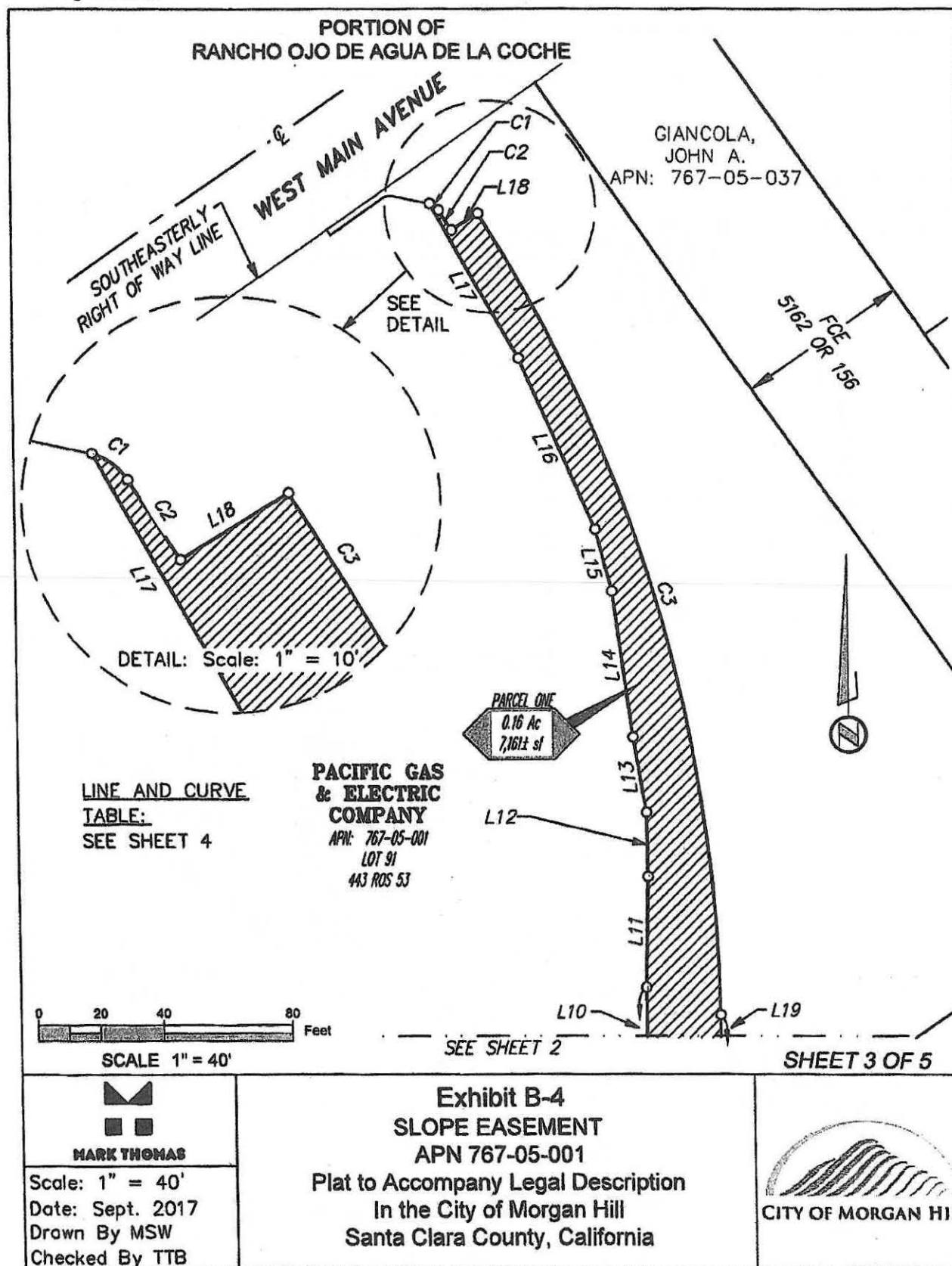


Exhibit "B-4"

PARCEL ONE
LINE AND CURVE TABLE

LINE TABLE

L1 N10°05'30"W 27.69'
L2 N07°41'14"E 3.93'
L3 N13°21'07"E 24.43'
L4 N10°47'27"E 6.27'
L5 N03°53'45"W 17.55'
L6 N07°59'14"W 2.84'
L7 S89°45'25"W 68.42'
L8 N00°12'29"W 137.98'
L9 N89°45'25"E 53.18'
L10 N00°14'35"W 46.47'
L11 N01°31'28"E 35.40'
L12 N00°32'48"W 20.40'
L13 N09°21'22"W 24.22'
L14 N07°38'39"W 46.53'
L15 N14°31'39"W 20.31'
L16 N23°12'24"W 59.39'
L17 N29°20'26"W 56.16'
L18 N57°47'25"E 10.00'
L19 S00°14'35"E 44.83'

LINE TABLE

L20 S89°45'25"W 72.58'
L21 S00°12'27"E 127.44'
L22 N89°45'25"E 72.66'
L23 S00°14'35"E 24.64'
L24 S55°06'29"W 13.69'

CURVE TABLE

R=5.00'
Δ=41°06'21"
C1 L=3.59'
CB=S53°26'01"E
CH=3.51'

R=474.50'
Δ=00°54'45"
C2 L=7.56'
CB=S32°25'28"E
CH=7.56'

R=484.50'
Δ=31°43'49"
C3 L=268.31'
CB=S16°06'29"E
CH=264.90'

R=775.50'
Δ=03°52'33"
C4 L=52.46'
CB=S02°10'51"E
CH=52.45'

SHEET 4 OF 5



MARK THOMAS

Scale: 1" = NTS
Date: Sept. 2017
Drawn By MSW
Checked By TTB

Exhibit B-4
SLOPE EASEMENT
APN 767-05-001

Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



CITY OF MORGAN HILL

Exhibit "B-4"

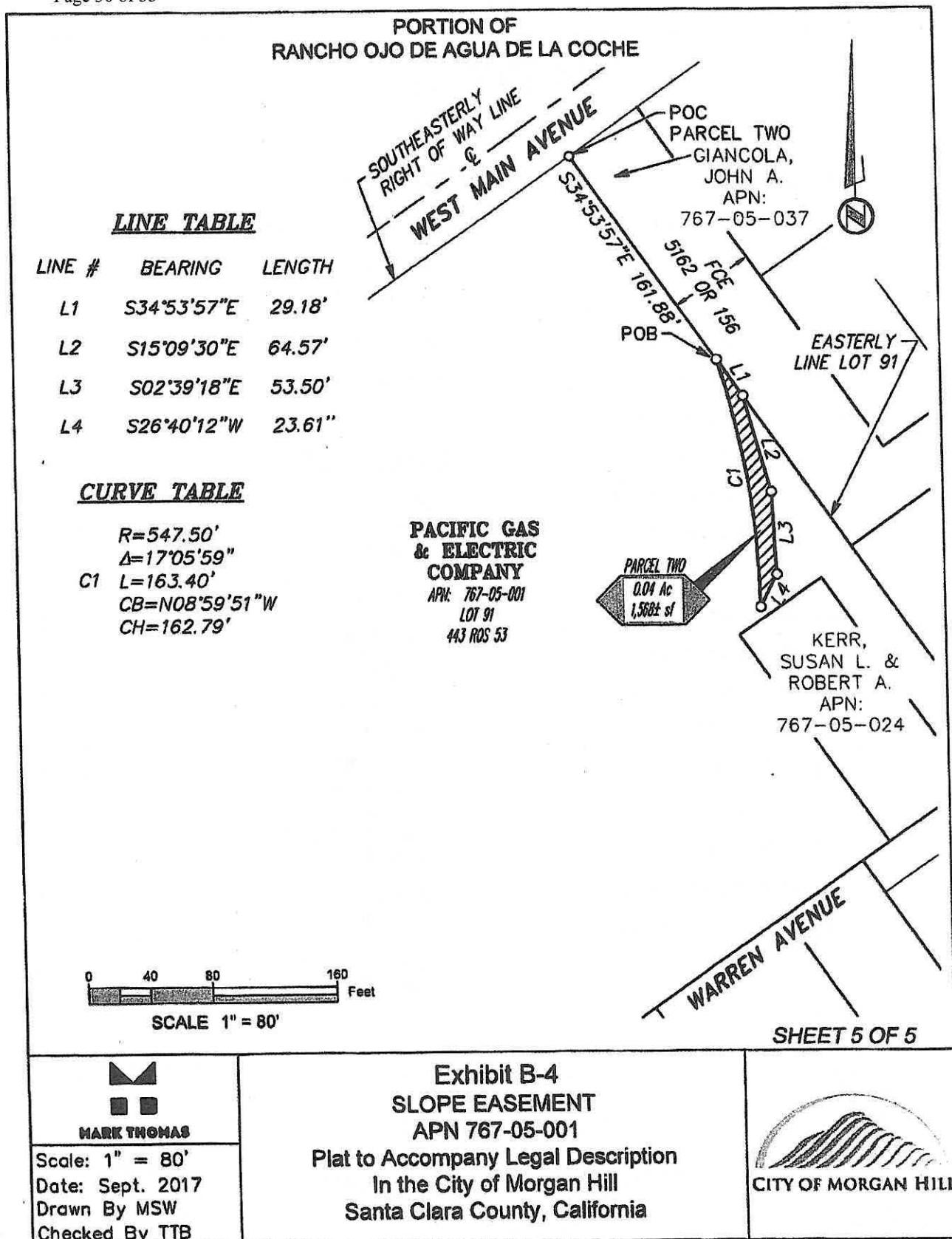


EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 91, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL ONE

Commencing at the intersection of the centerline of Warren Avenue with the westerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said centerline South 55°06'29" West 72.42 feet to the Point of Beginning; thence continuing along said centerline South 55°06'29" West 23.13 feet to the beginning of a non-tangent curve concave to the east, having a radius of 596.00 feet and a chord bearing North 02°01'22" West 37.02 feet; thence leaving said centerline northerly through a central angle of 03°33'35", 37.03 feet along said curve; thence North 00°14'35" West 132.68 feet to said westerly line; thence along said westerly line South 34°53'57" East 99.12 feet to the beginning of a non-tangent curve concave to the southeast, having a radius of 42.00 feet and a chord bearing South 25°30'48" West 83.28 feet; thence leaving said westerly line westerly and southerly through a central angle of 164°58'58", 120.94 feet along said curve to the Point of Beginning.

Containing 2,983 square feet or 0.07 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

PARCEL TWO

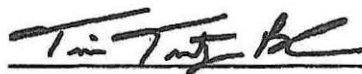
Commencing at the intersection of the centerline of Warren Avenue with the westerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said centerline North 55°06'29" East 65.00 feet; to the Point of Beginning also being the most easterly corner of said DEED; thence leaving said centerline and along the easterly line of said DEED, North 34°53'57" West 165.00 feet to the most northerly corner of said DEED; thence along the northerly line of said DEED, South 55°06'29" West 47.89 feet; thence leaving said northerly line, North 00°14'35" West 6.45 feet to the beginning of a curve concave to the west, having a radius of 547.50 feet and a chord bearing North 08°53'43" West 164.73 feet; thence northerly through a central angle of 17°18'16", 165.36 feet along said curve to the easterly line of said LOT 91; thence along said easterly line, South 34°53'57" East 318.37 feet to a point on said centerline; thence along said centerline, South 55°06'29" West 28.00 feet to the Point of Beginning.

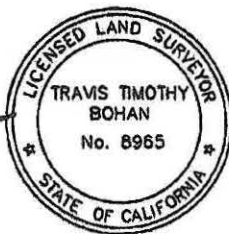
Containing 9,675 square feet or 0.22 acres, more or less.

Subject to a Road Easement, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara

Assessor's Parcel Number: 767-05-001

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.

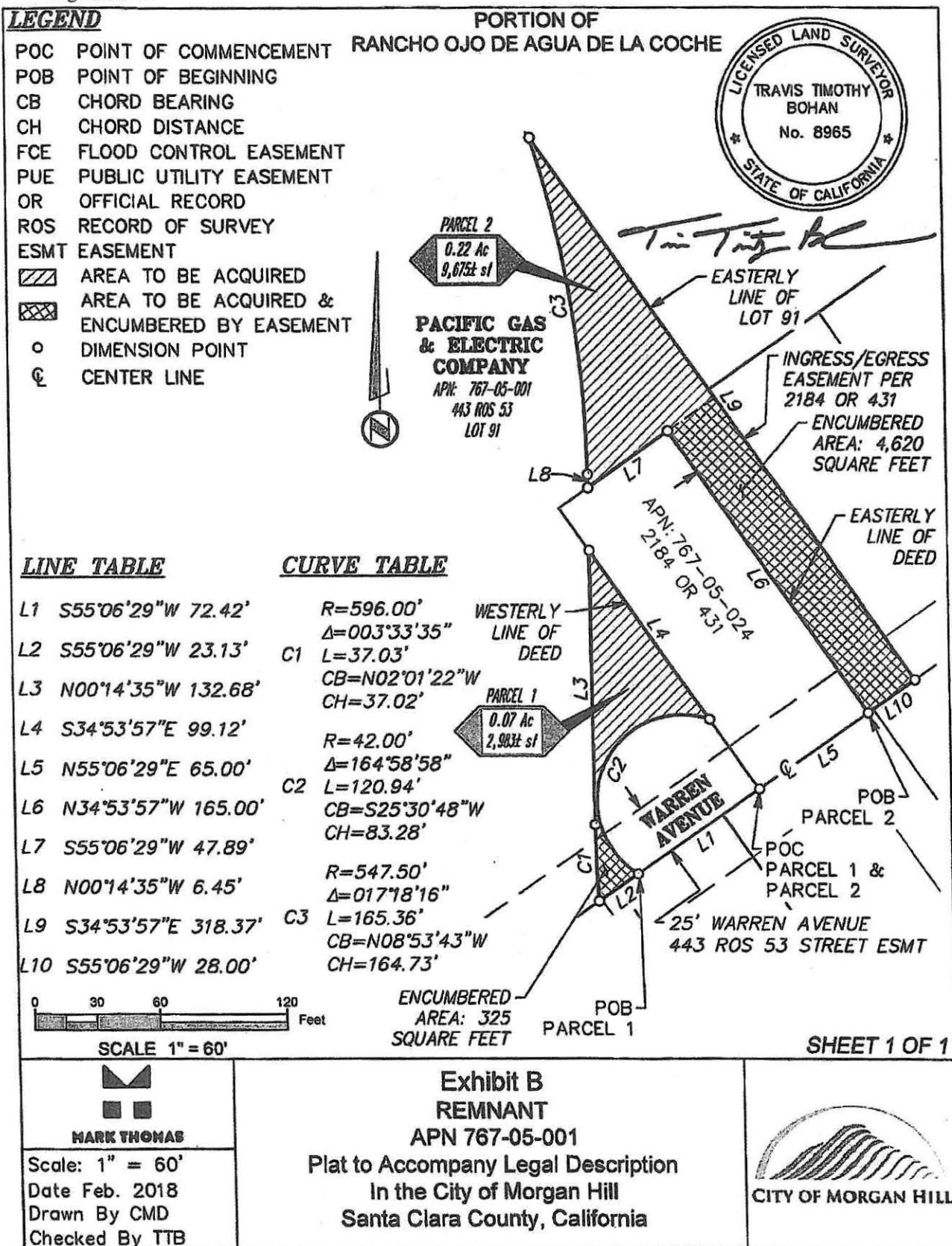

 Travis Timothy Bohan, LS 8965



February 2, 2018

Date

Attachment: Resolution 18-071 (1988 : Adopt Revised Resolution of Necessity)



RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT (HALE AVENUE EXTENSION PROJECT), AUTHORIZING THE ACQUISITION THEREOF, DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS, AND RESCINDING AND REPLACING RESOLUTION 18-071 WITH THIS RESOLUTION

WHEREAS, it is desirable and necessary for the City of Morgan Hill (hereinafter the “City”) to acquire certain real property specifically four (4) fee takes, two (2) uneconomic remnants, and six (6) slope easements from property located on the South Side of West Main Avenue and North Side of Warren Avenue, Morgan Hill, CA, Assessor’s Parcel Numbers 767-05-001 and 767-04-009, more particularly described in **Exhibits A and B**, attached hereto and incorporated herein by this reference, for the Hale Avenue Extension Project (“Project”); and

WHEREAS, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Section 37350.5 of the California Government Code, and Sections 1240.010, 1240.125 and 1240.220 of the California Code of Civil Procedure; and

WHEREAS, the four (4) fee takes are needed for the proposed Hale Avenue road right of way, a sound wall along the easterly side of the roadway, and a detention basin, as well as to improve the existing dead-end of Warren Avenue with a new cul de sac. They are more specifically described and depicted in Exhibits A, B (Fee), A-2, and B-2 (Fee) all a part of **Exhibits A and B** attached hereto; and

WHEREAS, six (6) permanent slope easements are needed for the purpose of lateral support for an embankment slope and the right and privilege to maintain said embankment slope, as City may see fit, inclusive of all necessary fences, protective barriers and fixtures for use in connection therewith or appurtenant thereto, as well as the privilege and right to plant and maintain grass, plants and trees on said slope for the protection and beautification of same, in, under, over, along, upon and across said easements as described in Exhibit A-1 and Exhibit B-1 of **Exhibits A and B** attached hereto.

WHEREAS, an independent appraiser has determined that as a result of the location of the proposed fee simple acquisitions and permanent easements as well as the construction of the Project in the manner proposed, the remainder land area east of the proposed Hale Avenue roadway will be separated from the other remainder parcel on the west side of the Hale Avenue extension and has, therefore, deemed them uneconomic remnants. The two, non-contiguous, severed parcels consist of a total of 12,658 square feet and are more specifically described and depicted in Exhibits “A” and “B REMNANT” (“uneconomic remnants”) both a part of **Exhibits A & B** attached hereto; and

WHEREAS, On August 23, 2017, the City Council approved Resolution 17-071 which certified the Final Environmental Impact Report (EIR) and Mitigation Monitoring and Report Program that completes the CEQA requirements for this project.

WHEREAS, pursuant to the provisions of Section 7267.2 of the California Government Code, the City made an offer to the owners of record to acquire the property interests set forth in **Exhibits A and B** for the amount which it has established to be just compensation;

WHEREAS, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, notice has been duly given to Pacific Gas and Electric Company, whose property is to be acquired by eminent domain and whose names and addresses appear on the Santa Clara County Equalized Assessment Roll, and the property owners have been given a reasonable opportunity to appear and be heard before the City Council but opted to submit written objections instead of appearing at the Resolution for Necessity hearing held on September 5, 2018; and

WHEREAS, Resolution 18-071 was adopted on September 5, 2018, but in order to clarify the scope of the takes and to comply with statutory requirements, it is being requested that Resolution 18-071 be rescinded and that this resolution be adopted instead;

WHEREAS, no substantive changes are being made between the two resolutions, the entire administrative record supporting Resolution No. 18-071 (including the written objections submitted by PG&E are incorporated herein by reference), now

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that it finds and determines as follows:

1. The public interest and necessity require the Project.
2. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The taking of the real property more particularly described in **Exhibits A and B** are necessary for the Project.
4. All environmental review required by law has been prepared and adopted.
5. The offer required by Section 7267.2 of the California Government Code has been made to the owners of record of the real property.
6. Insofar as any portion of the property has heretofore been appropriated for public use, the proposed use set forth herein constitutes a more necessary public use to which the property is appropriated pursuant to Code of Civil Procedure Section 1240.610 and 1240.650.
7. The uneconomic remnants are being acquired pursuant to Code of Civil Procedure section 1240.410 authorizing the City to acquire the property described and depicted

in Exhibit “A” and “B –REMNANT” as remnants by eminent domain in accordance with that article.

8. The City’s attorney or his or her duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the estates and interests aforesaid and to take such actions as he or she may deem advisable or necessary in connection therewith.
9. The City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the subject property.
10. Resolution 18-071 is rescinded and this resolution which merely clarifies and does not substantively change Resolution 18-071 is adopted in lieu thereof.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of October 2018 by the following vote:

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 the meeting held on October 17, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution-PG&E (1988 : Adopt Revised Resolution of Necessity)

EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 92, as shown on that certain RECORD OF SURVEY, filed June 18, 1979 in Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

Commencing at the southeast corner of said LOT 92; thence along the southerly line of said LOT 92, South 55°06'29" West, a distance of 38.78 feet to the **Point of Beginning**; thence continuing along said southerly line, South 55°06'29" West, a distance of 69.99 feet to the beginning of a non-tangent curve concave to the west, having a radius of 724.50 feet and a chord bearing North 15°50'05" West, a distance of 32.35 feet; thence leaving said southerly line, northerly through a central angle of 2°33'31", a distance of 32.35 feet along said curve; thence North 17°06'50" West, a distance of 288.72 feet to a line parallel with and lying 10.00 feet southwesterly of the northeasterly line of said LOT 92; thence along said parallel line, South 34°54'01" East, a distance of 216.06 feet; thence leaving said parallel line, South 17°06'50" East, a distance of 82.99 feet to the beginning of a tangent curve concave to the west, having a radius of 790.50 feet and a chord bearing South 16°42'59" East, a distance of 10.97 feet; thence southerly through a central angle of 00°47'43", a distance of 10.97 feet along said curve to the **Point of Beginning**.

Subject to an electrical easement, granted to Coast Counties Gas and Electric Company, recorded May 23, 1946, in Book 1360, Page 62, Official Records of Santa Clara County.

Containing 13,695 square feet or 0.31 acres, more or less.

Assessor's Parcel Number: 767-04-009

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in blue ink, appearing to read "Travis T. Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

LEGEND

POB POINT OF BEGINNING
 POC POINT OF COMMENCEMENT
 CB CHORD BEARING
 CH CHORD DISTANCE
 ROS RECORD OF SURVEY
 ○ DIMENSION POINT
 ▨ AREA TO BE ACQUIRED

LINE TABLE

L1 S55°06'29"W 38.78'
 L2 S55°06'29"W 69.99'
 L3 S17°06'50"E 82.99'

CURVE TABLE

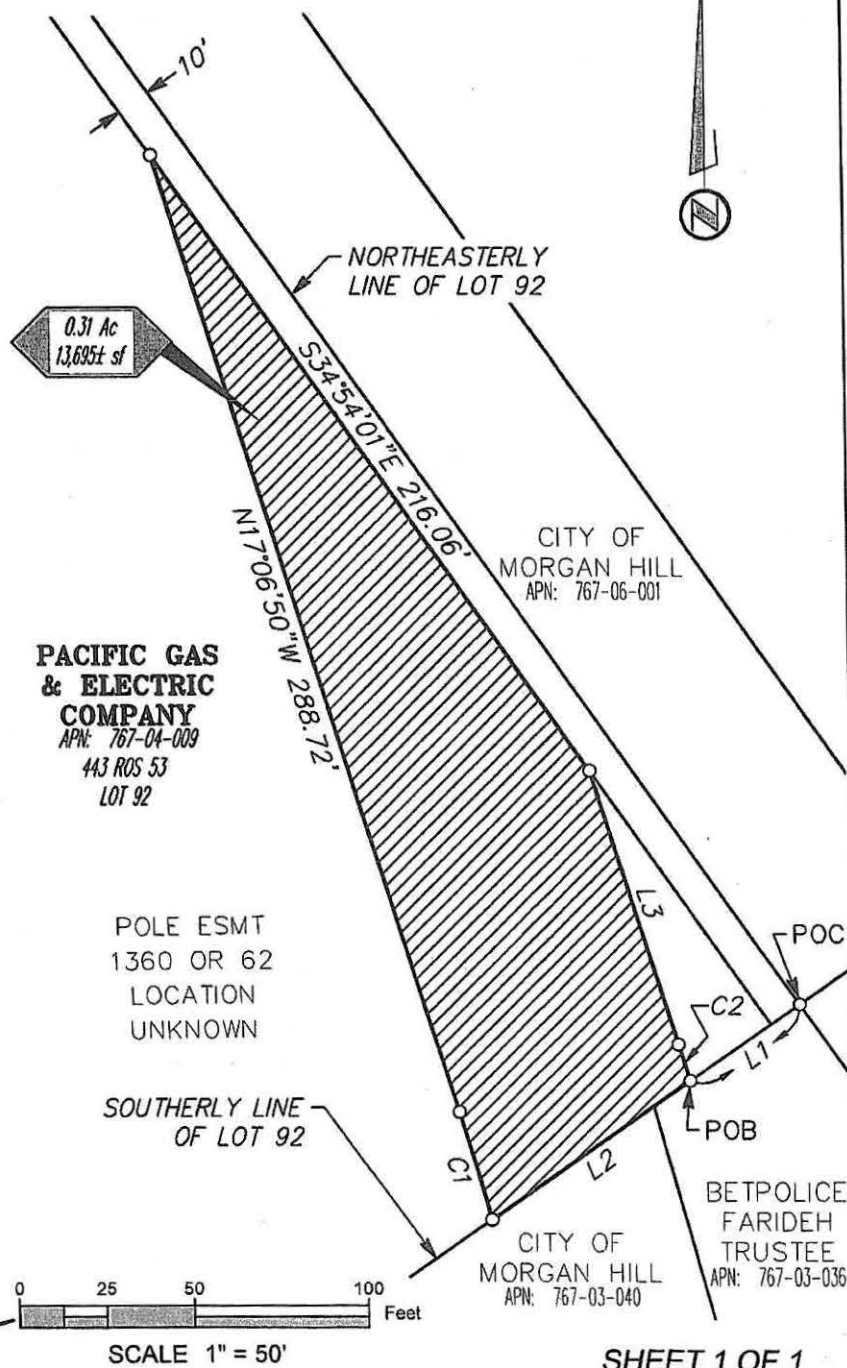
R=724.50'
 $\Delta=02^{\circ}33'31''$
 C1 L=32.35'
 CB=N15°50'05"W
 CH=32.35'

R=790.50'
 $\Delta=00^{\circ}47'43''$
 C2 L=10.97'
 CB=S16°42'59"E
 CH=10.97'



Timothy Bohan

PORTION OF
 RANCHO OJO DE AGUA DE LA COCHE



SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 50'
 Date Sept. 2017
 Drawn By BRM
 Checked By TTB

Exhibit B
 FEE

APN 767-04-009
 Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



CITY OF MORGAN HILL

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

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as PARCEL 1 and PARCEL 2 below:

PARCEL 1

Commencing at the southeast corner of said LOT 92; thence along southerly line of said LOT 92, South 55°06'29" West, a distance of 10.00 feet to the **Point of Beginning**; thence continuing along said southerly line, South 55°06'29" West, a distance of 28.78 feet to the beginning a non-tangent curve concave to the west, having a radius of 790.50 feet and a chord bearing North 16°42'59" West, a distance of 10.97 feet and a point here and after described as Point "A"; thence leaving said southerly line, northerly through a central angle of 00°47'43", a distance of 10.97 feet along said curve; thence North 17°06'50" West, a distance of 82.99 feet to a line parallel with and lying 10.00 feet southwesterly of the northeasterly line of said LOT 92; thence along said parallel line, South 34°54'01" East, a distance of 89.45 feet to the **Point of Beginning**.

PARCEL 1 Containing 1,284 square feet or 0.03 acres, more or less.

PARCEL 2

Commencing at said Point "A" on said southerly line; thence along said southerly line, South 55°06'29" West, a distance of 69.99 feet to the **Point of Beginning**; thence continuing along said southerly line, South 55°06'29" West, a distance of 22.17 feet; thence leaving said southerly line, the following six (6) courses:

1. North 07°9'14" West, a distance of 30.88 feet; thence

2. North 15°53'01" West, a distance of 74.07 feet; thence
3. North 14°42'44" West, a distance of 25.18 feet; thence
4. North 14°27'05" West, a distance of 170.22 feet; thence
5. North 19°56'59" West, a distance of 39.78 feet; thence
6. North 19°14'11" West, a distance of 14.82 feet to a line parallel with and lying 10.00 feet southwesterly of the northeasterly line of said LOT 92;

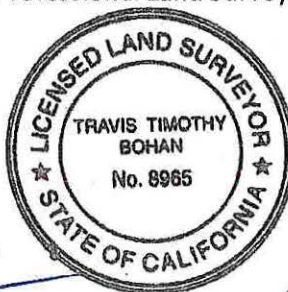
thence along said parallel line, South 34°54'01" East, a distance of 27.69 feet; thence leaving said parallel line, South 17°06'50" East, a distance of 288.72 feet to the beginning a tangent curve concave to the west, having a radius of 724.50 feet and a chord bearing South 15°50'05" East, a distance of 32.35 feet; thence southerly through a central angle of 02°33'31", a distance of 32.35 feet along said curve to the **Point of Beginning**.

PARCEL 2 Containing 3,991 square feet or 0.09 acres, more or less.

Subject to an electrical easement, granted to Coast Counties Gas and Electric Company, recorded on May 23, 1946, in Book 1360, Page 62, Official Records of Santa Clara County.

Assessor's Parcel Number: 767-04-009

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



[Handwritten signature of Travis Timothy Bohan]

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

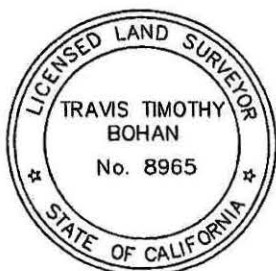
Exhibit "B-1"

LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 OR OFFICIAL RECORD
 ESMT EASEMENT
 ○ DIMENSION POINT
 ▨ SLOPE EASEMENT

LINE TABLE

L1 S55°06'29"W 10.00'
 L2 S55°06'29"W 28.78'
 L3 S55°06'29"W 69.99'
 L4 S55°06'29"W 22.17'
 L5 N07°09'14"W 30.88'
 L6 N14°42'44"W 25.18'
 L7 N19°56'59"W 39.78'
 L8 N19°14'11"W 14.82'
 L9 S34°54'01"E 27.69'



Timothy Bohan

0 25 50 100 Feet
 SCALE 1" = 50'

PORTION OF
 RANCHO OJO DE AGUA DE LA COCHE

CITY OF
 MORGAN
 HILL
 APN:
 767-06-001

CURVE TABLE

$R=790.50'$
 $\Delta=00^{\circ}47'43''$
 C1 $L=10.97'$
 $CB=N16^{\circ}42'59''W$
 $CH=10.97'$
 $R=724.50'$
 $\Delta=02^{\circ}33'31''$
 C2 $L=32.35'$
 $CB=S15^{\circ}50'05''E$
 $CH=32.35'$

POLE ESMT
 1360 OR 62
 LOCATION
 UNKNOWN

**PACIFIC GAS &
 ELECTRIC COMPANY**

APN: 767-04-009
 443 ROS 53
 LOT 92

PARCEL 2
 3,991± sf
 0.09 Ac

SOUTHERLY
 LINE LOT 92

CITY OF
 MORGAN HILL
 APN: 767-03-040

NORTHEASTERLY
 LINE LOT 92

PARCEL 1

1,284± sf
 0.03 Ac

POC
 PARCEL 1

POINT A
 POC
 PARCEL 2

POB
 PARCEL 1

FARIDEH
 BETPOLICE
 APN:
 767-03-03

SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 50'
 Date: Sept. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B-1
 APN 767-04-009
SLOPE EASEMENT
 Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



EXHIBIT "A-2"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 91 and LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL ONE

Beginning at the intersection of the southeasterly right of way line of West Main Avenue with the easterly line of said LOT 91; thence along said easterly line, South 34°53'57" East, a distance of 161.88 feet to the beginning of a non-tangent curve concave to the west having a radius of 547.50 feet and a chord bearing South 08°53'43" East, a distance of 164.73 feet; thence leaving said easterly line, southerly through a central angle of 17°18'16", a distance of 165.36 feet along said curve; thence South 00°14'35" East, a distance of 6.45 feet to the northerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said northerly line, South 55°06'29" West, a distance of 17.11 feet to the northwest corner of said DEED; thence along the westerly line of said DEED, South 34°53'57" East, a distance of 24.75 feet; thence leaving said westerly line, South 00°14'35" East, a distance of 132.68 feet to the beginning of a tangent curve concave to the east, having a radius of 596.00 feet and a chord bearing South 02°01'22" East, a distance of 37.02 feet; thence southerly through a central angle of 03°33'35", a distance of 37.03 feet along said curve to the centerline of Warren Avenue, as shown on said RECORD OF SURVEY; thence along said centerline, South 55°06'29" West, a distance of 75.82 feet to the beginning of a non-tangent curve concave to the east having a radius of 775.50 feet and a chord bearing North 02°10'51" West, a distance of 52.45 feet; thence leaving said centerline, the following fourteen (14) courses, curves, and distances:

1. Northerly through a central angle of $03^{\circ}52'33''$, a distance of 52.46 feet along said curve; thence
2. North $00^{\circ}14'35''$ West, a distance of 24.64 feet; thence
3. South $89^{\circ}45'25''$ West, a distance of 72.66 feet; thence
4. North $00^{\circ}12'27''$ West, a distance of 127.44 feet; thence
5. North $89^{\circ}45'25''$ East, a distance of 72.58 feet; thence
6. North $00^{\circ}14'35''$ West, a distance of 44.83 feet to the beginning of a tangent curve concave to the west, having a radius of 484.50 feet and a chord bearing North $16^{\circ}06'29''$ West, a distance of 264.90 feet; thence
7. northerly through a central angle of $31^{\circ}43'49''$, a distance of 268.31 feet along said curve; thence
8. South $57^{\circ}47'25''$ West, a distance of 10.00 feet to the beginning of a non-tangent curve concave to the southwest, having a radius of 474.50 feet and a chord bearing North $32^{\circ}25'28''$ West, a distance of 7.56 feet; thence
9. northwesterly through a central angle of $00^{\circ}54'45''$, a distance of 7.56 feet along said curve to the beginning a compound curve concave to the southwest, having a radius of 5.00 feet and a chord bearing North $55^{\circ}42'00''$ West, a distance of 3.88 feet; thence
10. northwesterly through a central angle of $45^{\circ}38'19''$, a distance of 3.98 feet along said curve; thence
11. North $78^{\circ}31'10''$ West, a distance of 11.20 feet to the beginning of a tangent curve concave to the south, having a radius of 5.00 feet and a chord bearing South $78^{\circ}19'33''$ West, a distance of 3.93 feet; thence
12. westerly through a central angle of $46^{\circ}18'35''$, a distance of 4.04 feet along said curve; thence
13. South $55^{\circ}10'16''$ West, a distance of 20.00 feet; thence
14. North $34^{\circ}53'31''$ West, a distance of 2.01 feet to said southeasterly right of way line, also being a point on the northwesterly line of said LOT 91;

and along said southeasterly right of way and northwesterly lines, North 55°06'29" East, a distance of 81.10 feet to the **Point of Beginning**.

Containing 40,685 square feet or 0.93 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

Subject to a 25' Pole Line Easement, granted to the City of Morgan Hill, recorded on April 3, 1951, in Book 2184, Page 431, Official Records of Santa Clara County.

PARCEL TWO

Beginning at the intersection of the centerline of Warren Avenue with the westerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said westerly line North 34°53'57" West 41.13 feet to the beginning of a non-tangent curve concaved to the southeast, having a radius of 42.00 feet and a chord bearing South 25°30'48" West, a distance of 83.28 feet; thence leaving said westerly line, southeasterly through a central angle of 164°58'58", a distance of 120.94 feet along said curve to a point on said centerline; thence along said centerline North 55°06'29" East 72.42 feet to the **Point of Beginning**.

Containing 3,800 square feet or 0.09 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

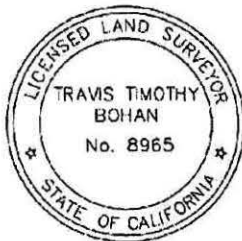
PARCEL THREE

Commencing at the southwest corner of said LOT 91; thence along the southwesterly line of said LOT 91, North 34°54'01" West, a distance of 120.63 feet to the **Point of Beginning**; thence continuing along said southwesterly line, North 34°54'01" West, a distance of 215.21 feet to the beginning of a non-tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 16°22'12" East, a distance of 20.14 feet; thence leaving said southwesterly line, southerly through a central angle of 01°29'17", a distance of 20.14 feet along said curve; thence South 17°06'50" East, a distance of 11.78 feet to a line parallel with and lying 10.00 feet southwesterly of said southwesterly line; thence along said parallel line, South 34°54'01" East, a distance of 216.06 feet; thence leaving said parallel line, North 17°06'50" West, a distance of 32.74 feet to the **Point of Beginning**.

Containing 2,159 square feet or 0.05 acres, more or less.

Assessor's Parcel Number: 767-05-001

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Tim T. Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

1/11/2018

Date

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-2"

LEGEND

- POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 FCE FLOOD CONTROL EASEMENT
 PUE PUBLIC UTILITY EASEMENT
 OR OFFICIAL RECORD
 ROS RECORD OF SURVEY
 ESMT EASEMENT
 AREA TO BE ACQUIRED
 AREA ENCUMBERED BY EASEMENT
 o DIMENSION POINT
 CL CENTER LINE

CURVE TABLE

C1
 R=547.50'
 $\Delta=17^{\circ}18'16''$
 L=165.36'
 CB=S08°53'43"E
 CH=164.73'

C4
 R=484.50'
 $\Delta=31^{\circ}43'49''$
 L=268.31'
 CB=N16°06'29"W
 CH=264.90'

C5
 R=474.50'
 $\Delta=00^{\circ}54'45''$
 L=7.56'
 CB=N32°25'28"W
 CH=7.56'

C6
 R=5.00'
 $\Delta=45^{\circ}38'19''$
 L=3.98'
 CB=N55°42'00"W
 CH=3.88'

C7
 R=5.00'
 $\Delta=46^{\circ}18'35''$
 L=4.04'
 CB=S78°19'33"W
 CH=3.93'



0 20 40 80 Feet

SCALE 1" = 40'

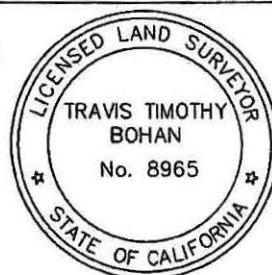
PORTION OF
 RANCHO OJO DE AGUA DE LA COCHE

WEST MAIN AVENUE

POB

GIANCOLA,
 JOHN A.

APN: 767-05-037

**LINE TABLE**

L1 S34°53'57"E 161.88'
 L12 S57°47'25"W 10.00'
 L13 N78°31'10"W 11.20'
 L14 S55°10'16"W 20.00'
 L15 N34°53'31"W 2.01'
 L16 N55°06'29"E 81.10'

PARCEL ONE

0.93 Ac
 40,685± sf

PACIFIC GAS
 & ELECTRIC
 COMPANY

APN: 767-05-001
 443 ROS 53
 LOT 91

5162 OR 156
 FCE

EASTERLY
 LINE LOT 91

SEE SHEET 2

SHEET 1 OF 4



MARK THOMAS

Scale: 1" = 40'
 Date Jan. 2018
 Drawn By SMB
 Checked By TTB

Exhibit B-2

FEE

APN 767-05-001

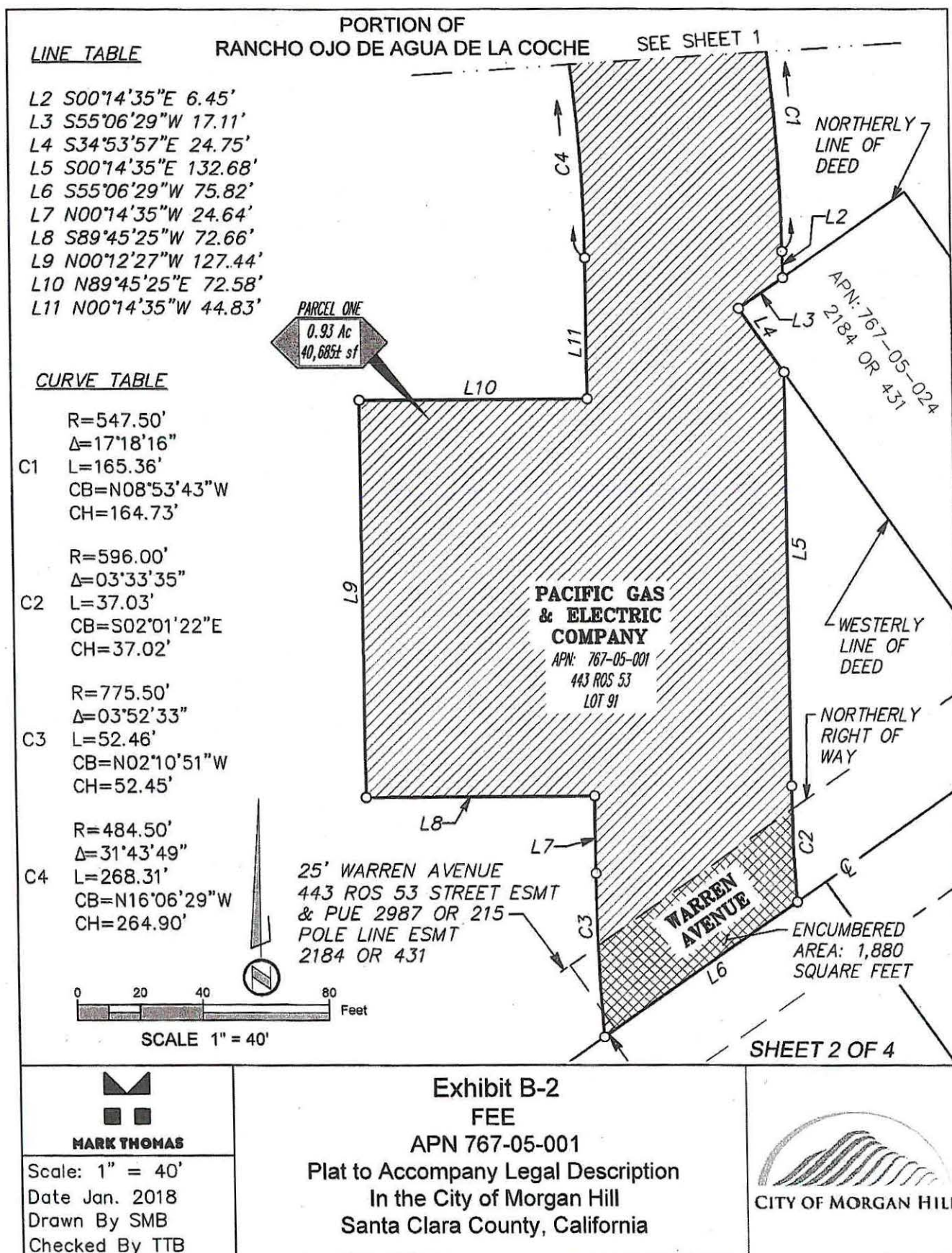
Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



CITY OF MORGAN HILL

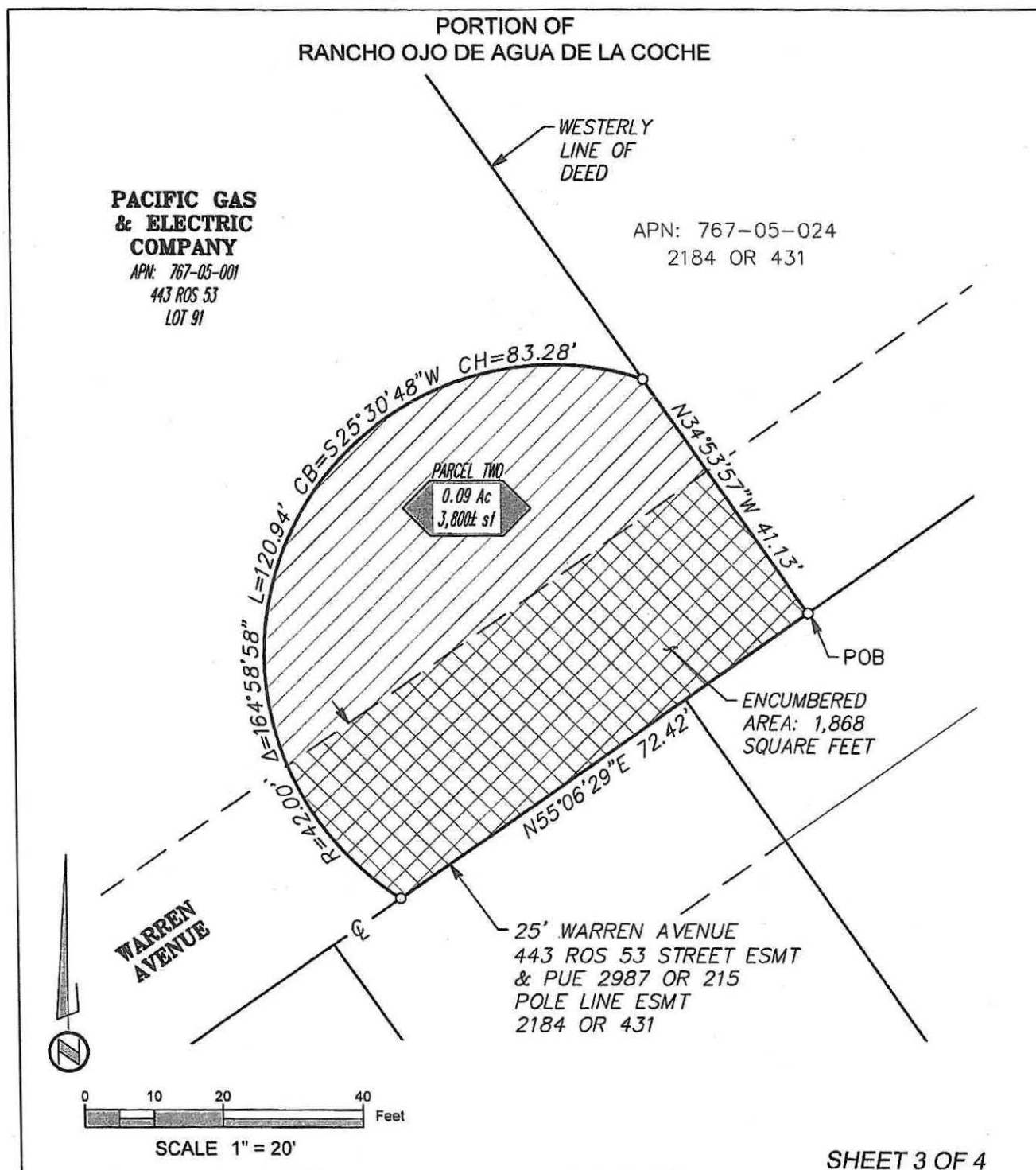
Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-2"



Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-2"

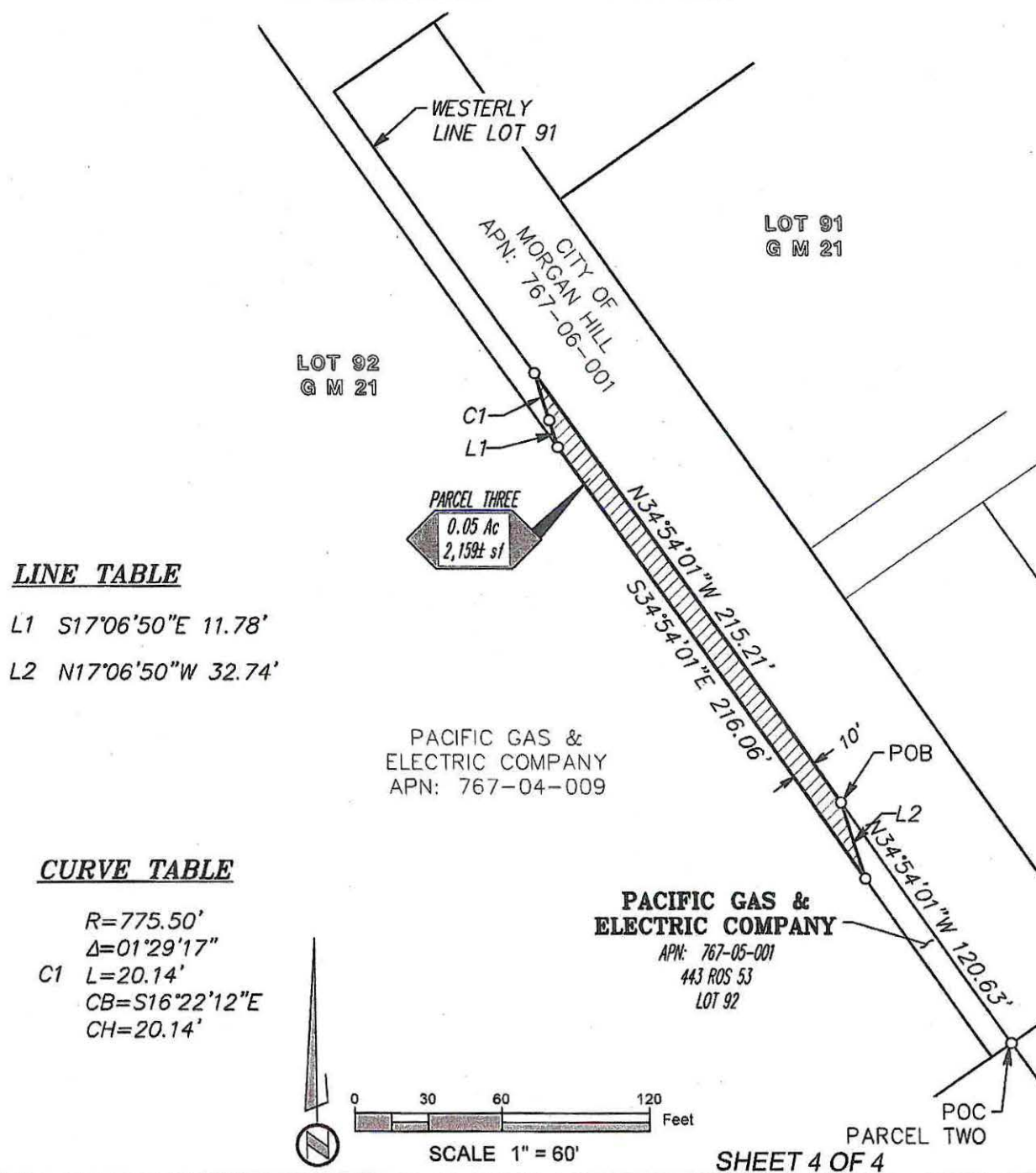


Scale: 1" = 20'
Date Jan. 2018
Drawn By SMB
Checked By TTB

**Exhibit B-2
FEE**
APN 767-05-001
Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



Exhibit "B-2"

PORTION OF
RANCHO OJO DE AGUA DE LA COCHE

MARK THOMAS

Scale: 1" = 60'

Date: Jan. 2018

Drawn By SMB

Checked By TTB

Exhibit B-2

FEE

APN 767-05-001

Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



CITY OF MORGAN HILL

EXHIBIT "A-3"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL 1

Commencing at the southwest corner of LOT 91, as shown on said RECORD OF SURVEY; thence along the southeasterly line of said LOT 92, South 55°06'29" West, a distance of 5.54 feet to the **Point of Beginning**; thence continuing along said southeasterly line, South 55°06'29" West, a distance of 4.46 feet to a line parallel with and lying 10.00 feet southwesterly of the westerly line of said LOT 91; thence leaving said southeasterly line and along said parallel line, North 34°54'01" West, a distance of 89.45 feet to a point here and after described as Point "A"; thence leaving said parallel line, North 17°06'50" West, a distance of 32.74 feet to a point on said westerly line; thence along said westerly line, South 34°54'01" East, a distance of 90.40 feet; thence leaving said westerly line, South 19°42'04" East, a distance of 13.99 feet; thence South 27°02'30" East, a distance of 14.56 feet; thence South 37°47'33" East, a distance of 2.29 feet to the **Point of Beginning**.

PARCEL 1 Containing 945 square feet or 0.02 acres, more or less.

PARCEL 2

Commencing at said Point "A", being a point on a line parallel with and lying 10.00 feet southwesterly of said westerly line; thence along said parallel line, North 34°54'01" West, a distance of 216.06 feet to the **Point of Beginning**; thence continuing along said parallel line, North 34°54'01" West, a distance of 27.80 feet to the beginning a non-

tangent curve concave to the east, having a radius of 708.08 feet and a chord bearing North 17°46'06" West, a distance of 24.08 feet; thence leaving said parallel line, northerly through a central angle of 01°56'55", a distance of 24.08 feet along said curve; thence North 16°47'38" West, a distance of 9.00 feet; thence North 09°55'08" West, a distance of 0.26 feet to said westerly line; thence along said westerly line, South 34°54'01" East, a distance of 29.28 feet to the beginning of a non-tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 16°22'12" East, a distance of 20.14 feet; thence leaving said westerly line, southerly through a central angle of 01°29'17", a distance of 20.14 feet along said curve; thence South 17°06'50" East, a distance of 11.78 feet to the **Point of Beginning**.

PARCEL 2 Containing 287 square feet or 0.01 acres, more or less.

Assessor's Parcel Number: 767-05-001

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



Travis Timothy Bohan

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-3"

LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 ROS RECORD OF SURVEY
 ○ DIMENSION POINT
 ▨ SLOPE EASEMENT

PORTION OF
 RANCHO OJO DE AGUA DE LA COCHE

**PACIFIC GAS &
 ELECTRIC COMPANY**

APN: 767-05-001 LOT 91
 443 ROS 53

WESTERLY LINE
 LOT 91

CITY OF MORGAN HILL
 APN: 767-06-001

PACIFIC GAS &
 ELECTRIC COMPANY
 APN: 767-04-009



Timothy Bohan

0 10 20 40 Feet

SCALE 1" = 20'

SOUTHEASTERLY
 LINE LOT 92

PARCEL 1

0.02 Ac
 945± sf

S19°42'04"E
 13.99'

S27°02'30"E
 14.56'

S37°47'33"E
 2.29'

S55°06'29"W
 5.54'

POC
 PARCEL 1

POB
 PARCEL 1

FARIDEH BETPOLICE
 APN: 767-03-036

SHEET 1 OF 2



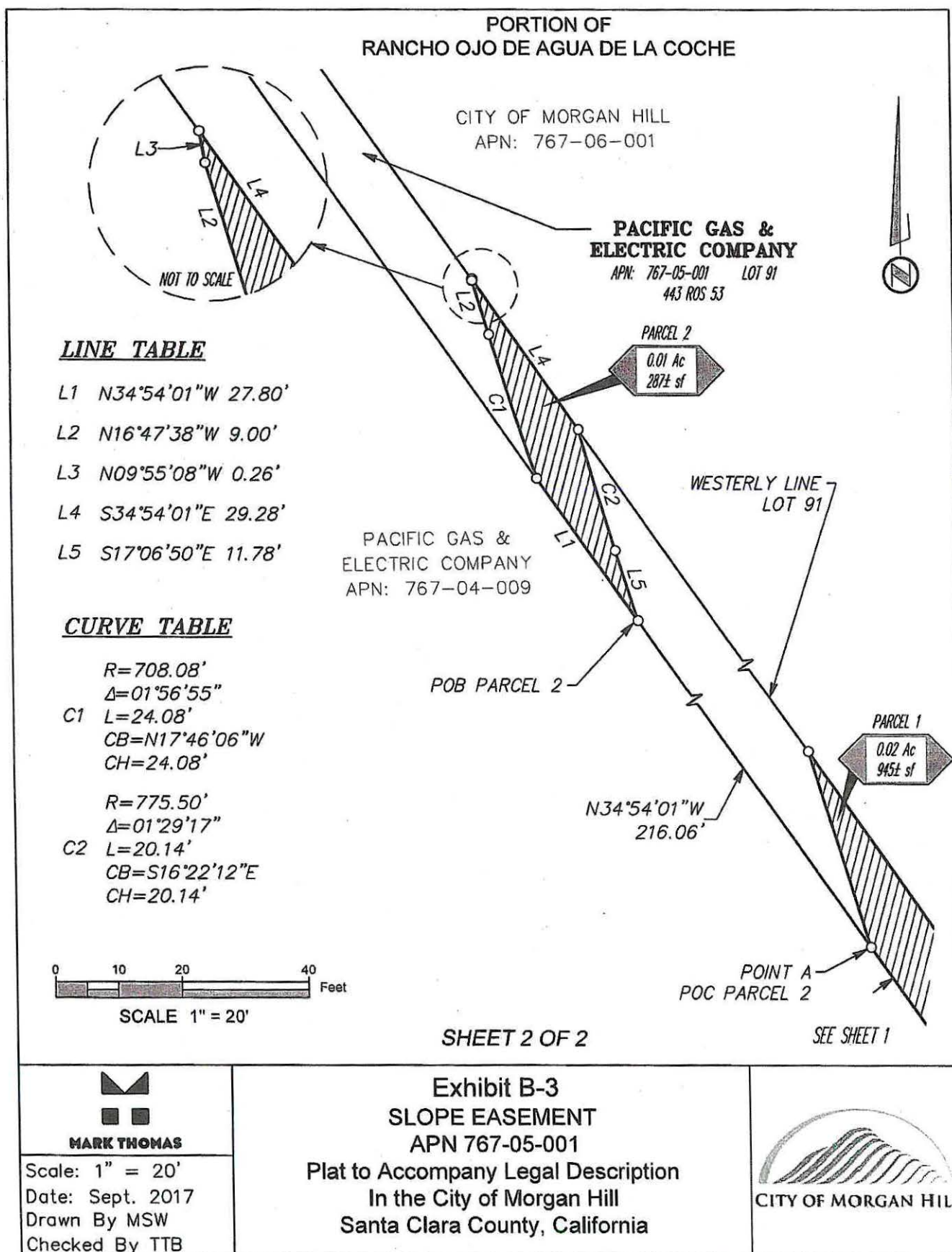
MARK THOMAS

Scale: 1" = 20'
 Date: Sept. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B-3
SLOPE EASEMENT
 APN 767-05-001
 Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



Exhibit "B-3"



Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

EXHIBIT "A-4"**LEGAL DESCRIPTION**

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 91 and LOT 92, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL ONE

Commencing at the southwest corner of said LOT 91, also being a point on the centerline of Warren Avenue, as shown on said RECORD OF SURVEY; thence along said centerline, North 55°06'29" East, a distance of 52.09 feet to the **Point of Beginning**; thence leaving said centerline, the following twenty-seven (27) courses, curves, and distances:

1. North 10°05'30" West, a distance of 27.69 feet; thence
2. North 07°41'14" East, a distance of 3.93 feet; thence
3. North 13°21'07" East, a distance of 24.43 feet; thence
4. North 10°47'27" East, a distance of 6.27 feet; thence
5. North 03°53'45" West, a distance of 17.55 feet; thence
6. North 07°59'14" West, a distance of 2.84 feet; thence
7. South 89°45'25" West, a distance of 68.42 feet; thence
8. North 00°12'29" West, a distance of 137.98 feet; thence
9. North 89°45'25" East, a distance of 53.18 feet; thence
10. North 00°14'35" West, a distance of 46.47 feet; thence
11. North 01°31'28" East, a distance of 35.40 feet; thence
12. North 00°32'48" West, a distance of 20.40 feet; thence
13. North 09°21'22" West, a distance of 24.22 feet; thence
14. North 07°38'39" West, a distance of 46.53 feet; thence
15. North 14°31'39" West, a distance of 20.31 feet; thence

16. North 23°12'24" West, a distance of 59.39 feet; thence
 17. North 29°20'26" West, a distance of 56.16 feet to the beginning of a non-tangent curve concave to the southwest, having a radius of 5.00 feet and a chord bearing South 53°26'01" East, a distance of 3.51 feet; thence
 18. southeasterly through a central angle of 41°06'21", a distance of 3.59 feet along said curve to the beginning a compound curve concave to the southwest, having a radius of 474.50 feet and a chord bearing South 32°25'28" East, a distance of 7.56 feet; thence
 19. southeasterly through a central angle of 00°54'45", a distance of 7.56 feet along said curve; thence
 20. North 57°47'25" East, a distance of 10.00 feet to the beginning of a non-tangent curve concave to the west, having a radius of 484.50 feet and a chord bearing South 16°06'29" East, a distance of 264.90 feet; thence
 21. southerly through a central angle of 31°43'49", a distance of 268.31 feet along said curve; thence
 22. South 00°14'35" East, a distance of 44.83 feet; thence
 23. South 89°45'25" West, a distance of 72.58 feet; thence
 24. South 00°12'27" East, a distance of 127.44 feet; thence
 25. North 89°45'25" East, a distance of 72.66 feet; thence
 26. South 00°14'35" East, a distance of 24.64 feet to the beginning of a tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 02°10'51" East, a distance of 52.45 feet; thence
 27. southerly through a central angle of 03°52'33", a distance of 52.46 feet along said curve to a point on said centerline;
- thence along said centerline, South 55°06'29" West, a distance of 13.69 feet to the **Point of Beginning.**

PARCEL ONE Containing 7,161 square feet or 0.16 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

Subject to a 25' Pole Line Easement, granted to the City of Morgan Hill, recorded on April 3, 1951, in Book 2184, Page 431, Official Records of Santa Clara County.

PARCEL TWO

Commencing at the intersection of the southeasterly right of way line of West Main Avenue with the easterly line of said LOT 91; thence along said easterly line, South 34°53'57" East, a distance of 161.88 feet to the **Point of Beginning**; thence continuing along said easterly line, South 34°53'57" East, a distance of 29.18 feet; thence leaving said easterly line, the following four (4) courses, curves, and distances:

1. South 15°09'30" East, a distance of 64.57 feet; thence
2. South 02°39'18" East, a distance of 53.50 feet; thence
3. South 26°40'12" West, a distance of 23.61 feet to the beginning a non-tangent curve concave to the west, having a radius of 547.50 feet and a chord bearing North 08°59'51" West, a distance of 162.79 feet; thence
4. northerly through a central angle of 17°05'59", a distance of 163.40 feet along said curve to the **Point of Beginning**.

PARCEL TWO Containing 1,568 square feet or 0.04 acres, more or less.

Assessor's Parcel Number: 767-05-001

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in blue ink, appearing to read "Travis T. Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

SEPT. 20, 2017

Date

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-4"

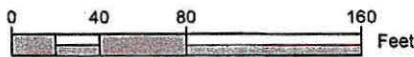
LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 OR OFFICIAL RECORD
 FCE FLOOD CONTROL EASEMENT
 PUE PUBLIC UTILITY EASEMENT
 ESMT EASEMENT
 CL CENTER LINE
 o DIMENSION POINT
 SLOPE EASEMENT
 SLOPE ENCUMBERED BY EASEMENT
 ROS RECORD OF SURVEY

LINE AND CURVE
 TABLE:
 SEE SHEET 4



Travis T. Bohan



SCALE 1" = 80'



MARK THOMAS

Scale: 1" = 80'
 Date: Sept. 2017
 Drawn By MSW
 Checked By TTB

PORTION OF
RANCHO OJO DE AGUA DE LA COCHE

SOUTHEASTERLY
 RIGHT OF WAY LINE CL
 WEST MAIN AVENUE

GIANCOLA,
 JOHN A.
 APN:
 767-05-037

5162 OR 156
 FCE

**PACIFIC GAS
 & ELECTRIC
 COMPANY**
 APN: 767-05-001
 LOT 91
 443 ROS 53

MATCH LINE SHEET 2
 MATCH LINE SHEET 3

WESTERLY
 LINE LOT 91

0.16 Ac
 7,161± sf
 PARCEL ONE

KERR,
 SUSAN L. &
 ROBERT A.
 APN:
 767-05-024

POB
 N55°06'29"E
 52.09'
 POC
 PARCEL ONE

WARREN AVENUE

SHEET 1 OF 5

Exhibit B-4
 SLOPE EASEMENT
 APN 767-05-001

Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



CITY OF MORGAN HILL

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

Exhibit "B-4"

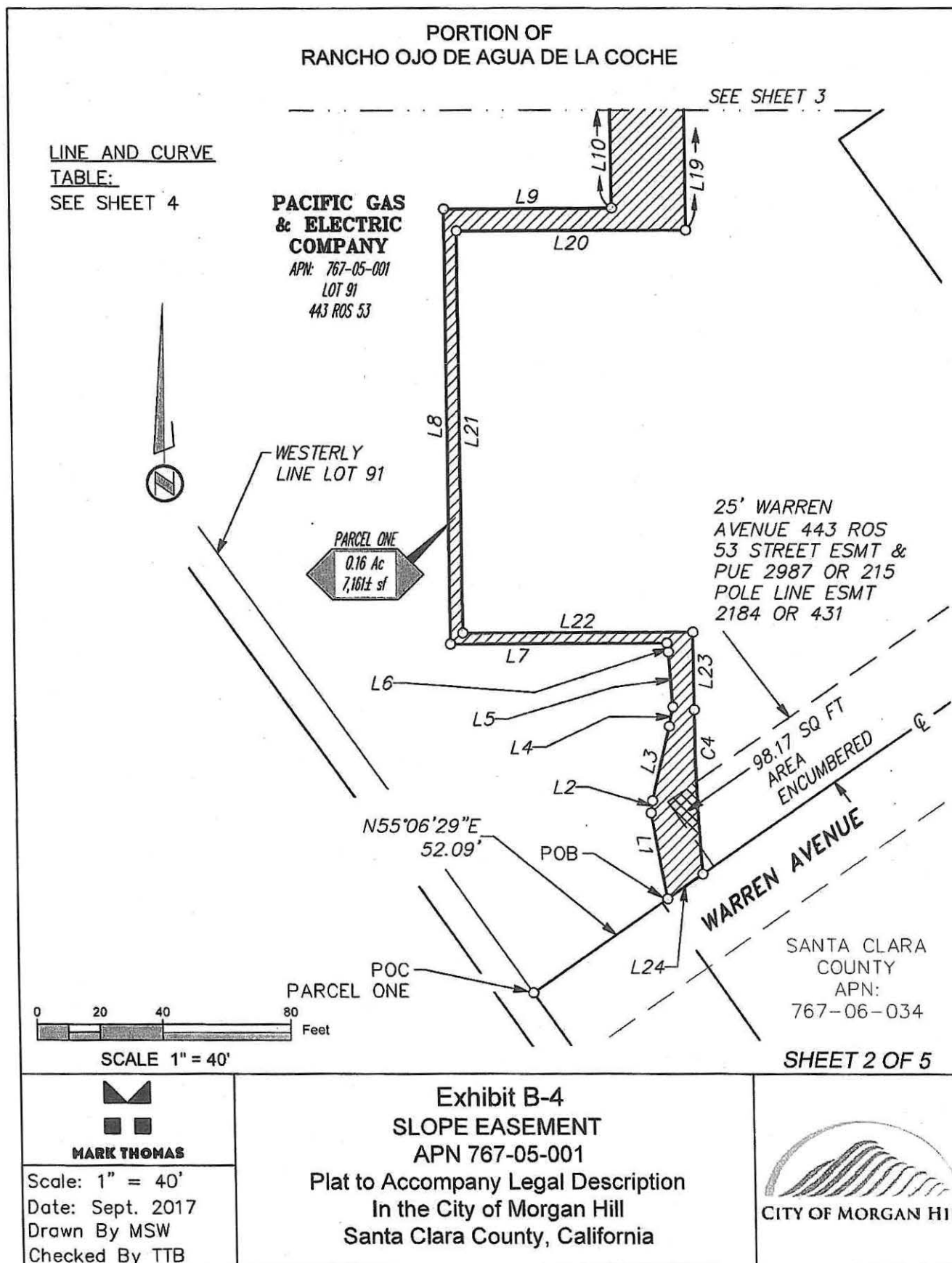
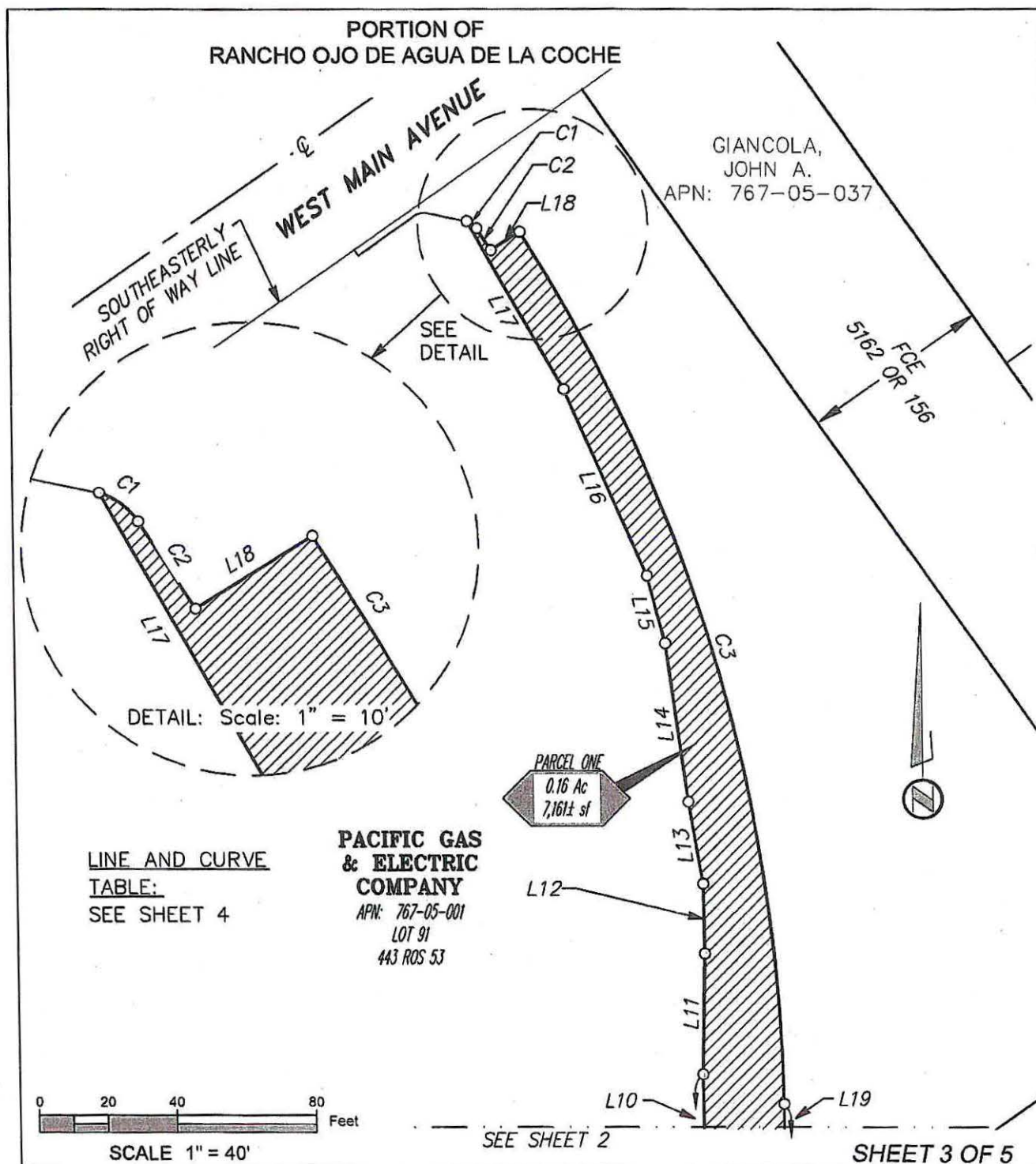


Exhibit "B-4"



MARK THOMAS

Scale: 1" = 40'
Date: Sept. 2017
Drawn By MSW
Checked By TTB

Exhibit B-4
SLOPE EASEMENT
APN 767-05-001
Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



CITY OF MORGAN HILL

Exhibit "B-4"

PARCEL ONE
LINE AND CURVE TABLE

LINE TABLE

L1 N10°05'30"W 27.69'
 L2 N07°41'14"E 3.93'
 L3 N13°21'07"E 24.43'
 L4 N10°47'27"E 6.27'
 L5 N03°53'45"W 17.55'
 L6 N07°59'14"W 2.84'
 L7 S89°45'25"W 68.42'
 L8 N00°12'29"W 137.98'
 L9 N89°45'25"E 53.18'
 L10 N00°14'35"W 46.47'
 L11 N01°31'28"E 35.40'
 L12 N00°32'48"W 20.40'
 L13 N09°21'22"W 24.22'
 L14 N07°38'39"W 46.53'
 L15 N14°31'39"W 20.31'
 L16 N23°12'24"W 59.39'
 L17 N29°20'26"W 56.16'
 L18 N57°47'25"E 10.00'
 L19 S00°14'35"E 44.83'

LINE TABLE

L20 S89°45'25"W 72.58'
 L21 S00°12'27"E 127.44'
 L22 N89°45'25"E 72.66'
 L23 S00°14'35"E 24.64'
 L24 S55°06'29"W 13.69'

CURVE TABLE

R=5.00'
 $\Delta=41^{\circ}06'21''$
 C1 L=3.59'
 CB=S53°26'01"E
 CH=3.51'

 R=474.50'
 $\Delta=00^{\circ}54'45''$
 C2 L=7.56'
 CB=S32°25'28"E
 CH=7.56'

 R=484.50'
 $\Delta=31^{\circ}43'49''$
 C3 L=268.31'
 CB=S16°06'29"E
 CH=264.90'

 R=775.50'
 $\Delta=03^{\circ}52'33''$
 C4 L=52.46'
 CB=S02°10'51"E
 CH=52.45'

SHEET 4 OF 5



MARK THOMAS

Scale: 1" = NTS
 Date: Sept. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B-4
SLOPE EASEMENT
APN 767-05-001
Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



CITY OF MORGAN HILL

Exhibit "B-4"

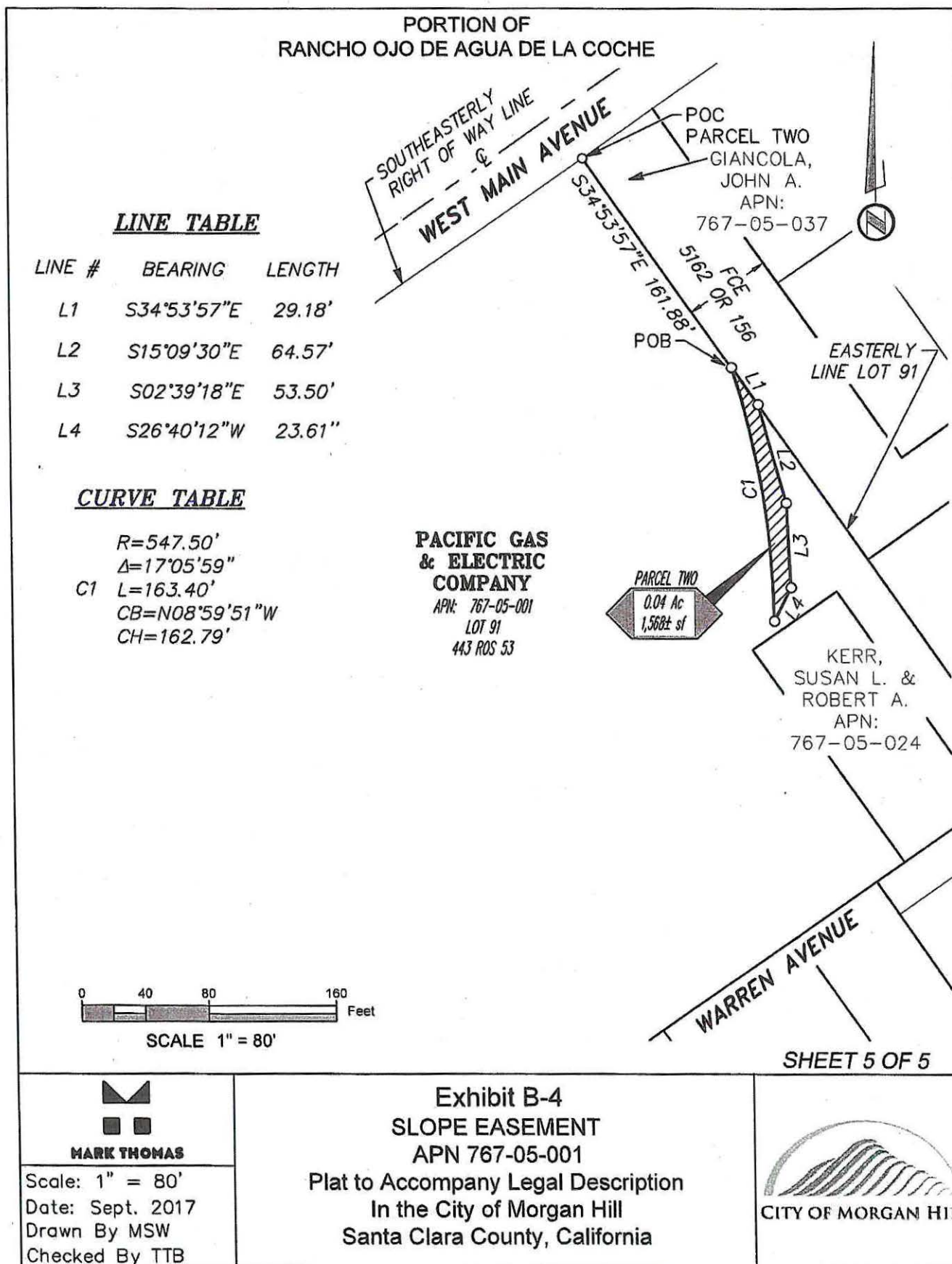


EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 91, as shown on that RECORD OF SURVEY, filed June 18, 1979, Book 443 of Maps, Page 53, Santa Clara County Records, more particularly described as:

PARCEL ONE

Commencing at the intersection of the centerline of Warren Avenue with the westerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said centerline South 55°06'29" West 72.42 feet to the **Point of Beginning**; thence continuing along said centerline South 55°06'29" West 23.13 feet to the beginning of a non-tangent curve concave to the east, having a radius of 596.00 feet and a chord bearing North 02°01'22" West 37.02 feet; thence leaving said centerline northerly through a central angle of 03°33'35", 37.03 feet along said curve; thence North 00°14'35" West 132.68 feet to said westerly line; thence along said westerly line South 34°53'57" East 99.12 feet to the beginning of a non-tangent curve concave to the southeast, having a radius of 42.00 feet and a chord bearing South 25°30'48" West 83.28 feet; thence leaving said westerly line westerly and southerly through a central angle of 164°58'58", 120.94 feet along said curve to the **Point of Beginning**.

Containing 2,983 square feet or 0.07 acres, more or less.

Subject to a 25' Road and Public Utility Easement, granted to THE CITY OF MORGAN HILL, recorded on October 20, 1954, in Book 2987, Page 215, Official Records of Santa Clara County.

PARCEL TWO

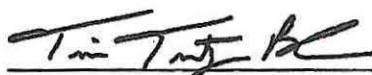
Commencing at the intersection of the centerline of Warren Avenue with the westerly line of that certain DEED, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara County; thence along said centerline North 55°06'29" East 65.00 feet; to the **Point of Beginning** also being the most easterly corner of said DEED; thence leaving said centerline and along the easterly line of said DEED, North 34°53'57" West 165.00 feet to the most northerly corner of said DEED; thence along the northerly line of said DEED, South 55°06'29" West 47.89 feet; thence leaving said northerly line, North 00°14'35" West 6.45 feet to the beginning of a curve concave to the west, having a radius of 547.50 feet and a chord bearing North 08°53'43" West 164.73 feet; thence northerly through a central angle of 17°18'16", 165.36 feet along said curve to the easterly line of said LOT 91; thence along said easterly line, South 34°53'57" East 318.37 feet to a point on said centerline; thence along said centerline, South 55°06'29" West 28.00 feet to the **Point of Beginning**.

Containing 9,675 square feet or 0.22 acres, more or less.

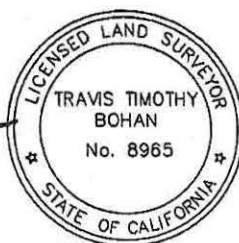
Subject to a Road Easement, granted to ROBERT A. BIDDISON and RUTH L. BIDDISON, recorded February 27, 1951, Book 2184, Page 431, Official Records of Santa Clara

Assessor's Parcel Number: 767-05-001

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



Travis Timothy Bohan, LS 8965



February 2, 2018

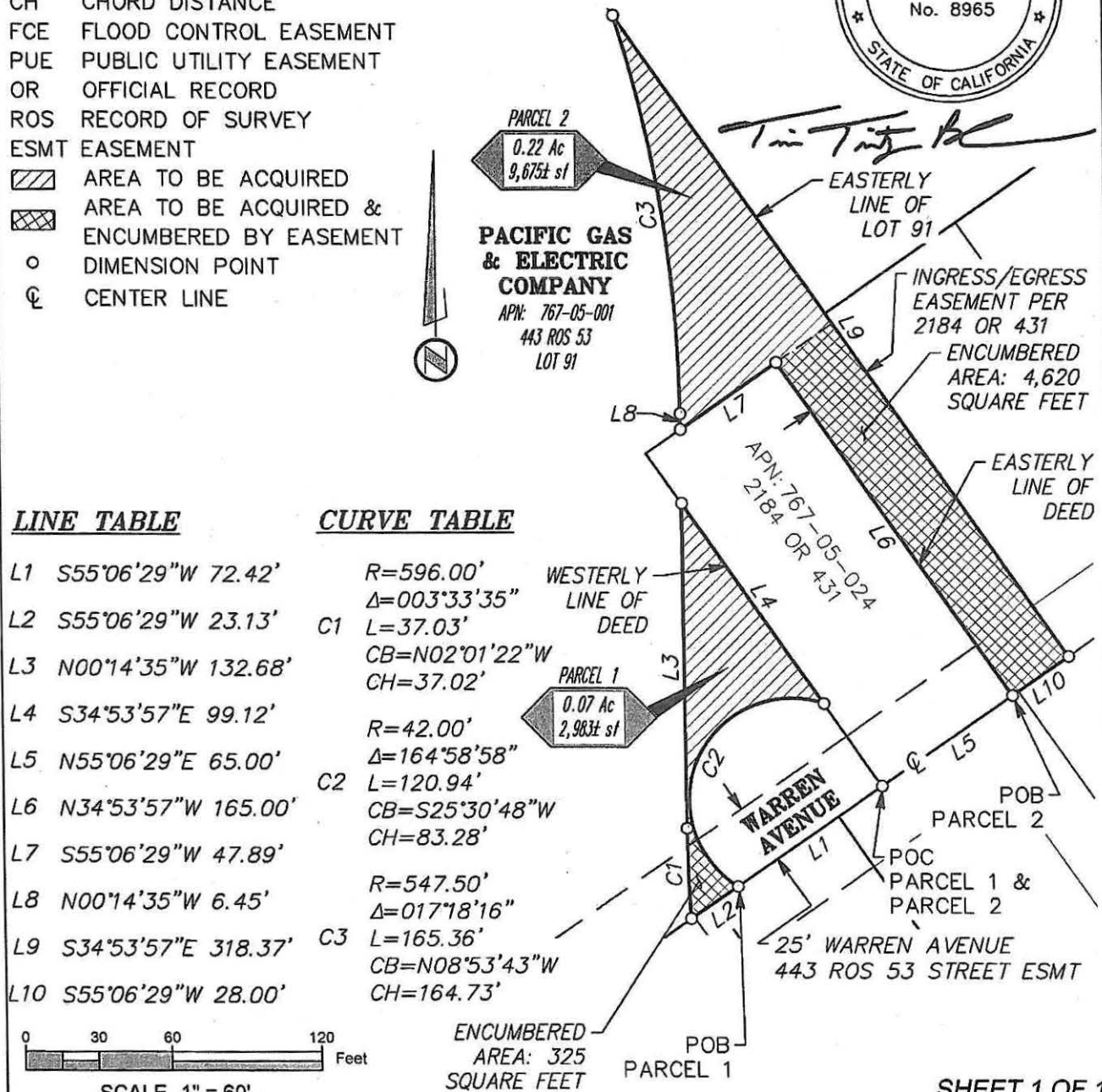
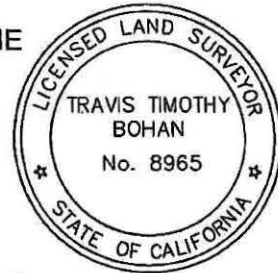
Date

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)

LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 FCE FLOOD CONTROL EASEMENT
 PUE PUBLIC UTILITY EASEMENT
 OR OFFICIAL RECORD
 ROS RECORD OF SURVEY
 ESMT EASEMENT
 AREA TO BE ACQUIRED
 AREA TO BE ACQUIRED & ENCUMBERED BY EASEMENT
 o DIMENSION POINT
 CENTER LINE

PORTION OF
RANCHO OJO DE AGUA DE LA COCHE



MARK THOMAS

Scale: 1" = 60'
 Date Feb. 2018
 Drawn By CMD
 Checked By TTB

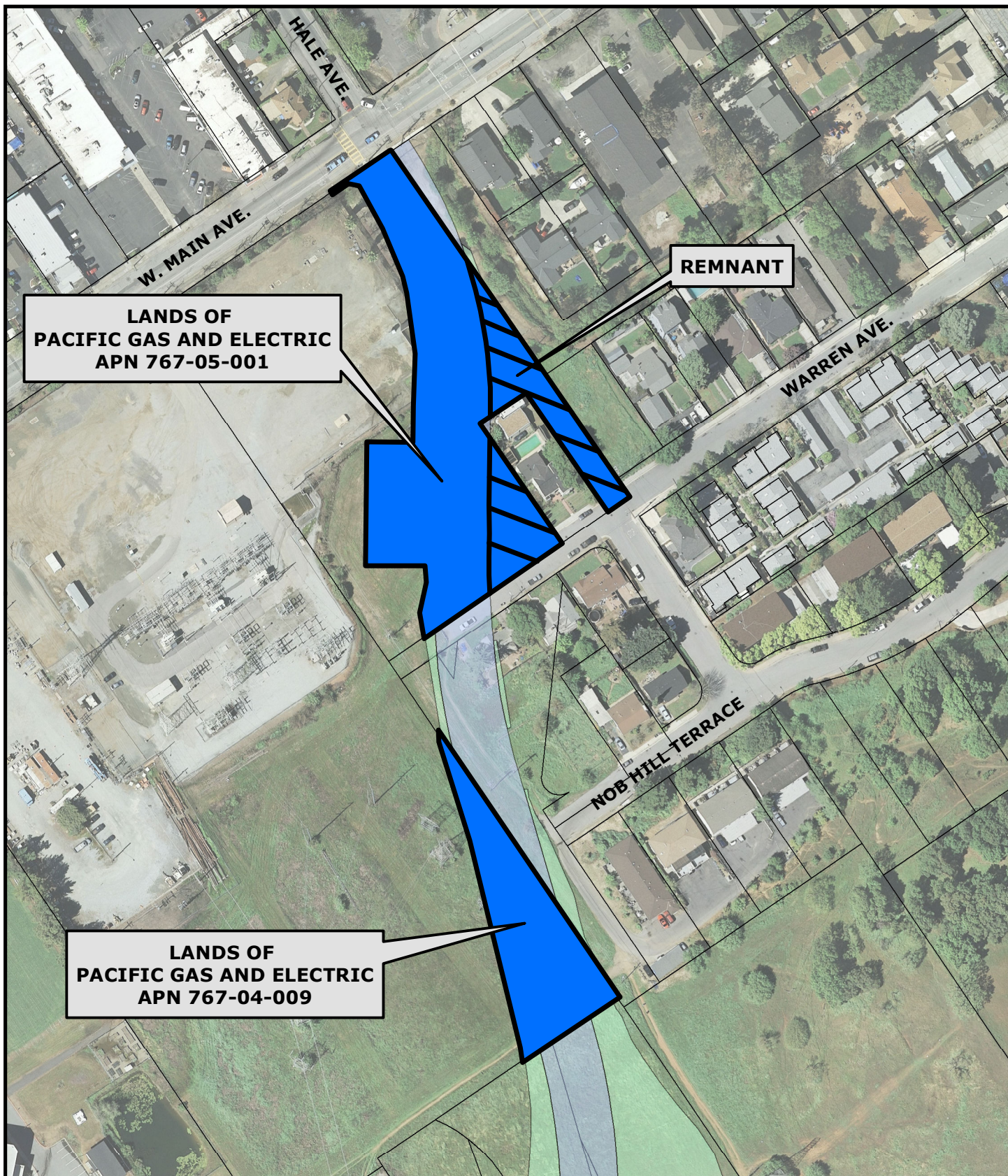
Exhibit B
REMNANT
 APN 767-05-001

Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



CITY OF MORGAN HILL

Attachment: Exhibits A and B (1988 : Adopt Revised Resolution of Necessity)



Attachment: Project Location Map (1988 : Adopt Revised Resolution of Necessity)



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

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SITE MAP
LANDS OF
PACIFIC GAS AND ELECTRIC
APN 767-05-001 AND 767-04-009



0 50 100 200 300 400
 Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

JULY 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 July 31, 2018. The Revenue and Expense Summary for the month of July is included on the first page. Overall, General Fund revenues total \$2.4 million or 6% of the budget. Expenditures, including encumbrances, amounted to \$4.1 million.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these monthly 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. July 2018 Financial Statement Analysis
2. July 2018 Financial and Investment Report

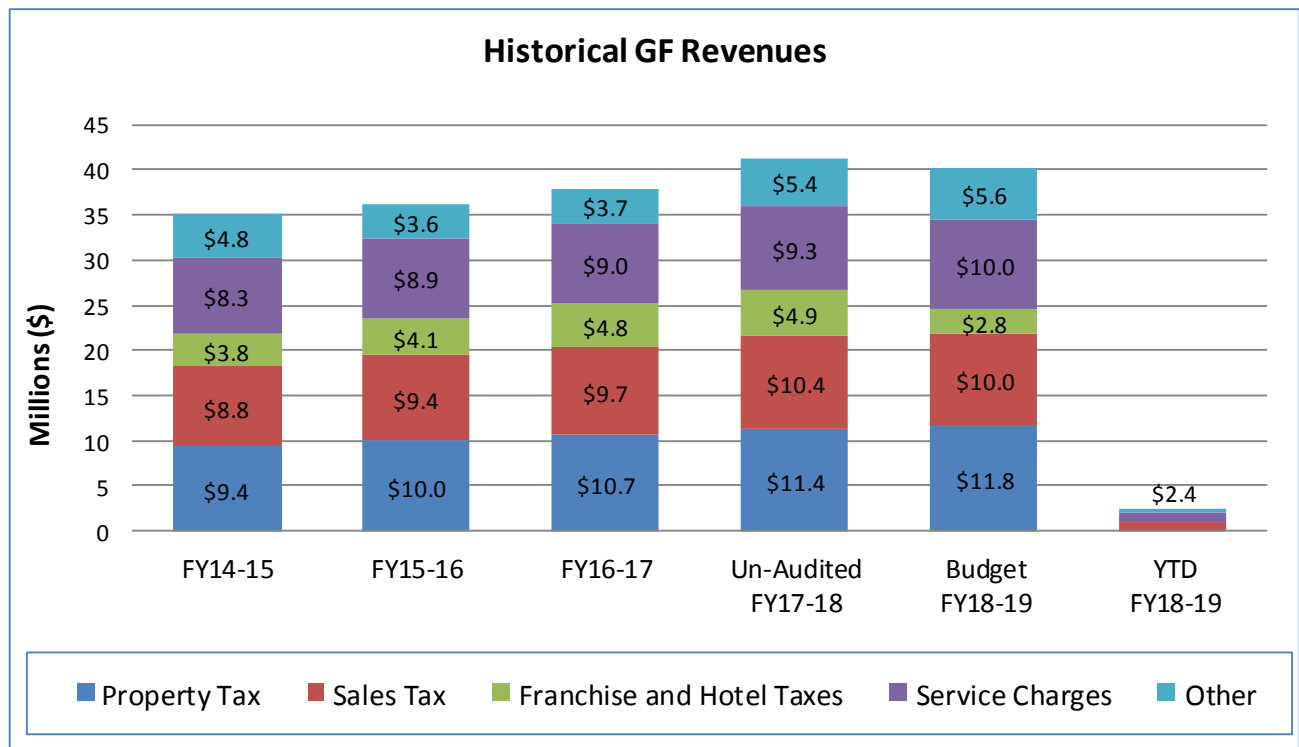


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED JULY 2018 – 8% OF YEAR COMPLETE

- **General Fund** – Revenues for the month of July totaled \$2.4 million, or 6% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the most recent County’s estimate projected Morgan Hill property tax revenue, excluding the property transfer tax, at \$12.5 million for the fiscal year 2018-19, which is approximately \$700,000 more than the adopted budget partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution of \$821,000 versus \$495,000 budgeted. 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 29% of the approximately \$40.1 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 44% of the budgeted amount as annual business license renewal payments are usually received in the first few months of the fiscal year.

The chart below shows historical General Fund revenues by major revenue category from FY14-15 through FY16-17 Actual, Un-audited FY17-18, FY18-19 Budget, and YTD as of July 31, 2018.



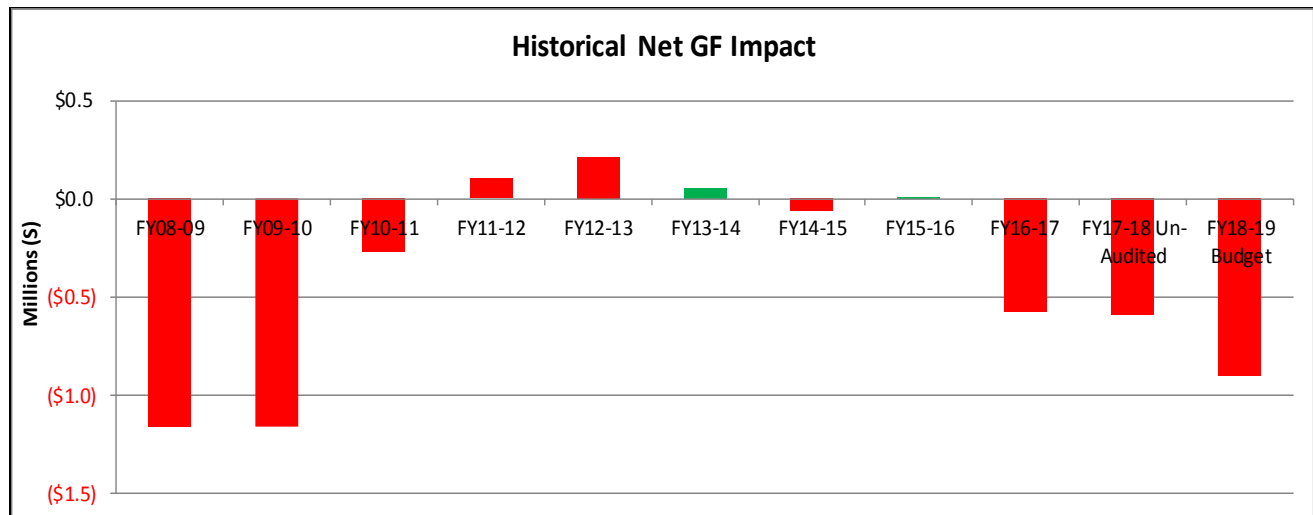
General Fund expenditures and encumbrances as of July 31, 2018 totaled \$4.1 million, of which approximately \$1.8 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department’s recreation operations, as reflected in



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED JULY 2018 – 8% OF YEAR COMPLETE

the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a positive impact to the General Fund of approximately \$300,000 for the month of July. Without the carry-over encumbrances, the month of July operations resulted in a larger net benefit to the general fund of approximately \$525,000. Any net impact from the recreation operations increases (decreases) reserves in 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.

- **Development Services Fund** – Revenues for July totaled \$475,000, an increase of 17% or approximately \$70,000 more than a year ago at this time partially due to the fee increases that went into effect January 1st of this year. Expenditures, including encumbrances, totaled \$618,000. Without the outstanding encumbrances, however, expenditures for the month of July amounted to \$372,000. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$1.4 million.
- **Debt Service Funds** – Expenditures for the month totaled \$1,104. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.
- **Wastewater Operations** – Revenues from Sewer Operations for the month of July totaled \$0.9 million. Expenditures and outstanding encumbrances totaled \$0.7 million or just 6% of the budget primarily attributable to the timing of the quarterly billing for sewer plant maintenance and operations. The table



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED JULY 2018 – 8% OF YEAR COMPLETE

below shows historical Sewer Operations revenues and expenditures from FY14-15 through FY16-17 Actual, Un-audited FY17-18, FY18-19 Budget, and YTD as of July 31, 2018.

(amount in millions)	FY14-15	FY15-16	FY16-17	Un-Audited FY17-18	Budget FY18-19	YTD FY18-19
Revenues	10.3	10.2	9.7	10.3	10.7	0.9
Expenditures	8.8	12.0	9.8	10.8	11.3	0.7
Operating Margin	1.5	(1.8)	(0.1)	(0.5)	(0.6)	0.2
Operating Margin without Encumbrances	1.5	(1.8)	(0.0)	(0.3)	(0.6)	0.5

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations for the month of July totaled \$1.4 million, approximately 4% more than a year ago mainly due to rate adjustment. Water Operations expenditures, including outstanding encumbrances, totaled \$1.8 million for the year. Without the encumbrances, however, the expenditures amounted to \$0.5 million. The table below shows Water Operations revenues and expenditures from FY14-15 through FY16-17 Actual, Un-audited FY17-18, FY18-19 Budget, and YTD as of July 31, 2018.

(amount in millions)	FY14-15	FY15-16	FY16-17	Un-Audited FY17-18	Budget FY18-19	YTD FY18-19
Revenues	8.8	8.5	10.9	13.0	13.8	1.4
Expenditures	9.3	9.7	11.2	12.1	13.5	1.8
Operating Margin	(0.5)	(1.2)	(0.3)	0.9	0.3	(0.4)
Operating Margin without Encumbrances	(0.5)	(1.2)	(0.1)	1.4	0.3	0.9

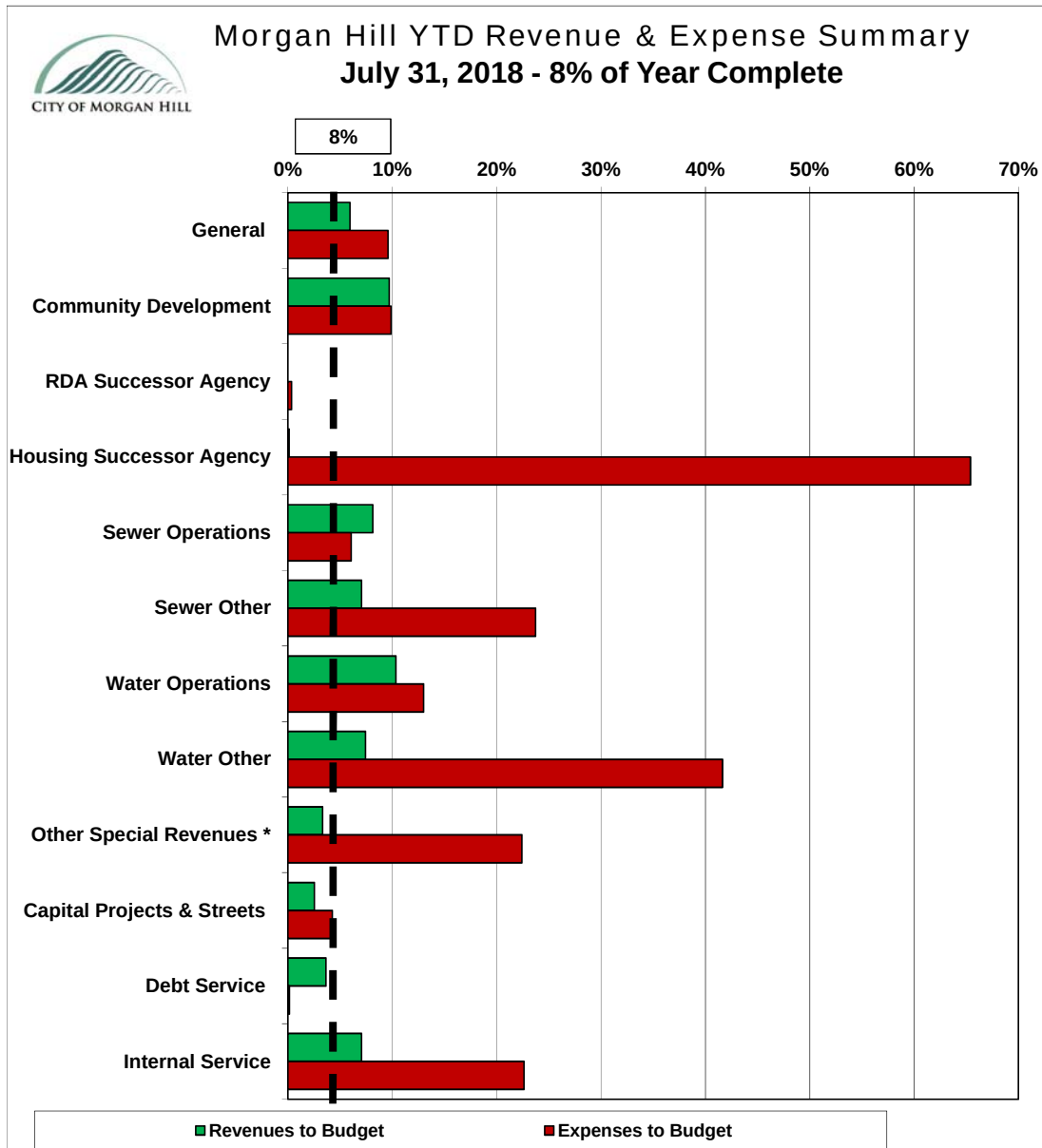
- **Investments** – No purchases were made during the month of July 2018. Total interest earnings received on investments were \$86,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
July 31, 2018 - 8% of Year Complete



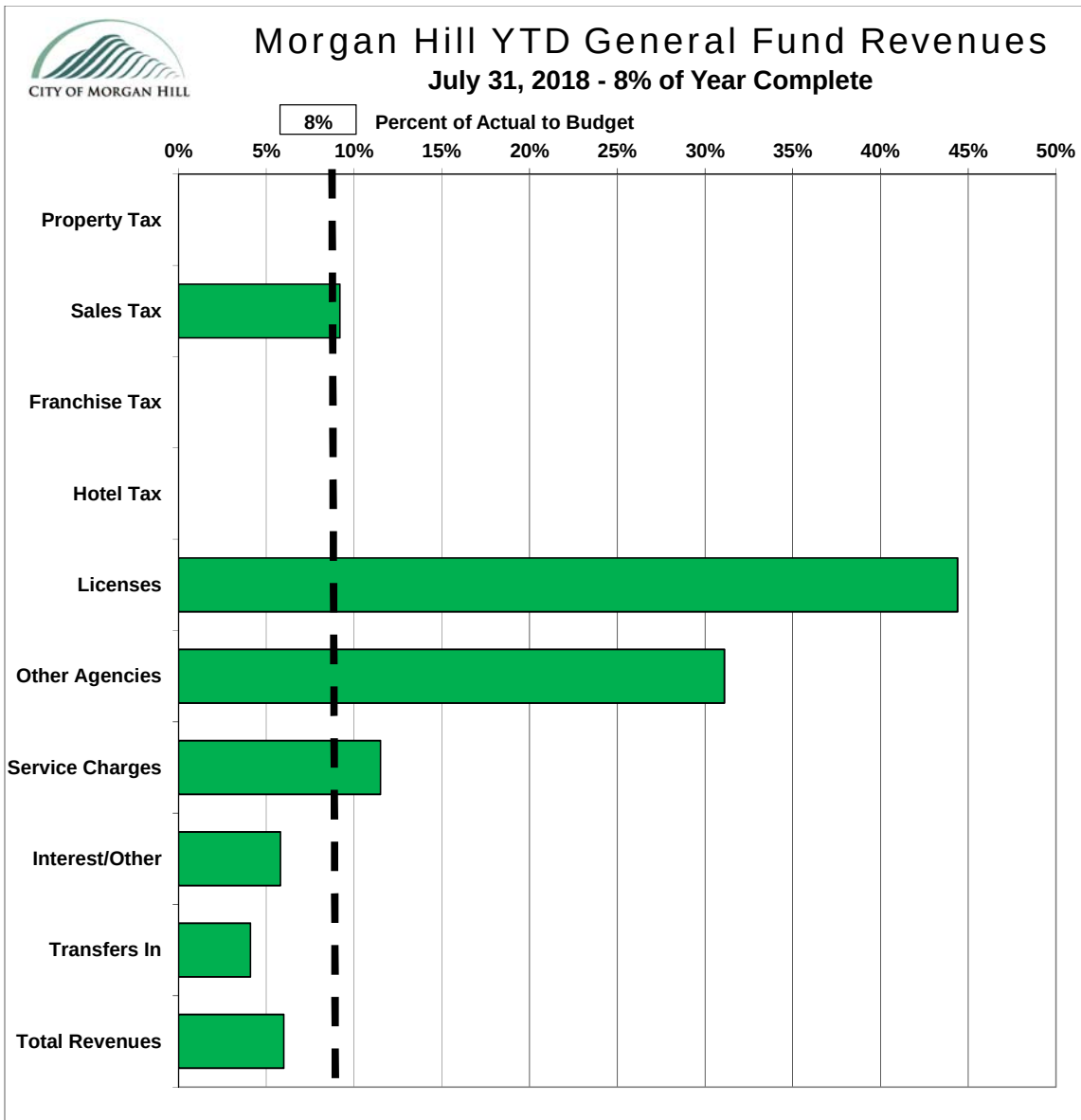
CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT

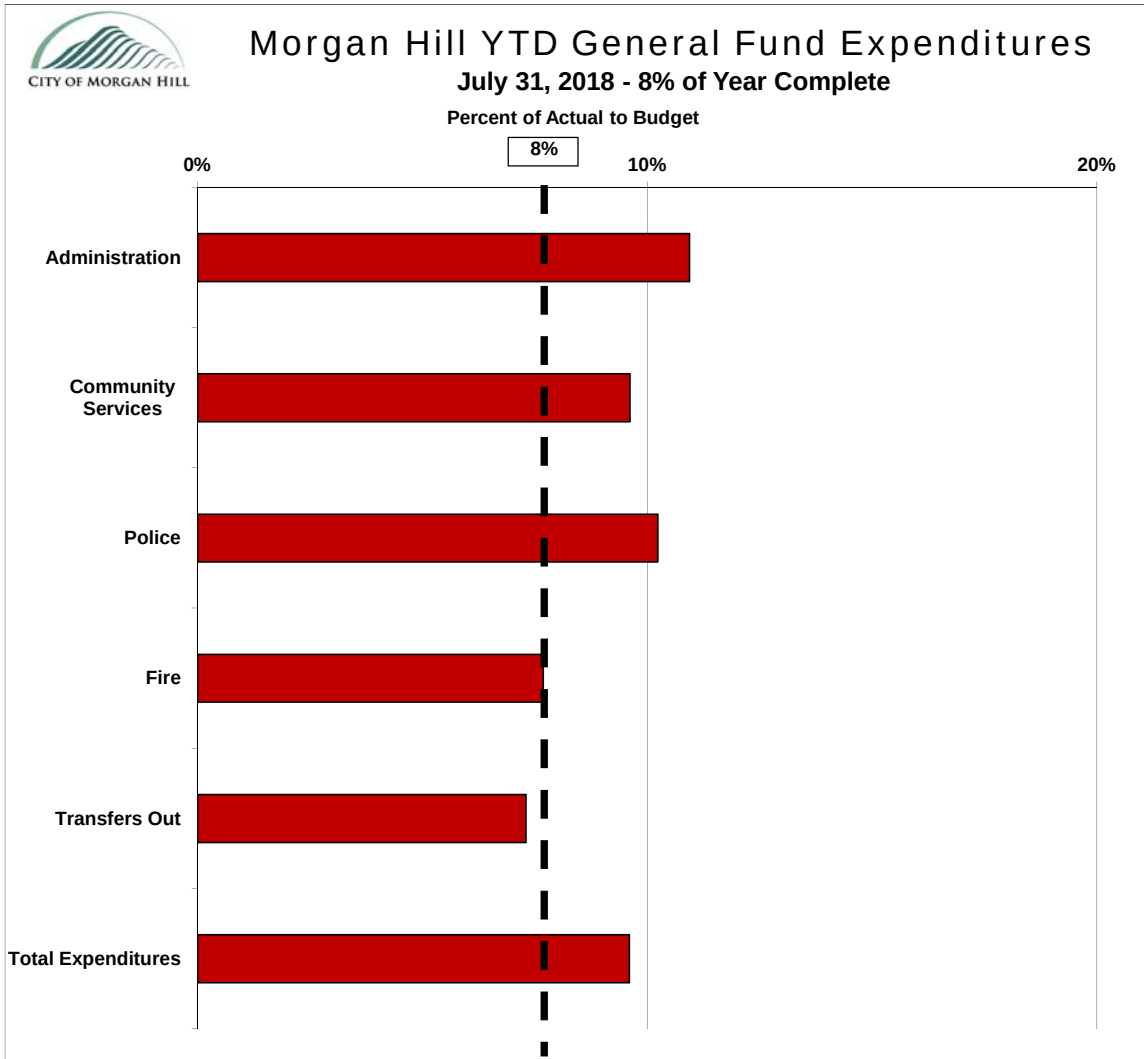


FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 2,391,849	6%	\$ 4,138,912	10%
Community Development	474,614	10%	617,966	10%
RDA Successor Agency	-	n/a	29,139	0%
Housing Successor Agency	2,838	0%	706,257	65%
Sewer Operations	875,699	8%	687,263	6%
Sewer Other	548,713	7%	3,025,765	24%
Water Operations	1,425,461	10%	1,751,176	13%
Water Other	280,605	7%	2,120,451	42%
Other Special Revenues *	104,019	3%	1,007,112	22%
Capital Projects & Streets	1,006,233	3%	2,046,828	4%
Debt Service	24,715	4%	1,104	0%
Internal Service	832,309	7%	2,590,490	23%
TOTAL FOR ALL FUNDS	\$ 7,967,055	5%	\$ 18,722,460	11%

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



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$11,813,532	\$ -		\$ -	#DIV/0!
Sales Tax	9,981,124	922,496	9%	639,300	44%
Franchise Tax	2,164,190	-		-	#DIV/0!
Hotel Tax	2,754,000	-		-	#DIV/0!
Licenses	200,800	89,081	44%	147,274	-40%
Other Agencies	271,398	84,405	31%	-	#DIV/0!
Service Charges	9,993,089	1,152,780	12%	1,050,660	10%
Interest/Other	1,330,787	76,524	6%	147,729	-48%
Transfers In	1,637,720	66,563	4%	66,171	1%
TOTAL REVENUES	\$40,146,640	\$ 2,391,849	6%	\$ 2,051,134	17%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,890,969	\$ 535,069	11%	\$ 1,293,568	-59%
Community Services	12,195,638	1,172,937	10%	1,360,473	-14%
Police	17,258,708	1,766,667	10%	1,261,445	40%
Fire	6,666,707	512,486	8%	437,687	17%
Transfers Out	2,077,498	151,753	7%	312,033	-51%
TOTAL EXPENDITURES	\$ 43,089,519	\$ 4,138,912	10%	\$ 4,665,206	-11%

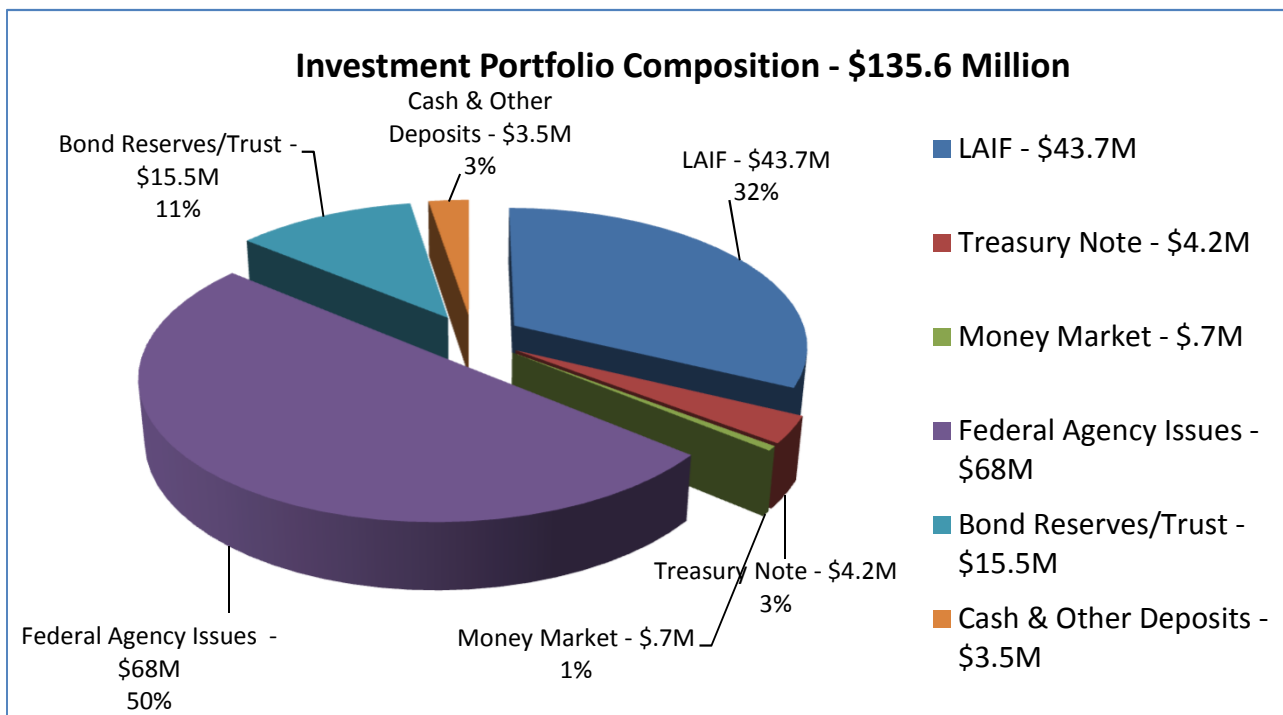


**City of Morgan Hill
Recreation Report - Fiscal Year 2018-19
For the Month Ended July 31, 2018
8% of Year Complete**

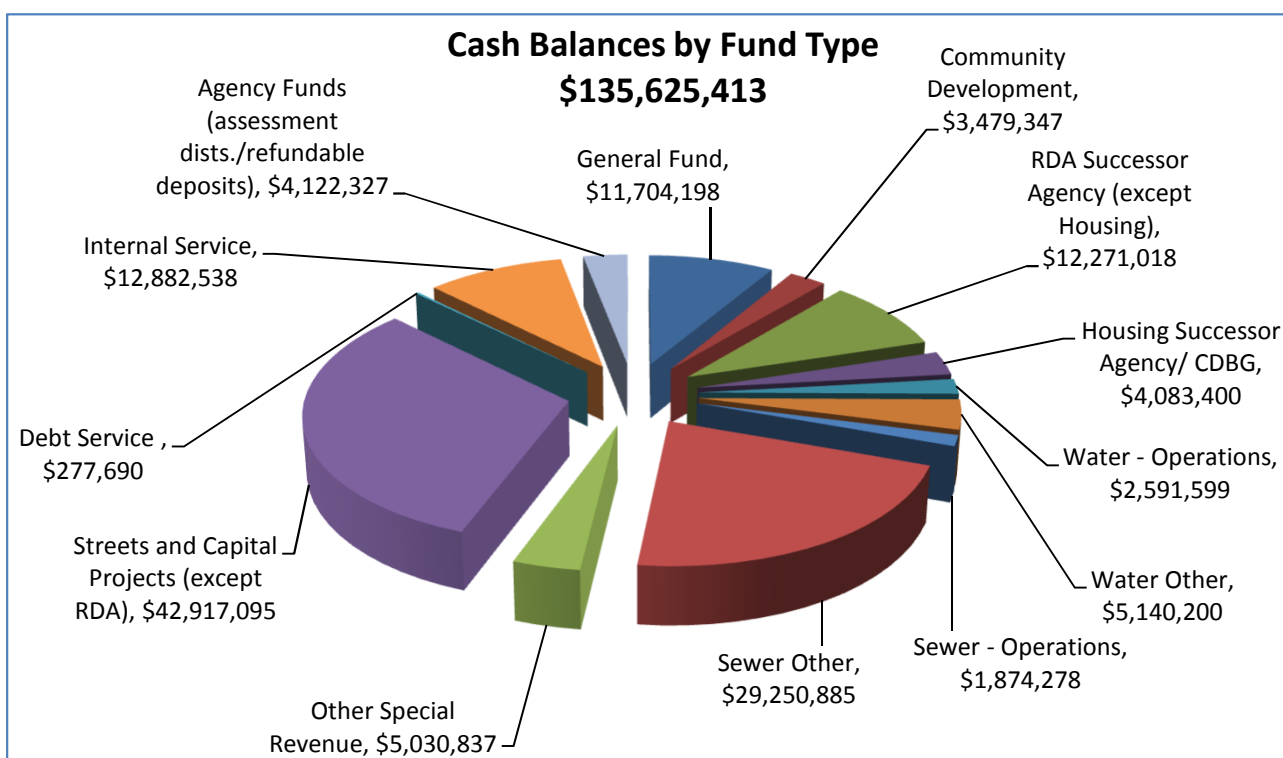
	<u>Budget</u>	<u>July 2018</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,241,196	\$ 822,315	\$ 822,315	
Facility Rentals	898,700	132,590	132,590	
Community Services	147,840	6,170	6,170	
Transfers in	75,000	6,250	6,250	
Total Revenues	<u>\$ 7,362,736</u>	<u>\$ 967,325</u>	<u>\$ 967,325</u>	13%
Less: Expenditures				
Membership & Program Services	\$ 6,255,009	\$ 323,888	\$ 323,888	
Facility Rentals	1,355,732	91,284	91,284	
Community Services	653,307	27,049	27,049	
Total Expenditures	<u>\$ 8,264,049</u>	<u>\$ 442,220</u>	<u>\$ 442,221</u>	5%
Net Impact without encumbrances	<u>\$ (901,313)</u>	<u>\$ 525,105</u>	<u>\$ 525,104</u>	
Encumbrances	-	-	225,119	
Net Impact with encumbrances	<u>\$ (901,313)</u>	<u>\$ 525,105</u>	<u>\$ 299,985</u>	

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

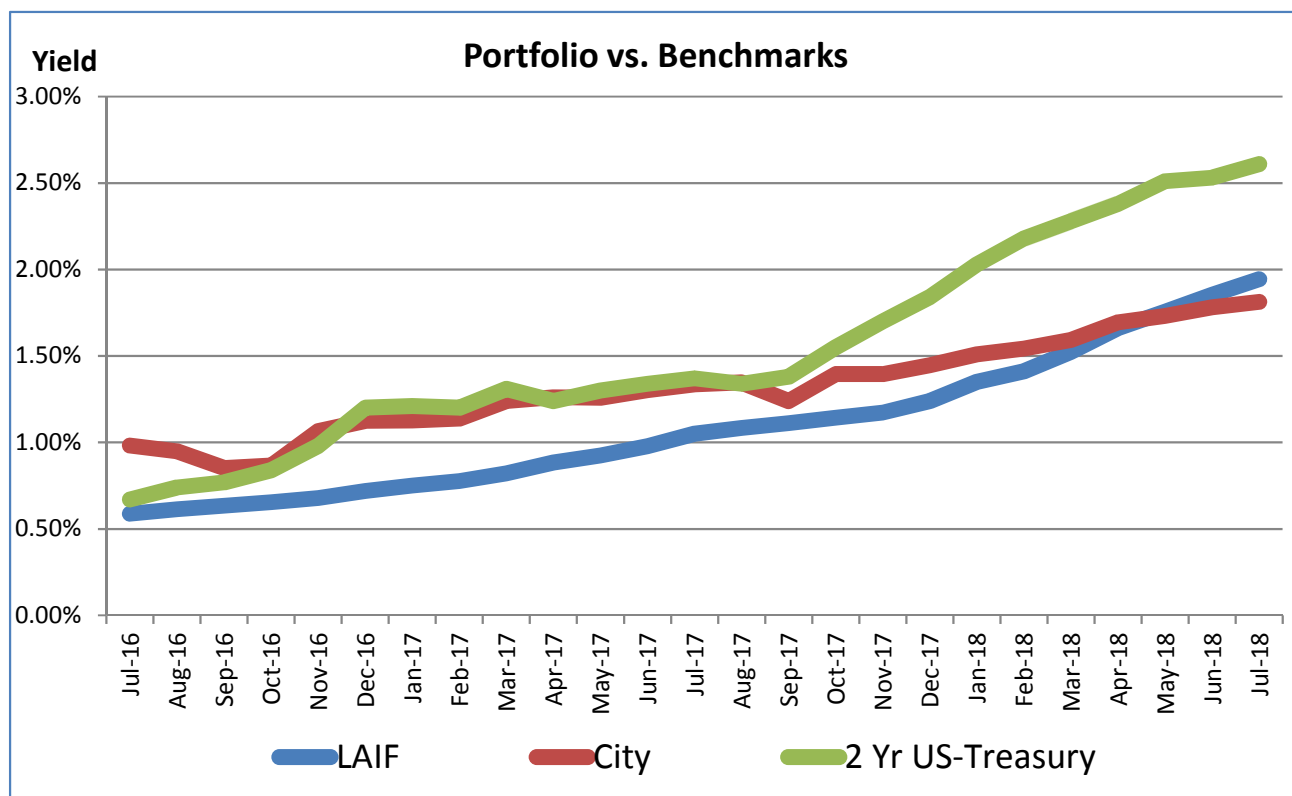
The following are the snapshots of City's investment portfolio as of July 31, 2018. The first chart shows the portfolio composition by investment type:



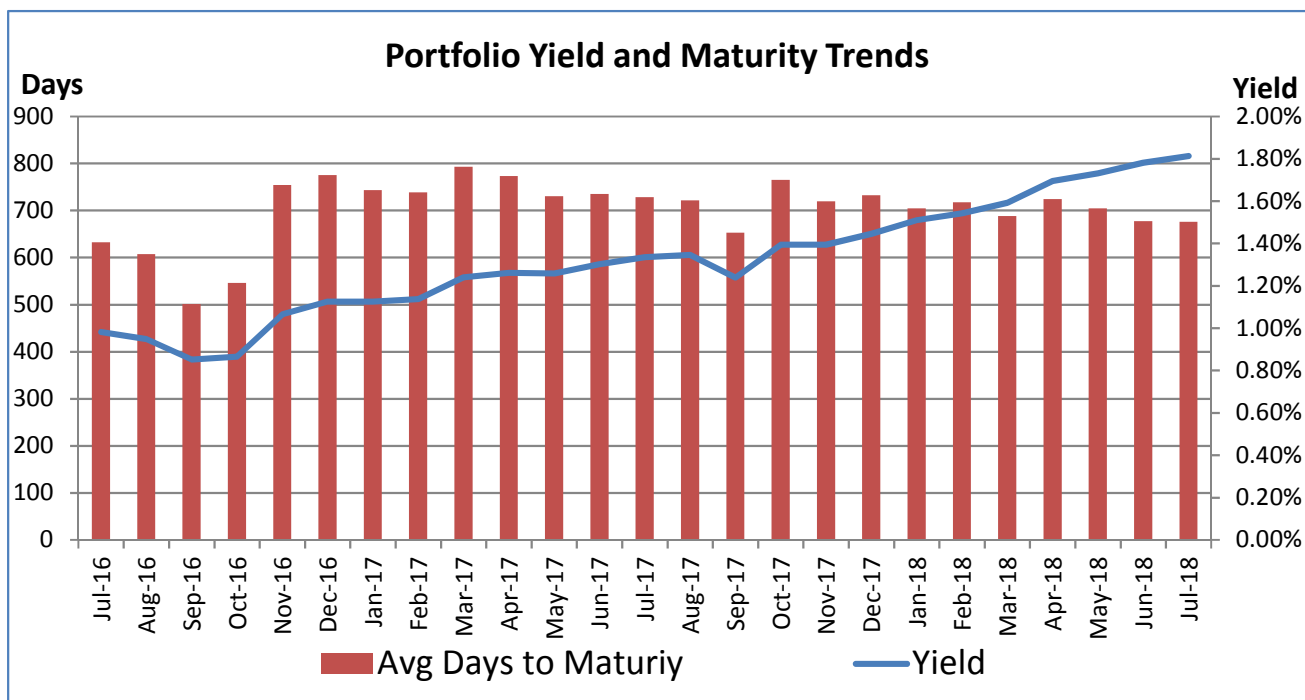
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JULY 31, 2018
FOR THE FISCAL YEAR OF 2018-19

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.94%	\$ 37,305,477	27.51%	\$ 37,235,599
2014 Water Rev Bonds - Water Impact	Water Fund	1.94%	526,900	0.39%	525,913
2014 Water Rev Bonds - Water CIP	Water Fund	1.94%	117,460	0.09%	117,240
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.94%	5,736,901	4.23%	5,726,155
Federal Issues	All Funds Pooled	1.50%	67,975,413	50.12%	65,758,751
US Treasury Notes	All Funds Pooled	2.73%	4,259,841	3.14%	4,237,920
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.76%	724,777	0.53%	724,777
	SUBTOTAL		\$ 116,646,769	86.01%	\$ 114,326,355
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	1.53%	55	0.00%	55 *
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.53%	70	0.00%	70 *
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.77%	235,462	0.17%	235,462 *
US Treasury Notes - Reserve Acct.	Successor Fund	1.08%	11,919,666	8.79%	11,929,033 *
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.53%	572,712	0.42%	572,712 *
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.53%	567,489	0.42%	567,489 *
	SUBTOTAL		13,295,453	9.80%	13,304,820
Other Cash/Deposits					
General Checking	All Funds		3,458,676	2.55%	3,458,676
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			1,387,404	1.02%	1,559,706
PARS - PENSION Trust			800,000	0.59%	871,023
	SUBTOTAL		5,683,192	4.19%	5,926,517
Total Cash and Investments			\$ 135,625,413	100.00%	\$ 133,557,692

CASH ACTIVITY SUMMARY
FY 2018-19

Fund Type	Unaudited 07/01/18 Balance	Change in Cash Balance	7/31/2018 Balance
General Fund	\$ 14,905,287	\$ (3,201,089)	\$ 11,704,198
Community Development	3,444,772	34,575	3,479,347
RDA Successor Agency (except Housing)	12,278,895	(7,877)	12,271,018
Housing Successor Agency/ CDBG	4,152,743	(69,342)	4,083,400
Water - Operations	2,341,115	250,485	2,591,599
Water Other	4,954,819	185,380	5,140,200
Sewer - Operations	1,519,052	355,226	1,874,278
Sewer Other	29,212,177	38,708	29,250,885
Other Special Revenue	5,093,029	(62,192)	5,030,837
Streets and Capital Projects (except RDA)	42,155,177	761,918	42,917,095
Debt Service	253,645	24,046	277,690
Internal Service	13,022,186	(139,647)	12,882,538
Agency Funds (assessment dists./refundable deposits)	4,116,381	5,945	4,122,327
Total	\$ 137,449,278	\$ (1,823,865)	\$ 135,625,413

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

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

* values as of 6/30/18

Prepared by:

Harjot Sangha, Accounting Manager

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

David Clink, Treasurer



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

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 43,686,738	32.21%	\$ 43,604,907	1.94%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.95%	3,902,000	1.70%	10/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.95%	3,830,280	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.95%	3,824,040	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.47%	1,929,440	1.65%	9/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.95%	3,818,440	1.60%	9/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.95%	3,848,240	1.60%	10/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.95%	3,799,880	1.55%	10/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.47%	1,927,160	1.65%	10/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.95%	3,825,680	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.21%	2,873,520	1.65%	8/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.95%	3,831,240	1.63%	8/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.95%	3,851,280	1.88%	8/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.96%	1,259,869	2.15%	9/29/2018	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.84%	3,722,835	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	3.06%	4,009,938	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.21%	2,924,550	2.50%	1/30/2019	1/30/2023
Treasury Note	4/30/2018	4,259,841	3.14%	4,237,920	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,559,841	43.91%	\$ 57,416,311	1.82%		
Money Market		\$ 658,020	0.49%	\$ 658,020	1.76%		
Total City Managed/Average		\$ 103,904,599	76.61%	\$ 101,679,237	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,780	0.55%	\$ 745,395	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,794	0.55%	739,860	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,973	0.55%	740,235	1.25%	8/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.55%	740,768	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.55%	749,265	1.10%	9/3/2018	9/3/2018
Fed Home Loan Bank	9/21/2016	749,979	0.55%	748,980	1.12%	9/21/2018	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,872	0.55%	739,583	1.29%	9/12/2018	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,907	0.55%	742,785	1.22%	8/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,703	0.55%	735,397	1.03%	1/30/2019	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,970	0.55%	738,675	1.25%	9/30/2018	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,916	0.55%	747,833	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,003,281	0.74%	994,630	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,908	0.74%	995,700	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	748,738	0.55%	743,550	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	742,316	0.55%	735,619	1.39%	6/20/2019	6/20/2019
Fed Home Loan Bank	6/19/2018	942,276	0.69%	942,087	1.38%	5/28/2019	5/28/2019
Money Market		66,757	0.05%	66,757	1.76%		
Sub Total/Average		\$ 12,742,169	9.40%	\$ 12,647,117	1.23%		
Bond Reserve Accounts - Held By Trustees		\$ 13,295,453	9.80%	\$ 13,304,820			
Cash/Deposits		\$ 3,495,788	2.58%	\$ 3,495,788			
PARS Trust		\$ 2,187,404	1.61%	\$ 2,430,730			
GRAND TOTAL/AVERAGE		\$ 135,625,413	100.00%	\$ 133,557,692			

Attachment: July 2018 Financial and Investment Report (1997 : July 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Month Ended July 31, 2018
8% 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	\$ 10,131,882	\$ 10,131,882	\$ -	0%	\$ -	\$ -	0%
Property Tax - RPTTF Residual Distribution	1,405,500	1,405,500	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	276,150	276,150	-	n/a	-	-	n/a
Sales Tax	9,601,124	9,601,124	922,496	10%	639,300	283,196	44%
Public Safety Sales Tax	380,000	380,000	-	n/a	-	-	n/a
Transient Occupancy Taxes	2,754,000	2,754,000	-	n/a	-	-	n/a
Franchise (Refuse, Cable, PG&E)	2,164,190	2,164,190	-	0%	-	-	n/a
Property Transfer Tax	505,000	505,000	-	n/a	-	-	n/a
TOTAL TAXES	27,217,846	27,217,846	922,496	3%	639,300	283,196	44%
LICENSES/PERMITS							
Business License	196,000	196,000	86,744	44%	144,992	(58,248)	-40%
Other Permits	4,800	4,800	2,337	49%	2,282	55	2%
TOTAL LICENSES/PERMITS	200,800	200,800	89,081	44%	147,274	(58,192)	-40%
FINES AND PENALTIES							
Parking Enforcement	8,250	8,250	677	8%	-	677	n/a
Bails & Fines	71,500	71,500	-	n/a	-	-	0%
Administrative Citations	9,500	9,500	100	1%	5,400	(5,300)	-98%
TOTAL FINES AND PENALTIES	89,250	89,250	777	1%	5,400	(4,623)	-86%
OTHER AGENCIES							
Motor Vehicle in-Lieu	23,934	23,934	-	0%	-	-	n/a
Other Revenue - Other Agencies	271,398	271,398	84,405	31%	-	84,405	n/a
TOTAL OTHER AGENCIES	295,332	295,332	84,405	29%	-	84,405	n/a
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,000	33,000	870	3%	840	30	4%
Business License Application Review	36,000	36,000	4,244	12%	3,500	744	21%
Membership Services & Rec Programs	6,241,196	6,241,196	822,315	13%	763,347	58,968	8%
Facility Rentals	898,700	898,700	132,590	15%	147,036	(14,447)	-10%
Community Services	147,840	147,840	6,170	4%	6,995	(824)	-12%
General Administration Overhead	1,709,712	1,709,712	142,176	8%	110,024	32,152	29%
Other Charges Current Services	926,641	926,641	44,415	5%	18,918	25,497	135%
TOTAL CURRENT SERVICES	9,993,089	9,993,089	1,152,780	12%	1,050,660	102,120	10%
OTHER REVENUE							
Use of money/property	458,589	458,589	36,349	8%	35,253	1,095	3%
Other Revenues	254,014	254,014	39,398	16%	107,076	(67,678)	-63%
TOTAL OTHER REVENUE	712,603	712,603	75,747	11%	142,329	(66,582)	-47%
TRANSFERS IN							
One Time Transfer	-	-	-	0%	-	-	0%
Public Safety	100,000	100,000	-	0%	-	-	0%
Streets	738,968	738,968	-	0%	-	-	n/a
Police Impact	25,000	25,000	2,083	8%	2,083	-	n/a
Sewer Operations	349,376	349,376	29,115	8%	28,919	196	1%
Water Operations	349,376	349,376	29,115	8%	28,919	196	1%
Park Development	75,000	75,000	6,250	8%	6,250	-	n/a
TOTAL TRANSFERS IN	1,637,720	1,637,720	66,563	4%	66,171	392	1%
TOTAL GENERAL FUND	40,146,640	40,146,640	2,391,849	6%	2,051,134	340,715	17%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	751,089	751,089	58,509	8%	-	58,509	n/a
Interest / Other Revenue/Other Charges	-	-	-	n/a	-	-	n/a
202 STREET MAINTENANCE	751,089	751,089	58,509	8%	-	58,509	n/a



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Month Ended July 31, 2018
8% 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	202	202	-	n/a	-	-	n/a
Police Grant/SLEF/JAG	100,000	100,000	-	n/a	-	-	0%
205 PUBLIC SAFETY TRUST	100,202	100,202	-	n/a	-	-	n/a
206 COMMUNITY DEVELOPMENT							
Building Fees	2,996,450	2,996,450	140,368	5%	196,830	(56,462)	-29%
Planning Fees	1,396,529	1,396,529	174,562	12%	47,880	126,682	265%
Engineering Fees	462,524	462,524	159,684	35%	160,751	(1,067)	-1%
Other Revenue/Current Charges	24,265	24,265	-	n/a	(987)	987	-100%
206 COMMUNITY DEVELOPMENT	4,879,768	4,879,768	474,614	10%	404,474	70,140	17%
207 LONG RANGE PLANNING	741,894	741,894	57,845	8%	65,913	(8,068)	-12%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	2,821	2,821	-	n/a	785	(785)	-100%
215 and 216 HCD BLOCK GRANT	2,821	2,821	-	n/a	785	(785)	-100%
225 ASSET SEIZURE	1,670	1,670	-	n/a	-	-	n/a
229 LIGHTING AND LANDSCAPE	188,591	188,591	-	n/a	-	-	n/a
230 COMMUNITY FACILITIES DISTRICT	44,198	44,198	-	0%	-	-	0%
232 ENVIRONMENTAL PROGRAMS	394,158	394,158	45,177	11%	55,517	(10,340)	-19%
234 MOBILE HOME PARK RENT STAB.	661	661	-	n/a	-	-	n/a
235 SENIOR HOUSING	3,347	3,347	-	n/a	-	-	n/a
236 HOUSING MITIGATION	1,613,912	1,613,912	-	n/a	13,449	(13,449)	-100%
240 EMPLOYEE ASSISTANCE	28,949	28,949	997	3%	2,238	(1,241)	-55%
247 ENVIRONMENT REMEDIATION	2,118	2,118	-	n/a	-	-	n/a
250 COMH-SUCCESSOR AGENCY-MHRDA	7,946,430	7,946,430	-	n/a	-	-	n/a
255 HOUSING SUCCESSOR AGENCY	2,386,006	2,386,006	2,838	0%	103,644	(100,806)	-97%
TOTAL SPECIAL REVENUE FUNDS	19,085,815	19,085,815	639,980	3%	646,020	(6,040)	-1%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	7,959,013	7,959,013	95,494	1%	20,411	75,083	368%
302 PARK MAINTENANCE	1,320,332	1,320,332	126,538	10%	407,167	(280,629)	-69%
303 LOCAL DRAINAGE	1,394,482	1,394,482	178,139	13%	561,462	(383,323)	-68%
304 LOCAL DRAINAGE/NON AB1600	80,981	80,981	26,510	33%	50,496	(23,986)	-48%
306 AGRICULTURE & OPEN SPACE PRESERVATION	2,652,538	2,652,538	32,939	1%	3,120	29,820	956%
308 STREET CIP	3,861,662	3,861,662	101,185	3%	85,877	15,308	18%
309 TRAFFIC IMPACT	17,251,157	17,251,157	213,105	1%	1,874	211,231	11269%
311 POLICE IMPACT	277,713	277,713	16,535	6%	767	15,768	2056%
313 FIRE IMPACT	349,306	349,306	23,391	7%	118	23,273	19723%
346 PUBLIC FACILITIES NON-AB1600	590,499	590,499	-	n/a	-	-	n/a
347 PUBLIC FACILITIES IMPACT	198,932	198,932	11,038	6%	512	10,526	2056%
348 LIBRARY	909,565	909,565	42,546	5%	1,974	40,572	2055%
350 UNDERGROUNDING	45,800	45,800	-	n/a	-	-	n/a
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	684,678	684,678	1,667	0%	11,633	(9,966)	-86%
360 COMMUNITY/REC IMPACT FUND	1,275,010	1,275,010	78,636	6%	3,663	74,973	2047%
TOTAL CAPITAL PROJECTS FUNDS	38,851,668	38,851,668	947,724	2%	1,149,074	(201,350)	-18%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	298,856	298,856	24,715	8%	24,478	237	1%
441 POLICE FACILITY BOND	375,764	375,764	-	n/a	-	-	n/a
TOTAL DEBT SERVICE FUNDS	674,620	674,620	24,715	4%	24,478	237	1%

Attachment: July 2018 Financial and Investment Report (1997 : July 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Month Ended July 31, 2018
8% 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	10,391,000	10,391,000	837,566	8%	832,462	5,103	1%
Interest Income/Transfers	37,151	37,151	-	n/a	-	-	n/a
Other Revenue/Current Charges	318,700	318,700	38,133	12%	69,335	(31,202)	-45%
640 SEWER OPERATION	10,746,851	10,746,851	875,699	8%	901,797	(26,098)	-3%
641 SEWER EXPANSION							
Interest Income	215,856	215,856	775	0%	178	597	336%
Development Impact Fee	4,717,263	4,717,263	319,679	7%	14,183	305,496	2154%
Transfers/Other	-	-	-	0%	-	-	0%
641 SEWER EXPANSION	4,933,119	4,933,119	320,453	6%	14,361	306,093	2131%
642 SEWER RATE STABILIZATION	38,641	38,641	-	n/a	-	-	n/a
643 SEWER-CAPITAL PROJECT	2,797,976	2,797,976	228,260	8%	199,401	28,859	14%
TOTAL SEWER FUNDS	18,516,587	18,516,587	1,424,413	8%	1,115,559	308,854	28%
650 WATER OPERATION							
Water Sales	12,435,000	12,435,000	1,215,851	10%	1,153,189	62,663	5%
Meter Install & Service	123,000	123,000	31,188	25%	66,456	(35,268)	-53%
Transfers-In / Interest Income	440,840	440,840	33,175	8%	34,629	(1,454)	-4%
Other Revenue/Current Charges	752,660	752,660	145,247	19%	115,927	29,320	25%
650 WATER OPERATION	13,751,500	13,751,500	1,425,461	10%	1,370,200	55,261	4%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	47,561	47,561	-	n/a	-	-	n/a
Development Impact Fee	1,311,698	1,311,698	80,699	6%	3,624	77,075	2127%
651 WATER EXPANSION	1,359,259	1,359,259	80,699	6%	3,624	77,075	2127%
652 Water Rate Stabilization	8,223	8,223	-	n/a	41,667	(41,667)	-100%
653 Water Capital Project	2,400,895	2,400,895	199,906	8%	112,648	87,258	77%
TOTAL WATER FUNDS	17,519,877	17,519,877	1,706,066	10%	1,528,139	177,927	12%
TOTAL ENTERPRISE FUNDS	36,036,464	36,036,464	3,130,479	9%	2,643,698	486,780	18%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,870,983	1,870,983	130,973	7%	134,305	(3,332)	-2%
740 BUILDING MAINTENANCE	3,326,619	3,326,619	273,825	8%	255,386	18,439	7%
741 BUILDING REPLACEMENT	789,958	789,958	61,187	8%	39,388	21,799	55%
745 CIP ADMINISTRATION	1,780,750	1,780,750	55,225	3%	122,958	(67,733)	-55%
760 UNEMPLOYMENT INSURANCE	2,324	2,324	-	n/a	-	-	n/a
770 WORKERS COMPENSATION	775,343	775,343	29,805	4%	56,365	(26,560)	-47%
790 EQUIPMENT REPLACEMENT	1,064,433	1,064,433	84,140	8%	79,307	4,833	6%
791 EMPLOYEE BENEFITS	1,171,099	1,171,099	112,797	10%	50,927	61,870	121%
793 CORPORATION YARD COMMISSION	-	-	764	0%	-	764	n/a
795 GENERAL LIABILITY INSURANCE	1,020,581	1,020,581	83,592	8%	77,917	5,675	7%
TOTAL INTERNAL SERVICE FUNDS	11,802,090	11,802,090	832,309	7%	816,553	15,756	2%
TOTAL FOR ALL FUNDS	\$ 146,597,297	\$ 146,597,297	\$ 7,967,055	5%	\$ 7,330,957	\$ 636,098	9%

Attachment: July 2018 Financial and Investment Report (1997 : July 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2018-19
For the Month Ended July 31, 2018
8% 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	\$ 39,730	\$ 337,607	\$ 39,730	\$ 87,000	\$ 126,730	38%	\$ 21
	CITY ATTORNEY	29,752	768,318	29,752	103,972	133,724	17%	5:
	CITY MANAGER	32,717	383,799	32,717	-	32,717	9%	8:
	HUMAN RESOURCES	44,550	796,813	44,550	3,740	48,290	6%	4:
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	36,453	614,068	36,453	-	36,453	6%	4:
	Elections	1,087	270,233	1,087	-	1,087	0%	:
	COUNCIL SVCS & RECORDS MGMT	37,539	884,301	37,539	-	37,539	4%	4:
	FINANCE	123,965	1,720,130	123,965	32,103	156,069	9%	12:
	TOTAL ADMINISTRATION	308,254	4,890,969	308,254	226,816	535,069	11%	38:
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	323,888	6,255,009	323,888	174,299	498,187	8%	38:
	Recreation Facility Rentals	91,284	1,355,732	91,284	50,820	142,104	10%	10:
	Community Services	27,049	653,307	27,049	-	27,049	4%	5:
	Environmental Services	11,166	303,894	11,166	-	11,166	4%	1:
	Street Maintenance	113,903	2,362,851	113,903	264,935	378,838	16%	8:
	Downtown Maintenance	8,396	316,644	8,396	71,512	79,908	25%	1:
	Cable Television	1,166	21,581	1,166	-	1,166	5%	:
	COMMUNITY SERVICES	576,852	11,269,018	576,852	561,566	1,138,418	10%	65:
	CODE COMPLIANCE	9,155	150,464	9,155	-	9,155	6%	:
	CONGESTION MANAGEMENT	1,148	55,861	1,148	-	1,148	2%	:
	ECONOMIC DEVELOPMENT PROGRAMS	24,217	720,295	24,217	-	24,217		
	TOTAL COMMUNITY SERVICES	611,371	12,195,638	611,371	561,566	1,172,937	10%	67:
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	53,131	1,222,942	53,131	44,603	97,734	8%	6:
	Field Operations	374,022	9,153,103	374,022	910,299	1,284,320	14%	56:
	Support Services	144,343	2,272,707	144,343	3,500	147,843	7%	16:
	Emergency Services/Haz Mat	9,073	187,057	9,073	-	9,073	5%	1:
	Special Operations	131,521	2,748,496	131,521	-	131,521	5%	22:
	Dispatch Services	85,671	1,674,402	85,671	10,503	96,174	6%	12:
	POLICE	797,762	17,258,708	797,762	968,905	1,766,667	10%	1,14:
	FIRE	471,756	6,666,707	471,756	40,730	512,486	8%	41:
	TOTAL PUBLIC SAFETY	1,269,517	23,925,415	1,269,517	1,009,635	2,279,152	10%	1,56:
IV. TRANSFERS								
	Other	151,753	2,077,498	151,753	-	151,753	7%	31:
	TOTAL TRANSFERS	151,753	2,077,498	151,753	-	151,753	7%	31:
	TOTAL GENERAL FUND	2,340,895	43,089,519	2,340,895	1,798,017	4,138,912	10%	2,93:

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City of Morgan Hill
Year to Date Expenses - Fiscal Year 2018-19
For the Month Ended July 31, 2018
8% 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	1,412	742,877	1,412	-	1,412	0%	
205	PUBLIC SAFETY/SUPP.LAW	545	106,536	545	-	545	1%	
206	COMMUNITY DEVELOPMENT FUND							
	Planning	95,593	2,597,349	95,593	223,396	318,989	12%	13%
	Building	84,816	1,976,108	84,816	16,009	100,825	5%	11%
	Engineering	65,558	1,668,062	65,558	132,593	198,152	12%	7%
206	COMMUNITY DEVELOPMENT FUND	245,967	6,241,519	245,967	371,998	617,966	10%	32%
207	LONG RANGE PLANNING	26,415	1,383,881	26,415	567,208	593,622	43%	3%
215/216	CDBG	413	4,961	413	-	413	8%	
225	ASSET SEIZURE	-	-	-	-	-	0%	
229	LIGHTING AND LANDSCAPE	3,304	195,274	3,304	44,648	47,952	25%	1%
230	COMMUNITY FACILITIES DISTRICT	1,592	46,262	1,592	-	1,592	3%	
232	ENVIRONMENT PROGRAMS	23,827	406,727	23,827	15,910	39,737	10%	2%
234	MOBILE HOME PARK	34	405	34	-	34	8%	
236	HOUSING MITIGATION	32,159	2,316,394	32,159	288,979	321,139	14%	3%
240	EMPLOYEE ASSISTANCE	2,078	28,430	2,078	-	2,078	7%	
250	COMH-SUCCESSOR AGENCY-MHRDA	5,249	7,983,635	5,249	23,890	29,139	0%	1%
255	HOUSING SUCCESSOR AGENCY	62,191	1,079,973	62,191	644,065	706,257	65%	7%
TOTAL SPECIAL REVENUE FUNDS		405,187	20,536,874	405,187	1,956,698	2,361,886	12%	52%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	23,875	8,665,258	23,875	528,883	552,758	6%	3%
302	PARK MAINTENANCE	54,054	1,244,024	54,054	248,724	302,778	24%	5%
303	LOCAL DRAINAGE	6,551	518,362	6,551	2,120	8,672	2%	
304	LOCAL DRAIN. NON-AB1600	217	338,627	217	-	217	0%	
306	AGRICULTURE & OPEN SPACE PRESERVATION	171,831	3,845,295	171,831	64,331	236,162	6%	
308	STREET CIP	5,576	4,012,576	5,576	298,567	304,143	8%	
309	TRAFFIC IMPACT	9,563	19,893,433	9,563	244,041	253,605	1%	2%
311	POLICE IMPACT	2,322	228,096	2,322	2,120	4,442	2%	1%
313	FIRE IMPACT	254	172,227	254	2,120	2,374	1%	
346	PUBLIC FAC.NON AB1600	585	420,850	585	47,489	48,074	11%	
347	PUBLIC FACILITIES IMPACT	175	84,479	175	2,120	2,295	3%	
348	LIBRARY IMPACT	45,243	3,849,962	45,243	114,958	160,201	4%	2%
350	UNDERGROUNDING	85	1,024	85	-	85	8%	
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	504	1,830,740	504	24,032	24,536	1%	
360	COMM/REC CENTER IMPACT	1,719	2,184,177	1,719	143,355	145,074	0%	
TOTAL CAPITAL PROJECTS FUNDS		322,554	47,289,131	322,554	1,722,861	2,045,415	4%	14%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	799	308,656	799	-	799	0%	
441	POLICE FACILITY BOND DEBT	305	380,313	305	-	305	0%	
TOTAL DEBT SERVICE FUNDS		1,104	688,969	1,104	-	1,104	0%	

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City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month Ended July 31, 2018
 8% 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	426,375	11,311,787	426,375	260,888	687,263	6%	45%
641	SEWER CAPITAL EXPANSION	24,572	2,051,871	24,572	518,933	543,505	26%	2%
642	SEWER RATE STABILIZATION	86	1,027	86	-	86	8%	-
643	SEWER-CAPITAL PROJECTS	17,576	10,683,664	17,576	2,464,598	2,482,174	23%	-
TOTAL SEWER FUND(S)		468,609	24,048,349	468,609	3,244,419	3,713,027	15%	48%
WATER								
	Water Operations	397,422	12,440,123	397,422	1,227,465	1,624,886	13%	47%
	Utility Billing	58,085	809,160	58,085	12,826	70,911	9%	7%
	Water Conservation	5,378	210,082	5,378	50,000	55,378	26%	-
650	WATER OPERATIONS	460,885	13,459,365	460,885	1,290,291	1,751,176	13%	55%
651	WATER CAPITAL EXPANSION	59,830	2,726,977	59,830	1,844,191	1,904,021	70%	1%
652	WATER RATE STABILIZATION	28	335	28	-	28	8%	-
653	WATER-CAPITAL PROJECTS	11,385	2,365,955	11,385	205,017	216,402	9%	4%
TOTAL WATER FUND(S)		532,128	18,552,632	532,128	3,339,499	3,871,627	21%	61%
TOTAL ENTERPRISE FUNDS		1,000,737	42,600,981	1,000,737	6,583,918	7,584,655	18%	1,09%
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	84,444	2,013,703	84,444	6,709	91,152	5%	10%
740	BUILDING MAINTENANCE	93,197	3,376,986	93,197	505,287	598,484	18%	12%
741	BUILDING REPLACEMENT	246	405,806	246	87,097	87,343	22%	-
745	CIP ADMINISTRATION	79,890	1,813,012	79,890	-	79,890	4%	12%
760	UNEMPLOYMENT	-	10,000	-	-	-	n/a	-
770	WORKERS COMPENSATION	368,156	947,795	368,156	-	368,156	39%	33%
790	EQUIPMENT REPLACEMENT	-	1,261,025	-	601,107	601,107	48%	-
791	EMPLOYEE BENEFITS FUND	62,728	600,000	62,728	-	62,728	10%	4%
793	CORP YARD COMMISSION	103	1,903	103	1,903	2,006	0%	-
795	GEN. LIABILITY INSURANCE	699,623	1,010,346	699,623	-	699,623	69%	-
TOTAL INTERNAL SERVICE FUNDS		1,388,387	11,440,575	1,388,387	1,202,103	2,590,490	23%	73%
REPORT TOTAL		\$ 5,458,864	\$ 165,646,049	\$ 5,458,863	\$ 13,263,597	\$ 18,722,460	11%	\$ 5,43%

Attachment: July 2018 Financial and Investment Report (1997 : July 2018 Financial and Investment Report)

 City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Month Ended July 31, 2018 8% of Year Complete									
Fund No.	Fund	Preliminary Fund Balance 06-30-18	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	\$ 17,755,405	\$ 2,391,849	6%	\$ 2,340,895	5%	\$ 50,954	\$ 1,798,017	\$ 16,008,342
TOTAL GENERAL FUND		\$ 17,755,405	\$ 2,391,849	6%	\$ 2,340,895	5%	\$ 50,954	\$ 1,798,017	\$ 16,008,342
202	STREET MAINTENANCE	58,588	\$ 58,509	8%	\$ 1,412	4%	\$ 57,096	\$ -	\$ 115,684
205	PUBLIC SAFETY/SUPPL. LAW	50,367	-	n/a	545	4%	(545)	-	49,822
206	COMMUNITY DEVELOPMENT	1,914,195	474,614	10%	245,967	4%	228,647	371,998	1,770,843
207	LONG RANGE PLANNING	1,188,449	57,845	8%	26,415	2%	31,430	567,208	652,672
215 / 216	CDBG	87,556	-	n/a	413	0%	(413)	-	87,143
225	ASSET SEIZURE	138,184	-	n/a	-	0%	-	-	138,184
229	LIGHTING AND LANDSCAPE	156,889	-	n/a	3,304	2%	(3,304)	44,648	108,937
230	COMMUNITY FACILITIES DISTRICT	81,882	-	0%	1,592	0%	(1,592)	-	80,290
232	ENVIRONMENTAL PROGRAMS	235,909	45,177	11%	23,827	6%	21,350	15,910	241,349
234	MOBILE HOME PK RENT STAB.	43,240	-	n/a	34	8%	(34)	-	43,206
235	SENIOR HOUSING	223,540	-	n/a	-	0%	-	-	223,540
236	HOUSING MITIGATION	2,697,655	-	n/a	32,159	1%	(32,159)	288,979	2,376,516
240	EMPLOYEE ASSISTANCE	38,845	997	3%	2,078	7%	(1,081)	-	37,764
247	ENVIRONMENT REMEDIATION	141,519	-	n/a	-	0%	-	-	141,519
250	COMH-SUCCESSOR AGENCY-MHRDA	4,778,248	-	n/a	5,249	0%	(5,249)	12,179,018	(7,406,018)
255	HOUSING SUCCESSOR AGENCY	3,346,204	2,838	0%	62,191	6%	(59,353)	3,157,340	129,511
TOTAL SPECIAL REVENUE FUNDS		\$ 15,181,270	\$ 639,980	3%	\$ 405,187	2%	\$ 234,792	\$ 16,625,101	\$ (1,209,038)
301	PARK DEV. IMPACT FUND	2,780,196	\$ 95,494	1%	\$ 23,875	0%	\$ 71,619	\$ 528,883	\$ 2,322,932
302	PARK MAINTENANCE	4,247,778	126,538	10%	54,054	4%	72,484	248,724	4,071,538
303	LOCAL DRAINAGE	10,380,973	178,139	13%	6,551	1%	171,588	2,120	10,550,440
304	LOCAL DRAINAGE/NON-AB1600	1,406,096	26,510	33%	217	0%	26,293	-	1,432,389
306	AGRICULTURE AND OPEN SPACE PRESERV	7,001,416	32,939	1%	171,831	4%	(138,892)	64,331	6,798,193
308	STREET CIP	2,329,489	101,185	3%	5,576	0%	95,609	298,567	2,126,531
309	TRAFFIC IMPACT FUND	3,262,550	213,105	1%	9,563	0%	203,542	244,041	3,222,051
311	POLICE IMPACT FUND	(737,015)	16,535	6%	2,322	1%	14,213	2,120	(724,922)
313	FIRE IMPACT FUND	3,903,828	23,391	7%	254	0%	23,137	2,120	3,924,845
346	PUBLIC FACILITIES NON-AB1600	664,143	-	n/a	585	0%	(585)	2,120	661,438
347	PUBLIC FACILITIES IMPACT FUND	519,082	11,038	6%	175	0%	10,863	114,958	414,987
348	LIBRARY IMPACT FUND	2,365,817	42,546	5%	45,243	1%	(2,697)	-	2,363,120
350	UNDERGROUNDING	714,508	-	n/a	85	8%	(85)	24,032	690,391
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,498,835	1,667	0%	504	0%	1,163	143,355	1,356,643
360	COMM/REC CTR IMPACT FUND	1,110,896	78,636	6%	1,719	0%	76,917	-	1,187,813
TOTAL CAPITAL PROJECT FUNDS		\$ 41,448,592	\$ 947,724	2%	\$ 322,554	1%	\$ 625,170	\$ 1,675,372	\$ 40,398,390
420	CIVIC CENTER DEBT	171,329	24,715	8%	799	0%	23,916	\$ 55	\$ 195,190
441	POLICE FACILITY BOND DEBT	82,284	-	n/a	305	0%	(305)	70	81,909
TOTAL DEBT SERVICE FUNDS		\$ 253,613	\$ 24,715	4%	\$ 1,104	0%	\$ 23,611	\$ 124	\$ 277,100

Fund No.	Fund	City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Month Ended July 31, 2018 8% of Year Complete							
		Preliminary Fund Balance 06-30-18	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	\$ 2,626,647	\$ 875,699	8%	\$ 426,375	4%	\$ 449,324	260,888	2,815,083
641	SEWER IMPACT FUND*	15,848,324	320,453	6%	24,572	1%	295,881	518,933	15,625,273
642	SEWER RATE STABILIZATION	2,567,930	-	n/a	86	8%	(86)	-	2,567,844
643	SEWER-CAPITAL PROJECTS	9,234,545	228,260	8%	17,576	0%	210,684	2,464,598	6,980,631
650	WATER OPERATIONS	2,691,489	1,425,461	10%	460,885	3%	964,574	1,290,291	2,365,774
651	WATER IMPACT FUND*	2,688,297	80,699	6%	59,830	2%	20,869	1,844,191	864,975
652	WATER RATE STABILIZATION	548,536	-	n/a	28	8%	(28)	-	548,508
653	WATER -CAPITAL PROJECT	587,647	199,906	8%	11,385	0%	188,521	205,017	571,151
TOTAL ENTERPRISE FUNDS		\$ 36,793,415	\$ 3,130,479	9%	\$ 1,000,737	2%	\$ 2,129,742	\$ 6,583,918	\$ 32,339,239

730	INFORMATION SERVICES	\$ 535,283	\$ 130,973	7%	\$ 84,444	4%	\$ 46,529	\$ 6,709	\$ 575,104
740	BUILDING MAINTENANCE	62,368	273,825	8%	93,197	3%	180,628	505,287	(262,290)
741	BUILDING REPLACEMENT	2,076,341	61,187	8%	60,941	0%	60,941	87,097	2,050,185
745	CIP ENGINEERING	32,492	55,225	3%	79,890	4%	(24,665)	-	7,827
760	UNEMPLOYMENT	162,944	-	n/a	-	-	-	-	162,944
770	WORKERS COMPENSATION	1,757,831	29,805	4%	368,156	39%	(338,351)	30,000	1,389,480
790	EQUIPMENT REPLACEMENT	4,430,908	84,140	8%	-	-	84,140	601,107	3,913,941
791	EMPLOYEE BENEFITS FUNDS	538,614	112,797	10%	62,728	10%	50,069	-	588,683
793	CORP YARD COMMISSION	(6,042)	764	0%	103	0%	661	1,903	(7,284)
795	GEN. LIABILITY INSURANCE	1,211,909	83,592	8%	699,623	69%	(616,031)	-	595,878
TOTAL INTERNAL SERVICE FUNDS		\$ 10,802,648	\$ 832,309	7%	\$ 1,388,387	12%	\$ (556,078)	\$ 1,232,103	\$ 9,014,467

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,755,405	\$ 2,391,849	6%	\$ 2,340,895	5%	\$ 50,954	\$ 1,798,017	\$ 16,008,342
SPECIAL REVENUE GROUP	15,181,270	639,980	3%	405,187	2%	234,792	16,625,101	(1,209,038)
DEBT SERVICE GROUP	253,613	24,715	4%	1,104	0%	23,611	124	277,100
CAPITAL PROJECTS GROUP	41,448,592	947,724	2%	322,554	1%	625,170	1,675,372	40,398,390
ENTERPRISE GROUP	36,793,415	3,130,479	9%	1,000,737	2%	2,129,742	6,583,918	32,339,239
INTERNAL SERVICE GROUP	10,802,648	832,309	7%	1,388,387	12%	(556,078)	1,232,103	9,014,467
TOTAL ALL GROUPS	\$ 122,234,943	\$ 7,967,055	5%	\$ 5,458,863	3%	\$ 2,508,191	\$ 27,914,635	\$ 96,828,500

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

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

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

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



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

ACCEPT RESIGNATION OF PARKS AND RECREATION COMMISSIONER

RECOMMENDATION(S)

1. Accept LaRene Green's resignation from the Parks and Recreation Commission effective immediately; and
2. Direct the City Clerk to continue recruitment efforts to fill an unexpired term ending April 1, 2022, on the Parks and Recreation Commission.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth

Seniors

and Entire Community

Fostering a Positive Organizational Culture

REPORT NARRATIVE:

On September 7, 2018, LaRene Green submitted her resignation from the Parks and Recreation Commission effective immediately as she has moved out of the state. The City Clerk's office has begun the recruitment efforts to fill the vacancy that has a term ending on April 1, 2022. Staff recommends that the Council accept Ms. Green's resignation and direct the City Clerk's office to continue the recruitment efforts.

COMMUNITY ENGAGEMENT: Involve

Recruitment efforts are underway encouraging citizens to apply for City Council appointment consideration to the Parks and Recreation Commission.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Recruitment efforts are conducted each year to appoint or reappoint commissioners as their terms expire.

FISCAL AND RESOURCE IMPACT:

There is no fiscal or resource impact associated with the actions to interview and appoint, as the recruitment and appointment process is accommodated in the Administrative Services operating budget.

CEQA (California Environmental Quality Act):

Not a project.

The appointment of commissioners is not a project, as defined in Section 15378 of the State CEQA guidelines.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES

RECOMMENDATION(S)

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Political Reform Act requires every local government agency to review its Conflict of Interest Code (Code) biennially (even years) to determine if it is accurate or must be amended. The review has been conducted by the Leadership Team including the City Attorney and Deputy City Clerk. Based on said review, staff recommends that the City Council adopt the attached resolution amending the Code to update the reporting categories. The categories to be deleted are shown as ~~strike-outs~~ and the categories that have been added are shown as **underscore/bold**.

Staff has identified the recommended changes below to the Code to comply with Government Code Section 87306 to update the reporting categories and to comport with the current employee classifications:

1. Add the following reporting categories:
 - a. Assistant City Attorney
 - b. Economic Development Manager
 - c. Building Official
 - d. Building Inspector Supervisor
 - e. Assistant Fire Chief
 - f. Fire Marshal
 - g. Public Services Director
 - h. Maintenance Coordinator
2. Remove the following reporting categories:
 - a. Building Inspector II
 - b. Associate Planner
 - c. Corporation Yard Commissioners
 - d. Oversight Board Members

3. The following titles have been changed:
 - a. Assistant City Manager for Community Development to Assistant City Manager for Development Services
 - b. Community Development Director to Development Services Director
 - c. Public Works Director changed to Engineering and Utilities Director
 - d. City Engineer added to Deputy Director for Engineering

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community about the amendments to the City's Conflict of Interest Code.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City's Conflict of Interest Code is required to be reviewed biennially. It was last reviewed and approved on November 16, 2016.

FISCAL AND RESOURCE IMPACT:

There are no fiscal or resource impacts associated with this action.

CEQA (California Environmental Quality Act):

Not a project. Administrative activities of governments that do not result in direct physical changes in the environment do not qualify as a project for purposes of CEQA.

LINKS/ATTACHMENTS:

1. Amend Conflict of Interest Code Reporting Categories Resolution

RESOLUTION NO. __ - ____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING RESOLUTION NO. 16-182 PERTAINING TO THE CITY'S CONFLICT OF INTEREST CODE BY AMENDING EXHIBIT A (DESIGNATED POSITIONS) TO REFLECT CURRENT CITY POSITION(S) AND DISCLOSURE CATEGORIES**

WHEREAS, pursuant to Government Code 87300, Resolution No. 1827 was adopted on September 21, 1983, and subsequently amended by various resolutions; and

WHEREAS, the Political Reform Act requires every local government agency to review its Conflict of Interest Code biennially or as deemed appropriate; and

WHEREAS, the Fair Political Practices Commission has adopted Title 2 of the California Code of Regulations § 18730, which contains the terms of a standard model conflict of interest, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Political Reform Act; and

WHEREAS, a review has been conducted and a determination has been reached that certain amendments are required to update the Code and maintain its accuracy as outlined in Exhibit A – Persons Subject to the Conflict of Interest Code; and

WHEREAS, the Mayor, Council Members, City Manager, City Attorney, City Treasurer, and Planning Commission are not listed in the City's Conflict of Interest Code as they are governed by § 87200 of the Government Code.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MORGAN HILL adopts the attached Exhibit A – Persons Subject to the Conflict of Interest Code; and Exhibit B – Conflict of Interest Code for the City of Morgan Hill.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of October 2018 by the following vote:

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

STEVE TATE, Mayor

DATE: _____

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

⌘ 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 October 17, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Persons Subject to the Conflict of Interest Code

Listed below are the designated positions in the local agency that are required to file Disclosure Statements.

Category 1 is defined as:

A designated employee, board member, and commissioner must report all interests in real property having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

Category 2 is defined as:

A designated employee, board member, and commissioner in this category must report all investments having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

Category 3 is defined as:

A designated employee, board member, and commissioner in this category must report income and business entities in which he or she is a director, officer, partner, trustee, and employee or holds any position of management having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

<u>Persons Subject to the Conflict of Interest Code</u>	<u>Disclosure Category</u>
Administrative Services	
Assistant City Manager for Administrative Services	1,2,3
Finance Director	1,2,3
Human Resources Director	1,2,3
Budget Manager	1,2,3
Council Services & Records Manager	1,2,3
Accounting Manager	1,2,3
Senior Human Resources Analyst	1,2,3
City Attorney's Office	
<u>Assistant City Attorney</u>	<u>1,2,3</u>
Deputy City Attorney	1,2,3
City Clerk	1,2,3
City Manager's Office	
Communications & Engagement Manager	1,2,3
Development Services	
Assistant City Manager for Development Services	1,2,3
Development Services Director	1,2,3
Economic Development Director	1,2,3
<u>Economic Development Manager</u>	<u>1,2,3</u>
Economic Development Coordinator	1,2,3
Housing Manager	1,2,3
<u>Building Official</u>	<u>1,2,3</u>

Building Manager	1,2,3
<u>Building Inspector Supervisor</u>	<u>1,2,3</u>
Building Inspector II	1,2,3
Code Enforcement Officer	1,2,3
Senior Planner	1,2,3
Associate Planner	1,2,3
Fire Department	
Fire Chief	1,2,3
<u>Assistant Fire Chief</u>	<u>1,2,3</u>
<u>Fire Marshal</u>	<u>1,2,3</u>
Police Department	
Chief of Police	1,2,3
Police Captain	1,2,3
Information Services Manager	1,2,3
Police Support Services Manager	1,2,3
<u>Public Services</u>	
<u>Public Services Director</u>	<u>1,2,3</u>
Community Services	
Community Services Director	1,2,3
Program Administrator	1,2,3
Recreation Manager	1,2,3
Community Services Supervisor	1,2,3
Older Adult Services Supervisor	1,2,3
Maintenance Manager	1,2,3
<u>Maintenance Coordinator</u>	<u>1,2,3</u>
<u>Management Analyst</u>	<u>1,2,3</u>
Engineering and Utilities	
Engineering and Utilities Director	1,2,3
Deputy Director for Engineering/City Engineer	1,2,3
Deputy Director for Utility Services	1,2,3
Utility Systems Manager	1,2,3
Senior Project Manager	1,2,3
Senior Civil Engineer	1,2,3
Assistant/Associate Engineer	1,2,3
Successor Agency to the Morgan Hill Redevelopment Agency Board Members	1,2,3
Morgan Hill Financing Authority Board Members	1,2,3
Morgan Hill Wastewater Facilities Financing Corporation Board Members	1,2,3
Corporation Yard Commissioners	1,2,3
Library, Culture & Arts Commissioners	1,2,3
Parks and Recreation Commissioners	1,2,3
Oversight Board Members	1,2,3
General Plan Update Committee	1,2,3
Parking Authority of the City of Morgan Hill	1,2,3
Consultants*	1,2,3

*Consultants shall be included in the list of designated employees and shall disclose pursuant to Category 1, 2, and 3, based on the scope of work performed for the City of Morgan Hill, in consultation with the City Attorney.

EXHIBIT B

CONFLICT OF INTEREST CODE FOR THE CITY OF MORGAN HILL

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, Section 18730, which contains the terms of a standard conflict of interest code which can be incorporated by reference, and that may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference. These terms, along with the attached Appendix which designates officials and employees subject to the code and disclosure categories, constitute the Conflict of Interest Code of the City of Morgan Hill.

Pursuant to Section 4 of the Standard Code, designated employees, boards, and commissioners shall file statements of economic interests with the City of Morgan Hill - City Clerk. The City Clerk is to retain these statements. Upon receipt of the statements of the members of the City Council, City Manager, City Attorney, City Treasurer, and members of the Planning Commission; the City Clerk of the City of Morgan Hill shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT ORDINANCE APPROVING A ZONING AMENDMENT ZA2018-0004 TO AMEND THE ZONING ON HALF OF THE 0.29 ACRE PORTION OF DEPOT STREET LOCATED AT THE END OF DEPOT STREET AND EAST DUNNE AVENUE INTERSECTION, ADJACENT TO 17020 DEPOT STREET (APN 726-13-049)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2282, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Economic Development and
Telecommunications
Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Sewer System Master Plan
Vision Zero

REPORT NARRATIVE:

On October 3, 2018, the City Council introduced Ordinance No. 2282 New Series, by the following roll call vote: AYES: Carr, Constantine, Tate; NOES: Spring, Jachimowicz; ABSTAIN: None; ABSENT: None.

The General Plan and Zoning Amendment will allow for the realignment of Depot Street and mixed-use development on the former Depot Street. The amendments are consistent with the goals and policies of the 2035 General Plan and Downtown Specific Plan.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission reviewed the application at the September 11, 2018 meeting. The Commission collectively recommended approval of the project to Council (6-aye,0-no,1-absent).

FISCAL AND RESOURCE IMPACT:

Reviewing and proposing amendments to land use designation and zoning classifications is part of the Planning Division's activity workplan, which is funded by development services' user fees.

CEQA (California Environmental Quality Act):

The Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan that was certified in November 2009 in conformance with California Environmental Quality Act (CEQA) Guidelines Section 15175(a), identified the impacts of the Downtown Specific Plan in order to streamline the later environmental review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan FEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from (in conformance with CEQA Guidelines Section 15176(d)).

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074).

CEQA Guidelines § 15164 state that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in § 15162 calling for preparation of a subsequent EIR have occurred.

LINKS/ATTACHMENTS:

1. Ordinance 2282- Hale Lumber

ORDINANCE NO. 2282, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A ZONING AMENDMENT ZA2018-0004 TO
AMEND THE ZONING ON HALF OF THE 0.29 ACRE
PORTION OF DEPOT STREET LOCATED AT THE END OF
DEPOT STREET AND EAST DUNNE AVENUE
INTERSECTION, ADJACENT TO 17020 DEPOT STREET
(APN 726-13-049)**

WHEREAS, the Latala Group, LLC proposes to develop the property located at 17020 Depot Street, identified by Assessor Parcel Number(s) 726-13-049, on the east side of the 0.29-acre portion of Depot Street with a 48-unit residential housing project which may incorporate up to 3,000 square feet of office space;

WHEREAS, as part of the adjacent residential project, Depot Street would be re-aligned through the Community and Cultural Center parking lot, and the portion of Depot Street (0.29 acres) adjacent to 17020 Depot Street at the East Dunne intersection, would be sold to the Latala Group, LLC as part of the residential project and vacated upon completion of the realigned Depot Street.

WHEREAS, the portion of the 0.29-acre area that is currently zoned as Public Facilities would be updated to a Mixed Use Downtown (MU-D) designation.

WHEREAS, the Zoning Amendment to amend the map to support the realignment of Depot Street was reviewed and found to be consistent with the 2035 General Plan and Downtown Specific Plan.

WHEREAS, an Addendum to the 2035 General Plan Final Environmental Impact Report (FEIR) and Downtown Specific Plan Master Final Environmental Impact Report (MFEIR) was prepared consistent with the State California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15164. No further evaluation is required, and no subsequent EIR is needed pursuant to State CEQA Guidelines Section 15162.

WHEREAS, such request was considered by the Planning Commission at its regular meeting of September 11, 2018, at which time the Planning Commission recommended approval of Zoning Amendment application, ZA2018-0007: Depot – Morgan Hill; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

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

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan and the Downtown Specific Plan as required by Section 18.114.060 of the Municipal Code.

Attachment: Ordinance 2282- Hale Lumber (2005 : Adopt Ordinance 2282- Hale Lumber)

The project is consistent with the 2035 General Plan, specifically the Transportation Policy TR-3.15 and is consistent with the General Plan FEIR.

The project is consistent with the 2009 Downtown Specific Plan, specifically Chapter 7: Infrastructure, under Transportation Projections and Improvements for the preferred alignment of Depot Street through the Community and Cultural Center parking lot.

- SECTION 2.** The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City as provided in Section 18.114.060 of the Municipal Code.

The amendment supports the realignment of Depot Street to Church Street which provides public convenience by enhancing circulation to and through the Downtown and achieving complete streets by completing sidewalk and bicycle gaps within the Downtown.

- SECTION 3.** The affected site is physically suitable in terms of design, location, shape, size and other characteristics to ensure that the permitted land uses, and development will comply with the Zoning Code and General Plan and contribute to the health safety, and welfare of the property, surrounding properties and the community at large.

After the realignment of Depot Street, the proposed amendment will allow the 0.29 acres of vacated street to be redeveloped as part of the adjacent housing project. An office building for public purposes which will serve the community is also potentially part of the proposed project.

- SECTION 4.** The City of Morgan Hill hereby finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study and Addendum, and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

- SECTION 5.** The City Council hereby adopts the amendment to the Zoning for the .29 acres of Depot Street right-of-way as described in the attached Exhibit "A", and by this reference incorporated herein.

- SECTION 6.** The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 3RD DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2282, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of October 2018.

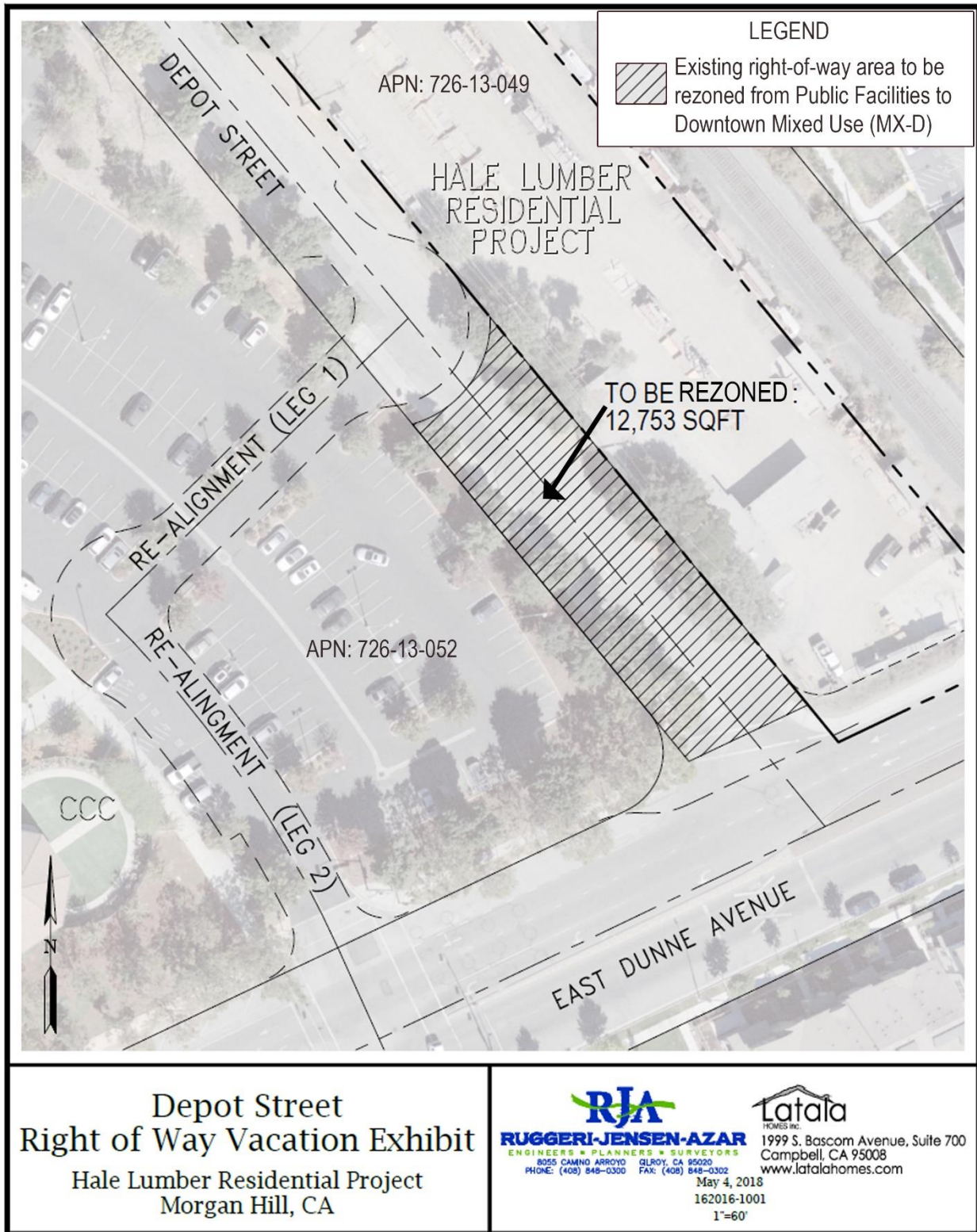
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2282- Hale Lumber (2005 : Adopt Ordinance 2282- Hale Lumber)

EXHIBIT "A"



Attachment: Ordinance 2282- Hale Lumber (2005 : Adopt Ordinance 2282- Hale Lumber)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT ORDINANCE AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) TO TITLE 5 (BUSINESS LICENSES GENERALLY) TO CLARIFY BUSINESS LICENSE REQUIREMENT AND REVOCATIONS FOR MASSAGE ESTABLISHMENTS AND SERVICES

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2283, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

On October 3, 2018, the City Council introduced Ordinance No. 2283 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The City of Morgan Hill recognizes massage as a valid therapy; it also recognizes that massage activities raise concerns regarding illicit establishments, and health and safety issues. After review of the Business and Professions Code sections 4600-4621, State laws, and research of other local ordinances related to the regulation of massage establishments, staff recommends it is in the best interest of the public to update the existing massage establishment ordinance (Chapter 5.32), to follow the intent of State law. Staff recommends having all certification of massage therapists to be a responsibility of California Massage Therapy Council (CAMTC), while regulatory compliance and oversight of massage establishments will continue to be the responsibility of the City.

COMMUNITY ENGAGEMENT: Engage

In general, the community has expressed the need for additional measures to ensure adequate screening is performed on new establishments and professionals, as well as ongoing oversight. If approved, staff will follow up with each massage establishment and licensed professional, notifying them of the change, and work together to ensure that they are in compliance with the City's ordinance.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2001, City established Massage Establishment ordinance, Chapter 5.32.

In 2004, City amended Chapter 5.32, and established massage permit process and related fees.

In 2011, City amended Chapter 5.32 to become in compliance with new State laws, which established the CAMTC, and massage professional certifications.

FISCAL AND RESOURCE IMPACT:

Periodic review and amendments of the City's existing ordinances is part of the staff's annual workplan.

CEQA (California Environmental Quality Act):

Not a project, as these administrative activities of governments will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Ordinance 2283- Regulatory Fee for Massage Establishments

ORDINANCE NO. 2283, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) TO TITLE 5 (BUSINESS LICENSES GENERALLY) TO CLARIFY BUSINESS LICENSE REQUIREMENT AND REVOCATIONS FOR MASSAGE ESTABLISHMENTS AND SERVICES

THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 5.32 of Title 5 of the Morgan Hill Municipal Code is hereby amended in its entirety as follows:

Chapter 5.32 - MASSAGE ESTABLISHMENTS

5.32.010 - Definitions.

- A. "City manager" means the city manager of the City of Morgan Hill or his/her designee.
- B. "Massage" "massage services" or "massage therapy" means performing any act or practice of treating the external parts of the human body by bathing, rubbing, pressing, stroking, kneading, tapping, vibrating or touching or stimulating with the hands, any part of the body or any instrument. Types of massage may include but are not limited to activities commonly known as massage therapy, bodywork, acupuncture, reflexology, deep tissue touch, and shiatsu release.
- C. "Massage establishment" means any establishment, having a fixed place of business in the city where any person engages in or permits to be engaged in or carries on any of the activities mentioned in this chapter. Any establishment engaged in, permitted to be engaged in or carrying on any combination of massage and bath house, spa, sauna or other activity mentioned in this chapter shall be deemed a massage establishment.
- D. "Massage practitioner" or "practitioner" means a person who is certified as such by the California Massage Therapy Council and who administers massage for compensation.
- E. "Massage therapist" or "therapist" means a person who is certified as such by the California Massage Therapy Council and who administers massage for compensation.
- F. "Outcall massage service" means any business or operation which provides massage services at a location designated by the customer or client or the massage practitioner or therapist or outcall massage service, other than at a fixed location of a massage establishment permitted under this chapter.
- G. "Owner" of a massage establishment, or an outcall massage service, means any person who operates, maintains, or permits a massage establishment or outcall massage service. To the extent the "owner" is any type of association, partnership, corporation or other entity, "owner" includes all publicly named or registered persons, officers, directors,

managers and shareholders within those entities. Where the "owner" is one or more persons, each such person is jointly and severally liable for compliance with this chapter.

- H. "Person" means any individual, partnership, firm, association, corporation, joint venture or any other combination of individuals for the purpose of doing business.
- I. "Police chief" means the Morgan Hill police chief or his/her designee.
- J. "State massage certification" means a massage practitioner or massage therapist certification issued by the California Massage Therapy Council created pursuant to California Business & Professions Code Section 4600 et seq.

(Ord. No. 2002 N.S., § 1, 2-16-2011)

5.32.020 - Exemptions.

The provisions of this chapter shall not apply to:

- A. Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists or other health professionals who are duly licensed to practice their respective professions under the laws of the State of California.
- B. Persons performing massage in the offices of a licensed physician, surgeon, chiropractor, osteopath, physical therapist or other licensed medical professional, or at a hospital, nursing home, convalescent home, hospice or sanitarium when and while under the supervision of a licensed medical professional.
- C. Barbers or cosmetologists who are duly licensed under the laws of the State of California while performing massage within the scope of their licenses.
- D. Persons performing massages which are clearly incidental, but integral, to the operation of a personal fitness training center, gymnasium, athletic facility or health club, when the giving of massage for compensation is not a principal function of such businesses. In determining whether massage constitutes a principal or incidental function of personal fitness training centers, gymnasiums, athletic facilities or health clubs, the police chief shall consider the percent of income derived from massages, the amount of floor space devoted to and the number of employees assigned to massage services, as well as the manner in which the business advertises and holds itself out to the public.
- E. Coaches and trainers acting within their scope of employment at an accredited high school, junior college, college or university.
- F. Trainers of amateur, semiprofessional or professional athletes, or athletic teams, performing troupes or similar groups while engaging in their training responsibilities for and with athletes and performers; and trainers working in conjunction with a specific athletic event or performance.
- G. Students performing massage therapy while at an approved massage school, as defined in Business and Professions Code Section 4600, and in the presence and active supervision of a massage therapist.

H. Persons administering massages or health treatments involving massage to other persons who are participating in a recreational or special event that has been approved by the city, provided that the following conditions are met:

1. Massage services are made available equally to all participants in the event;
2. The event is open to participation by the general public or a significant segment of the public;
3. The massage services are provided during the event in an open environment at the site of the event;
4. The sponsors of the event have approved the provision of massage services at the event;
5. The persons providing the massage services are in compliance with all applicable city codes and other laws.

5.32.030 - State massage certification required.

A. It shall be a violation of this chapter for:

1. Any person to perform massage services for compensation without a valid state massage certification;
2. A massage establishment or outcall massage service to engage in, conduct, or carry on, permit to engage in, in or upon any premises with the City of Morgan Hill the business of providing massage services or massage therapy unless all persons providing such massage services possess a valid state massage certification.

B. Any person holding a valid massage practitioner permit issued pursuant to prior Morgan Hill Municipal Code Chapter 5.32 may continue to provide massage therapy under that massage permit. The existing practitioner permit, and any renewal thereof, shall only be effective for and shall expire one year from the adoption of this ordinance.

C. Any massage establishment holding a valid massage establishment permit pursuant to prior Morgan Hill Municipal Chapter 5.32 may continue to provide massage therapy services as long as each of their employees, agents, independent contractors or other representatives providing massage therapy has a valid massage practitioner permit or state massage certification. The existing establishment permit, and any renewal thereof, shall only be effective for and shall expire one year from the adoption of this ordinance.

5.32.040 - Massage establishment, massage services or outcall massage services—business license required.

A. Any person operating a massage establishment, or engaging in the business of providing massage services or outcall massage services shall apply for and obtain a business license pursuant to Chapter 5.04 of this code and, in addition, shall submit the following information with the application:

1. Full name.

2. Date of birth.
 3. State issued identification number.
 4. Social Security number.
 5. Home address and phone number.
 6. Work address and phone number.
 7. Color photograph.
 8. Proof of state massage certification for each massage practitioner or massage therapist.
- B. It shall be the responsibility of each owner or operator to notify the city of any change in persons providing massage services and to provide copies of the state massage certification for all such persons to the city prior to such persons providing massage services.
 - C. It shall be the responsibility of each owner or operator to notify the city of any intention to rename, change management, or convey the business to another person.
 - D. Each owner or operator of the massage business, who is not a CAMTC certified professional, is subject to background check, including criminal background checks, and submission of fingerprints for a state or federal background check.
 - E. Each owner or operator, who is not a CAMTC certified professional, shall complete a supplemental form, to include employment history for the five years preceding the date of application; including dates, name, and addresses of massage establishment or similar businesses owned or operated by the individual.
 - F. Any omission or falsified information within the application, will result in an automatic denial.
 - G. A copy of all the personal information, as required by 5.32.040 A, provided during the application of a City business license will be kept at the police department until said business or practitioner relinquishes the City business license.

5.32.050 - Operating requirements for massage establishments.

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements.

- A. Exterior Signs. A recognizable and legible sign should be posted at the main entrance identifying the business as a massage establishment. Such sign need not be the primary sign for the business, but should clearly identify the establishment to foot and/or automobile traffic.
- B. Posting of State Massage Certification. Each person providing massage services shall have a valid state massage certification, a clearly legible copy of which shall be conspicuously posted in the room or location where massage services will be provided.
- C. State Massage Certification—Verification. All massage establishments shall maintain on their premises evidence for review by local authorities that demonstrates that all persons providing massage services hold state massage certification.

- D. Owner Responsible. An owner of a massage establishment shall be responsible for the conduct of all persons working on the premises or at their direction.
- E. Any violation of provisions of this chapter or any other ordinance of the city shall be justification for revocation of owner's business license under the procedures of Section 5.32.090 of this code.
- F. Inspection. All massage establishments shall be open at all times during hours during which massage is being provided for inspection by any police officer, building official or code enforcement officer of the City of Morgan Hill.
- G. Dressing Room. Clients of the massage establishment shall be furnished with a dressing room. Dressing rooms shall be used only by clients of the same sex at the same time.
- H. Payment/Tips. All massage services and all tips, if any, shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.
- I. Alcohol Prohibited. No alcoholic beverages may be possessed or consumed on the premises of the massage establishment.
- J. Doors to Massage Rooms/Dressing Rooms to be Unlocked. All doors leading into a massage establishment or area where massages are performed shall remain unlocked during business hours unless there is no staff available to assure security for clients and massage staff behind closed doors.
- K. Standard of Dress. All employees or independent contractors of the massage business shall remain fully clothed in clean outer garments, the use of which is restricted to the massage business, at all times while on the premises of the massage establishment. At a minimum, such clothing shall be made of a nontransparent material and shall not expose the buttocks, genital area or breasts of any employee or the holder of the permit. Low cut blouses, mini skirts, bikini swimsuits and halter tops shall not be acceptable.
- L. Operating Hours. All massage establishments shall be closed for business by no later than ten p.m. and shall open for business no earlier than seven a.m. Specific operating hours for each massage establishment may be set through the conditional use permit process. It shall be unlawful for any massage practitioner, therapist or other employee or independent contractor of a massage establishment to give or practice massage during the hours when the massage business is required to be closed.
- M. Birth Control Devices Prohibited. No birth control device or aid, including but not limited to condoms, shall be stored, kept or distributed on the premises of a massage establishment.

5.32.060 - Sanitation requirements/condition of premises.

- A. Required Maintenance of Massage Establishments. All premises and facilities of the massage establishments shall be maintained in a clean and sanitary condition and shall be thoroughly cleaned after each day of operation. The premises and facilities shall meet applicable code requirements of the city, including but not limited to those related to the

safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

- B. Linens. All massage establishments shall provide clean, laundered sheets, towels and other linens in sufficient quantity for use by their clients. Such linens shall be laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.
- C. Privacy Standards for Massage Rooms, Dressing Rooms and Rest Rooms. Dressing rooms and rest rooms may only be used by clients of the same sex at the same time. The massage establishments shall provide doors on all of its dressing rooms and massage rooms. Draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.

5.32.070 - Prohibited acts.

- A. Touching of Sexual and Genital Parts During Massage. No massage practitioner, therapist or any other employee or independent contractor of a massage establishment shall place either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female.
- B. Uncovering and Exposure of Sexual and Genital Parts Before, During or After Massage. No massage practitioner, therapist or other employee or independent contractor of a massage establishments shall uncover and expose the sexual or genital parts, as defined in subsection A above, of any client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the massage practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure.

5.32.080 - Outcall massage services.

- A. All outcall massage services with a principal place of business located inside city limits or which is located outside of city limits and provides massage services within city limits shall obtain and maintain a city business license.
- B. State Massage Certification Required for Outcall Massage Services. Any person dispatched to give massages at locations within city limits from an outcall massage service located within or outside of city limits must obtain and maintain in effect a state massage certification and shall comply with all applicable provisions of this chapter. Such massage practitioners or therapists shall maintain their state certificates upon their persons or within their immediate reach at all times while performing massage in the city and shall display such certification upon the request of any city police officer or code enforcement officer.

- C. Special Procedures for Massage Practitioners or Therapists Dispatched to Facilities Which are Open to the Public and/or Available for Rental or Hire in City Limits by Outcall Massage Service. Massage practitioners or therapists may be dispatched to facilities which are open to the public and/or available for rental or hire within the city limits by any outcall massage service only by the direct arrangement of the facilities which are open to the public and/or available for rental or hire in conjunction with an incidental service regularly provided by the facilities which are open to the public and/or available for rental or hire and only if the massage service and massage practitioners or therapists have complied with all requirements of this chapter. It shall be unlawful to perform massages at any facilities which are open to the public and/or available for rental or hire that does not have an appropriate business license.
- D. Owner Responsible. An owner of an outcall massage service shall be responsible for the conduct of all employees or independent contractors working within city limits. Any violation of provisions of this chapter, or any other ordinance of the city, shall be justification for revocation of owner's business license under the procedures of Section 5.32.090.

5.32.090 - Revocation of business license.

- A. Any massage establishment or outcall massage service operated or maintained contrary to the provisions of this chapter or other ordinance of the city shall result in the revocation of the business license of the massage establishment or outcall massage service in accordance with the procedures of Section 5.04.040 of this code.
- B. Any massage practitioner or therapist that violates any provision of this chapter or other ordinance of the city shall result in the revocation of the business license of the massage practitioner or therapist in accordance with the procedures of Section 5.04.040 of this code.
- C. The City reserves the right to place a temporary moratorium up to one (1) year on a massage establishment business which violates the provisions of this chapter or other ordinances of the City. The massage establishment business shall not be transferred except with prior written approval from the Police Department.

5.32.100 - Criminal penalties.

A violation of any provision of this chapter is a misdemeanor and may be prosecuted in the name of the people of the State of California. The maximum fine or penalty for any violation of this article shall be one thousand dollars, or a term of imprisonment in the county jail for a period not exceeding six months, or both such fine and imprisonment.

5.32.110 - Massage establishment operated, or massage services offered in violation of this chapter deemed a public nuisance.

Any massage establishment which is opened, operated or maintained or massage services offered contrary to the provisions of this chapter shall be deemed a public nuisance and may be abated according to the procedures of Chapter 1.18 of the Morgan Hill Municipal Code.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 3RD DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2283, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT ORDINANCE AMENDING SECTION 2.08.040 (“POWERS AND DUTIES”) OF CHAPTER 2.08 (“CITY MANAGER”) OF TITLE 2 (“ADMINISTRATION AND PERSONNEL”) OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY THE POWERS AND DUTIES OF THE CITY MANAGER

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2284, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

On October 3, 2018, the City Council introduced Ordinance No. 2284 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve to inform the Community of the proposed amendments to the Morgan Hill Municipal Code.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council adopted a resolution electing that the City become subject to the California Uniform Public Construction Cost Accounting Act on July 15, 2015.

The Council approved amendments to Chapters 2.08 and 3.04 of the Morgan Hill Municipal Code to increase the signature authority of the City Manager and to revise the regulations pertaining to the purchasing of goods and services on September 15, 2015.

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. Ordinance 2284 Powers and Duties of the City Manager

ORDINANCE NO. 2284, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 2.08.040 ("POWERS AND DUTIES") OF CHAPTER 2.08 ("CITY MANAGER") OF TITLE 2 ("ADMINISTRATION AND PERSONNEL") OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY THE POWERS AND DUTIES OF THE CITY MANAGER

THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.08.040 of Chapter 2.08 of Title 2 of the Morgan Hill Municipal Code is hereby amended to read in its entirety as follows:

2.08.040 - Powers and duties.

The city manager shall be the administrative head of the city government acting under the direction and control of the city council. In addition to the city manager's general powers as chief administrator, and not as a limitation thereon, the city manager shall have the powers and duties set forth in the following subsections:

- A. To see that all laws and ordinances of the city are duly enforced and that all franchises, permits, licenses and privileges granted by the city are faithfully performed and observed;
- B. To perform all financial and accounting duties imposed on the city clerk by Government Code Sections 40802 through 40805. Pursuant to Section 40805.5 of the Government Code, these duties are transferred to the city manager or his/her designee;
- C. To control, order and give directions to all directors of departments and to subordinate officers and employees of the city under the city manager's jurisdiction through their department director;
- D. The services and facilities of the city clerk, city treasurer and city attorney shall be made available to the city manager in the same manner that such services are available to the city council;
- E. The city manager shall have authority to appoint, discipline and dismiss any and all officers and employees of the city, except the city attorney and those elected by the electors of the city. All department directors, persons holding those positions listed in section A of the resolution adopting selected salary ranges and job titles for management, professional and confidential employees, are "at-will" employees and may be removed at any time by the city manager without cause and without right of appeal.
- F. To attend all meetings of the city council unless excused there from by the city council;
- G. To recommend to the city council for adoption such measures and ordinances as he or she deems necessary or expedient;
- H. To keep the city council at all times fully advised as to the financial conditions and needs of the city;

- I. To prepare and submit to the city council the annual budget and to administer it after adoption;
- J. To purchase or cause to be purchased all supplies for all of the departments or divisions of the city. No expenditures shall be submitted or recommended to the city council except on report and approval of the city manager;
- K. To make investigation into the affairs of the city and any department or division thereof and any contract or the proper performance of any obligation pertaining to the city;
- L. To investigate all complaints in relation to matters concerning the administration of the government of the city and in regard to the services maintained by public utilities in the city, and to see that all franchises, permits and privileges granted by the city are faithfully observed;
- M. To execute general supervision over all public buildings, public parks, streets and other public property which are under the control and jurisdiction of the city council;
- N. Reserved.
- O. To receive and open all official mail and communications addressed either to the mayor or to the city council, unless a councilmember has filed a written request with the city manager to forward all mail and communications unopened to the councilmember. The councilmember requesting the forwarding of unopened mail shall assume all responsibility to comply with all laws. The mayor will not have the option to file a request to have his or her mail forwarded unopened;
- P. To make reports and recommendations as may be desirable or as requested by the city council;
- Q. To perform such other duties and exercise such other powers as may be delegated to the city manager from time to time by ordinance, resolution or other action of the city council;
- R. To sign the following instruments on behalf of the city:
 1. Without prior approval from the city council:
 - a. Rights of entry onto city property where the city manager determines no reasonable risk of hazard, harm or danger is presented by such entry;
 - b. Written contracts, letters of intent or similar memoranda of understanding made or entered into by city where city council previously has made sufficient appropriation therefore and the total amount to be expended by city under such contract or other written instrument equals the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act or less;
 - c. Written contracts, letters of intent or similar memoranda of understanding where the amount or value to be received by city equals the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act or less;
 - d. Emergency purchases pursuant to the applicable provisions of Chapter 2.44 or Chapter 3.04 of this code; and
 2. Whenever authorized by the city council:

- a. All warrants drawn on the city treasury,
 - b. All written contracts and conveyances made or entered into by the city where the amount to be expended or received by the city exceeds the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act, and
 - c. All instruments requiring the city seal; and
- S. All claims and actions against the city or any officer or any employee thereof shall be filed, served and processed in accordance with applicable state law. All claims shall be filed with the city clerk. Pursuant to Section 935.4 of the Government Code, the city manager or said manager's designee shall be authorized to accept, settle or reject, without prior approval of the council, claims against the city, provided that no allowance, compromise, or settlement shall exceed twenty thousand dollars. Upon the written order of the city manager or said manager's designee, the director of finance shall cause to be issued a warrant upon the treasury of the city in the amount for which a claim has been allowed, compromised or settled. The city manager or said manager's designee is further authorized to compromise or settle, without prior approval of the council, except on a matter of policy, any actions in which the city is the plaintiff, provided that the amounts of such compromise or settlement shall not exceed twenty thousand dollars.

SECTION 2. Severability. Should any provision of this Ordinance be deemed invalid, unconstitutional, unenforceable or inapplicable to a situation by a court of competent jurisdiction, such determination shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations, and any such invalid or unconstitutional provision shall be severed from this Ordinance, which severance shall not affect the validity of the remainder of this Ordinance.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this Ordinance in accordance with the provisions of California Government Code Section 36933.

City of Morgan Hill
Ordinance No. 2284, New Series
Page 4 of 4

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 3RD DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2284, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT ORDINANCE AMENDING CHAPTER 3.04 (“PURCHASING”) OF TITLE 3 (“REVENUE AND FINANCE”) OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY PROVISIONS GOVERNING THE PURCHASE OF GOODS AND SERVICES

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2285, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

On October 3, 2018, the City Council introduced Ordinance No. 2285 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve to inform the Community of the proposed amendments to the Morgan Hill Municipal Code.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council adopted a resolution electing that the City become subject to the California Uniform Public Construction Cost Accounting Act on July 15, 2015.

The Council approved amendments to Chapters 2.08 and 3.04 of the Morgan Hill Municipal Code to increase the signature authority of the City Manager and to revise the regulations pertaining to the purchasing of goods and services on September 15, 2015.

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. Ordinance 2285 Amending Chapter 3.04 Title 3- Revising the regulations pertaining to purchasing of goods

ORDINANCE NO. 2285, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 3.04 ("PURCHASING") OF TITLE 3
("REVENUE AND FINANCE") OF THE MORGAN HILL
MUNICIPAL CODE TO MODIFY PROVISIONS
GOVERNING THE PURCHASE OF GOODS AND
SERVICES**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Chapter 3.04 of Title 3 of the Morgan Hill Municipal Code is hereby amended to read in its entirety as follows

Chapter 3.04 – PURCHASING

3.04.010 - Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.020 - Application.

Except as otherwise provided in this chapter, this chapter applies to contracts for the procurement of supplies and services entered into by the city. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this chapter shall prevent city from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.030 - Definitions.

As used in this chapter:

- A. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
- B. "City" means the city of Morgan Hill.
- C. "Emergency" means a situation where immediate action is required to preserve the public peace, health and safety and/or to avoid severe degradation of a city facility.
- D. "Local business" means a business that has its headquarters, distribution point or locally-owned franchise located in or having a street address within the city limit for at

- least six months immediately prior to the request for quotations and holds all required business licenses and other approvals by the city of Morgan Hill.
- E. "Local offeror" means a consultant or service provider that has its headquarters, distribution point or locally-owned franchise located in or having a street address within the Morgan Hill Unified School District Boundary for at least six months immediately prior to the request for quotations and holds all required business licenses and other approvals by the city of Morgan Hill.
 - F. "Person" means any business, individual, union, committee, club, other organization or group of individuals.
 - G. "Post consumer" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item. This would include old newspapers, magazines, boxes, office waste paper, etc.
 - H. "Procurement" means the buying, purchasing, renting, leasing or other acquisition of any supplies or services. Procurement also includes all functions that pertain to the obtaining of any supplies or services, including specifications, description of requirements, selection and solicitation of sources, preparation and awards of contracts and contractual administration.
 - I. "Public project" means a project governed by Section 20161 of the California Public Contract Code.
 - J. "Recycled paper" means paper that contains, in accordance with Presidential Executive Order 12873, a minimum of thirty percent post-consumer materials.
 - K. "Services" means the performance of work by an independent contractor of the city; provided, however, services specifically exclude employee services and exclude the performance of work for "public projects." Services specifically includes all professional services, such as attorneys, physicians, consultants, teachers, trainers, architects, engineers, landscape architects, construction managers, environmental, land surveyors, appraisers, accountants and financial advisers, as well as other professional services such as insurance brokers and bankers; nonprofessional services such as cleaning and maintenance; and any "public works" not within the definition of "public projects."
 - L. "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply or service for delivery.
 - M. "Supplies" means all personal property (including, but not limited to, equipment and materials) except as otherwise provided in this chapter.
 - N. "Surplus supplies" means supplies that are worn out, obsolete or unsuitable for city use.
 - O. "Total amount" means total price charged for a supply, including tax, shipping and handling and any other associated charges.
 - P. "Total taxable amount" means total price for a supply on which sales taxes are charged.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.040 - Purchasing officer—Office established.

The city manager, or his/her designee, shall serve as the purchasing officer of the city.

City of Morgan Hill
 Ordinance No. 2285, New Series
 Page 3 of 14
 (Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.050 - Purchasing officer—Duties.

- A. In accordance with this chapter, the purchasing officer shall have the following duties and powers:
 - 1. To procure or supervise the procurement of all supplies and services needed by the city, except as otherwise provided in this chapter;
 - 2. To sell, trade or otherwise dispose of surplus supplies belonging to the city to the extent and in the manner allowed by law; and
 - 3. To establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the city department(s) using the supplies and services;
 - 4. To call for bids or give notice to any and all persons or publish in any case even if the same is not required by the terms of this chapter; and is empowered to invite bids by telephone, electronic mail, facsimile or by mail when deemed in the best interests of the city; and
 - 5. To keep a record of all purchases made and the bids, if any, submitted thereon. Said records shall be open to public inspection at all times during regular business hours.
- B. Direct supervision over the city's central stores. General supervision over all other inventories of supplies belonging to the city may be assigned by the purchasing officer to another city employee or other individual or business.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.060 - Operational procedures.

Consistent with this chapter, the purchasing officer may adopt operational procedures relating to the execution of duties. At a minimum, the purchasing officer shall adopt procedures relating to the preparation of purchase orders, competitive pricing requirements for purchases of less than five thousand dollars, the determination that sufficient funds are available for the purchase, verification that the order received is correct and meets the city's quality standards and establish policies relating to environmental procurement and purchases relating to brand name products.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.070 - Delegation.

The purchasing officer may delegate authority to purchase supplies or services and to dispose of surplus supplies to other city officials, if such delegation is deemed necessary for the effective procurement or disposal of those items and approved by the city manager.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.080 - Consideration of bids and basis of awards.

Purchases shall be awarded on the basis of the bid or bids most advantageous to the city. In determining whether a bid is most advantageous to the city, in addition to price, the purchasing officer, city manager or city council may consider the following:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
2. Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with applicable laws and ordinances;
6. The sufficiency of the financial resources and the ability of the bidder to perform the contract or provide the service;
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and
9. The number and scope of conditions attached to the bid.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.090 - Justification for acceptance of a high bid.

In cases where the purchasing officer makes the purchase and, in the opinion of the purchasing officer, the most advantageous bid is not the lowest bid, the purchasing officer shall prepare and place on file with the department making the purchase, a written statement of his/her opinion and the reason therefor. Such statement shall be open to public inspection at all times during regular business hours.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.100 - Local business price preference.

A local business shall be given a one percent preference (calculated on the total taxable amount of the purchase), over a bidder that is not a local business. In cases where considering this one percent preference, two or more bids are judged to be equal on the basis of price, quality and service, the local business bidder shall be preferred.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.101 - Local business quotation preference.

If the lowest price submitted for a purchase is not from a local business, local businesses shall be given a preference in the procurement process if they are otherwise responsive and responsible and within five percent of the lowest price originally submitted by a non-local business. The local business's price will be tabulated as if it were up to five percent lower than the total figure actually set forth in the submitted bid, sufficient to establish the re-tabulated bid as the low bid. The local business would then be awarded the contract at the newly calculated price (deducting the five percent). Local businesses shall have the choice when submitting a bid whether or not they would be willing to reduce their price up to five percent in order to make them the low bidder. The city, when seeking bids or proposals, will notify bidders or proposers that the bids or proposals will be evaluated on the basis of a local preference of five percent of the bid or proposal price. The local business must affirmatively mark on the bid submittal that it would like to apply the local preference. The preference described in this section will be applied in addition to the one percent preference required by Section 3.04.100.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.110 - Purchases in the amount of five thousand dollars or more must be in writing.

No award for supplies or services where the total amount or value is five thousand dollars or more shall be deemed to be an acceptance of any offer or bid unless and until the same is reduced to writing and signed by the purchasing officer and dispatched to the vendor or purchaser. For purchases under five thousand dollars, informal bidding procedures should be utilized whenever beneficial to the city; provided, however, that written documentation of the amount owed by city shall be obtained prior to any payment by city.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.120 - Informal purchases in an amount of up to ten thousand dollars.

Where the total amount or value of a purchase is ten thousand dollars, or less, the city manager may delegate the authority to purchase to the department head for the department making the purchase, provided that the department head conducts and completes an informal price checking process through telephone or mail inquiry, comparison of prices on the Internet, or similar process and shall document the information received in writing. Notwithstanding the foregoing, the department head may elect to make any purchase in a total amount or value of up to ten thousand dollars (except as the laws of the state otherwise require) in the following cases:

1. By department head approval that said purchase may be made cooperatively, as provided in Section 3.04.180 of this chapter, upon a determination that informal price checking would not be likely to result in a lower price to the city from a responsible bidder or would cause unnecessary expense or delay under the circumstances; or

2. By department head approval upon a determination that there is only one source for the required supply or service based on a review of available sources by the purchasing officer and written recommendation therefor.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.130 - Informal purchases in an amount over ten thousand dollars and up to twenty-five thousand dollars.

Where the total amount or value of a purchase is twenty-five thousand dollars, or less, the purchase may be made by the purchasing officer, provided that the purchasing officer shall conduct and complete an informal price checking process through telephone or mail inquiry, comparison of prices on the Internet, or similar process and shall document the information received in writing. Notwithstanding the foregoing, the purchasing officer may elect to make any purchase in a total amount or value of up to twenty-five thousand dollars (except as the laws of the state otherwise require) in the following cases:

1. By purchasing officer approval that said purchase may be made cooperatively, as provided in Section 3.04.180 of this chapter, upon a determination that informal price checking would not be likely to result in a lower price to the city from a responsible bidder or would cause unnecessary expense or delay under the circumstances; or
2. By purchasing officer approval upon a determination that there is only one source for the required supply or service based on a review of available sources by the purchasing officer and written recommendation therefor.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.140 - Competitive bid purchases over twenty-five thousand dollars and up to the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act.

Where the total amount or value of a purchase is twenty-five thousand dollars or more, but not over the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act, the purchase shall be made by the city manager through competitive bid, upon notice as required by Section 3.04.190 of this chapter, provided however, the city manager may elect to make any purchase in any amount (except as the laws of the state otherwise require) in the following cases:

1. By city manager approval upon a determination that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder or would cause unnecessary expense or delay under the circumstances;
2. By city manager approval that said purchase may be made cooperatively, as provided in Section 3.04.180 of this chapter, upon a determination that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder or would cause unnecessary expense or delay under the circumstances;

3. By city manager approval upon a determination that the immediate preservation of the public peace, health or safety requires said purchase to be made without competitive bids upon notice; or
4. By city manager approval upon a determination that there is only one source for the required supply or service based on a review of available sources by the purchasing officer and written recommendation therefor.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.150 - Competitive bid purchases over the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act.

Where the total amount or value involved is over the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act, the purchase shall be made by the city council through competitive bid, upon notice as required by Section 3.04.190 of this chapter, provided however, the city council may elect to make any purchase in any amount (except as the laws of the state otherwise require) in the following cases:

1. By affirmative vote of three city council members upon a determination that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder or would cause unnecessary expense or delay under the circumstances;
2. By majority vote of city council members present at a city council meeting that said purchase may be made cooperatively, as provided in Section 3.04.180 of this chapter, upon a determination that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder or would cause unnecessary expense or delay under the circumstances;
3. By majority vote of those present at a city council meeting upon a determination that the immediate preservation of the public peace, health or safety requires said purchase to be made without competitive bids upon notice; or
4. By majority vote of those present at a city council meeting upon a determination that there is only one source for the required supply or service based on a review of available sources by the purchasing officer and written recommendation therefor.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.160 - Emergency authority of purchasing officer.

- A. In an emergency as defined in Section 3.04.030 where timely action by the city council is not possible, the purchasing officer may purchase supplies or services, even though the total amount thereof may exceed the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act, without competitive bids or notice.

- B. At the next succeeding city council meeting, the purchasing officer shall submit to the city council a written report setting forth a statement of the circumstances of such emergency, a description of the supplies or services purchased and the prices thereof.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.170 - Waiver of informalities—Rejection of bids.

Where the purchasing officer, city manager or city council are required to make purchases upon competitive bids, said officer, manager or city council may waive any informalities or minor irregularities, or may reject any and all bids (anything contained in this chapter to the contrary notwithstanding) if said officer, manager or city council, respectively, deems said rejection to be in the best interests of the city. Said rejection shall be at the sole discretion of the officer, manager or city council, as the case may be. Upon rejection of bids, the officer, manager or city council may:

1. Give subsequent notice for new competitive bids;
2. Postpone said purchase or disposal definitely or indefinitely; or
3. Elect to make the purchase without competitive bids, upon notice (and as if competitive bids, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this section.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.180 - Cooperative purchasing.

The purchasing officer has the authority to join with other public jurisdictions in cooperative purchasing plans or programs, including, but not limited to California Communities Purchasing Program (CCPP), the California Department of General Services (CADGS), the California Multiple Award Schedule (CMAS), the National Association of Counties (NACo), or similar arrangements or plans, as determined by the purchasing officer to be in the city's best interests.

The purchasing officer may either: (1) buy directly from a vendor at a price established by a competitive bid by another jurisdiction even if the city had not joined with the public agency in a cooperative purchase; or (2) compare bids among cooperative purchasing plans or programs and choose the bid that best matches the needs of the city. The purchasing officer shall not, however, shop the cooperative purchasing process bid to private vendors.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.190 - Competitive bids—Notice.

Where notice is required, notice shall be given as follows:

- A. The notice shall give such information as to the proposed purchase or disposal as the purchasing officer deems sufficient but shall include the following:

1. A distinct description of the supplies or services to be purchased or personal property to be disposed;
 2. The location where bid forms, specifications, performance requirements, requests for proposals, or specific disposal requirements can be obtained for bidding;
 3. Date, time and place of bid opening;
 4. Whether bid deposits or bonds and faithful performance bonds will be required; and
 5. A statement that the city has the authority to reject any and all bids and may waive any minor technicality or variance found in the bid document.
- B. For purchases under Sections 3.04.140 or 3.04.150:
1. By publishing notice in a newspaper of general circulation within the city on at least one occasion at least ten days prior to the date set for the final receipt of bids, provided that publication may be made in any newspaper of general circulation in the county which the purchasing officer shall select if the publication schedule of all newspapers of general circulation in the city are such that notice by publication cannot be given in time; and
 2. Posting on the city's website.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.200 - Competitive bids.

Competitive bids shall be submitted in writing in a sealed envelope to the office of the city clerk no later than the final time and date for receipt of bids as set forth in the notice of publication and opened publicly. If authorized in the notice, bids also may be submitted by electronic mail or facsimile, provided however, that the entire document is received no later than the final time set for receipt of written bids. Any bid may be withdrawn by a written request signed by the bidder and received by the city clerk prior to the final time and date for the receipt of bids.

1. Opening. Bids shall be opened in public at the time and place stated in the public notices.
2. Tabulation. A tabulation of all bids received shall be posted for public inspection.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.210 - Bid deposits.

When deemed necessary by the purchasing officer, city manager or city council, any bidder may be required to submit a bid security or bond in an amount determined by the purchasing officer, city manager or city council that represents the damage costs to the city should the bidder not be able to engage in a contract with the city as a result of the bidder's actions. A successful bidder (and surety, if a bond is furnished) shall be liable for all damages upon said bidder's failure to enter into a contract with the city.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.220 - Faithful performance deposits.

When deemed necessary by the purchasing officer, city manager or city council, any person entering into a contract with the city may be required to furnish a faithful performance and/or a time and materials deposit or bond in an amount determined by the purchasing officer, city manager or city council. Said person (and surety, if a bond is furnished) shall be liable for any damages upon said person's failure to faithfully perform the terms of his/her contract.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.230 - Reserved.

3.04.240 - Consultant contracts.

- A. The city council finds and declares that the competitive bid process is ill-suited for the selection of consultants. The request for proposal procedure set forth in Section 3.04.250 may be used if a determination is made by the officer or official responsible for the purchase — the purchasing officer, city manager or city council, respectively — that to do so would be in the best interest of the city in selecting the best qualified consultant. Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers in relation to a particular skill or expertise required are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the city or eliminate unnecessary expense or delay.
- B. The officer or official responsible for the purchase — the purchasing officer, city manager or city council, respectively — shall be empowered to engage a consultant (including, but not limited to, material testing service, construction inspection services, architectural, engineering, testing, land surveying, appraising, environmental, planning, financial, legal, development processing, governmental operations, special studies, construction project management, information technology and services graphic design and other services related thereto) without the necessity of an informal bid or competitive bid or notice thereof in the following circumstances and subject to the following criteria and conditions:
 1. Subject to the delegation of the city manager, with department head approval if the consultant's total fee for services and supplies under the contract by which the consultant is engaged on a per project basis, including any amendments to the contract, does not exceed ten thousand dollars, so long as there exists a sufficient unencumbered appropriation in the fund against which the contract expense may be appropriately charged and provided further that any bifurcation of a purchase or contract into subunits or phases for the purpose of avoiding the maximum dollar amounts set forth in this section is prohibited; or
 2. With city manager approval if the consultant's total fee for services and supplies under the contract by which the consultant is engaged on a per project basis, including any amendments to the contract, does not exceed the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act, so long as there exists a sufficient unencumbered appropriation in the fund against which the contract expense may be

- appropriately charged and provided further that any bifurcation of a purchase or contract into subunits or phases for the purpose of avoiding the maximum dollar amounts set forth in this section is prohibited; or
3. With city council approval if the consultant's total fee for services and supplies under the contract by which the consultant is engaged on a per project basis exceeds the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act. City council approval is not required for services in excess of the amount authorized to be performed by the employees of a public agency for public projects per State of California's Uniform Public Construction Cost Accounting Act if the consultant's total fee for services and supplies is to provide environmental services for a project that will be paid for by a development processing project applicant.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.245 - Non-consultant services contracts.

- A. A services contract is a contract, with or without the furnishing of supplies or equipment, for work, labor or services including, but not limited to:
 1. Maintenance of public buildings, streets, parks and playgrounds and other public improvements not governed by the provisions of the California Public Contract Code;
 2. Repair, modification and maintenance of equipment;
 3. Installation and maintenance of computer software;
 4. Janitorial services, uniform cleaning, tree trimming, street sweeping, power washing and landscape maintenance; and
 5. Leasing of personal property for use by the city.
- B. Services contracts shall comply with the necessary informal bid, competitive bid process or request for proposal as set forth in Sections 3.04.080; 3.04.120; 3.04.130; 3.04.140; 3.04.150, and 3.04.250, as applicable.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.250 - Request for proposals.

- A. In lieu of competitive bidding, the officer or official responsible for the purchase — the purchasing officer, city manager or city council, respectively — may utilize the request for proposal method of purchasing supplies or services upon a determination that competitive bidding is not practical or advantageous to the city because of one or more of the following reasons:
 1. Quality, capability, performance or qualification is overriding in relation to price;
 2. Delivery, installation, service, maintenance, reliability or replacement is overriding in relation to price;
 3. In the opinion of the purchasing officer, city manager or city council, respectively, the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussion of proposals before entering the contract; or
 4. Any of the considerations set forth in Section 3.04.080 are overriding.

- B. The identity of persons responding to the request for proposals and the content of proposals submitted to the city may be kept confidential during the process of negotiation and until a contract is awarded, if deemed necessary by the purchasing officer, city manager or city council to receive the best proposal.
- C. The formats and procedures for requests for proposals shall be established by the purchasing officer.
- D. The contract award shall be based upon the proposal determined by the purchasing officer, city manager or city council, respectively, to be most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals.
- E. The purchasing officer, city manager or city council, respectively, may reject any and all proposals if such rejection is deemed to be in the best interests of the city and may thereupon direct that proposals be solicited or utilize any other purchasing method set forth in this section.
- F. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors, or of any information derived from proposals submitted by competing offerors.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.300 - Reserved.

3.04.310 - Reserved.

3.04.320 - Disposals of two thousand five hundred dollars or less.

Except as otherwise provided by state law or city ordinance, the purchasing officer shall be empowered to dispose of personal property of the city which cannot be used by any department of the city, at public or private sale, or by renting, donating or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the purchasing officer's discretion, and upon such terms as said officer deems best) provided any single item of property involved does not exceed two thousand five hundred dollars in current market value. At the beginning of each fiscal year, the city council may adopt a list of acceptable non-profit organizations to which the city may donate.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.330 - Deposits for disposal of property.

The purchasing officer may, in said officer's discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon disposal of personal property.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.400 - Disposals of more than two thousand five hundred dollars.

In the event any single item of property exceeds two thousand five hundred dollars in current market value, the city council may empower the purchasing officer to dispose of it (in accordance with the same terms and conditions, and subject to the same discretion and limitations as if it were under two thousand five hundred dollars in value). Alternatively, the city council may elect to sell, rent, donate or destroy the same in accordance with whatever provision and/or terms and conditions the city council may, in its discretion, elect.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

3.04.420 - Exclusions from chapter.

The provisions of this chapter shall not apply:

1. To public projects (governed by the provisions of the California Public Contract Code);
2. To franchises governed by the provisions of the California Public Utilities Code or other statutes of the state;
3. Where state or federal law requires a different procedure;
4. To franchises, rights and privileges granted for refuse disposal under Chapter 13.28, and the cable franchise under Chapter 5.20, of this code;
5. To the purchase of insurance;
6. To the leasing, purchase or sale of land or any interest therein;
7. To the hiring of, or contracting for, personnel (whether as temporary, seasonal or permanent employees);
8. To private construction contracts reviewed pursuant to Titles 17 or 18; and
9. To the purchase of utilities, including, but not limited to, telephone service, gas, electricity or water.

(Ord. No. 2172 N.S., § 1, 10-7-2015)

SECTION 2. Severability. Should any provision of this Ordinance be deemed invalid, unconstitutional, unenforceable or inapplicable to a situation by a court of competent jurisdiction, such determination shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations, and any such invalid or unconstitutional provision shall be severed from this Ordinance, which severance shall not affect the validity of the remainder of this Ordinance.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this Ordinance in accordance with the provisions of California Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 3RD DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2285, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

DRAFT



Meeting Minutes City Council

Steve Tate - Mayor
Rich Constantine - Mayor Pro Tem
Larry Carr - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, September 26, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Pro Tem Constantine called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Gonzalez called the roll.

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

DECLARATION OF POSTING AGENDA

Minutes Clerk Gonzalez declared the posting of the agenda.

Minutes Acceptance: Minutes of Sep 26, 2018 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr sits on the Board of Directors for the Valley Transportation Authority (VTA) and he spoke about VTA's Capital Projects Committee. He stated that VTA is looking at its financial structure and trying to find ways to be more sustainable. The Committee will be looking at all the Capital Projects. The Board has made a decision that they are going to hold off on that process until after the November election. The election will be one that is extremely important when it comes to funding for transportation, as a result of that, the financial reviews and capital reviews need to wait until voters have made decisions in November.

He spoke about VTA's Mobility Partnership Committee, this is a partnership between San Benito County and VTA. The committee has focused work on the safety improvements that need to happen on the Highways 25 and 101 interchange, specifically rebuilding of the bridge and the design work that needs to happen there.

He concluded by speaking about the Upper Llagas Creek Flood Control Project. It is moving along at a good pace and they are hoping to break ground by the end of this calendar year or early next calendar year. For Phase 1 all of the properties needed have been acquired. For Phase 2 there are about two or three properties that need to go through the Board's approval and the permits that are needed have all been acquired by both federal and state agencies.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She corrected an error on item number 5 of the agenda, the Evergreen Project. In the count of the votes for that item, it was a unanimous vote, which is different than what was stated in the staff report. She announced that on Wednesday, October 3rd at 9:00 a.m. at the Starbucks on Dunne Ave. the Police team will be hosting Coffee with a Cop. She concluded by announcing that on September 20th the Silicon Valley Business Journal awarded the City with a Structures Award for our three Downtown parks. The City was presented the award and was recognized for its significant investment Downtown and the benefits of creating deeper connections between residents, visitors, and the City.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin had no report.

OTHER REPORTS

None.

PROCLAMATIONS

Proclaiming September 30, 2018 as Lewy Body Dementia Awareness Day
In honor of Susan Berghoff

Proclaiming the month of September 2018 as National Hispanic Heritage Month

PUBLIC COMMENT

Mayor Pro Tem Constantine opened the public comment at 7:15 p.m. The following people were called to speak:

Jeff Layne
 Greg DaCunha
 Shelli DaCunha
 Brian Allen
 Penny Doubek
 Catherine Derringer
 Brian Faircloth
 Brian Sullivan

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

PUBLIC COMMENT RECEIVED

ADOPTION OF AGENDA

ADOPTION OF AGENDA

MOTION:

Adopting the agenda, moving the workshop item to follow the consent calendar.

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 2, and 4 through 8 with the abstention of Council Member Spring on item 4.

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

1. ITEM PULLED FROM CONSENT

2. AWARD 2018-2019 PARKING LOT AND PATH SEAL COAT PROJECT

Recommendation:

1. Award contract to Silicon Valley Paving, Inc. in the amount of \$63,466.10;
2. Authorize the expenditure of contingency funds not to exceed \$6,346.61; and
3. Authorize City Manager to execute and administer that certain construction contract with Silicon Valley Paving, Inc.

3. ITEM PULLED FROM CONSENT

4. TERMINATE IMPROVEMENT AGREEMENT WITH NUEVA VISTA, LLC FOR PSYNERGY PROGRAMS CAMPUS AT 18225 HALE AVE

Recommendation:

Terminate Improvement Agreement with Nueva Vista, LLC.

5. ADOPT ORDINANCE APPROVING AN AMENDMENT TO A PLANNED DEVELOPMENT MASTER PLAN FOR “EVERGREEN VILLAGE” TO BE LOCATED ON A 20 ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF BUTTERFIELD BOULEVARD AND COCHRANE ROAD (APN’S 726-25-035 AND 726-32-021)

Recommendation:

Waive the reading, adopt Ordinance No. 2279, 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.

6. ADOPT ORDINANCE APPROVING REVISIONS TO SECTION III- COMPETITION CRITERIA, STANDARDS AND POINTS OF A COMPETITION MANUAL (FILE NO. ZA2018-0003) FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)

Recommendation:

Waive the reading, adopt Ordinance No. 2280, 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.

7. ADOPT ORDINANCE ADDING A NEW CHAPTER 12.24 (NEWSRACK CONSOLIDATION) TO TITLE 12 (STREETS SIDEWALKS AND PUBLIC PLACES) TO THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

Recommendation:

Waive the reading, adopt Ordinance No. 2281, 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.

8. APPROVE THE SEPTEMBER 5, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION

1. ACCEPT DONATION FROM CHIALA FAMILY FOR INCLUSIVE PLAYGROUND

Recommendation:

1. Accept a donation of \$23,000 from the Chiala Family for construction of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

MOTION:

Approving the recommended action.

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

3. APPROVE THIRD AMENDMENT TO WESTON MILES ARCHITECTS FOR THE LIBRARY EXPANSION PROJECT

Recommendation:

1. Approve Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project increasing the fee by \$20,305 for a total not to exceed amount of \$467,430; and
2. Authorize the City Manager to execute the Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project.

Public Services Director Chris Ghione presented the report and answered questions.

Mayor Pro Tem Constantine opened the public comment at 7:51 p.m.
Hearing no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	APPROVED [3 TO 1]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Carr, Jachimowicz
NAYS:	Spring
ABSENT:	Tate

WORKSHOP

The meeting recessed at 7:54 p.m.

The meeting was reconvened 8:02 p.m.

The purpose of this workshop is to discuss a Below Market Rate (BMR) Ownership Program Participation Guide and a Below Market Rate Program Application Guide, including Ownership and Estate Planning and BMR Owners' Minimum Return on Down payment. Guides are attached in Other Business Item #9.

Housing Manager Rebecca Garcia facilitated the workshop with Assistant City Manager Leslie Little, Julius Nyanda from House Keys, and Debbie Kern from Keyser, Marston and Associates.

Mayor Pro Tem Constantine opened the public comment at 8:02 p.m. The following people were called to speak:

Dick Oliver

Rocke Garcia

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

Mayor Pro Tem Constantine opened the public comment at 9:29 p.m. The following people were called to speak:

Rocke Garcia

anonymous

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

OTHER BUSINESS

9. ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
 - A. Adds Chapter 14.08 to institute a Housing in-lieu fee of \$19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, \$13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, \$29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and \$11.00 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
 - B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Program Application Guide;
 - C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
 - D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

Item Continued to the October 17, 2018 City Council Meeting.

RESULT:	CONTINUED
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FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring asked for follow up on the temporary use permit for "Pirate House" and proposed a new project for Morgan Hill called [rat] Poison Free Morgan Hill.

ADJOURNMENT

There being no further business Mayor Pro Tem Constantine adjourned the meeting at 9:35 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk

Minutes Acceptance: Minutes of Sep 26, 2018 7:00 PM (CONSENT CALENDAR)

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, October 3, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(5:30 P.M. Closed Session/ 7:00 P.M. Regular Meeting)

A special meeting of the City Council was called at 5:30 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

Mayor Tate called the special meeting to order at 5:31 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	Present	

Minutes Acceptance: Minutes of Oct 3, 2018 5:30 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 Bigelow declared the posting of the agenda.

CLOSED SESSION

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 5:33 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:34 p.m.

CONFERENCE WITH LABOR NEGOTIATOR

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

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to:	Government Code Section 54956.9(d)(2)
Number of Cases:	One (1)

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to:	Government Code Section 54956.8
Property:	APN 817-21-001
Agency Negotiators:	Christina Turner and Anthony Eulo
Negotiating Parties:	Fountain Oaks Ranch, LLC
Under Negotiation:	Price and Terms of Payment

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957 (b)(1)
 Title: City Manager

REGULAR MEETING

7:00 P.M.

Mayor Tate called the regular meeting to order at 7:02 p.m.

SILENT INVOCATION**PLEDGE OF ALLEGIANCE****CITY COUNCIL REPORTS**

Council Member Spring shared that the Taste of Morgan Hill took place this past weekend and thanked the Chamber of Commerce and the many volunteers involved for setting up another wonderful event.

CITY MANAGER'S REPORT

City Manager Christina Turner announced the evening's supplements and presentations. She shared that today is National Coffee with a Cop day. Here in Morgan Hill at the Starbucks on Walnut Grove Drive, our police officers hosted the Coffee with a Cop event which was well attended. She thanked the many community members that came out and talked with our police officers. She announced that the City and Chamber of Commerce will be holding Manufacturing Day in Morgan Hill tomorrow, Thursday October 4th. She invited the community to join us and our local business community in understanding the role that manufacturing plays in career and product development. The event begins at 8:30 a.m. at the Community and Cultural Center with a panel. The balance of the day will be dedicated to tours of four manufacturing businesses including Anritsu Company, Creative Manufacturing Solutions, Wolfsped, and Bruce's Custom Covers. She also shared that on Saturday, October 6th, from 4:00 p.m. to 7:30 p.m. we will have a Latin concert at the Downtown Amphitheatre. This event is a part of the National Hispanic Heritage Month Celebration. She announced that on Saturday, October 13th, we will hold our 12th Annual Get Fit Obstacle Course Challenge at Community Park. This is a one and a half mile run/walk and obstacle course for kids ages 5 through 13. If you missed the American Association of University Women (AAUW) candidate forum that took place last week, we do have the video available on our website in the media center. Lastly, she shared that public input on the Gun Violence Ordinance is due to Maureen Tobin this Friday, October 5th.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that the Council met in closed session on four items earlier this evening and shared that there was no reportable action on any of the items. He shared that regarding the MWest/Divco litigation matter, the Superior Court entered an order and judgment holding, as we expected, that the Housing Accountability Act preempts our Residential Development Control System (RDCS) program as it applies to affordable housing projects that provide a significant amount of housing at an affordability level for which we are deficient. With that moving forward, we will be coming back to Council with a development agreement with the Divco/MWest project that will outline how that project will be developed outside of RDCS. He commented that we have received a lot of feedback from the community regarding the Gun Violence Ordinance and are still in the process of digesting that. To make sure that we are evaluating all the feedback that has come in and to provide a good recommendation to Council, we will likely not be bringing this item to Council until the October 24th or November 7th City

Council meetings.

OTHER REPORTS

None.

PROCLAMATIONS

Proclaiming the week of October 7-13, 2018 as Fire Prevention Week
Received by Fire Marshal Dwight Good

RECOGNITION

Recognizing the Chiala Family for their generous donation to the City of Morgan Hill in Memory of Rick Chiala

PUBLIC COMMENT

The public comment was opened at 7:16 p.m.
There being no 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, Constantine, Carr, Jachimowicz, Spring

CONSENT CALENDAR

MOTION:

Approving Consent Calendar items 1 through 6.

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

1. ACCEPT FEDERAL EMERGENCY MANAGEMENT AGENCY GRANT – ASSISTANCE TO FIREFIGHTERS 2017

Recommendation:

1. Accept the Assistance to Firefighters Grant award in the amount of \$142,764; and
2. Adopt a resolution amending the Fiscal Year 2018-19 Budget, appropriating \$157,040 in the General Fund (010) for the related Grant expenditures.

2. ADOPTION OF A RESOLUTION OPPOSING PROPOSITION 6

Recommendation:

Adopt resolution opposing Proposition 6, which would repeal Senate Bill 1 (SB 1), also known as the "Road Repair and Accountability Act of 2017."

3. ACCEPTANCE OF OUTDOOR SPORTS CENTER ARTIFICIAL TURF REPLACEMENT PROJECT

Recommendation:

1. Accept as complete the Outdoor Sports Center Artificial Turf Replacement Project;
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.

4. AWARD EL TORO FIRE STATION ROOF REPLACEMENT PROJECT

Recommendation:

1. Award a contract to Andy's Roofing Company, Inc. in the amount of \$71,773;
2. Authorize the expenditure of contingency funds not to exceed \$14,355; and
3. Authorize City Manager to execute and administer that certain construction contract with Andy's Roofing Company, Inc.

5. APPROVAL OF IMPROVEMENT AGREEMENT AND STORMWATER BEST-MANAGEMENT-PRACTICES OPERATION AND MAINTENANCE AGREEMENT WITH MORGAN HILL REAL ESTATE, LLC (TOWBIN DODGE)

Recommendation:

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

6. APPROVE AGREEMENT AND INTERFUND LOAN FOR PURCHASE OF PROPERTY (APN 767-01-052) FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve Possession and Use Agreement with Glenda and Rocke Garcia for fee property (APN 767-01-052) for the Hale Avenue Extension project;
2. Approve expenditure of \$3,563,200 for said property into an escrow account;
3. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction; and
4. Adopt resolution amending the Fiscal Year 2018-19 Budget and authorizing an interfund loan to the Traffic Impact Fund (309) of up to \$2.25 million from the Local Drainage Impact Fund (303).

PUBLIC HEARING

7. APPROVE DISPOSITION AND DEVELOPMENT AGREEMENT FOR HALE LUMBER SITE INCLUDING VACATION OF 0.29 ACRES OF DEPOT STREET AND REALIGNMENT OF A PORTION OF DEPOT STREET TO CHURCH STREET AT EAST DUNNE AVENUE INTERSECTION

Recommendation:

Minutes Acceptance: Minutes of Oct 3, 2018 5:30 PM (CONSENT CALENDAR)

1. Adopt Addendum to the 2035 General Plan Final Environmental Impact Report (FEIR) and Downtown Specific Plan FEIR; and
2. Adopt resolution approving a Disposition and Development Agreement with Latala Group, LLC for the sale of .29 acres of Depot Street, the re-alignment of Depot Street to Church Street at the East Dunne intersection, and the purchase of 3,000 square feet of office space within the mixed-use project.

Assistant Planner Tiffany Brown, Economic Development Director Edith Ramirez, and Development Services Director Jennifer Carman presented the report.

Mayor Tate called a recess at 8:03 p.m.
The meeting was reconvened at 8:10 p.m.

The public hearing was opened at 8:28 p.m. The following people were called to speak:

Michael Van Every
Reyad Katwan
Chuck Bradley
Joe Guerra
Devin Spencer
John Horner
Paul Latala

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

MOTION:

Approving the recommended actions.

RESULT:	ADOPTED [3 TO 2]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Steve Tate, Mayor
AYES:	Tate, Constantine, Carr
NAYS:	Jachimowicz, Spring

8. APPROVE GENERAL PLAN AND ZONING AMENDMENT TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FROM PUBLIC FACILITIES TO MIXED-USE AND THE ZONING CLASSIFICATION FROM PUBLIC FACILITIES TO DOWNTOWN MIXED USE (MU-D) ON HALF OF A 0.29 ACRE PORTION OF DEPOT STREET LOCATED AT THE CORNER OF DEPOT STREET AND EAST DUNNE AVENUE

Recommendation:

1. Adopt resolution approving an amendment to the 2035 General Plan;
2. Waive first and second reading of the ordinance;
3. Introduce ordinance approving a Zoning amendment;
4. Determine Project Consistency with the General Plan; and
5. Adopt an Addendum to the 2035 General Plan Final Environmental Impact Report (FEIR) and Downtown Specific Plan FEIR.

Assistant Planner Tiffany Brown, Economic Development Director Edith Ramirez, and Development Services Director Jennifer Carman presented the report.

The public hearing was opened at 9:38 p.m.
There being no requests to speak, the public hearing was closed.

MOTION:

Adopting resolution approving an amendment to the 2035 General Plan and determining that the project is consistent with the General Plan.

RESULT: **ADOPTED [3 TO 2]**
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Steve Tate, Mayor
AYES: Tate, Constantine, Carr
NAYS: Jachimowicz, Spring

MOTION:

Waiving the first and second reading of the ordinance.

RESULT: **WAIVED [3 TO 2]**
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Steve Tate, Mayor
AYES: Tate, Constantine, Carr
NAYS: Jachimowicz, Spring

MOTION:

Introducing the ordinance.

RESULT: **INTRODUCED [3 TO 2]**
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Steve Tate, Mayor
AYES: Tate, Constantine, Carr
NAYS: Jachimowicz, Spring

9. AMEND CHAPTER 5.32 - MASSAGE ESTABLISHMENT, AND INSTATE AN ANNUAL REGULATORY FEE FOR RELATED COMPLIANCE ACTIVITIES

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance;
3. Introduce Massage Establishment Amendment Ordinance; and
4. Adopt resolution establishing an Annual Regulatory Fee for Massage Establishments.

Accountant Manager Harjot Sangha presented the report.

The public hearing was opened at 9:56 p.m.

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

Mayor Tate called a recess at 10:06 p.m.

The meeting was reconvened at 10:12 p.m.

MOTION:

Waiving the first and second reading of the ordinance.

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

MOTION:

Introducing the ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Rich Constantine, Mayor Pro Tem
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

10. APPROVE AMENDMENTS TO THE MORGAN HILL MUNICIPAL CODE BY AMENDING SECTION 2.08.040 OF CHAPTER 2.08 (CITY MANAGER) OF TITLE 2 TO AMEND THE CITY MANAGER'S POWERS AND DUTIES AND BY AMENDING CHAPTER 3.04 OF TITLE 3 RELATED TO PURCHASING OF GOODS AND SERVICES

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the Ordinance to amend Section 2.08.040 of Chapter 2.08 of Title 2 of the Municipal Code to increase the signature authority of the City Manager;
3. Introduce Ordinance by title;
4. Waive the first and second reading of the Ordinance to amend Chapter 3.04 of Title 3 of the Municipal Code to revise the regulations pertaining to the purchasing of goods and services; and
5. Introduce this Ordinance by title.

Finance Director Dat Nguyen presented the staff report.

The public hearing was opened at 10:16 p.m.

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

MOTION:

Waiving the first and second reading of the ordinance amending section 2.08.040 of the Municipal Code.

RESULT: WAIVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Waiving the first and second reading of the ordinance amending Chapter 3.04 of the Municipal Code.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

OTHER BUSINESS

11. DE PAUL HEALTH CENTER PROPERTY DISCUSSION

Recommendation:

Discuss Verity Health System's Bankruptcy as it relates to the De Paul Health Center Property in Morgan Hill.

City Attorney Donald Larkin recused himself and exited the dais.

City Manager Christina Turner presented the report. Mayor Tate continued the presentation.

RESULT:	NO ACTION TAKEN
----------------	------------------------

12. APPROVE FUNDING AGREEMENT FOR DOWNTOWN TREE LIGHTING

Recommendation:

1. Authorize the City Manager to negotiate, execute and administer all necessary agreements and documents to accept \$15,000 from the Morgan Hill Downtown Association, for the purpose of funding tree lighting in Downtown Morgan Hill; and
2. Adopt resolution amending the Fiscal Year 2018/19 Budget appropriating \$30,000 in the General Fund (010).

Public Services Director Chris Ghione presented the report.

The public comment was opened at 10:32 p.m.

John McKay was called to speak.

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

MOTION:

Approving the recommended actions with the modification of the City funding up to \$19,000.

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

13. INTRODUCE THE 2018 STORM DRAINAGE SYSTEM MASTER PLAN

Recommendation:

Receive the 2018 Storm Drainage System Master Plan.

Associate Engineer David Gittleson, Deputy Director for Engineering Scott Creer, and Tony Akel with Akel Engineering Group presented the report.

The public comment was opened at 10:45 p.m.

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

RESULT:	NO ACTION TAKEN
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14. JUNE 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Finance Director Dat Nguyen presented the report.

RESULT:	ACCEPTED
----------------	-----------------

15. APPROVE CITY COUNCIL MEETING SCHEDULE FOR CALENDAR YEAR 2019

Recommendation:

1. Review and adjust the 2019 City Council meeting schedule as deemed appropriate; and
2. Approve 2019 City Council meeting schedule.

Deputy City Clerk Michelle Bigelow presented the report.

MOTION:

Approving the 2019 City Council Meeting Calendar.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring asked that staff bring back a policy regarding City Manager reporting of contracts signed under the City Manager signature authority.

ADJOURNMENT

There being no further business, the meeting was adjourned at 11:01 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Edith Ramirez, Economic Development Director

APPROVED BY: City Manager

ECONOMIC DEVELOPMENT WEBSITE AND MARKETING CAMPAIGN UPDATE

RECOMMENDATION(S)

Receive economic development website and marketing campaign update, and provide feedback.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2018 Strategic Priorities

Economic Development and
Telecommunications

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

The City of Morgan Hill's Economic Blueprint provides policy guidance with very specific strategies intended to foster economic growth by attracting investment, development, and jobs that will ensure fiscal sustainability and vitality for the community. To convey an 'open for business' attitude and articulate Morgan Hill's value proposition for attracting jobs and commercial investments in the areas of healthcare, innovation, retail and tourism, the City Council approved the creation of a new Economic Development website accompanied by a robust marketing campaign.

The goals of the new Economic Development website are to:

1. Align with the Economic Blueprint, migrate from a text-heavy approach to a more visual and story-telling approach, and provide a strong, relevant experience for site visitors and stakeholders.
2. Design a site with the sole purpose to attract new businesses to Morgan Hill and empower existing businesses with tools and resources to enable growth.
3. Create a modern, business-forward identity and brand for the Morgan Hill Economic Development Division grounded on the unique value proposition Morgan Hill offers.

The new website, ChooseMorganHill.com is designed with a modern, yet warm and inviting style with authentic and active photography. The style is a dynamic site with clear core messages in a non-text heavy way. The tone of the website aims to achieve a balance between sophistication, down to earth and outdoorsy, and between

informative and approachable. The features of the new website allow the user to easily navigate with their mobile devices.

ChooseMorganHill.com is organized around four key themes:

- A. Morgan Hill for business: “The Jewel of Silicon Valley”
- B. Working and Living in Morgan Hill: “Love where you work”
- C. Resources for growing in Morgan Hill: “A pro-business and pro-development climate”
- D. The Morgan Hill Economic Development Team: “We are here to help”

Website visitors use choosemorganhill.com to learn about Morgan Hill and the reasons why they should consider moving to or expanding in Morgan Hill. It offers information on key industries, workforce, lifestyle, and business resources. Key features and resources for businesses, brokers and developers include information on available space and land for development. This information is organized in multiple ways.

- Featured Properties: Select sites that recently came into the market and are available for lease.
- Development Opportunities: This is a partnership with OppSites, an online platform that allows cities to identify development opportunity sites that may or may not be on the market. The platform offers an opportunity to upload site-specific information on planning requirements, project readiness, incentives, costs, and parcel ownership information. Currently, there are six Morgan Hill commercial/industrial sites ranging in five to 90 acres listed on Oppsites.
- Space for Lease: Site selection assistance is available through LoopNet, the leading mobile and online commercial real estate marketplace that connects tenants and investors to real estate available for lease or for sale.
- Retail Opportunities: Similar to the “Featured Properties” section, this section allows for site-specific opportunities to be highlighted, such as the Cochrane Commons second phase. An interactive map allows users the ability to search for citywide opportunities divided into three categories: Downtown, Shopping Centers, and Auto Dealer Use opportunities.

Another significant feature and ‘offering’ is the “Business Portal” through OpenCounter. Through the Business Portal, users can find out about Zoning regulations and determine answers to the question of whether a proposed use is allowed on a specific site. This tool simplifies site selection by showing where a use is permitted. It also provides information about fees and licenses that may be needed for that business(use). This service as well as the entire ChooseMorganHill.com website is translated into Spanish.

Finally, ChooseMorganHill.com offers information on business programs, financial assistance, marketing materials, and market studies.

In addition to the new website, as part of the Economic Blueprint strategies, the Council approved a marketing campaign with the Silicon Valley Business Journal, the leading

real estate news source in Silicon Valley. The campaign is focused on raising visibility for Morgan Hill. The campaign has been designed to support the four key industries with very specific goals:

1. Innovation: attract small and medium businesses who need to expand
2. Healthcare: attract medical clinics and healthcare practitioners
3. Tourism: attract a full-service hotel
4. Retail: attract wineries, breweries, and other unique boutique shops

Now that the new website ChooseMorganHill.com is complete, the marketing campaign with the Business Journal will begin. The City is working with local developers, Toeniskoetter and DivcoWest, to collaborate on the print campaign and promote their assets in Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 19, 2017, City Council adopted the Economic Blueprint.

On May 3, 2017, City Council approved a contract with Open Counter to provide on-line counter services for businesses interested in opening.

On May 19, 2017, City Council approved funding the implementation of the Economic Blueprint as part of the Mid-year budget cycle workshop to support a range of initiatives and work program efforts.

On February 7, 2018, the City Council approved contracts with Silicon Valley Business Journal for a marketing campaign and Antics Online for the new Economic Development website.

FISCAL AND RESOURCE IMPACT:

No fiscal impact for this item. Funding for the website and marketing campaign was approved in prior City Council actions.

CEQA (California Environmental Quality Act):

Not a Project: The creation of governmental funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project that may result in physical environmental impacts is not a project under CEQA.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Tiffany Brown, Associate Planner
APPROVED BY: City Manager

APPROVE DA2017-0008, EA2017-0016: LLAGAS - STROLATA - DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 773-32-013 LOCATED AT THE NORTHEAST END OF SABINI COURT

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive first and second reading of the ordinance;
3. Introduce an ordinance approving the Development Agreement; and
4. Authorize the City Manager to execute and administer the Development Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The project site is a four- and one-half acre parcel located in the west hills of Morgan Hill at 1110 Llagas Road (Attachment No. 1). The property is designated as Residential Estate minimum one acre lots. An application was submitted for the 2016 Residential Development Control System (RDSCS) competition showing a future subdivision requesting three building allotments for the project site. At the January 10, 2017 Planning Commission Meeting, the Commission Adopted Resolution No. 17-01, awarding the project three Fiscal Year (FY) 2018-19 building allotments.

This Development Agreement (Attachment No. 2) is to incorporate awarded RDSCS allotments to memorialize the RDSCS public benefit commitments for three FY 2018-19 allotments. The Development Agreement specifies the duration and permitted uses of the subject property; the general location and density or intensity of uses. It also contains provisions concerning its transferability to any successor owners of the property. In addition, the Development Agreement clearly outlines the benefits provided to the City by entering into the Agreement.

If the agreement is approved, the applicant will submit for their Subdivision Map to divide the property into four 1-acre minimum lots. The fourth lot (remainder lot) is

subject to RDCS and will not be eligible to build a residential unit until an application is submitted and a unit is awarded for that project.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill Community was informed about the project through public notification (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division Requirements.

ALTERNATIVE ACTIONS:

The Council may deny the Development Agreement, or direct staff to make changes to the Agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 10, 2017, the Planning Commission adopted Resolution No. 17-01, awarding the project three (3) FY2018-19 residential building allotments.

On June 6, 2018, the City Council adopted Ordinance No. 2277, approving a comprehensive update to Title 18 (Zoning), including an amendment to the City's Official Zoning Map. The update re-designated the project site from Residential Estate 40,000 square foot lots, to Residential Estate one-acre minimum lots, which provides consistency with the General Plan designation.

On September 25, 2018, the Planning Commission adopted Resolution No. 18-24 unanimously recommending approval of the Development Agreement (Attachment No 4).

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applications to cover cost services. These fees have been collected.

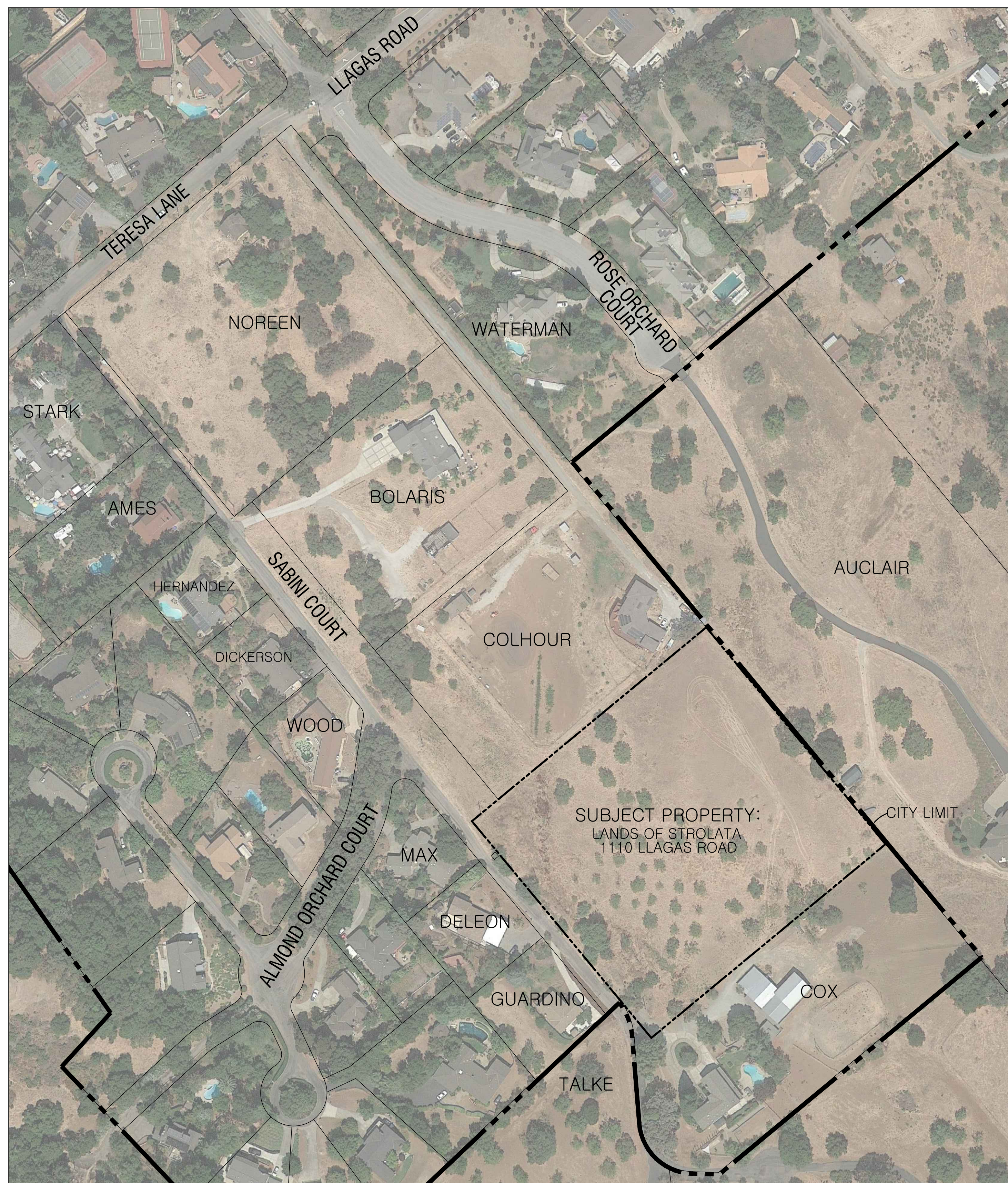
CEQA (California Environmental Quality Act):

An environmental assessment was prepared in conformance with the California Environmental Quality Act and determined the project Categorically Exempt pursuant to Section 15303, Class 3, relating to new construction of small structures, and Section 15315, Class 15, relating to Minor Land Divisions.

LINKS/ATTACHMENTS:

1. Site Plans
2. Ordinance
3. Development Agreement, DA2017-0008, Llagas-Strolata
4. Planning Commission Staff Report with Attachments (web link)

MORGAN HILL, SANTA CLARA COUNTY, CALIFORNIA



SITE DATA

- SUBJECT PARCELS: 1110 LLAGAS ROAD (APN 773-32-013)
- CURRENT LAND USE: FALLOW, VACANT
- CURRENT ZONING: RE-40,000
- CURRENT GENERAL PLAN: RESIDENTIAL ESTATE (UP TO 1 DU/AC)
- PROPOSED LAND USE: SINGLE FAMILY RESIDENCES
(THREE LOTS + REMAINDER LOT)
- BUILDOUT TABULATION

GROSS AREA	4.48 ± AC
RESIDENTIAL SINGLE-FAMILY DETACHED (LOTS 1-4)	4.07 ± AC
PUBLIC RIGHT-OF-WAY DEDICATION (SABINI COURT)	0.41 ± AC
- UTILITIES:

WATER	CITY OF MORGAN HILL
SANITARY SEWER	CITY OF MORGAN HILL
STORM DRAIN	CITY OF MORGAN HILL
GAS & ELECTRIC	PG&E
TELEPHONE	VERIZON
- PRELIMINARY EARTHWORK SUMMARY:

CUT	7,700 CY±
FILL	4,700CY±
NET	3,000 CY± (EXPORT)

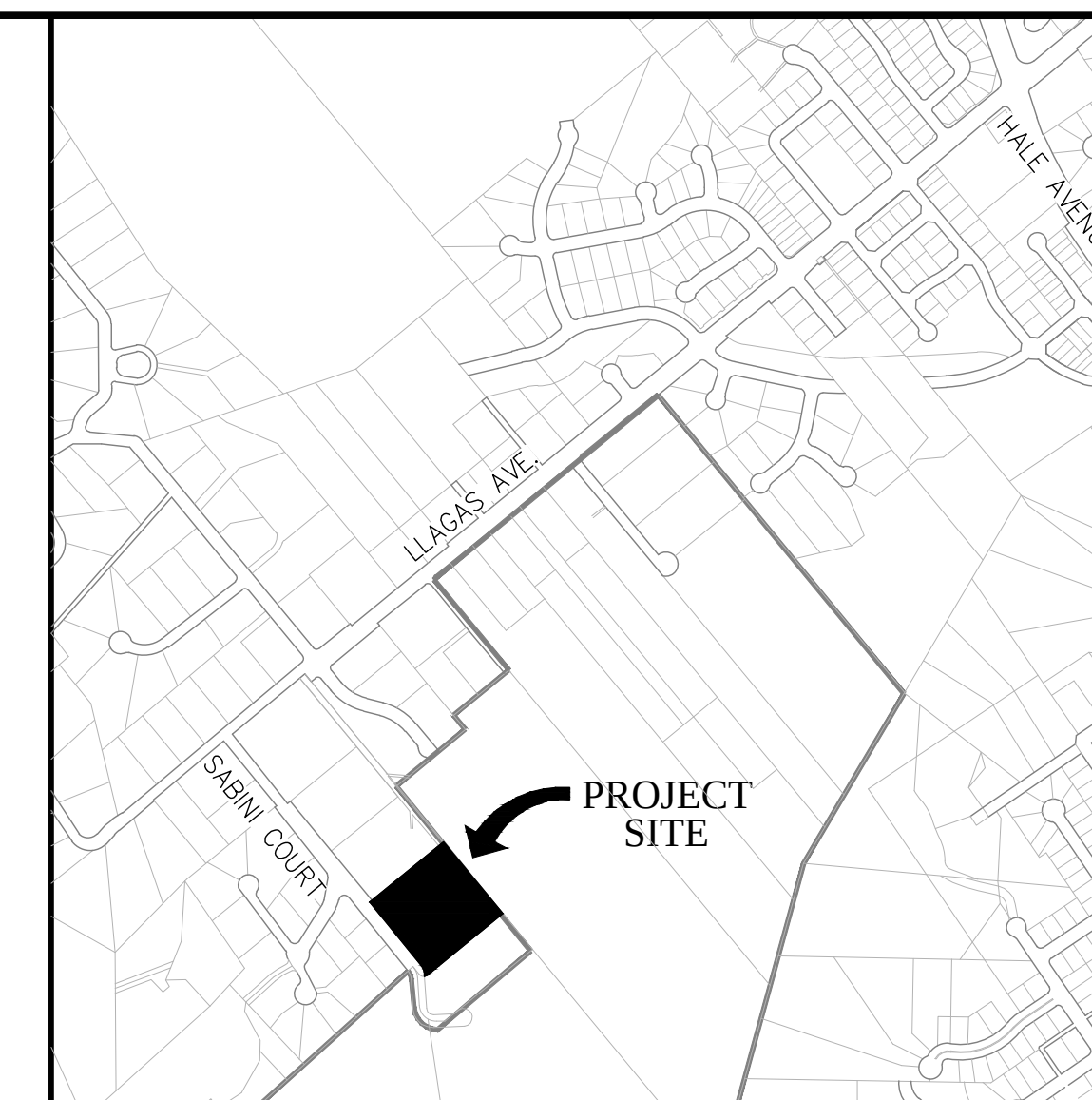
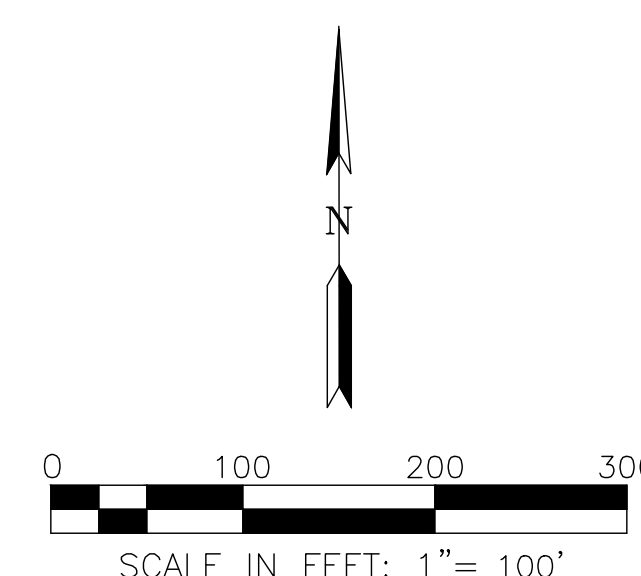
SHEET INDEX

- | | |
|-------|-------------------------------------|
| TM-01 | TITLE SHEET |
| TM-02 | EXISTING CONDITIONS |
| TM-03 | LOTING PLAN |
| TM-04 | GRADING AND UTILITY PLAN |
| TM-05 | PRELIMINARY STORMWATER CONTROL PLAN |

CONTACT INFORMATION

APPLICANT: LATALA HOMES
1999 SOUTH BASCOM AVENUE, SUITE 700
CAMPBELL, CA 95008
CONTACT: PAUL LATALA
(408) 515-9205, PAUL@LATALAHOMES.COM

CIVIL ENGINEER: 8055 CAMINO ARROYO
AND PLANNER: GILROY, CA 95020
ENGINEER: JIM SCHUL (JSCHUL@RJA-GPS.COM)
PLANNER: JOHN MONIZ (JMONIZ@RJA-GPS.COM)
(408) 848-0300



VICINITY MAP

GENERAL INFORMATION

1. PROPOSED CONTOURS AND GRADES IN THIS PLAN SET ARE PRELIMINARY. FINISH GRADING IS SUBJECT TO FINAL DESIGN.
2. BOUNDARY SHOWN HEREIN IS BASED ON RECORD DATA. ADDITIONAL SURVEY IS RECOMMENDED.
3. LOT NUMBERS ARE FOR IDENTIFICATION PURPOSES ONLY AND ARE NOT INTENDED AS FINAL.
4. ALL GRADING WILL BE DONE IN CONFORMANCE WITH THE RECOMMENDATIONS AND CONDITIONS OF THE GEOTECHNICAL ENGINEER, THE CITY OF MORGAN HILL STANDARDS AND SPECIFICATIONS, AND APPLICABLE REPORTS REGARDING THIS PROJECT.
5. PROJECT LIES WITHIN FLOOD ZONE D: AREAS OF 0.2% CHANCE OF FLOOD; AREAS OF 1% CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD (FIRM MAP NUMBER 06085C0444H, EFFECTIVE DATE MAY 18, 2009).
6. FINISHED FLOOR ELEVATIONS SHOWN ARE PRELIMINARY AND SUBJECT TO CHANGE DURING FINAL DESIGN, AS STRUCTURAL SECTIONS OF FOUNDATIONS ARE NOT AVAILABLE AT THIS TIME.
7. THE UTILITY PIPE SIZES AND CONNECTIONS SHOWN ON THIS MAP ARE PRELIMINARY AND ARE SUBJECT TO CHANGE.
8. PROPOSED STORM DRAIN AND RETENTION SYSTEM IS PRELIMINARILY DESIGNED TO ACCOMMODATE STORAGE FOR RUNOFF RETENTION AS REQUIRED BY THE CENTRAL COAST RWQCB.
9. EXISTING TOPOGRAPHY IS BASED ON INFORMATION BY OTHERS AND IS SUBJECT TO FURTHER ANALYSIS.
10. LEGAL DESCRIPTION:
THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:
PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP PORTION OF LOT 46 OF THE MORGAN HILL RANCH MAP NO. 3, BOOK G OF MAPS, PAGES 20 AND 21", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 10, 1972 IN BOOK 312 OF MAPS, AT PAGE 1.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO THAT PORTION OF SABINI COURT, AS SHOWN UPON THAT CERTAIN PARCEL MAP ABOVE REFERRED TO.

ALSO EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO A STRIP OF LAND 16.50 FEET IN WIDTH, THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE MOST WESTERLY CORNER OF SAID WALKER PARCEL IN THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHWEST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 984.39 FEET TO THE MOST SOUTHERLY CORNER OF SAID WALKER PARCEL.

DATE	MK	SHEET REVISIONS	BY	CK	SCALE
5-15-18	-	REVISE PER AGENCY COMMENTS	JAM	JS	AS SHOWN
7-6-18	-	REVISE PER AGENCY COMMENTS	JAM	JS	
8-28-18	-	REVISE PER ARBORIST REPORT	JAM	JS	
					DATE
					12/21/2017

SHEET

TM-01

OF 5 SHEETS

JOB NO.
172024-001

PLOT DATE: August 28, 2018
FILE PATH: W:\Jobs 17\172024\Drawings\Prelim\Applications\Tentative Map\Resubmittal 2018-08-16\TM-01 TITLE SHEET.dwg

TENTATIVE MAP (SD2017-0002)

TITLE SHEET
SABINI COURT

Attachment: Site Plans (1998 : Llagas/sabini Ct. - Srolata)

Latqia

HOMES inc.
1999 S. Bascom Avenue, Suite 700
Campbell, CA 95008
www.latalahomes.com

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8055 CAMINO ARROYO, GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302



TREE DISPOSITION TABLE						
TREE NO.	COMMON NAME	D.B.H.	HEIGHT	CANOPY	CONDITION	DISPOSITION
11979	VALLEY OAK	17"	32'	31'	GOOD	TO BE MITIGATED
11980	VALLEY OAK	17"	30'	37"	GOOD	TO BE MITIGATED
11981	SYCAMORE	88"	32'	60'	FAIR	TO BE MITIGATED
11982	OLIVE	2"	18'	23'	FAIR	TO BE MITIGATED
11983	OLIVE	4"	12'	15'	GOOD	TO BE MITIGATED
11984	OLIVE	2"	10'	8'	GOOD	TO BE MITIGATED
11985	PERSIMMON	9"	18'	20'	GOOD	TO REMAIN
11986	PERSIMMON	11"	18'	22'	GOOD	TO REMAIN
11987	PERSIMMON	11"	20'	25'	GOOD	TO REMAIN
11989	VALLEY OAK	44"	50'	55'	FAIR	TO REMAIN
11990	VALLEY OAK	17"	32'	31'	FAIR	TO REMAIN
11991	WALNUT	VARIES	VARIES	VARIES	POOR-DEAD	TO BE REMOVED



NORTHWEST CORNER OF THE PROPERTY,
LOOKING NORTHERLY.



NORTHEAST CORNER OF THE PROPERTY,
LOOKING SOUTHWESTERLY.



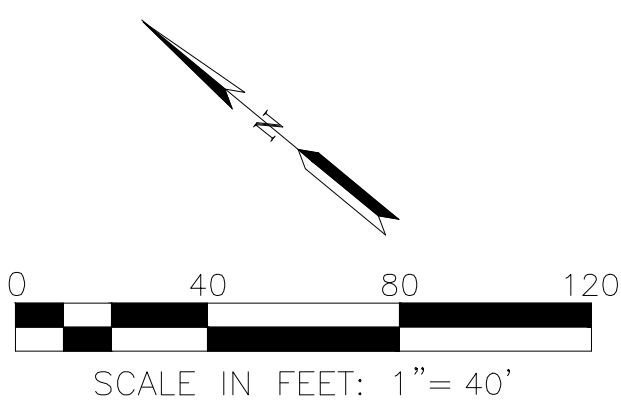
SOUTHEAST CORNER OF THE PROPERTY,
LOOKING WESTERLY.



SOUTHWEST CORNER OF THE PROPERTY
LOOKING EASTERLY.



TYPICAL CONDITION OF SABINI COURT.

UTILITY VAULTS NEAR THE SABINI INTERSECTION
WITH TERESA LANE.[illegible]

PLOT DATE: August 28, 2018
FILE PATH: W:\0809 17\2024\Drawings\Pre\Applications\Tentative Map (Resubmittal) 2018-08-16\TM-03 LOTTING PLAN.dwg

LANDS OF BOLARIS
(APN 773-32-011)
SINGLE RESIDENCE

LANDS OF CALHOUR
(APN 773-32-012)
SINGLE RESIDENCE

LANDS OF AUCLAIR
(APN 773-32-016)
SINGLE RESIDENCE
UNINCORPORATED

LANDS OF MAX
(APN 773-27-018)
SINGLE RESIDENCE

LANDS OF DELEON
(APN 773-27-019)
SINGLE RESIDENCE

LANDS OF GUADINO
(APN 773-27-020)
SINGLE RESIDENCE

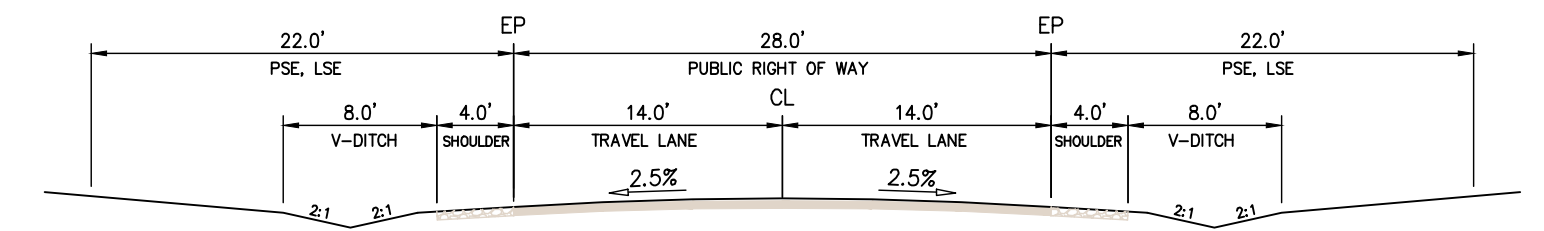
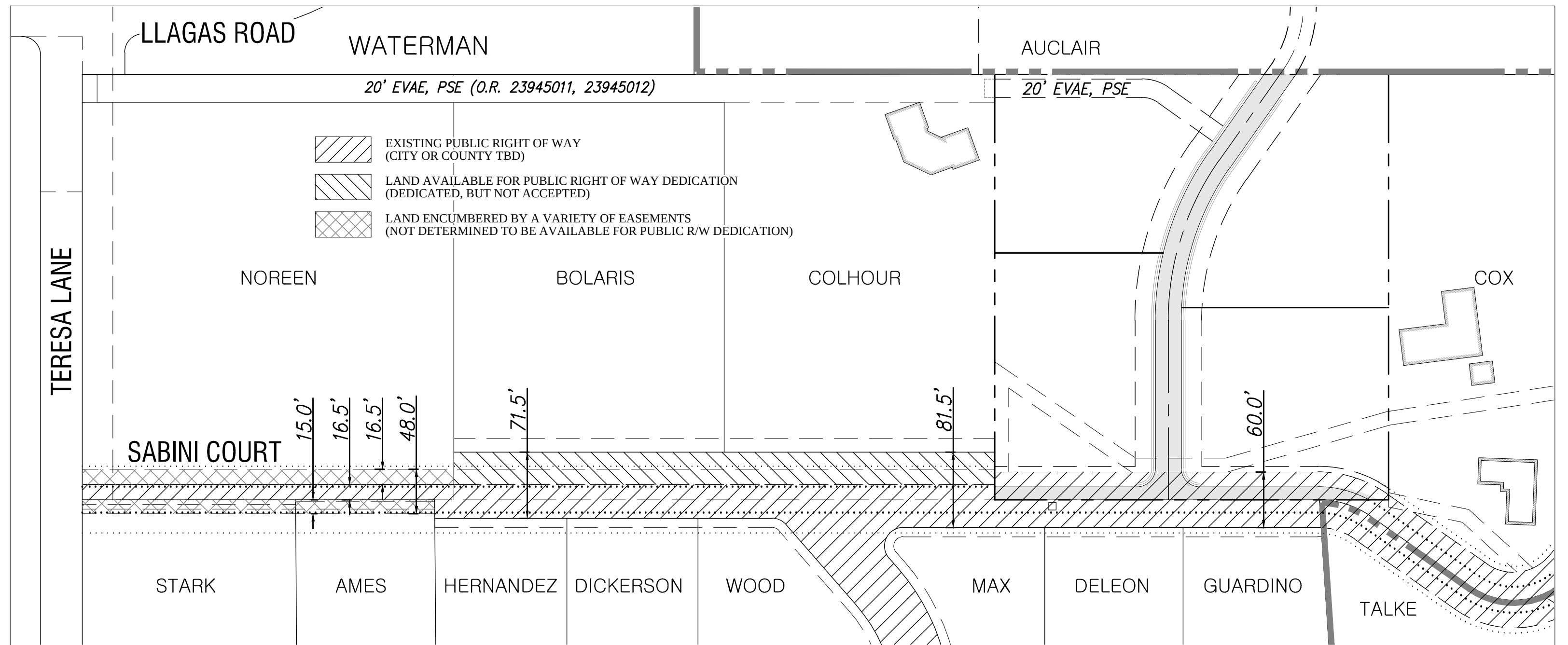
LOT THREE
±44,600 SQFT (NET)

REMAINDER LOT
±43,700 SQFT (NET)
(subject to additional RDCS allocation)

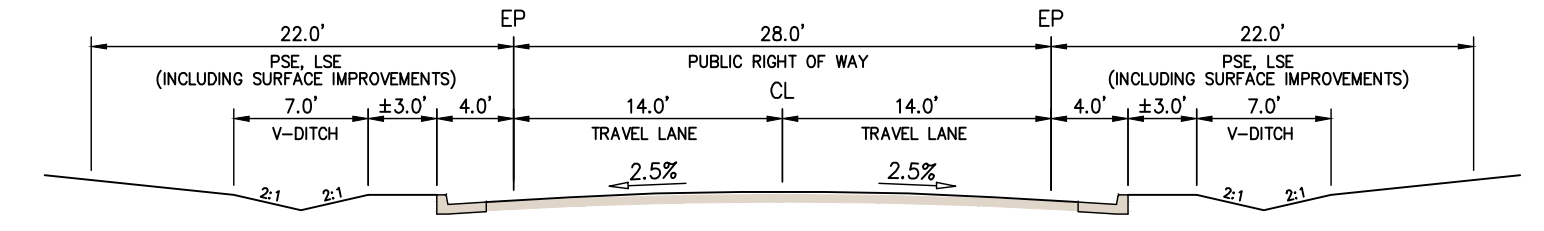
LOT ONE
±43,940 SQFT (NET)

LOT TWO
±43,930 SQFT (NET)

68 WALNUT TREES ARE IDENTIFIED
IN THE ARBORIST REPORT AS IN
POOR CONDITION OR DEAD AND WILL
BE REMOVED



28' PUBLIC RIGHT OF WAY
SABINI COURT (EXISTING)
(RURAL STREET SECTION A-21)



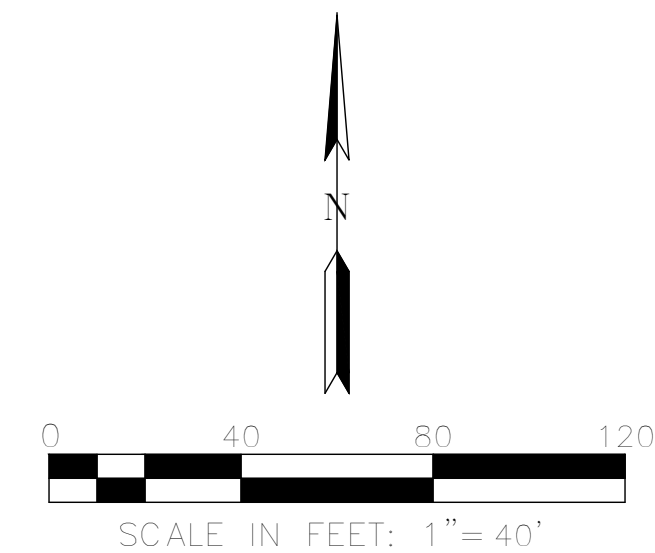
28' PUBLIC RIGHT OF WAY
ROSE ORCHARD LANE (NEW)
(RURAL STREET SECTION A-21)

TREE NO.	COMMON NAME	D.B.H.	HEIGHT	CANOPY	CONDITION	DISPOSITION
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11991	WALNUT	VARIES	VARIES	VARIES	POOR-DEAD	TO BE REMOVED

INFORMATION FOR THIS TABLE SOURCED FROM ARBORIST REPORT, PREPARED BY SMITH TREE SPECIALISTS, INC., DATED AUGUST 12, 2018.

LEGEND

EXISTING	DESCRIPTION	PROPOSED
---	BOUNDARY	---
---	LOT LINE	---
---	FACE OF CURB	---
---	EDGE OF PAVEMENT	---
---	RIGHT-OF-WAY	---
---	BUILDING SETBACK	---
---	CENTERLINE	---
PSE	PUBLIC SERVICE EASEMENT	---
PSDE	PRIVATE STORM DRAIN EASEMENT	---
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT	---
TRXXX	TREE TO REMAIN	---
TRXXX	TREE TO BE REMOVED	---
---	PUBLIC STREET DEDICATION (±0.41 AC)	---
---	FUTURE ROW VACATION FROM CITY OF MORGAN HILL (±0.14 AC)	---



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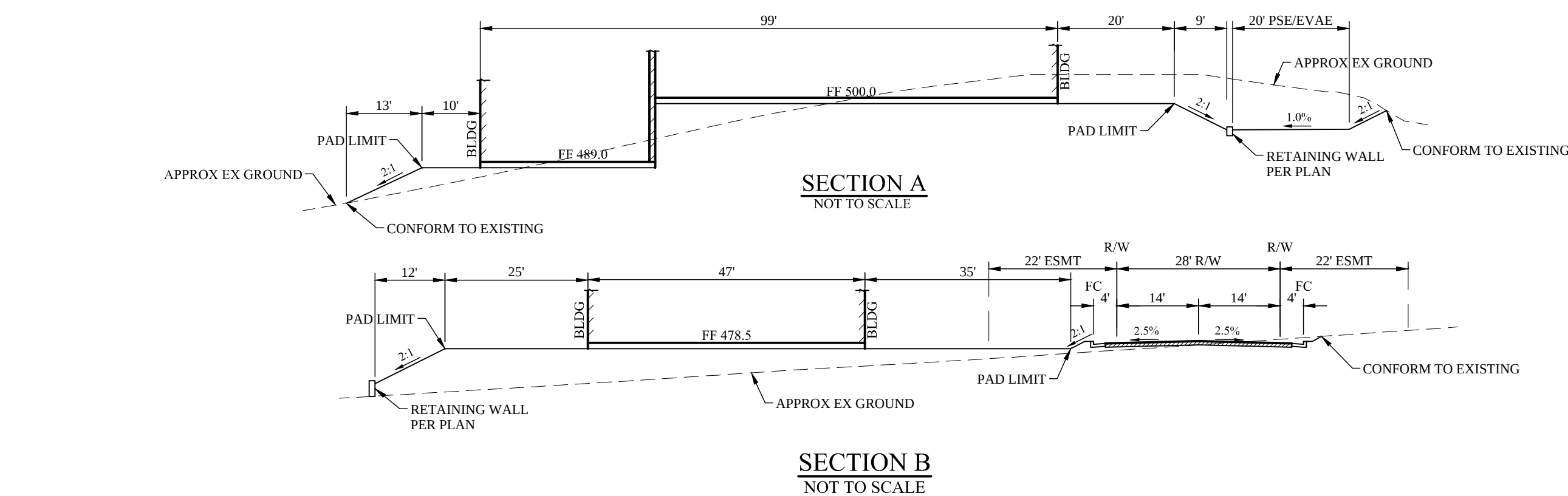
TENTATIVE MAP (SD2017-0002)
LOTTING PLAN
SABINI COURT
MORGAN HILL, CALIFORNIA

DATE	BY	CHK	SCALE
5-15-18	JAM	JS	AS SHOWN
7-6-18	JAM	JS	AS SHOWN
9-26-18	JAM	JS	AS SHOWN

DATE	DATE
12/21/2017	

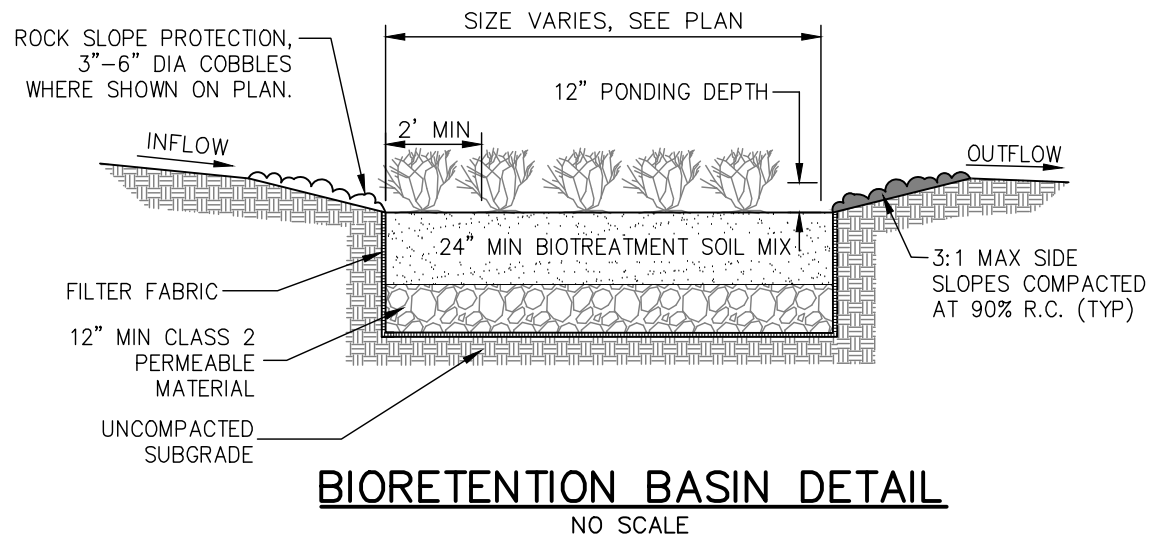
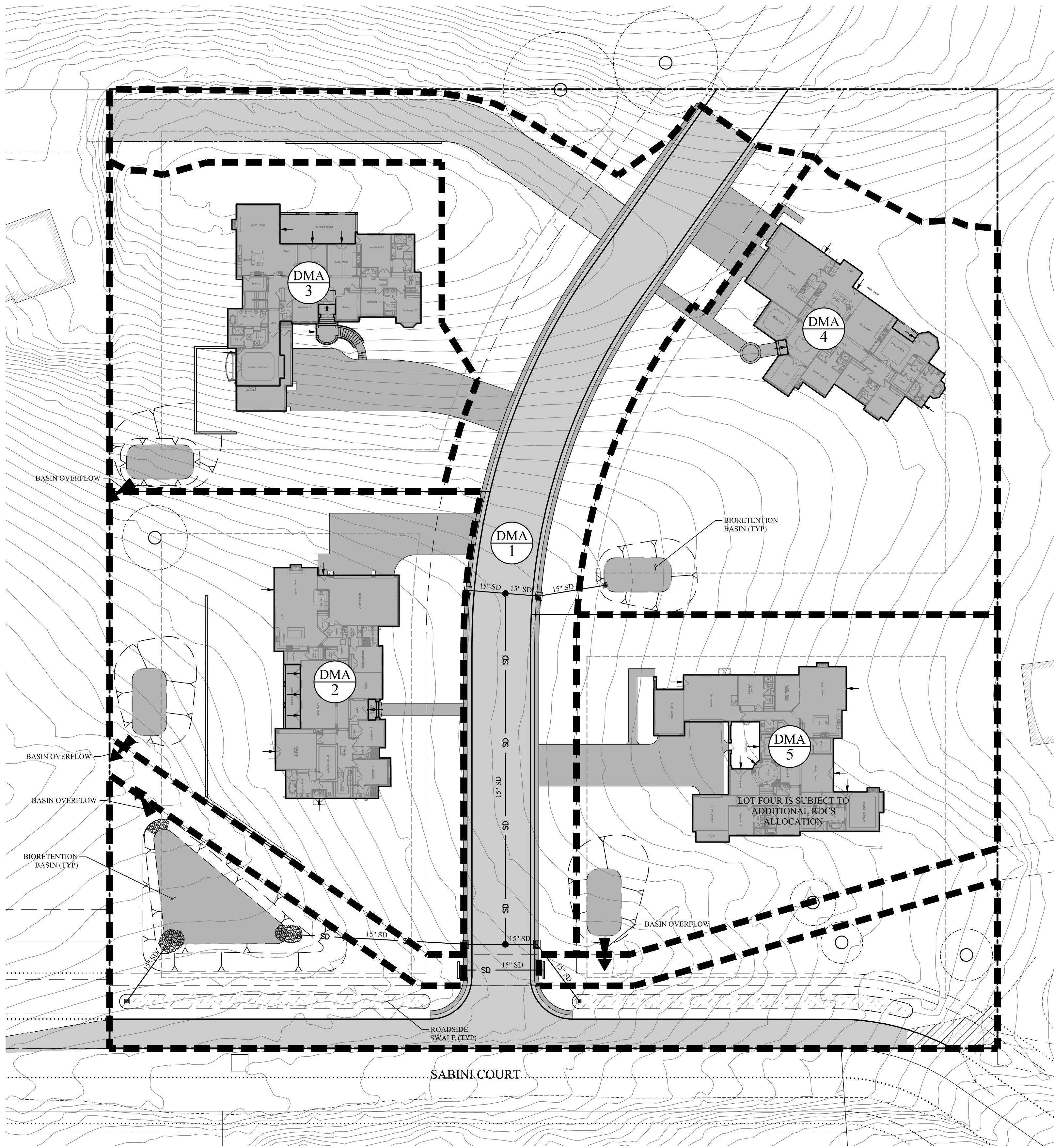
SHEET
TM-03
OF 5 SHEETS
JOB NO.
172024-001

Attachment: Site Plans (1998 : Llagas/sabini Ct. - Srolata)



SHEET		BY CK		SCALE
TM-04		DATE	AS SHOWN	
		1-E-1B	JAM JS	
		7-6-1B	JAM JS	
		8-2B-1B	JAM JS	
OF 5 SHEETS		DATE 12/21/2017		
JOB NO.		172074-001		

PLOT DATE: August 28, 2018
FILE PATH: W:\0809 17\2024\Drawings\Preim\Applications\Tentative Map (Resubmittal) 2018-08-16\TM-05 PRELIM STORMWATER CONTROL PLAN.dwg



STORM WATER MANAGEMENT NOTES:

- THE PROJECT IS LOCATED IN THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD (CCWQCB) JURISDICTION. STORM WATER RUNOFF MANAGEMENT SHALL ADHERE TO THE CRITERIA IDENTIFIED IN THE "STORMWATER MANAGEMENT GUIDANCE MANUAL FOR LOW IMPACT DEVELOPMENT & POST CONSTRUCTION REQUIREMENTS FOR THE CITY OF GILROY, CITY OF MORGAN HILL, AND COUNTY OF SANTA CLARA", DATED JUNE 2015.
- THIS STORM WATER RUNOFF MANAGEMENT PLAN IS CONCEPTUAL AND SUBJECT TO REVISION BASED ON FINAL DESIGN AND SITE SPECIFIC INFILTRATION TESTING.
- BIORETENTION FACILITIES WERE SIZED USING THE "SIMPLIFIED SIZING METHOD", IDENTIFIED IN SECTION 3 OF THE CITY'S STORMWATER MANAGEMENT GUIDANCE MANUAL. THE PROJECT MAY USE ALTERNATIVE SIZING METHODS DURING FINAL DESIGN SUCH AS THE "ROUTING METHOD", WHICH, IF USED, MAY REDUCE THE OVERALL SIZE AND FOOTPRINT OF THE BIORETENTION FACILITIES.
- ALL STORMWATER CALCULATIONS SHOWN HEREIN ARE PRELIMINARY AND SUBJECT TO CHANGE DURING FINAL DESIGN. THE LID MEASURES AND STORMWATER CONTROL FACILITIES MAY BE CHANGED OR MODIFIED DURING FINAL DESIGN AS LONG AS THE PROJECT CAN SHOW CONFORMANCE WITH THE CITY OF MORGAN HILL AND CCRWQCB POST-CONSTRUCTION STORMWATER REGULATIONS IN EFFECT AT THE TIME OF THE PROJECT APPROVAL.

LEGEND	
PROPOSED	DESCRIPTION
	DRAINAGE AREA BOUNDARY
	STORM DRAIN
	STORM DRAIN INLET
	DRAINAGE MANAGEMENT AREA ID
	STORMWATER TREATMENT BASIN
	EXISTING IMPERVIOUS AREA TO REMAIN

PRELIMINARY STORMWATER SIZING CALCULATIONS

Project Name: Sabini Court	
Project Location: Morgan Hill, CA	
Date: 8/28/2018	
Project Information	
Area = 179,930 ft ²	Total Watershed Area
Existing Impervious Area = 580 ft ²	Existing Percent Impervious area
Ex Imperv Area To Remain = 580 ft ²	Total existing impervious surface to remain
Replaced Imperv Area = 0 ft ²	Total existing impervious surface to be replaced as part of project
New Imperv Area = 57,290 ft ²	Total new impervious surface to be installed as part of project
Total Impervious Area = 57,870 ft ²	Total project impervious area
	Percent impervious area
Water Management Zone = 1	
Performance Requirements	
No. 1 = Implement site design and runoff reduction strategies	
No. 2 = Provide water quality treatment for 85% storm event	
No. 3 = Prevent offsite discharge from events up to the 95th% storm event via optimizing infiltration	
No. 4 = Reduce peak flows to pre-project levels for 2-yr through 10-yr storm events	
No. 5 = N/A	
Rainfall Design Information	
MAP = 22.0 in	Mean Annual Precipitation
P _{85%} = 1.2 in	85th% 24-hr rainfall depth
P _{95%} = 1.9 in	95th% 24-hr rainfall depth
Soil Type Design Information	
Site HSG = C	NRCS Hydrologic Soil Group Classification
Infiltration Rate = 0.5 in/hr	NRCS Physical Soil Properties
Design Infiltration Rate = 0.5 in/hr	

95% Rainfall Depth Runoff Retention Volume

		Pervious Surface Correction Factor														Porosity								
																0.25	0.40							
		Impervious Surface (SF)					Pervious Surface (SF)					Runoff Retention Volume Calculation					SCM Sizing Summary							
		Roof	Streets/ Parking Lot	Handscape	Total	Managed Turf	Landscape/Grass	Pervious Concrete	Turf Block	Pavers	Total	Equivalent Impervious Surface Area (ft ²)	% Impervious	Runoff Coefficient	95th% Volume, V ₉₅ (ft ³)									
DMA	Area (SF)																DMA	SCM Description	SCM Surface Area (ft ²)	Surface Ponding Depth (in)	BSM Depth (in)	Gravel Layer Depth (in)	Required SCM Area (ft ²)	Drawdown Time (hr)
1	63,320	0	29,310	0	29,310	0	34,010	0	0	0	34,010	32,711	46%	0.32	3,171		1	Bioretention	2,000	12	24	12	1,669	38
2	29,840	5,600	0	1,990	7,590	0	29,840	0	0	0	29,840	10,574	25%	0.20	947		2	Bioretention	500	12	24	12	499	45
3	25,580	5,480	0	2,390	7,870	0	25,580	0	0	0	25,580	10,428	31%	0.23	929		3	Bioretention	500	12	24	12	489	45
4	32,910	4,770	0	670	5,440	0	32,910	0	0	0	32,910	8,731	17%	0.15	784		4	Bioretention	500	12	24	12	413	38
5	28,280	5,450	0	2,210	7,660	0	28,280	0	0	0	28,280	10,488	27%	0.21	938		5	Bioretention	500	12	24	12	494	45
Total	179,930	21,300	29,310	7,260	57,870	0	150,620	0	0	0	150,620	72,932	32%	0.24	6,769				4,000				3,563	
		% SCM Area to Equivalent Impervious Surface Area = 5.5%																						

- Notes:
- SCM surface area for volume based facilities is based on the area at 1/3 depth to account for side slopes.

Governing Equations:

$$V_{95} = C^*P_{95}^*A$$

$$V_{95} = 95\% \text{ Rainfall Depth Runoff Retention Volume (ft}^3\text{)}$$

$$C = 0.858I^{0.781} + 0.774I + 0.04$$

$$P_{95} = 1.90 \text{ 24-hr 95th percentile rainfall depth (in)}$$

$$A = \text{drainage area (ft}^2\text{)}$$

$$I = \% \text{ impervious}$$

$$\text{Area} = \frac{V_{95} * 12}{D_p + D_{BSM} * R_{BSM} + D_p * R_p}$$

$$\text{Area} = \text{Design SCM Area based on 95\% runoff ret}$$

$$D = \text{SCM Layer depth (in)}$$

$$R = \text{SCM Layer porosity (in)}$$

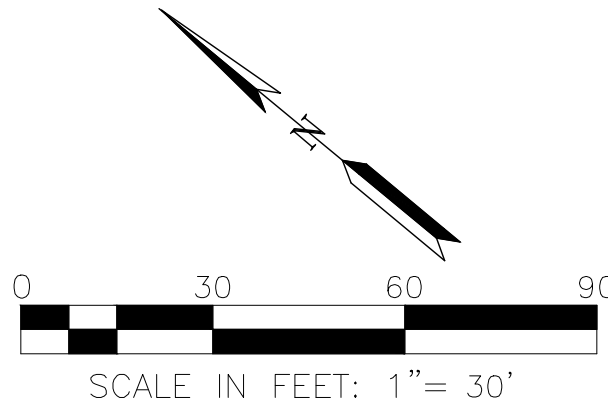
$$T_D = \frac{V_{95} * 12 * SF}{I * \text{Area}}$$

$$T_D = \text{Drawdown time (hr)}$$

$$A = \text{Available SCM Area (ft}^2\text{)}$$

$$I = 0.5 \text{ Infiltration Rate (in/hr)}$$

Peak Flow Management Summary					
Storm	2-Year	10-Year	25-year	100-Year	
Pre-Developed Peak Flow (cfs)	0.27	1.40	2.58	5.23	
Post-Developed Peak Flow (cfs)	0.18	0.89	1.94	3.81	



RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

Latala
ENGINEERS INC.
1999 S. Bascom Avenue, Suite 700
Campbell, CA 95008
www.latalahomes.com

TENTATIVE MAP (SD2017-0002)
PRELIM STORMWATER CONTROL PLAN
SABINI COURT
MORGAN HILL, CALIFORNIA

SCALE		BY		SHEET REVISIONS	
DATE	DATE	DATE	DATE	DATE	DATE
5-15-18	7-6-18	7-6-18	8-28-18	8-28-18	8-28-18
REVISION PER AGENCY COMMENTS		REVISION PER AGENCY COMMENTS		REVISION PER AGENCY COMMENTS	
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ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2017-
0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT
RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT
ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS
AVENUE (APN 773-32-013)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 3 building allotments for application RDCS2016-0011 Llagas-Silvas for FY 2018-2019; and

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code; and

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

SECTION 4. Said Development Agreement request was considered by the Planning Commission at its regular meeting of September 25, 2018 at which time the Planning Commission recommended City Council approval of Development Agreement application DA2017-0008: Llagas-Strolata (Silva); and

SECTION 5. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 6. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide three single-family homes on minimum one-acre lots. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 7. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing

development project is a permitted use within the Residential Estate zoning district and is compatible with the surrounding residential neighborhoods.

SECTION 8. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 9. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act (CEQA) and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment and therefore finds the project Categorically Exempt pursuant to Class 3, Section 15303 relating to New Construction of Small Structures, and Class 15, Section 15315 relating to Minor Land Divisions, of the CEQA and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2278, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

STROLATA PROPERTIES, LLC

REGARDING

**THE RDCS2016-0011 LLAGAS- STROLATA (SILVA) RESIDENTIAL
DEVELOPMENT PROJECT**

Attachment: Development Agreement, DA2017-0008, Llagas-Strolata (1998 : Llagas/sabini Ct. - Strolata)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
STROLATA PROPERTIES, LLC
REGARDING THE
LLAGAS- STROLATA (SILVA) RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Strolata Properties, LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. **Allotments Approved Pursuant to RDCS Applications: RDCS2016-0011**, and conditions attached to the award of such allotments;
2. **Environmental Impact Assessment EA2017-0016**; and

E. On January 10, 2017, the Morgan Hill Planning Commission awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

F. On September 25, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that its provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) "**Director**" shall mean the Director of Community Development, and his or her designee.

- (5) **"Existing Approvals"** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 *et seq.*
- (8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.
- (10) **"Project"** means the development containing **three residential building allotments for Fiscal year 2018-2019 containing three single-family homes on property identified by Assessor Parcel Number 773-32-013**, as more particularly described in the RDCS2016-0011 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 4.2 gross acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Existing Approvals.
- (3) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
- (5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other

agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such

employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS application – RDCS2016-0011 - and approval actions on January 10, 2017 (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive

payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of

receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (e.g., City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party

Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an

interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any

improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security

with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Tel: (408) 779-7259
 Fax: (408) 779-3117

With a Copy To: City Attorney
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Tel: (408) 779-7271
 Fax: (408) 779-1592

If to Developer: Strolata Properties, LLC
 1999 South Bascom Avenue, Suite 700
 Campbell, CA 95008
 Tel: (408)848-0300
 Email: Paul@latalahomes.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

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IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Paul Latala, Strolata Properties L
s/ _____

member
Name/Title [print]

Corporate entities must provide a second signature:

s/ _____

Name/Title [print]

Date: _____

Adopted By Ordinance Number _____
by action of City Council on _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

Attachment: Development Agreement, DA2017-0008, Liagas-Strolata (1998 : Liagas/sabini Ct. - Strolata)

EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH****PROJECT IS BE LOCATED**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP PORTION OF LOT 46 OF THE MORGAN HILL RANCH MAP NO. 3, BOOK G OF MAPS, PAGES 20 AND 21", WHICH MAP WAS FILED FOR CALIFORNIA ON NOVEMBER 10, 1972 IN BOOK 312 OF MAPS, AT PAGE 1.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO THAT PORTION OF SABINI COURT, AS SHOWN UPON THAT CERTAIN PARCEL MAP ABOVE REFERRED TO.

ALSO EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO A STRIP OF LAND 16.50 FEET IN WIDTH, THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE MOST WESTERLY CORNER OF SAID WALKER PARCEL IN THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHWEST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 984.39 FEET TO THE MOST SOUTHERLY CORNER OF SAID WALKER PARCEL.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT OF WAY CREATED APPURTENANT TO PARCEL ONE ABOVE IN THE DEED FROM ROBERT M. WELCH, RECORDED MAY 7, 1898, BOOK 210 OF DEEDS, PAGE 55, OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHWEST LINE OF SAID LOT 46 SOUTH 49° 45' WEST 73.92 FEET.

PARCEL THREE:

Attachment: Development Agreement, DA2017-0008, Llagas-Strolata (1998 : Llagas/sabini Ct. - Strolata)

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY CREATED IN THE DEED TO PETER SABINI, RECORDED JANUARY 16, 1934, BOOK 674 OFFICIAL RECORDS, PAGE 73, FOR INGRESS AND EGRESS OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 16 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 30 FEET.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 30 FEET WIDE, THE NORTHEAST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE SOUTHEAST LINE OF BOOK 674 OFFICIAL RECORDS, PAGE 73, SAID POINT ALSO BEING SOUTH 40° 15' EAST 16 FEET FROM THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID NORTHEAST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 17.00 FEET TO THE TERMINUS OF THIS EASEMENT.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT CREATED IN THE DEED TO CLASSINA SABINI, RECORDED JANUARY 1, 1972, BOOK 9859 OFFICIAL RECORDS, PAGE 372 FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892 IN BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST 103.92 FEET FROM THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE, AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 412.53 FEET.

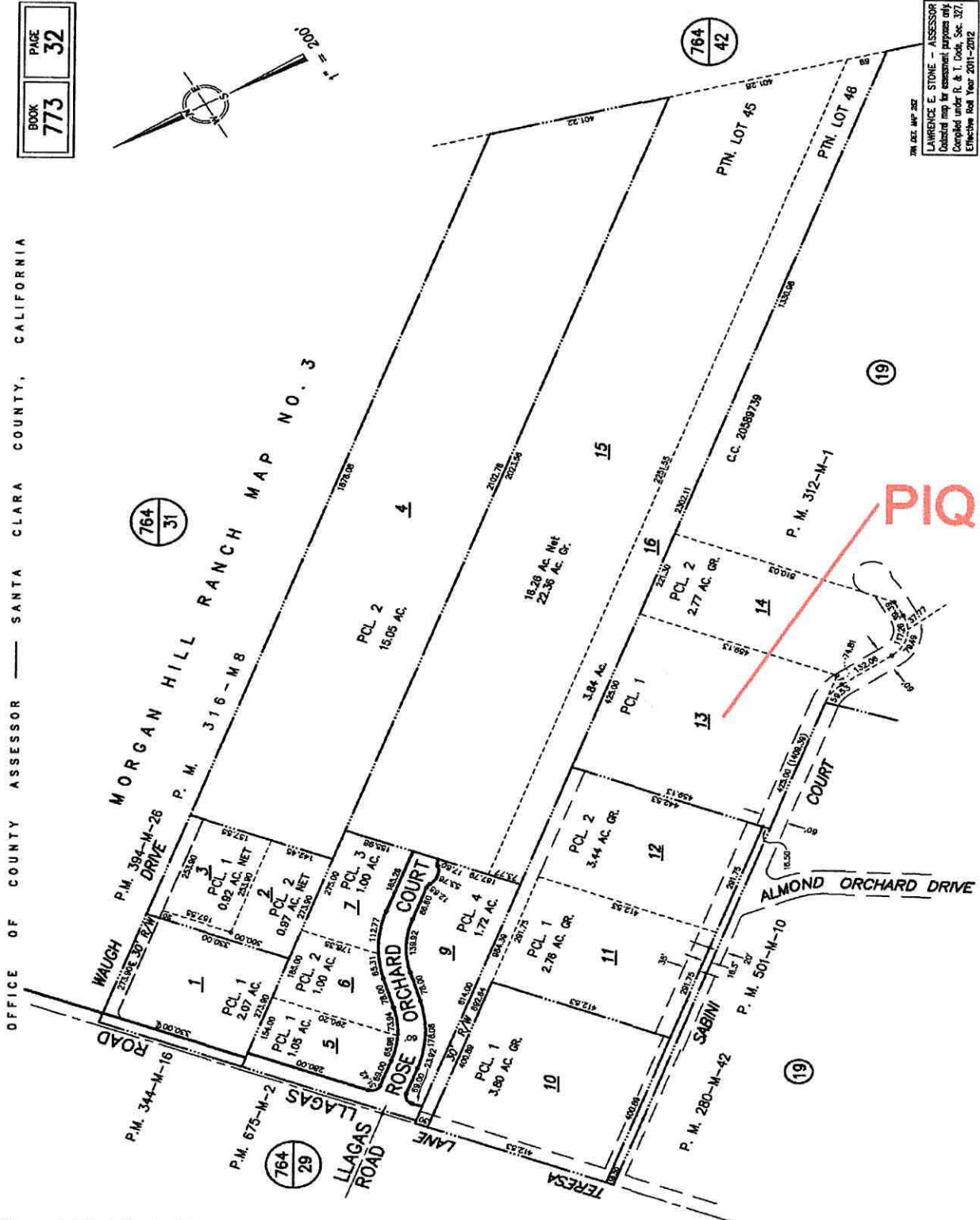
PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A 16.5 FOOT STRIP OF LAND THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, RECORDED SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS, AT PAGE 20, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 2 AS SHOWN ON THE "PARCEL MAP" RECORDED MARCH 29, 1971 IN BOOK 280 OF MAPS, AT PAGE 42, SANTA CLARA COUNTY RECORDS; THENCE NORTH 40° 15' EAST ALONG THE SOUTHWESTERLY LINE OF PARCEL 2 AND PARCEL 1 OF SAID PARCEL MAP, 984.39 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 1, AND THE TERMINATION POINT OF THE SOUTHWESTERLY LINE OF SAID 16.5 FOOT EASEMENT.

Attachment: Development Agreement, DA2017-0008, Liagas-Strolata (1998 : Liagas/sabini Ct. - Strolata)



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

EXHIBIT B**DESCRIPTION OF PROJECT**

RDCS2016-0011: LLAGAS – SILVAS: Request for three residential building allotments for Fiscal Year 218-2019. The proposed development contains three single-family homes with remainder lot. The property, identified by Assessor Parcel Number 773-32-013, is located on Llagas Road at Sabini Court (Yancey and Lorinda Silvas, Applicant).

Attachment: Development Agreement, DA2017-0008, Llagas-Strolata (1998 : Llagas/sabini Ct. - Strolata)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

APPROVE DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DRIVE AND MONTEREY ROAD

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Waive first and second reading of Development Agreement Ordinance;
3. Introduce Development Agreement Ordinance; and
4. Authorize the City Manager to execute and administer the Development Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Background

The MWest-Cochrane project is a large multi-family apartment project consisting of 389 units on 19.5 acres at the intersection of Jarvis Drive and Monterey Road. Twenty percent, or 78 units, will be restricted to very-low income households earning 50% of the Area Median Income (AMI). All the remaining units will be priced at market rate, but because of the unique nature of the Morgan Hill rental market, all or nearly all those units will be affordable to moderate income households (120% AMI).

MWest has competed in the RDSCS process for three consecutive years. The first year, the project did not receive a qualifying score, but in the 2017 and 2018 competitions the MWest project was among the highest scoring.

In the 2017 competition, the project was awarded 10 units. In 2018, MWest applied for multi-year allotments, which would have allowed the project to be completed over a period of years without further competition. The Planning Commission denied MWest's application for multi-year allotments based on criteria identified in section 18.78.140 of the Zoning Ordinance but awarded 71 units in the competition.

MWest appealed the denial of their application for multi-year allotments to the City Council. On June 20, 2018, the City Council denied MWest's appeal based on the same findings as the Planning Commission (Attachment No. 7).

Immediately following the June 20, 2018 hearing, counsel for MWest informed the City Attorney that MWest intended to file a writ of mandate challenging the denial of their appeal as unlawful under recently enacted amendments to the Housing Accountability Act. MWest filed a timely writ on August 20, 2018.

Housing Accountability Act (HAA)

The Housing Accountability Act (Government Code § 65589.5) was enacted in 1982, finding that “the lack of housing, including emergency shelter, is a critical statewide problem.” As originally adopted, the Act prohibited a local agency from denying a housing development unless the agency made specific findings, based on substantial evidence, to deny the project.

The Act was amended in 2017 to further limit a local agency’s ability to deny, reduce the density of, or render infeasible housing development projects. The 2017 amendments included additional protections for projects in which 20% of the units are allocated to low or very-low income households, or projects that are 100% affordable to moderate (120% of AMI) and/or middle income (150% AMI) households.

Under the applicable provisions of the Act, an agency must make specific findings to deny an affordable housing project, reduce the density of the project, or condition the project in a way that renders the project infeasible for affordable housing. The required findings are:

- The City has adopted an approved housing element, and the City has met or exceeded its share of the regional housing need allocation for the planning period for the income category proposed for the housing development project;
- The housing development project, as proposed, would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households;
- The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households;
- The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project; or
- The housing development project or emergency shelter is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as

specified in any element of the general plan as it existed on the date the application was deemed complete.

For the MWest project, the City would not be able to make any of the required findings to deny or condition the project in a manner that renders it infeasible. MWest states that the requirement to compete for allocations in multiple years would render the project infeasible. Among other problems, MWest cannot apply for financing for the very-low income units until it has received full project approval. If MWest is required to compete for units over multiple years, some of its allocations will expire before the project can obtain full approval and financing. Requiring an affordable project to compete for allotments in a way that renders project financing infeasible would violate the Act.

Writ of Mandate

A petition for writ of mandate (also called “mandamus”) is the procedure used to obtain judicial review of decisions by a public agency. In its petition, MWest alleges that:

“By rejecting the Project and conditioning its approval in a manner that renders it infeasible for the use of low-income households, without making the findings required by Gov. Code § 65589.6(d), Respondents have “not proceeded in the manner required by law.” *Honchariw v. County of Stanislaus*, 200 Cal.App.4th 1066, 1081 (2011) (quoting Code Civ. Proc. § 1094.5(b).) Nor could Respondents validly make such findings:

- a. The City has not met its share of the Regional Housing Need Allocation pursuant to Gov. Code § 65588 for very low-income housing. Gov. Code § 65589.5(d)(1).
- b. The Project would not have any “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions . . .” Gov. Code 65589.5(d)(2).
- c. Denial of the Project is not “required in order to comply with specific state or federal law.” Gov. Code § 65589.5(d)(3).
- d. The Project is not “proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.” Gov. Code § 65589.5(d)(4).
- e. The Project is consistent with “the jurisdiction’s zoning ordinance and general plan land use designation.” Gov. Code § 65589.5(d)(5).”

The petition sought an order compelling the City to comply with the HAA, including an order that the City take appropriate action to approve the project. The petition further sought recovery of attorneys’ fees and statutory fines.

Because the City could not make the findings to deny or condition the project in a way that renders it infeasible, and the fines and fees for violation of the Act would likely be in the millions of dollars, the City Council authorized the City Attorney to negotiate a settlement of the writ action.

Settlement/Judgment

In order to resolve the claims raised in the writ petition, the City and MWest agreed to a settlement (Attachment No. 4) in which:

- The parties entered into a stipulated judgment affirming that, to the extent it conflicts with the Housing Accountability Act, the City's voter-approved RDCS ordinance is preempted.
- The City agreed to introduce an Ordinance adopting a Development Agreement approving the MWest project. (Attachment No. 1 & 2)
- MWest agreed to include all its prior Measure S RDCS commitments in the Development Agreement, as well as ensure that 20% of the units would be affordable to very-low income households.
- MWest agreed not to seek attorneys' fees or penalties from the City.

On September 24, 2018, Judge Arand of the Santa Clara County Superior Court entered judgment (Attachment No. 5), confirming that:

"[t]he Housing Accountability Act (Government Code section 65589.5) preempts conflicting requirements of the City's RDCS ordinance. Specifically, provisions of the City's RDCS Ordinance, including but not limited to subsection B of section 18.156.050 of the Morgan Hill Municipal Code, are ineffective and unenforceable as applied to the Project, which qualifies as a housing development project "for very low, low-, or moderate income households" pursuant to Gov. Code § 65589.5(h) and for which none of the findings described in Gov. Code § 65589.5(d) can be made. Accordingly, the Project must be treated as exempt from the requirement to receive RDCS allotments."

The Court further issued a writ of mandate, directing the City "to take action on the Cochrane-MWest Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and consistent with the Court's judgment and order, within 60 days from the date of the Court's order, pursuant to Gov. Code § 65589.5(k)(1)(A)."

Development Agreement

The Development Agreement (Attachment No. 2) allows the project to be developed as exempt RDCS in accordance with the Housing Accountability Act and the Stipulated Judgement. Exhibit C describes the Developer Commitments, which are consistent with

the commitments the project made in the RDCS competition. The primary impact of the Development Agreement is that the project will be allowed to develop as a single phase, without the need to compete for housing allotments.

COMMUNITY ENGAGEMENT: Not Applicable

This action is mandated by state law and a judgment of the Santa Clara County Superior Court. Future action will be taken to educate the community about changes to state housing law and its implications for maintaining paced growth in Morgan Hill.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 6, 2015, the City Council adopted a resolution changing the General Plan designation for the project site from Industrial to Multi-Family Medium.

On September 2, 2015, the Council held a public hearing on an ordinance amending the zoning designation for the site to be consistent with the General Plan. The ordinance was adopted on October 7, 2015.

On November 10, 2015, the Planning Commission adopted Resolution No. 15-66, adopting final scores for the 2015 RDCS competition. The project did not receive a passing score. The City Council adopted Resolution No. 15-310 on December 16, 2015 denying an appeal of the project scores. The project did not qualify for allotments.

On January 10, 2017, the Planning Commission adopted Resolution No. 17-01 awarding the project 10 residential building allotments. The City Council adopted Resolution 17-017 denying appeals by two other projects and reaffirmed the distribution by the Planning Commission.

On May 22, 2018, the Planning Commission adopted Resolution No. 18-13, which awarded the project 71 residential allotments, but denied the project's request for multi-year allotments.

On June 20, 2018, the City Council adopted a Resolution denying an appeal of the Planning Commission's decision not to award multi-year allotments to the project.

FISCAL AND RESOURCE IMPACT:

As required by the Development Agreement, the developer will remit all impact and development processing fees payable to the City.

CEQA (California Environmental Quality Act):

A program-level Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum was adopted in July 2014 (Attachment No. 7.)

A project level Initial Study/Consistency Checklist demonstrating consistency with the Butterfield – MWest General Plan Amendment Project GPA 14-04 Environmental

Impact Report and Addendum (State Clearinghouse No. 2014072009) and the Morgan Hill 2035 Environmental Impact Report (State Clearinghouse No. 2015022074) is attached (Attachment No. 3.)

LINKS/ATTACHMENTS:

1. Ordinance Approving DA
2. MWest Development Agreement
3. Butterfield - CEQA Consistency Document
4. MWest - Settlement Agreement and Release - Executed
5. 2018-09-25 Judgment and Order MWest Propco XXIII LLC v City of Morgan Hill (002)
6. 2018-09-25 Peremptory Writ of Mandate MWest Propco XXIII LLC v City of Morgan Hill
7. General Plan Amendment Staff Report and EIR (weblink)
8. June 20, 2018 Appeal Denial (weblink)

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT FOR A 389
UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5
ACRES AT JARVIS DR. AND MONTEREY ROAD**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
ORDAIN AND ENACT AS FOLLOWS:**

SECTION 1: California Government Code sections 65864 through 65869.5 authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 2: The City Council of the City of Morgan Hill finds that, on the basis of the whole record before it, including the Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum, the Morgan Hill 2035 General Plan Environmental Impact Report, and the project-level Initial Study/Consistency Checklist prepared for the project, that there is no substantial evidence that the project will have a significant effect on the environment, and that the environmental documents described herein represent the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Agency.

SECTION 3: ADOPTION OF A DEVELOPMENT AGREEMENT. The City Council hereby approves the Development Agreement attached to this Ordinance as Exhibit A.

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 14TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: August 25, 2018

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance Approving DA (2021 : MWest Development Agreement)

Settlement Agreement Execution Form 9/12/18

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT**BY AND BETWEEN****THE CITY OF MORGAN HILL****AND****MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY
INVESTMENTS****REGARDING****BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT****Effective Date: _____**

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

Settlement Agreement Execution Form 9/12/18

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MORGAN HILL MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS REGARDING BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the CITY OF MORGAN HILL, a California municipal corporation, (hereinafter "**City**"), and MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS a Delaware limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its MHMC (Chapter 18.116 ¹*et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer is the fee owner of the approximately 19.5-acre property as more particularly described in Exhibit A (the "**Property**").

C. The Developer proposes to plan, develop, construct, operate and maintain a high quality 389-unit multi-family residential apartment project on the Property, and to make twenty percent (20%) of the units affordable and income restricted to Very Low Income Households earning fifty percent (50%) of the Area Median Income ("**VLI Units**"), and as the project is further defined below ("**Project**").

¹ On June 6, 2018, the City adopted a comprehensive zoning code update, which resulted in a renumbering of all code sections in Title 18 of the Municipal Code. All references are to the revised code section numbers.

D. The Project will be the first market rate project in the City to provide 20% VLI Units, and will help the City meet its Regional Housing Needs Allocation requirements pursuant to California Government Code Section 65584 (“**RHNA**”) for VLI Units, an income category in which the City is currently deficient under State Housing Law.

E. The City and Developer have entered that certain unrecorded Settlement Agreement between the City and Developer dated September [REDACTED], 2018 (“**Settlement Agreement**”), including a Stipulated Judgment (Case #18CV333676) dated September [REDACTED], 2018 (“**Stipulated Judgment**”) related to the City’s violation of Section 65589.5(d) of the California Government Code (the “**Housing Accountability Act**”), whereby MHMC Chapter 18.156 (“**Residential Development Control System**”, or “**RDCS**”) is without legal and/or equitable force and effect as applied to the Project. Pursuant to the Settlement Agreement and Stipulated Judgment, this Agreement serves to: (1) confirm that RDCS has no Legal Effect (as defined below) on the Project; and (2) implement the other terms of the Settlement Agreement and Stipulated Judgment, including securing for the City, in a permanent and enforceable manner, the Developer’s public benefits and voluntary commitments with respect to the Project. These public benefits and voluntary commitments include but are not limited to (and as further and more precisely defined below): (i) providing 20% VLI Units; (ii) the extension of Sutter Road and related utilities from Butterfield Boulevard to Digital Drive to help catalyze industrial development on the adjacent property; (iii) the construction of an approximately 3.2 acre park and a system of trails and pathways that will be publicly accessible, but privately owned and maintained; and (iv) a sidewalk along the Butterfield Boulevard frontage to provide a safe route for pedestrians and school children.

F. And, in light of the commitment to provide 20% VLI Units to help the City meet its RHNA requirements under State Housing Law, this Agreement also confirms, consistent with the Settlement Agreement, the City’s commitments to: (1) expedite and streamline the remaining entitlements to allow for the construction and occupancy of the Project; (2) cooperate and take all actions necessary to assist the Developer to obtain 20-50 Financing (as defined below) for the 20% VLI Units, (3) approve and authorize all actions necessary to remove and terminate that certain temporary overflow stormwater limitation on Lot 26 (“**Stormwater Detention Note**”) as noted on Sheet 2 of that certain Parcel Map recorded in the Official Records of Santa Clara County on September 27, 2000 as Instrument No. 15404436 (“**2000 Parcel Map**”); and (4) to the extent consistent with law, approve and authorize all actions necessary to permit stormwater from the Project to use the City’s detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map.

G. As of the Effective Date of this Agreement, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively “**Existing Approvals**”), including without limitation, all of the following:

1. Environmental Impact Report for Butterfield-MWest General Plan Amendment Project and Addendum (GPA-14-04) (SCH #2014072009 (“**GPA EIR**”)and

Environmental Assessment for Butterfield Village Multi-Family Residential Project Development Agreement (File No. DA-18-) (“**Development Agreement EA**”)

2. Butterfield-MWest General Plan Amendment (GPA-14-04) (“**GPA**”)
3. 2016 Morgan Hill General Plan (“**General Plan**”)
4. Butterfield-MWest Zoning Amendment (File No. ZA-15-12) (“**Rezoning**”)

On January 18, 2018, the City confirmed by letter (Application No. RDCS2017-0013) that the Project conforms to the General Plan and City’s zoning code (the Project has also been referred to by the City as the “Cochrane-MWest Project.”)

H. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City’s General Plan and City’s Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On _____, 2018, following duly noticed and conducted public hearings before the Planning Commission and City Council with respect to the Project, the Morgan Hill City Council (“**City Council**”) introduced Ordinance No. _____ (“**Ordinance**”) affirming CEQA compliance under the GPA EIR and Rezoning EA, finding that the provisions are consistent with the General Plan, finding the provisions are consistent with the Settlement Agreement and Stipulated Judgment, approving this Agreement, and directing this Agreement’s execution by City. The City adopted the Ordinance on _____, 2018, and the Ordinance became effective thirty (30) days later. The “**Effective Date**” in this Agreement shall be the date that the Ordinance became effective, and shall be inserted by the City Clerk shall be inserted on the cover sheet prior to recordation.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

“**20-50 Financing**” shall public financing from any or all of the following sources: (i) private activity tax exempt bond financing (tax-exempt through a volume cap allocation from the California Debt Limit Allocation Committee), (ii) LIHTCs available under Section 42 of the Code and allocated through the TCAC, (iii) any property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise

permitted by the California Board of Equalization, and (iv) any other tax credits and/or other special financing programs that are available to projects that provide at least 20% VLI Units.

“20-50 Financing Requirements” shall mean any and all terms, conditions, obligations, restrictions, requirements necessary for the Developer to apply for, obtain and comply with the 20-50 Financing for the Project.

“2000 Parcel Map” shall have that meaning set forth in Recital F.

“Actual Household Size” means the actual number of persons in the applicable household, as determined by TCAC.

“Administrative Amendment” shall have that meaning set forth in Section 3.05.

“Adjusted for Family Size Appropriate to the Unit” shall be determined consistent with Section 42(g)(2) of the IRC (or successor provision) if applicable.

“Affordable Rent” means the amounts, and fees charged by Developer for occupancy of a VLI Unit by a tenant and required to be paid by such tenant for such VLI Unit on a non-optional basis as determined by Section 42(g)(2)(A) of the Code. For avoidance of doubt, the schedules of Affordable Rent published by TCAC shall be conclusively presumed to be the correct Affordable Rent for the VLI Units.

“Applicable Law” shall have that meaning set forth in Section 2.01(a) of this Agreement.

“Area Median Income” or “AMI” means the median income for Santa Clara County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by TCAC.

“CDLAC” means the California Debt Limit Allocation Committee and any successor agency or authority.

“Central Park” or “Butterfield Park” shall mean that approximately 3.2-acre park as generally consistent with Exhibit B that shall be a privately-owned, privately maintained park subject to public access during standard operating hours and subject to reasonable and uniformly-applied rules and regulations on use and conduct.

“Central Park Construction Costs” shall have that meaning set forth in Section 2.04(c) of this Agreement.

“City Commitments” shall have that meaning set forth in Section 2.04(b) of this Agreement.

“City’s Authorized Representative” means the City Manager of the City of Morgan Hill or his or her designee.

“CSCDA” means the California Statewide Communities Development Authority.

“Construction Codes” shall have that meaning set forth in Section 2.05 of this Agreement.

“Design Review” shall mean approval of architectural, site and landscape approval for the Project prior to construction pursuant to Chapter 18.74 of the MHMC.

“Developer Commitments” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“Development Factors” shall have that meaning set forth in Section 2.06(a) of this Agreement.

“Director” shall mean the Director of Community Development, and his or her designee.

“District” shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 *et seq.*, the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

“Effective Date” shall be as set forth in Section 1.01 of this Agreement.

“Existing Approvals” shall have that meaning set forth in Recital G of the Recitals of this Agreement.

“Existing City Laws” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, green building standards, and other City land use regulations in force and effect on the Effective Date of this Agreement, with the exception of RDCS which is expressly hereby excluded from the definition of Existing City Laws for the purposes of this Agreement.

“General Plan” shall have that meaning set forth in Recital G.

“GPA” shall have that meaning set forth in Recital G.

“GPA EIR” shall have that meaning set forth in Recital G.

“**Gross Income**” shall have the meaning set forth in Section 42 of the IRC, as such section may be revised from time to time.

“**Housing Accountability Act**” shall mean California Government Code have the meaning set forth in Recital E.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Impact Fees**” shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to MHMC Chapter 3.56 and California Government Code Section 66001 *et seq.*

“**IRC**” means the Internal Revenue Code of 1986, as amended.

“**IRS**” means the Internal Revenue Service.

“**Legal Effect**” shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

“**LIHTCs**” means low-income housing tax credits.

“**Ministerial Permits**” shall mean grading permits, building permits, fire permits, improvement plans and improvement agreement, certificates of occupancy, and any other “over-the-counter” permits and approvals required under the MHMC for the construction and occupancy of the Project, consistent with this Agreement, including Existing Approvals, Applicable Law, Construction Codes, Design Review and the Subdivision Document.

“**MHMC**” shall mean the Morgan Hill Municipal Code.

“**New City Laws**” shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes Legal Effect after the Effective Date of this Agreement, and that applies City wide.

“**Official Records**” means the Official Records of the Santa Clara County Recorder.

“**Park Impact Fees**” shall mean those development impact fees related to park and recreational facilities pursuant to MHMC Section 3.56.030(A)(5).

“**Project**” means a high quality 389-unit multi-family residential apartment project, including 20% VLI Units as set forth in Section 2.04(b) of this Agreement, and related

infrastructure, circulation, parking, landscaping, park and open space as conceptually described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property."

"Project Approvals" mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

"Property" shall mean that certain real property consisting of approximately 19.5 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.

"RDCS" means the Residential Development Control System set forth in Chapter 18.78 of the MHMC.

"Required City Entitlements" shall have that set forth in Section 2.04(b)(1) of this Agreement.

"Rent Restricted" means the rent restrictions under Section 42(g)(2)(A) of the IRC.

"Rezoning" shall have that meaning set forth in Recital G.

"Rezoning EA" shall have that meaning set forth in Recital G.

"RHNA" shall have that meaning set forth in Recital D.

"Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.

"Settlement Agreement" shall have that meaning set forth in Recital E.

"Severe Economic Recession" means a decline in the monetary value of all finished goods and services produced in the United States ("US"), as measured by initial quarterly estimates of US Gross Domestic Product ("GDP") published by the US Department of Commerce Bureau of Economic Analysis (and not BEA's subsequent monthly revisions), lasting more than four (4) consecutive quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

"Stipulated Judgment" shall have that meaning set forth in Recital E.

"Subdivision Document" means, pursuant to the California Subdivision Map Act and this Agreement, a lot merger or lot line adjustment necessary and appropriate to make the Property suitable for the construction, operation, ownership and financing of the Project.

"Subsequent Approvals" and "Subsequent Approval" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are

sought by Developer, and that are granted by City after the City Council adopts the Ordinance pursuant to Section 3.01.

“**Substitution of Developer Commitments**” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“**Sutter Road Extension**” shall have the meaning set forth on in Section 2.04(a)(4) of this Agreement.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**TEFRA**” means the Tax Equity and Fiscal Responsibility Act of 1982.

“**Temporary On-Site Stormwater Detention Note**” shall have the meaning set forth in Recital F.

“**Term**” shall have that meaning set forth in Section 1.03 of this Agreement.

“**VLI**” means Very Low Income.

“**VLI Unit**” means a dwelling unit that is Rent Restricted for occupancy at an Affordable Rent by Eligible Households which shall be dispersed throughout the Project, with the exception of the for rent townhome-style units, in compliance with Section 42 of the Code and requirements of the 20-50 Financing, including but not limited to TCAC and CDLAC.

“**Very Low Income Household**” is a household whose household Gross Income is no greater than 50 percent (50%) of AMI adjusted for Actual Household Size, as determined by TCAC.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the MHMC.

1.03 Term.

(a) The term (“**Term**”) of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the issuance of a certificate of occupancy for all units in the Project or (2) ten (10) years plus one day after the Effective Date; provided however that if the Developer constructs the Project, Developer’s obligations pursuant to Sections 2.03 and 2.04 of this Agreement shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement, and provided further that the City’s obligations under Section 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with any 20-50 Financing Requirements until such time as the 20-50 Financing is no longer outstanding or subject to recapture.

(b) If any “**Third-Party Challenge**” (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment (“**Litigation Tolling**”). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, “**Applicable Law**” shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Stipulated Judgment
- (3) Settlement Agreement
- (4) Existing Approvals.
- (5) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (6) The “Existing City Laws” that are not in conflict with this Agreement and the Project Approvals.

- (7) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law, but only to the extent and as provided in this Agreement.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Existing Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of Impact Fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts,

Community Facilities Districts, Assessment Districts, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by Developer, in its reasonable discretion, pursuant and subject to this Agreement and all appropriate and applicable City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees, but only to the extent such Impact Fees exist and in the amounts in Legal Effect as of the Effective Date, and shall pay such Impact Fees when they become due and payable as provided for in the City's Municipal Code, and to the extent possible Impact Fees will be designated to such capital expenditure related to Project infrastructure.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer or City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

(d) Approval of the Financing Mechanisms. The City and the Developer agree that the construction of public improvements (including but not limited to the Sutter Road Extension and other infrastructure, open space and circulation to serve the Project) may be financed by a District or Districts which could encompass the Property, and, to the extent other property owners outside the Property are interested or benefit and are made part of such District in accordance with all applicable law, such other lands. If the Developer requests formation of a District, the Developer will be deemed to have consented to formation of such District(s), to the

assessments or taxes ratably allocated to the Property by the District(s), and to having the Property included within the District(s). The Developer agrees to cooperate in the City's formation of the District or Districts and in the performance by the District(s) of its responsibilities. The City and Developer agree that, unless the City and the Developer agree otherwise, the assessments or special taxes for any District formed will be collected from any parcels only after the issuance of building permits for such parcels. City, as the legislative body of any District, shall proceed with all good faith to consider at a noticed public meeting of the legislative body, the adoption of a resolution of intention and a rate and method of apportionment or an engineer's report, establishing a special tax or assessment to be levied semi-annually on property within the District(s), subject to the provisions of subsections (a) and (b) below. City, as legislative body of the District(s), shall thereafter, in accordance with the appropriate legislation for the Financing Mechanism, consider a resolution of formation for the adoption of such District(s) and shall further hold all elections of the qualified voters thereof in connection with the establishment of a District(s) and the approval of such special tax or assessment. City, as legislative body of the District, further agrees to simultaneously consider (or at such time as California law shall otherwise require) the adoption of a resolution of issuance of bonds secured by such special tax or assessment in an amount as is necessary to finance the Improvements and the Impact Fees that may be required in connection with the development of the Project; provided, however, that the amount of such bonds shall be dictated by prudent underwriting standards, as may be required by an underwriter selected by the City. In all respects, City agrees to use its good faith efforts to implement such requests, and Owner shall rely on such good faith efforts in connection with the consideration provided hereunder by Owner. City shall also use its good faith efforts to enter into joint facilities financing agreements with other eligible recipients of District proceeds. For the purposes of clarity, the term "Financing Mechanism" as used in this Section 2.03(d) shall not include the 20-50 Financing which is considered separate and essential to support the VLI Units and is not subject to City approval and is instead subject to Section 2.04(b)(2) of this Agreement.

(A) General Parameters for Approval of Financing Mechanisms.

1. Upon written request of City, Developer will advance amounts necessary to pay all costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism. City staff shall meet with the Developer to establish a preliminary budget for such costs, and will confer with Developer from time to time as to any necessary modifications to that budget.

2. Any Financing Mechanism may provide for the reimbursement to Developer of any advances by Developer for any costs incurred in Section (a)1 above, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer at such time as Developer makes application for

reimbursement. Prior to the filing by Developer of a petition to request that the City institute proceedings to create a District, City and Developer shall enter into a deposit and reimbursement agreement, mutually acceptable to both City and Developer that provides for the deposit by Developer of funds sufficient to commence proceedings to form any Financing Mechanism and the reimbursement of such amounts from the available bond or assessment proceeds.

(B) Financing Parameters for Approval of Financing Mechanisms.

1. Any Financing Mechanism shall be secured solely by assessments or special taxes levied within the respective District, proceeds of the bonds issued that are placed in a bond fund, reserve fund or other such fund for the financing and investment earnings thereon. City's general fund shall not be pledged to the repayment of any public financing contemplated by this Section. Notwithstanding anything to the contrary in this Agreement, nothing herein would preclude the City from pursuing other financing alternatives as is necessary to finance infrastructure, public facilities, including but not limited to the Improvements and/or Impact Fees, if it would be in the best interest of the City.

2. The payment of reasonable initial and annual administrative costs of the City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology and the City's general fund shall not be called upon to provide for initial or any annual administrative costs related to the Financing Mechanism.

2.04 Developer and City Commitments and Obligations.

(a) Developer Commitments and Obligations

(1) Developer Commitments. The Developer's public benefit commitments for the Project set forth in Exhibit C ("**Developer Commitments**") are voluntarily proposed and agreed to by Developer in return for benefits derived from this Agreement, including but not limited to the City Commitments in Section 2.04(b). These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition, except as expressly provided in this Agreement. The Developer Commitments set forth in Exhibit C shall be enforceable by the City through this Agreement. In the event of any conflict between Exhibit C and the text of this Agreement, the text of this Agreement shall control. In the event of any conflict between Exhibit B and Exhibit C, Exhibit C shall control. Substitution of Developer Commitments or adjustments in implementation timing may be approved by the Director of Community Development if such substitution or

implementation timing adjustment would not degrade the quality of the Project, materially lower the value of the Developer Commitments, or would subject the Project to further environmental review under CEQA (“**Substitution of Developer Commitments**”). Any approved Substitution of Developer Commitments shall be documented through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(2) Affordable Housing. Twenty percent (20%) of the residential units in the Project shall be Rent Restricted at the Affordable Rent for Very Low Income Units and occupied (or if vacant, available for occupancy) by Very Low Income Households. The Developer shall submit a plan for the location of the VLI Units with the application for Design Review. Developer reserves the right to determine the specific location of the VLI Units provided the location is allowed under the 20-50 Financing. Subject and subordinate to any conflicting 20-50 Financing Requirements (including any required regulatory agreement), the Developer shall enter into a recorded covenant to ensure the VLI Units remain Rent Restricted for at a minimum of fifty-five (55) years prior to the first certificate of occupancy for the Project. The parties acknowledge and agree that the Project and this Section 2.04(a)(2) shall be subject to modification and subordination, if, and to the extent necessary, to meet 20-50 Financing Requirements for the Project, and the City and Developer shall document any such modification through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(3) Central Park. As a multi-family apartment development, the Project is not subject to MHMC Section 17.28. The City confirms it has no desire or intention to take fee title, or to accept operational or maintenance obligations to the Central Park or any other park or open space proposed as part of the Project. The Central Park be designed and constructed generally consistent with the location and amenities (subject to reasonable modification and substitution) shown conceptually Exhibit B, and shall not be (unless voluntarily proposed by Developer) required to meet the City “Public Park Standards.” The City also confirms that the Central Park, as proposed as a private park subject to public access, is consistent with the General Plan and applicable zoning, and the only City approvals necessary for the construction and operation of the Central Park are (i) Design Review and Ministerial Permits. As described in more detail on Exhibit B and Exhibit C, the Developer has voluntarily committed to design, construct and operate the Central Park with the Project and to complete the Central Park prior to the final certificate of occupancy for the Project. Developer shall submit a good faith cost estimate for all design and construction costs associated with the Central Park (including engineering and design costs, land preparation, improvements, equipment, fixtures and finishes, and City fees) (“**Central Park Construction Cost**”) to the City prior to issuance of the first building permit for any residential units in the Project, for review and approval by the City Engineer, in his or her reasonable discretion which shall not be unreasonably withheld or delayed (“**City Engineer Approval**”). If the Central Park Construction Cost is estimated to exceed the amount of Park Impact Fees due from the Project, the Developer shall not pay Park Impact Fees. If the costs are estimated to be less than the Park Impact Fees, the Developer shall pay, when due, only the difference. At the completion of the Central Park (final inspection), the Developer shall submit a reasonable accounting of the actual Central Park Construction Cost for City Engineer Approval, and if the Central Park Construction Cost exceeds the Park Impact Fees for the Project, the Developer shall

not owe any Park Impact Fees for the Project. If the final Central Park Construction Cost is less than the Park Impact Fees for the Project, the Developer shall pay the difference (minus any amount paid previously). If the Developer paid any Park Impact Fees and the actual Central Park Construction Costs exceed the Park Impact Fees, the City shall promptly reimburse the excess to Developer. This Section does not obligate the City to reimburse the Developer for any amount the Central Park Construction Costs exceed the Park Impact Fees.

(4) Sutter Road Extension. In order to help attract users and accelerate new investment on the adjacent industrial property, at the time set forth below, the Developer shall dedicate, design and construct a slightly re-aligned 68-foot public street right-of-way from the intersection of Butterfield Boulevard and Sutter Boulevard to the extension of Sutter Place off of Digital Drive, as conceptually shown on Exhibit B ("**Sutter Road Extension**"), with an approximate full length of 1,490 lineal feet. The proposed realignment is intended to increase the marketability of the industrial lots and allow for development of the Central Park. Developer shall submit revisions to the approved November 30, 2001 "Plans for the Improvement of Sutter Place" to reflect the realignment and current standards per the attached Industrial standard 48-feet (curb-to-curb). Improvements for the Sutter Road Extension shall include, but not be limited to, curb and gutter, compaction, sidewalks, driveway entrances, street paving, joint trench, storm drainage facilities, sewer and water mainlines and laterals, fire hydrants and street lighting. Driveway entrances and sidewalks may be deferred for construction on an individual parcel basis concurrent with the construction of each building site subject to reasonable approval of the City Engineer. Developer and City acknowledge that, as shown on Exhibit B, all but approximately 670 lineal feet of the Sutter Road Extension is anticipated to be required to provide adequate circulation and a secondary access and connection for the Project to Butterfield Boulevard. However, in order to expedite development and make the adjacent industrial property "business ready," Developer commits to and shall commence construction (and complete in 270 days) of the entire length of the Sutter Road Extension from Butterfield Boulevard to Digital Drive once Developer receives building permits for 165 residential units in the Project.

(b) City Commitments

(1) Required Entitlements and Expedited Processing. The City hereby confirms that the only entitlements required for construction and occupancy of the Project are: (1) CEQA compliance, (2) Design Review, (3) a Subdivision Document, and (4) Ministerial Permits ("**Required City Entitlements**"). Pursuant to Section 3.01, the City shall use reasonable and good faith efforts to expedite the Required City Entitlements to allow for the construction and occupancy of the Project.

(2) 20-50 Financing Assistance. In addition to any Financing Mechanisms under Section 2.03(d), the City shall cooperate and take all actions necessary (and when necessary) to assist the Developer to obtain 20-50 Financing and to meet any 20-50 Financing Requirements, including, but not limited to: (i) acting as the local reviewing agency in support of the applications for any bond financing, (ii) approval to use CSCDA, or other joint powers authority selected by the Developer, as the bond issuer and cooperation with their bond counsel

(iii) holding a TEFRA hearing as required by the IRS, and (iv) cooperation with any reasonable requirements of Developer and its lenders with respect to bond financing and the investors with respect to LIHTCs, including refinancing or refunding any previously obtained bond financing, and (v) providing reasonable assistance to the Developer in obtaining a property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise permitted by the California Board of Equalization. The City acknowledges that timing is of the essence to obtain 20-50 Financing.

(3) Termination of City's Use of Property for Temporary Overflow Stormwater Detention Purposes. To allow for development of the Project, the City hereby approves the removal and termination of the Temporary On-Site Detention Note on the 2000 Parcel Map restricting use of Lot 26 for temporary overflow stormwater detention purposes, and hereby authorizes the City Engineer and City Attorney to take all actions necessary to remove the notation for title purposes within sixty (60) days of the Effective Date; and

(4) City Detention Basin. The Developer shall have the right to, consistent with all Applicable Law and Construction Codes, direct stormwater from the Project to the City's detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map for stormwater water quality treatment and detention (storage) purposes.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) The parties acknowledge that Developer cannot at this time predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as the duration of city processing and permitting, the availability of 20-50 Financing, market orientation and demand, interest rates, absorption, completion and other similar factors (the "**Development Factors**"). Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that the Developer shall have the right to develop its Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its subjective business judgment. In the event that a New City Law is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing or sequencing of new development or construction in the City,

such New City Law shall not apply to the Project or any portion thereof. The Parties acknowledge a mutual desire to have the Project develop as quickly as the Development Factors permit.

(b) Securing Building Permits and Beginning Construction. Developer is required to obtain the Required City Entitlements. However, any Subsequent Approval initiated by Developer which substantially changes the permitted uses or substantially increases the height and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

(c) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire Project.

2.07 Intentionally Deleted.

2.08 Overcapacity, Oversizing.

(a) To the extent consistent with this Agreement, City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement, including but not limited to the 20-50 Financing. City shall not apply any New City Law that would adversely affect the financial feasibility of the Project that is subject to 20-50 Financing. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development, including but not limited to, RDCS as in effect as of the Effective Date or as may be later amended from time to time.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(5) Conflict with any aspect of the 20-50 Financing or 20-50 Financing Requirements.

(6) Institute or apply rent or income restrictions other than the Rent Restrictions as to the Project, as such Rent Restrictions may be increased from time to time as provided by TCAC or under the standards of HUD; and

(7) Determine rents with respect to the VLI Units in a fashion that is inconsistent with Section 42 of the IRC or the rules or regulations of TCAC.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply

the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regards to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations pursuant to Section 2.03 and 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is consistent with or authorized by this Agreement, including all Applicable Law and Construction Codes. This Agreement provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regards to the Project Approvals that legally require the exercise of discretion by City, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by this Agreement, including all Applicable Law and Construction Codes. Therefore, so long as the Developer is in good faith compliance with this Agreement, and in the spirit of the mutual benefit of delivering the VLI Units, the City shall prioritize processing of applications related to the Project (including but not limited to public and private improvement plan review and scheduling inspections) and shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Project, including the following actions:

(i) Required City Entitlements; Design Review. Developer shall apply for and obtain all Required City Entitlements prior to construction and occupancy, as applicable. So long as the proposed Project, or portion thereof subject to a formal application, meets the Existing Approvals, Applicable Law, Construction Codes and is in conformance with CEQA, City shall expedite review and approval of all Required City Entitlements. The Design Review process for the Project shall be in accordance with the administrative portion only of Chapter 18.108.040 of the Morgan Hill Municipal Code, subject to normal appeal rights of the Developer under Chapter 18.108.

(ii) General Processing; Third Party Consultants. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance this Agreement. At Developer's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate

with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits needed for development of the Project or any other on or offsite improvements. The City acknowledges that time is of the essence with respect to these actions, particularly as they relate to obtaining and complying with the 20-50 Financing.

(iii) CEQA. City has prepared and certified the GPA EIR, Addendum and Development Agreement EA and has imposed mitigation measures as conditions of approval prior to the execution of this Agreement. This Agreement does not limit City's duty to comply with the provisions of CEQA and the associated Guidelines, as they may be amended from time to time, that comply with the provisions of § 21082 of CEQA. However, City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a subsequent approval or other discretionary action, it shall be in accordance with §§ 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

(iv) Standard of Review. All Required City Entitlements shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

(A) Submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement; and

(B) The application is complete and all fees due related to such application are paid; and

(C) The application demonstrates that Developer has complied with this Agreement, the Existing Approvals, Applicable Law (including CEQA), and Construction Codes.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially

deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Intentionally Deleted.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification qualifies as an Administrative Amendment subject to Section 3.05; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law.

3.05 Administrative Amendment

(a) If the City Manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law ("**Administrative Amendment**"), the City Manager or his designee may approve the proposed Administrative Amendment without notice and public hearing. Any Administrative Amendment must be made in writing signed by the City Manager (and approved by the City Attorney in his or her reasonable discretion) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the Administrative Amendment shall be recorded with the Santa Clara county recorder.

(b) An Administrative Amendment shall not include any of the following:

(i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the Permitted Uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings allowed under the Existing Approvals, (5) provisions for reservation or dedication of land for public purposes, or (6) material changes in the Project allowed under the Existing Approvals (which does not include minor adjustments to the site plan, orientation and location of buildings, floor plans, architecture, landscaping, circulation, etc.); or

(ii) Any material amendment or modification or eliminations of the Developer Commitments set forth in Article 2.04(a) of this Agreement, any reduction in fees, or any reduction or elimination of any Project Mitigations hereunder, except that, upon the written request of, and payment of the established fee by, Developer, a Substitution of Commitments.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). A Default by the City under this Agreement shall be a default under the Settlement Agreement. Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to a party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that neither party shall be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Annual Review.

(a) Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date. Except as affected by the terms hereof, the terms of MHMC Section 18.116.060 shall govern City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement.

(b) Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a compliance letter ("**Compliance Letter**") to the City Manager with copies to the Community Development Director and the City Attorney, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the

Compliance Letter is submitted to City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and Morgan Hill Municipal Code Section 18.116.060.

(c) City's Finding of Compliance. Within sixty (60) days after receipt of the Compliance Letter, the City Manager shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the City Manager finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the City Manager shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review ("**Compliance Certificate**"). Developer may record the Compliance Certificate with the Santa Clara County Recorder's Office.

(d) City's Finding of Non-Compliance. If the City Manager finds the Developer has not complied in good faith with the terms and conditions of this Agreement during the year under review, the City Manager shall specify in writing to the Developer the respects in which the Developer has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. Within ten (10) days of receipt of the notice of noncompliance the Developer may, at its option and in its sole discretion, file a written appeal to the City Council. If the Developer files an appeal, the City Council shall, expeditiously, hold a duly noticed public hearing on the matter. If, after such hearing, the Council finds and determines based on substantial evidence that Developer has complied in good faith, then the City Manager shall issue a Compliance Certificate pursuant to Section 8.03. If, however, the City Council determines based on substantial evidence that Developer has not complied in good faith, the City Manager shall give written notice thereof to Developer terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance, and such notice shall serve as a Notice of Default under Section 4.04. If after receipt of a notice of non-compliance, Developer fails to cure the noncompliance within a reasonable period of time as established by the City Manager, in his or her discretion, may (a) grant additional time for compliance by Developer, or (b) refer the Agreement to the City Council to modify this Agreement to the extent necessary to remedy or mitigate the noncompliance or terminate this Agreement.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, Severe Economic Recession, or litigation (including without limitation litigation contesting the validity, or seeking the

enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge, City shall control all aspects of the defense and City shall pay City's own attorneys' fees and costs (including related court costs) and shall pay any and all third-party fees and costs arising out of such Third-Party Challenge.

(c) Developer shall accept City's Tender, and Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed form of assignment agreement shall be subject to the written consent of City Attorney, which consent shall not be unreasonably withheld, delayed or conditioned. If the City does not respond to a request for approval of the form of assignment within fifteen (15) days such form shall be deemed approved by the City and no signature of the City shall be required. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall

specify the portion of the Project or Property and the rights assigned and obligations assumed. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney. Notwithstanding the above, Developer shall have the absolute right to assign the VLI Units to a separate legal entity to obtain, implement or refinance the 20-50 Financing upon normal and customary terms.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project, including in connection with any solar or renewable energy or conservation improvement financings or encumbrances. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee and each party investing in the LIHTCs (collectively, the "**Affordable Finance Notice Parties**") shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided each such Affordable Finance Notice Party has informed City of its address for notices. Each Affordable Finance Notice Party shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Affordable Finance Notice Party in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Affordable Finance Notice Party's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Affordable Finance Notice Party relief from the automatic stay. Each Affordable Finance Notice Party shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Affordable Finance Notice Party who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs, including interest, as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have

been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. During the term of this Agreement, Developer shall maintain in full force and effect the insurance policies required in Exhibit D. These policies shall be maintained with coverage amounts, required endorsements, certificates of insurance and coverage verifications included, as defined in Exhibit D, attached hereto and incorporated by this reference.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271

If to Developer: MWest PropCo XXIII LLC d/b/a DivcoWest Silicon
Valley Investments
Attn: Ryan McDaniel

3351 Olcott Street
 Santa Clara, CA 95054
 Tel: (408) 450-3823

With a Copy To: Holland & Knight, LLP
 50 California St., Suite 2800
 San Francisco, CA 94111
 Attn: Tamsen Plume
 Tel: (415) 743 -6941

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

- Exhibit A Legal Description Property.*
- Exhibit B Description of Project.*
- Exhibit C Developer Commitments.*
- Exhibit D Insurance Requirements*

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL, CALIFORNIA
a California municipal corporation

APPROVED AS TO FORM:

DONALD A. LARKIN
City Attorney

CHRISTINA TURNER
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

ATTEST:

IRMA TORREZ
City Clerk

“CITY”

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

DEVELOPER:

Mwest PropCo XXIII LLC, a Delaware limited liability company, d/b/a, DivcoWest Silicon Valley Investments

By:	_____
	Signature of Person executing the Agreement on behalf of Developer
Name:	_____
	Steve Novick
Title:	_____
	Authorized Signatory
Local Address:	_____
	575 Market Street, 35 th Floor

	San Francisco, CA 94015

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

[Insert legal description from title prior to execution]

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

EXHIBIT B**DESCRIPTION OF PROJECT**

Divco West SVI Measure S Application 2017 Butterfield Village dated January 4, 2018 prepared by TCA Architects and RJA Ruggeri-Jensen-Azar and Alma Du Soleir on file with the City under File No. , expressly excluding any reference to RDCS except as may be helpful for informational reference.

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

EXHIBIT C**DEVELOPER COMMITMENTS****EXHIBIT C****Developer Commitments**

The following chart describes the Developer Commitments for the Project, including the applicable reference in the MHMC, a description, timing of implementation or payment. These commitments are in addition to any Project Mitigation (CEQA), Impact Fees, or other requirements pursuant to federal or state laws, or applicable provisions of the MHMC consistent with this Agreement (See Section 2.03 of the Agreement).

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
1.	Schools		
	Student Transportation Improvements	Project commits to construct off-site improvements valued at (and not to exceed) \$1,000/unit, including sidewalks along the industrial frontage of Butterfield Blvd (west side), along Jarvis Drive (south side) and the Sutter Road Extension (Digital Drive to the Project's proposed Main Street) where shown on the attached Exhibit B. Any remaining funds will be contributed to City's Safe Access to Schools Fund.	Prior to final certificate of occupancy.
2.	Location		
a	Water distribution lines	Local water distribution lines are of sufficient size to serve the Project. The Project does not require replacing existing local water distribution lines with large diameter pipes. New water mains to serve the site do not need to be installed. In-tract extension to occur along Sutter. The 12 inch water lines in Jarvis Drive and Butterfield Blvd provide adequate capacity to serve the site. However, the project is installing a new main in the Sutter Road Extension to contribute	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		toward the City's grid system, which will also serve the adjacent industrial project.	
b	Wastewater collection	The existing wastewater collection system is sufficient to serve the Project. The Project does not require extending or replacing existing sewer pipes or lift stations outside of the Project Site. In-tract extension to occur along Sutter. An existing 10" sanitary sewer line in Jarvis Drive and a 20" sanitary sewer line in Butterfield Blvd provide adequate capacity to serve the project. In addition, the Project is voluntarily providing off-site sewer service in the new Sutter Road Extension to serve the adjacent industrial.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the Project. A 24" storm drain line in Jarvis Drive and a 54" storm drain line in Butterfield Blvd serve the site. In addition, the project site lies adjacent to a regional detention basin that will accommodate stormwater flows from the proposed development.	As needed to serve the Project, but no later than prior to final certificate of occupancy.
3.	Affordable Housing		
	Development of Affordable Units	The Project will make 20% of units affordable to Very Low Income Households as defined by State Housing and Urban Development (HUD) Guidelines. Affordable units will be distributed throughout the site and proportionally amongst unit types.	See Section 2.04(b) of the Agreement.
4.	Housing Diversity		
a	Diversity of Housing Types	The project includes a diversity of 2 housing types: multi-family units, and single family attached townhomes. Both	Design Review; subject to 20-50 Financing Requirements.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		housing types will represent at least 10% of the project.	
b	Variation in Housing Size	The project includes one and two-bedroom apartments. Please see sheet A-1.0 in the Schematic Design package in Exhibit B for full breakdown.	Design Review; subject to 20-50 Financing Requirements.
c	Small Units	A minimum of 50% of units in the Project are less than 1,000 SF. See also Sheet A-1.0 of Exhibit B for a description of unit size and distribution.	Design Review; subject to 20-50 Financing Requirements.
d	Housing Stock Diversity	The project is 100% multi-family rental.	Design Review.
5.	Parks and Open Space		
a	Excess Park Land	The Project shall provide 5.82 acres of dedicated open space area which is more than 50% in excess of the requirement of 3.42 acres (389 @.0088 ac/unit). The project is providing a total of 114,093 sf (2.62 acres) within the residential acreage and a total of 139,000 sf (3.2 acres) for Central (aka Butterfield) Park, for a total of 5.82 acres, which exceeds the requirement under local ordinance by more than 50%. The Project will construct the park improvements, and the Park will be privately owned and maintained, but open to the public via a permanent public access easement.	See Section 2.04(b) of the Agreement.
b	On-Site Recreational Amenities	The Project shall provide a pool, a restroom area, 4 tot lots with at least three age appropriate activities, a clubhouse with kitchen, a jacuzzi and children's pool, and an exercise room. The project includes the following Tier 3 and 4 amenities: Junior Olympic Swimming Pool, Restroom, 4 Tot Lots/Playgrounds, Exercise Room,	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		Clubhouse w/kitchen, Jacuzzi/children's pool. See Sheet R-2.0 of the Schematic Design package in <u>Exhibit B</u> for details. Note Central Park (aka Butterfield Park) amenities are NOT included in this calculation.	
c	Amenities for Age Group	The Project will provide amenities for all ages: Children - 2 tot lots, children's wading pool. Teens - 2 flex playgrounds & outdoor spaces for socializing. Adults - indoor gym, fire pit, bbq/picnic areas. Seniors - senior par course & walking paths. All ages - swimming pool, club room, picnic sites, trails. See Sheets R-2.0 and R-2.1 of the Schematic Design package in Exhibit B for details.	Design Review; prior to final certificate of occupancy
d	Public Gathering Places	Central Park (aka Butterfield Park) will be a high value public gathering space located in a high-density mixed use residential/industrial area with a pedestrian network and easy access to public streets, visible and open to the public, and containing multiple seating areas and sheltered areas for year-round use. The Project will invest a minimum of \$2,000 per unit in park and open space improvements.	Design Review; prior to final certificate of occupancy.
e	Open Space Design	Project will include outdoor rooms; open space of sufficient size; well defined open space edges; visibility; adjacent units; and landscape. See Sheets R-5 and R-6 of the Schematic Design package in Exhibit B for details. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
6.	Environmental Protection		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Indoor Water Use	The Project commits to exceed minimum requirements for indoor water efficiency and conservation by no less than 10% per the California Green Building Standards Code (CalGreen) in place as of the date of the Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of the Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
b	No Natural Turf Outside Common Areas	The Project contains no natural turf outside common areas used for active play.	Design Review.
c	Exceeds Outdoor Water Efficiency 20%	The Project commits to exceed outdoor water efficiency standards by 20% per the California Green Building Standards Code (CalGreen) in place as of the date of Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
d	Subsurface Irrigation	The Project commits to install subsurface irrigation for all private natural turf areas within the Project (not including Central (aka Butterfield) Park).	Design Review; prior to final certificate of occupancy.
e	Sustainable Site and Building Design	The project commits to score 16 BIG points above the minimum 70 points required by the City of MH Municipal Code as of the date of execution of this Development Agreement, for a total of 86 BIG points.	Design Review; prior to final certificate of occupancy.
7.	Transportation		

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Off-Site Street and Parking Improvements or Fund Contribution	The Project will provide for the dedication and improvements to the off-site industrial serving portion of the Sutter Extension from Main Street to Digital Drive (a total of 670 LF). This portion is not required to serve the residential project. Project commitment equivalent to \$2,000/unit.	See Section 2.04(a)(4) of the Agreement.
b	Transportation Demand Management (rental projects)	The Project will provide the following TDM measures for the life of the project: (1) Move in package will include one month free car share membership for each unit, (2) one on-site cargo bicycle available for resident's use, and (3) establishment of and operation of a commute assistance center offering on-site, one-stop shopping for transit and commute alternatives information, or (4) other suitable alternate measures acceptable to the City.	Design Review; prior to final certificate of occupancy.
c	Aligns and connects streets	"Main Street" will align with the opposing Jarvis entrance to Madrone Plaza and connect to the new Sutter Extension to be constructed by the Project.	Design Review.
d	Extends Streets	The southern extension of Sutter Road from the Project's private Main Street to Digital Drive will be considered out of tract improvements. The Project will extend streets to the adjoining undeveloped industrial land to provide access in the event of its future development. The Project will dedicate/construct the Sutter Extension, which will provide access to the adjacent industrial land via Butterfield Blvd.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
e	Off-street bicycle and pedestrian connections	The Monterey/Sutter Greenways & Central Park (aka Butterfield Park) trails will be open to the public and secured by	Design Review; as necessary to serve the project, but in no

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		permanent public access easement, providing off-street pedestrian/bike connections to/from Central Park (aka Butterfield Park, the industrial park, & retail on Monterey. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the public.	event prior to final certificate of occupancy.
f	Complete Streets	Sutter and Main are multi-modal complete streets meeting the needs of multiple users with vehicular, pedestrian and bicycle access, as well as ADA compliant access & crossings.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
g	Enhanced bicycle and pedestrian improvements	Treated pavement is provided at all primary pedestrian street crossings. Curb neck downs are provided at pedestrian crossings within Main St. Each unit including a garage with secure bike storage.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
h	Direct pedestrian connections	The project provides direct pedestrian access (trails, sidewalks, crosswalks) from units to common open space, recreational facilities and to the adjacent Central (aka Butterfield) Park.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
i	Neighborhood traffic management techniques	The project includes traffic calming measures to enhance safety. Main St. includes medians, neck-downs, bulbouts & enhanced paving materials at significant entries/crossings.	Design Review; prior to final certificate of occupancy.
j	Electric Vehicle Charging Stations	The applicant commits to install all connections and equipment necessary for 4 charging stations to be ready to use by residents and visitors upon project completion.	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
8.	Municipal Infrastructure		
a	Water Infrastructure	The Project commits to construct off-site water improvements in the Sutter Ext (Digital Drive to Main Street) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
b	Wastewater Infrastructure	The Project commits to construct off-site waste water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site storm water improvements	The Project commits to construct off-site storm water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
d	Installs broadband conduit in public right-of-way	The project will install broadband conduit in the public right-of way, along the project frontages, as necessary to serve the Project. The project does not front on Monterey Road.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
e	Installs broadband conduit to home/buildings	The Project will install broadband conduit from the public ROW and/or from internal streets as necessary to provide service to each occupied building in the project.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
f	Pre-installs indoor conduit	The Project will pre-install indoor conduit, wiring and other necessary infrastructure to allow broadband service to each unit.	Design Review; as necessary to serve the project, but in no event prior to final

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
			certificate of occupancy.
9.	Project Quality		
a	Front Porches	All first floor units will have a front porch with minimum dimensions of 6' x 5' with exterior entries included. (Sheets A-5.0 through A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
b	Balconies Facing Street or Courtyard	All upper floor units facing a street or common interior courtyard include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
c	Balconies Facing Alleys	All upper floor units facing an alley, parking area or drive aisle include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
d	Façade Articulation and Finishes	Elevations feature façade articulation & finishes that break up blank walls thru use of awnings, metal iron work, pot shelves, balcony rails, rafter tails, columns & finials. Sheets A-4.0-A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
e	360-degree Architecture	All buildings have four-sided architecture (Sheet A-4.4 in Exhibit B)The Project has demonstrated	Design Review

EXHIBIT C

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Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
f	Corner Treatments	The project includes enhanced corner treatments to support a welcoming and visually interesting public realm. (Sheets A-3.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
g	Colors and Materials	The project incorporates a mix of colors and materials compatible with the style and creates visual interest. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
h	Multi-family Ground Level Entrances	All ground-floor units have private exterior entries (Sheets A-5.0 through A-5.5, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
i	Residential-Scale Design Elements- Attached Projects	Several building details are provided per this narrative (Sheet A-4.0 through A-4.4) in Exhibit B. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
j	Variation in Building Height	Building heights vary between one, two- and three-story elevations. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
k	Variation in Building Placement	The project incorporates variation in building front setbacks to minimize monotony and create visual interest (Sheet A-2.0 and Sheet R-3.0) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
l	Roof Line Variation	Elevation roof lines vary between 1 -3 stories. Some roof lines pop above the 3rd floor eave line. Design employs Hip, gable and shed roofs to articulate the roof line. (Sheets A-4.0 thru A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
m	Height and Project Edge-Attached Projects	2.5 story towns are located on perimeter streets to match exist. homes. Interior buildings step up to 3 stories. Edges/massing are articulated by dropped edges or raised towers. (Sheets A-2.0 - 4.0 thru A-4.4, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
n	Adjacent Building Types-Attached Projects	The project places 2.5 story townhomes along the perimeter street edges that are consistent with the surrounding architecture. (Sheet R-3.0 and Sheets A-2.0, and A-4.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
o	Landscaping-Parkway Design	An additional 50% in planting strip width is provided within public and private	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		street sections. Main Street --the central spine of the community-- includes a planted central median. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
p	Landscaping-Visual Relief	Planting and paving materials are used to minimize appearance of building bulk and to highlight pedestrian routes, encouraging pedestrian circulation throughout. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
q	Exterior Lighting	Exterior lighting on the building will be architecturally integrated with the building design, style, color and material.	Design Review
r	Entrance Pathways	All units have direct pedestrian pathways from public sidewalks. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
s	Public/Private Transitions	The project will include transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation. As shown in the schematic drawings submitted January 4, 2018 in Exhibit B the townhomes create some transition with raised stoops leading to front porches, and the stacked flats provide some transition with low walls enclosing patios/unit entries. (See Sheets A-2.0 and A-5.0 thru A-5.5 in Exhibit B).	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The project will demonstrate compliance through Design Review.	
t	Mechanical Equipment	Mechanical equipment located within roof wells on stacked flats not visible from street or adjacent buildings; in townhomes located on grade at side of buildings and screened from view with landscaping and low fences. (Sheets A-5.0 thru A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
u	Garage Door Orientation	Garage doors do not face forward toward the main streets; they are located to the sides or rear of the buildings. (See sheet R-3.0 and Sheets A-5.0 thru A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
v	Parking-Attached Projects	Parking lots are carefully situated behind buildings so that parking is not located/visible between a building and a public sidewalk or street. (Sheet A-2.0 and Sheet R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
w	Screening	Any parking visible from public streets behind buildings will be screened with landscaping and some low walls as shown on the site plan, building plans or elevations. (Sheets A-2.0 and A-4.0 in Exhibit B)	Design Review

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
x	Landscaping-Attached Projects	Planting is strategically located throughout the project to minimize visibility of parking. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
y	Pavement Design	Special zones, such as entry gateways, pedestrian crosswalks, speed tables and roundabouts are proposed to be paved with special color and/or textured unit pavers.	Design Review

END OF CHART

EXHIBIT D**INSURANCE REQUIREMENTS**

Developer is required to procure and provide proof of the insurance coverage required by this Agreement in the form of certificates and endorsements. The required insurance must cover the activities of Developer and its subcontractors relating to or arising from the performance of work associated with the Agreement, 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 Agreement terminates.

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. If Developer fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Developer’s expense. Developer further understands that the City reserves the reasonable right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Developer, at any time as deemed necessary to protect the interests of the City.

A. Upon execution of Agreement:

(a) Policies and Limits. The following insurance policies and limits are required:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s (including its agents, representatives, officers, employees, invitees, volunteers, and contractors) activity, use and maintenance of the property 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.

(b) Required Endorsements. Developer shall provide proof of the following endorsement to the General Liability policy:

a. “Additionally Insured” - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

B. Ten (10) days prior to start of any construction within the Project:

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

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’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) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

(2) Workers’ Compensation Insurance and Employer’s Liability: Developer 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 Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Developer is self-insured, Developer must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Developer shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Developer does not own automobiles, then Developer 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 Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Developer’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. Developer shall procure and maintain Pollution Liability covering the Developer’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 Developer under Developer's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Developer shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

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

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

c. "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. Developer must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

C. Certificates. Developer 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 Developer'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 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

Attachment: MWest Development Agreement (2021 : MWest Development Agreement)

MWEST BUTTERFIELD VILLAGE RESIDENTIAL PROJECT

INITIAL STUDY/CONSISTENCY CHECKLIST DEMONSTRATING CONSISTENCY WITH:

BUTTERFIELD – MWEST GENERAL PLAN AMENDMENT PROJECT GPA 14-04

ENVIRONMENTAL IMPACT REPORT AND ADDENDUM

(State Clearinghouse No. 2014072009)

AND

MORGAN HILL 2035 ENVIRONMENTAL IMPACT REPORT

(State Clearinghouse No. 2015022074)

Attachment: Butterfield - CEQA Consistency Document (2021 : MWest Development Agreement)

September 2018

I. Introduction

This document is an Initial Study/Consistency Checklist to analyze the environmental impacts of the proposed Butterfield Village project, a 389-unit multi-family attached, 100 percent rental, residential development on a 22.8-acre site at the southeasterly quadrant of Monterey Road and Jarvis Drive, 19.5 acres of which consist of the residential uses, and 3.3 acres of which consist of park use ("Project"). This document has been prepared in accordance with the relevant provisions of the California Environmental Quality Act ("CEQA") of 1970 (as amended) and the State CEQA Guidelines as implemented by the City of Morgan Hill ("City"). According to Section 15168(c)(2) of the State CEQA Guidelines, a program Environmental Impact Report ("EIR") can be used in compliance with CEQA to address the effects of a subsequent activity so long as the activity is within the scope of the project covered by the program EIR and no new effects are found and no new mitigation measures would be required. As supported by the analysis presented in this document, the Project would not result in new or substantially more severe significant environmental effects than what was analyzed in:

- (1) EIR for the General Plan Amendment (File No. GPA-14-04) ("GPA") from Industrial to MF Medium Residential (14 – 21 du/acre) for a 19.5 acre portion of the 58-acre property located at Butterfield Boulevard and Jarvis Drive ("GPA EIR");
- (2) Addendum to the GPA EIR, to study amended application presenting two alternative residential project area reconfigurations for the same total 19.5 residential acres and 409 units ("GPA EIR Addendum"); and
- (3) the City's 2035 General Plan and Residential Development Control System Update ("GP Update EIR")

This document includes a description of the Project and a comparison of the potential impacts of the Project to those identified in the GPA EIR, GPA EIR Addendum, and the GP Update EIR (together, "the Prior EIRs"). This document also examines the consistency of the Project with the City's General Plan for the purposes of CEQA Guidelines 15183, which allows a streamlined environmental review process for projects that are consistent with the densities established by existing zoning, community plan or general plan policies for which an EIR was certified; and discusses streamlining per CEQA Section 21159.28 below in Section I.A. CEQA Background.

A. CEQA Background

GPA EIR:

In July, 2014, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA"), the City of Morgan Hill ("City") issued a Notice of Preparation ("NOP") for the GPA EIR, which contemplated subsequent residential development of a 19.5 acre portion of the 58-acre MWest site with up to 409 residential units (20 more residential units than

the proposed Project). The City then circulated the Draft EIR for public comment in August, 2014 and published the Final EIR in November, 2014. The applicable project area was as follows in *Figure 1 – GPA EIR Area*.

Figure 1 – GPA EIR Area



GPA EIR Addendum:

MWest subsequently slightly reconfigured the residential and industrial portions of the planned development on their 58-acre parcel, studying two potential reconfigurations in the Addendum to the GPA EIR, dated April, 2015. The GPA EIR Addendum concluded that neither Alternative A nor Alternative B (the two reconfigurations) would result in any new significant impacts or impacts that would be substantially more severe than identified in the GPA EIR, according to CEQA and CEQA Guidelines triggers. Alternative A studied has much the same residential configuration as the Project studied in this Initial Study. Compare *Figure 2 – GPA EIR Addendum Alt. A*, and *Figure 3 – Current Project Area*, below. For a more complete comparison of the proposed Project against what was studied previously in the GPA EIR Addendum, see Section I.B.

Figure 2 – GPA EIR Addendum Alt. A



Figure 3 – Current Project Area



The City certified the GPA EIR and GPA EIR Addendum on May 6, 2015 in Resolution 15-101.

GP Update EIR:

On February 23, 2015, the City issued a NOP for a program EIR for the GP Update EIR. The City then circulated the Draft EIR for public comment in January, 2016 and certified the Final EIR in July, 2016.

CEQA Guidelines Sections 15168

Per CEQA Guidelines Section 15168, subsequent activities that fit within the scope of a proposed program are examined in the light of one or more Program EIRs to determine whether an additional environmental document must be prepared. The CEQA Guidelines require agencies to use checklists or similar mechanisms to conduct this analysis. An additional environmental document is not required unless the later activity (1) would have effects not examined in the program EIR or (2) would require new mitigation measures. If these two requirements are met, the lead agency may approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document is required. The lead agency shall incorporate applicable mitigation measures and alternatives developed in the program EIR(s) into subsequent actions in the program.

Further, per CEQA Section 21166 and Guidelines Section 15162(a), once an EIR has been certified, no subsequent EIR shall be prepared unless the lead agency determines, on the basis of substantial evidence, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Streamlining Per CEQA Guidelines Section 15183

The Project also is designed to be consistent with the development standards in the General Plan and Zoning Code. CEQA and the CEQA Guidelines mandate that projects consistent with the development density established by existing zoning policies or community plan for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects that are peculiar to the project or its site. Specifically, in approving a project meeting the requirements of CEQA Guidelines section 15183, the City must limit its examination of environmental effects to those that the agency determines, in an initial study or other analysis:

1. Are peculiar to the project or the parcel on which the project would be located;
2. Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent;
3. Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or
4. Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in a prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, then no additional EIR is required to address that impact. Uniformly applied development policies and standards include those policies in the General Plan, General Plan, and Municipal Code, as well as applicable regional, state, and federal laws.

Streamlining Per CEQA Section 21159.28

The Project also qualifies for streamlining per CEQA § 21159.28 for residential projects because it: 1) is at least 75% residential; 2) is consistent with the general use designation,

density, building intensity, and applicable policies of Plan Bay Area; and 3) will incorporate applicable mitigation measures required by a prior EIR.

B. Project/Site Overview

The Project consists of the development of a 389-unit multi-family attached, 100 percent rental, residential development on a 22.8-acre site (19.5 acres of purely residential use and approximately 3.3 acres of park) at the southeasterly quadrant of Monterey Road and Jarvis Drive.¹

Figure 4 – Proposed Project Conceptual Site Plan



1. Project Comparison to GPA EIR Addendum Project

The currently proposed Project and that studied in the GPA EIR Addendum are very similar, and the current proposed Project would have a slight reduction in impacts due to more open space, and a smaller number of residential units. The currently proposed Project contains an expanded park site (see Central Park above in Figure 4). The Project proposes 389 residential units, whereas the former GPA EIR Addendum project studied the development

¹ The Project site has no physical address. APNs are 726-25-061, -066, -067, -078, -079.

of 409 units. Finally, the current Project does not propose to make any improvements to the City-owned detention basin for use as open space or a park.

2. *Project Features*

Amenities includes two centrally-located recreation buildings including a fitness room, club room with kitchen, mail room and leasing/management facilities; a pool, child wading pool, and spa immediately adjacent to the recreation buildings; and other recreational elements. The Project also features an approximately 3.2-acre Central Park with recreational amenities. The park will be privately owned and operated, but open for use by the public during normal park hours through a public access easement.

Project landscaping and irrigation plans have been designed to promote water efficiency with drought-tolerant plants and efficient watering practices, and the vast majority of Project landscaping will be completed with native plants. The Project applicant has committed to exceeding CalGreen minimum requirements for indoor water efficiency and conservation by no less than 10%. The Project conforms to green building standards, and provides green development features above and beyond City requirements. The Project also features a Transportation Demand Management (“TDM”) Program that includes one month free car share membership for residents, on-site cargo bicycle available for residents’ use, and the operation of a commute assistances center offering on-site, one-stop shopping for transit and commute alternatives information.

The Project site is within close proximity to nearby schools, community-serving retail, restaurants, and other services, and is within 0.75 mile of the City’s central core. With regard to infrastructure, existing local water distribution lines, the wastewater collection system, and off-site storm drainage facilities are all sufficient to serve the Project without expansion or new infrastructure development required.

Vehicular circulation shall be provided via a private main street connecting Jarvis Drive to the (future) Sutter Road Extension, which connects to Digital Drive and Butterfield Boulevard. Parking requirements are fulfilled through two primary, centralized parking lots that are screened from surrounding streets; attached and detached garage parking, providing at least one covered space per unit; apron parking; guest parking throughout the Project site; and curb-side parking along Main Street and the recreation hub.

The Project site’s General Plan designation is Residential Attached Medium (16-24 DU/AC), and its Zoning District is R-3. On January 18, 2018, the City confirmed in a letter to MWest that its application No. RDCS2017-0013 for the Project is consistent with the City’s General Plan and Zoning Code. The Project is consistent with and implements the policies and visions of the General Plan. More specific Project features related to each topic area are discussed below in Section II.

II. Analysis of Project Impacts

This Initial Study document provides an analysis of each environmental issue identified in the Prior EIRs with regard to this Project. In the following evaluation, each topic section begins with a checklist comparing Project impacts to the Prior EIRs, followed by subsections discussing Prior EIR analysis, Project analysis, applicable mitigation requirements, and concluding with a finding regarding whether the Project would result in any new significant impacts, impacts that would be substantially more severe than identified in the Prior EIRs, or impacts that would require new and/or different mitigation measures. The full Prior EIRs are available for public review at the City of Morgan Hill Planning Department, 17575 Peak Avenue, in Morgan Hill, CA, and on the internet.² The entirety of the Prior EIRs are incorporated by reference into this document. Mitigation measures from the GPA EIR that are applicable to and will be required as conditions of approval for the Project are listed in the below analysis, and have been provided in full at Attachment A – GPA EIR Mitigation Measures Applicable to the MWest Butterfield Village Residential Project to this document.

² Available at: <https://www.morgan-hill.ca.gov/868/Environmental-Review>. Last accessed September 5, 2018.

A. AESTHETICS

AESTHETICS. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs ³	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.6 of the GPA EIR (Visual and Aesthetics) concludes that development of up to 409 residential units, with implementation of applicable General Plan and other policies, would not have a significant impact on aesthetics, with no mitigation required.⁴ With regard to change in visual character, because development would be typical for suburban residential development and would be surrounded by similar uses, the development would not degrade visual character, and the GPA EIR concluded impacts would be less than significant.⁵ The site is approximately 18 miles from the nearest Scenic state highway, and would therefore have no impact with regard to scenic highways.⁶ Similarly, the site has no trees, rock outcroppings, or historic buildings, and is not designated a scenic resource; nor is it near a scenic corridor and would therefore have less than significant impacts in that regard. With regard to light and glare, while future residential development would incrementally increase light and glare, it would be consistent with that currently emitted but uses surrounding the site and will be subject to the design review process to ensure consistency with City requirements – impacts would be less than significant.

³ Please see Section 1.0, Introduction, for further information regarding the standards in CEQA Guidelines Sections 15168 and 15162, and the EIRs compared to the Project in this document.

⁴ GPA EIR, pages 86-87, 92.

⁵ GAP EIR, pages 87, 92.

⁶ GAP EIR, page 92.

Project Analysis: As noted in the GPA EIR Addendum, the slight site reconfiguration between the area analyzed in the GPA EIR and the Project area did not change the conclusions reached in the GPA EIR with respect to Project site conditions and potential impacts. Further, the Project will be subject to applicable General Plan and other City requirements that would ensure appropriate lighting and minimized impacts. The Project would have less than significant impacts with regard to aesthetics.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

B. AGRICULTURE AND FOREST RESOURCES

AGRICULTURE and FOREST RESOURCES. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forestland (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g)).	☐	☐	☐	☒
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forestland to non-forest use?	☐	☐	☐	☒

Prior EIR Analysis: Due to a lack of either agricultural or forest resources on the site or nearby, this topic was scoped out of the GPA EIR for in-depth analysis, and there would be no impact.⁷ As noted in the GPA EIR, the site had historically been used for agriculture, but not for several decades as the City has become more developed.⁸ There is no forest land on or adjacent to the site studied in the GPA EIR.⁹ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.¹⁰

Project Analysis: Nothing about the Project and/or Project site would cause any different impacts to agricultural or forest resources than what was studied in the GPA EIR. The Project site remains a non-agricultural use in a non-agricultural area, and a non-forested site in a similarly non-forested area. The Project would have no impact on agricultural or forest resources.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

C. AIR QUALITY

AIR QUALITY. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☒
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☒
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☐	☐	☐	☒
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐

⁷ GPA EIR, Appendix A, Notice of Preparation.

⁸ GPA EIR, page 13.

⁹ GPA EIR, page 13.

¹⁰ GPA EIR Addendum, page 5.

e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☒
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Prior EIR Analysis: Section 2.4 of the GPA EIR (Air Quality) identifies the only sensitive receptors in the location as the existing residential uses north of Jarvis Drive, and the future residents of the development as part of the project.¹¹ The GPA EIR evaluated project impacts under BAAQMD's May 2011 thresholds, which the City evaluated and found to be the best available information for the Bay Area.¹²

With regard to conflict with an applicable air quality plan, the GPA EIR concludes that impacts would be less than significant for the construction of 409 units on the site because such development would not exceed BAAQMD thresholds, development would implement applicable air quality plan control measures, and would be required to undergo analysis to confirm that impacts would not be significant.¹³ The GP Update EIR confirmed that development contemplated under the General Plan would not violate the then-applicable 2010 Bay Area Clean Air Plan.¹⁴

With regard to operational impacts, for criteria air pollutants, under the applicable threshold, the development of 409 units in a low-rise residential development would have less than significant impacts, with no mitigation required.¹⁵ Likewise, the development of 409 units would result in carbon monoxide emissions far below the threshold, resulting in a less than significant impact.¹⁶ With regard to objectionable odors, the area is not agricultural and no unusual odor sources surround it; while the area could experience odors from a mushroom farm located 1.3 miles away and/or garlic farm 2.5 miles away, such occurrences have been very rare and impacts are anticipated to be less than significant.¹⁷

With regard to construction impacts, the GPA EIR assumes impacts for construction of a 409-units, for which there would be less than significant odor-related impacts, but potentially significant impacts related to dust and equipment exhaust on a temporary basis, resulting in a potentially significant impact prior to mitigation.¹⁸ Therefore, mitigation measures MM-AQ-1 and MM-AQ-2.1 and 2.2 are incorporated to reduce construction-related toxic air

¹¹ GPA EIR, page 63. Please note that to the extent the GPA EIR analysis considers air quality impacts from existing sources in relation to future residents of the Project, it does so for informational purposes only pursuant to the judicial decisions in *CBIA v. BAAQMD* (2015) 62 Cal.4th 369, 386 and *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473, which confirm that the impacts of the environment on a project are excluded from CEQA unless the project itself "exacerbates" such impacts. As such, any air quality impacts on the future residents of the Project is not an impact under CEQA.

¹² GPA EIR, page 65.

¹³ GPA EIR, page 67.

¹⁴ GP Update EIR, page 4.3-23.

¹⁵ GPA EIR, pages 65, 67.

¹⁶ GPA EIR, page 68.

¹⁷ GPA EIR, pages 73-74.

¹⁸ GPA EIR, pages 67-68.

contaminant and fugitive dust impacts to a less than significant level.¹⁹ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.²⁰

Project Analysis: With regard to conflict with an applicable air quality plan, the now applicable plan is the BAAQMD's Final 2017 Clean Air Plan.²¹ Thresholds of significance used to evaluate proposed development are determined by the Lead Agency, the City of Morgan Hill. Per CEQA Guidelines Section 15064.7, the City has elected to use the thresholds and methodology included in the May 2017 BAAQMD Air Quality Guidelines, as they are based on substantial evidence and remain the most up-to-date, scientifically-based method available to evaluate air quality impacts. The total residential acreage for the Project site remains the same as studied under the GPA EIR, and the total number of units/density is 20 less than studied. Further, the reconfiguration does not change the distance from the only sensitive receptors to the north of Jarvis Drive or other surrounding sources. Therefore, the Project would have substantially similar impacts as evaluated under the GPA EIR, and may have slightly less impacts due to the reduction in residential units. The Project would therefore continue to result in emissions that do not exceed applicable BAAQMD average daily thresholds of 54 pounds of ROG, NOx, or PM2.5 per day, and/or 82 pounds of PM10 per day.²² The Project will therefore also be consistent with the BAAQMD's Final 2017 Clean Air Plan, because it does not exceed BAAQMD thresholds and will be required to implement applicable air quality control measures. The Project will also be subject to the requirements of MM-AQ-1 and MM-AQ-2.1 and 2.2 to reduce construction-related impacts to a less than significant level.

Applicable Mitigation: GPA EIR mitigation measure MM-AQ-1 requires the preparation of a Community Health Risk Analysis for the Project, and the implementation of requirements that would reduce impacts to nearby sensitive receptors related to toxic air contaminants during construction.²³ MM-AQ-2.1 requires the incorporation of specified conditions of Project approval that will ensure best management practices are applied to construction activities.²⁴ MM-AQ-2.2 requires the creation and implementation of a dust management plan for the Project.²⁵

Finding: No supplemental analysis required. Applicable mitigation measures set forth appropriate performance standards that are applicable as conditions of approval to ensure

¹⁹ GPA EIR, page 74-75.

²⁰ GPA EIR Addendum, page 6.

²¹ BAAQMD, Spare the Air: Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area. April 19, 2017. Available at: http://www.baaqmd.gov/~media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-_proposed-final-cap-vol-1-pdf.pdf?la=en.

²² GPA EIR, page 68; BAAQMD CEQA Guidelines May 2017, Table 2-1, Air Quality CEQA Thresholds of Significance.

²³ GPA EIR, page 74.

²⁴ GPA EIR, pages 74-75.

²⁵ GPA EIR, page 75.

Project-related impacts will be reduced to a less than significant level. No new or different mitigation measures are required.

D. BIOLOGICAL RESOURCES

BIOLOGICAL RESOURCES. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native	☐	☐	☒	☐

resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.7 of the GPA EIR (Biological Resources) identifies impacts to nesting birds and burrowing owls, and identifies mitigation measures to reduce all impacts related to biological resources to a less than significant level. The Biological Evaluation prepared by Live Oak Associates, Inc. (Appendix E to the GPA EIR) analyzed not only the project site for the GPA project, but the eight surrounding quadrangles. (See Appendix E at page 3).

With regard to habitat impacts, the biological evaluation indicated there are not suitable soils for special-status species, and there are no jurisdictional waters of the United States in the study area.²⁶ Further, there are no sensitive habitats, including areas of high biological diversity, on the site or study area.²⁷ Development of up to 409 residential units therefore would result in less than significant impacts to a Federally-protected wetland, riparian habitat, nor other sensitive natural community.²⁸ With regard to special-status wildlife species potentially present on the site, the GPA EIR notes that white-tailed kite are likely to occur, while golden eagle, tricolored blackbird, and pallid bird may possibly occur.²⁹ However, the development of 409 units on the 19.5-acre site and the Central Park would result in a very small reduction of potential foraging and breeding habitat, resulting in a less than significant impact.³⁰ With regard to trees, there are none on site, and there would therefore be no impact to trees. Further, any future trees associated with planned development would need to be planted per City requirements, ensuring no impact.³¹

With regard to nesting birds and/or burrowing owls, although they were not found on site, they may occupy the site in the future, and/or construction could have impacts on adjacent

²⁶ GPA EIR, page 101.

²⁷ GPA EIR, page 101.

²⁸ GPA EIR, page 101.

²⁹ GPA EIR, pages 95-96.

³⁰ GPA EIR, page 103.

³¹ GPA EIR, page 103.

occupied areas if not mitigated.³² Therefore, the GPA EIR incorporated mitigation measures MM-BIO-1 and MM-BIO-2 to ensure impacts are less than significant, through requirements to conduct surveys, establish buffers and other avoidance tactics if necessary, and comply with the City's standard requirements for burrowing owl mitigation.³³ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.³⁴

Project Analysis: As discussed in the GPA EIR, the Project site, including the Central Park, is currently vacant, and contains no trees. Site conditions have not substantially changed since the GPA EIR was published. Therefore, the Project would have the same potential impacts identified in the GPA EIR, and would remain subject to the same mitigation measures as conditions of approval to reduce potential impacts to nesting birds and burrowing owls to less than significant levels. No new or more severe impacts have been identified, and no new or different mitigation is required.

Applicable Mitigation: GPA EIR mitigation measures MM-BIO-1 and MM-BIO-2.

Finding: No supplemental analysis required.

E. CULTURAL RESOURCES

CULTURAL RESOURCES. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines section 15064.5?	☐	☐	☒	☐
b) Cause a substantial adverse change in the significance of an archaeological resource as defined in CEQA Guidelines section 15064.5?	☐	☐	☒	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☒	☐
d) Disturb any human remains, including those	☐	☐	☒	☐

³² GPA EIR, page 100.

³³ GAP EIR, pages 103-104.

³⁴ GPA EIR Addendum, page 7.

interred outside of formal cemeteries?				
e) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, features, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is: 1) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or cause a substantial adverse change in the significance of an archaeological resource as defined in CEQA Guidelines Section 15064.5(k); or 2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1.	☐	☐	☒	☐

Prior EIR Analysis: Section 2.8 of the GPA EIR (Cultural Resources) concludes the project site does not contain any historic resources, and only a potential for discovery of subsurface archeological resources during construction.³⁵ It therefore identifies standard mitigation measures to reduce any potential impact related to any potential subsurface cultural resources to a less than significant level.³⁶ The GPA EIR analyzed potential impacts to all historic and archaeological resource including tribal cultural resources, and to human remains including tribal remains, and the conclusion is that with legal requirements and standard mitigation incorporated, impacts would be less than significant. The GPA EIR

³⁵ GPA EIR, page 107.

³⁶ GPA EIR, pages 107-109.

Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.³⁷

Project Analysis: The City's Archaeological Sensitivity Map does not identify any cultural resources on the Project area, including the Central Park, as noted in the GPA EIR Addendum.³⁸ The applicable legal requirements and standard measure from the GPA EIR would similarly be applied to the Project, and impacts would be less than significant with such mitigation implemented. No new or more severe impacts would occur, and no new or different mitigation is required.

Applicable Mitigation: GPA EIR Standard Measure SM CUL-1.1.

Finding: No supplemental analysis required.

F. GEOLOGY AND SOILS

GEOLOGY AND SOILS – <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (Division of Mines and Geology Special Publication 42)?	☐	☐	☐	☒
ii) Strong seismic ground shaking?	☐	☐	☐	☒
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒

³⁷ GPA EIR Addendum, page 8.

³⁸ GPA EIR Addendum, page 8.

b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.9 of the GPA EIR (Geology and Soils) concludes that project area development would not require septic tanks or alternative wastewater disposal systems, and there would therefore be no impact in this regard.³⁹ The project site is not within any landslide area, any liquefaction hazard zone, or any Alquist-Priolo earthquake fault zone, and impacts in that regard would therefore be less than significant.⁴⁰ While the site is in a seismically active region, the EIR concludes that future development will be required to follow applicable construction standards to ensure safety, and the project therefore would not expose people or structures to adverse effects from rupture of a known earthquake fault, strong seismic ground shaking, or expansive soils, and impacts would be less than significant.⁴¹ Future construction-related grading could result in a significant impact from soil erosion without mitigation.⁴² The GPA EIR therefore incorporates standard mitigation measure SM GEO-1 to reduce impacts related to soil erosion during construction to a less than significant level. The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁴³

Project Analysis: The total residential development acreage remains the same as in the GPA EIR, and the soil and geological conditions are substantially the same as identified in the GPA EIR. The reconfigured areas, including the Central Park, are similarly not in any landslide, fault zone, or liquefaction hazard zone. Therefore, the Project would not change the

³⁹ GPA EIR, page 112.

⁴⁰ GPA EIR, pages 110-111, 113.

⁴¹ GPA EIR, page 112.

⁴² GPA EIR, page 113.

⁴³ GPA EIR Addendum, page 10.

conclusions reached in the GPA EIR, and would remain subject to the same standard mitigation measure SM GEO-1 to reduce potential soil erosion impacts.

Applicable Mitigation: GPA EIR mitigation measure SM GEO-1.

Finding: No supplemental analysis required.

G. GREENHOUSE GAS EMISSIONS AND ENERGY

GREENHOUSE GAS EMISSIONS & ENERGY. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☐	☒
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☐	☒
c) Result in a wasteful, inefficient, and unnecessary consumption of energy?	☐	☐	☐	☒
d) Result in a substantial increase in demand upon energy resources in relation to projected supplies?	☐	☒	☐	☐
e) Result in longer distances between housing and jobs?	☐	☐	☐	☒

GREENHOUSE GAS

Prior EIR Analysis: Section 2.5 of the GPA EIR (Greenhouse Gas Emissions) applies 2011 BAAQMD thresholds to the project because the City analyzed the thresholds and determined they were the best information available for the San Francisco Bay Area Basin.⁴⁴ Analysis assumes operation and construction emissions from buildout of 409 residential units on the site, with operations assumed to begin in 2017.⁴⁵ Emissions were first compared to the “bright-line” thresholds of 1,100 MT CO_{2e}, which the development would exceed at an estimated 3,049 MT CO_{2e} per year.⁴⁶ Therefore, the secondary threshold of 4.6 MT CO_{2e} per

⁴⁴ GPA EIR, page 82.

⁴⁵ GPA EIR, page 83.

⁴⁶ GAP EIR, page 83.

service population was applied, to account for it being a larger project, and emissions were estimated to be 2.4 MT CO_{2e} per year in 2017.⁴⁷ The GPA 14-04 EIR therefore concluded the project would not exceed the BAAQMD efficiency threshold of 4.6 MT CO_{2e} per service population and therefore would have a less than significant impact related to greenhouse gas emissions.⁴⁸ With regard to applicable plans, policies, and regulations, the GPA EIR studies project compliance with the Climate Change Scoping Plan and relevant greenhouse-gas related General Plan policies, and determines it will be consistent with both.⁴⁹ Further, the EIR concludes that the project would comply with the then-applicable Bay Area 2010 Clean Air Plan because the 409 units would generate emissions below the BAAQMD thresholds, future development will need to incorporate control measures, and future project analysis will confirm that it will not hinder compliance and implementation. Impacts are therefore less than significant.⁵⁰

Project Analysis: With regard to conflict with applicable plans to reduce greenhouse gas emissions, the currently applicable plan is the BAAQMD's Final 2017 Clean Air Plan.⁵¹ Thresholds of significance used to evaluate proposed development are determined by the Lead Agency, the City of Morgan Hill. Per CEQA Guidelines Section 15064.7, the City has elected to use the thresholds and methodology included in the May 2017 BAAQMD Air Quality Guidelines, as they are based on substantial evidence and remain the most up-to-date, scientifically-based method available to evaluate air quality impacts. The BAAQMD's CEQA Air Quality Guidelines recommended a GHG threshold of 1,100 metric tons or 4.6 metric tons (MT) per capita. These thresholds were developed based on meeting the 2020 GHG targets set in the scoping plan that addressed AB 32. Development of the project would continue beyond 2020, so a threshold that addresses a future target is appropriate. Although BAAQMD has not published a quantified threshold for 2030 yet, this assessment uses a "Substantial Progress" efficiency metric of 2.6 MT CO_{2e}/year/service population. This is calculated for 2030 based on the GHG reduction goals of SB 32 and Executive Order B-30-15, taking into account the 1990 inventory and the projected 2030 statewide population and employment levels.

Because total residential acreage is the same and number of residential units is 20 units less than studied under the GPA EIR, the modeling assumptions or results with respect to greenhouse gas operational or construction emissions and the conclusions reached in the GPA EIR would remain substantially the same. Emissions are in fact likely lower than assumed in the GPA EIR because there are fewer units, green building and efficient technology has advanced since 2014, the Project will be constructed and operated after the assumed operational timeline of 2017 under the GPA EIR, and the Project will be required to comply with more stringent legal mandates than existed in 2014. The Project would

⁴⁷ GAP EIR, page 83.

⁴⁸ GPA EIR, pages 83-84.

⁴⁹ GPA EIR, pages 84-85.

⁵⁰ GPA EIR, page 85.

⁵¹ BAAQMD, Spare the Air: Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area. April 19, 2017. Available at: <http://www.baaqmd.gov/~media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a-proposed-final-cap-vol-1-pdf.pdf?la=en>.

therefore continue to be below both the 2020 target threshold of 4.6 MT CO_{2e} per year per service population, and will also be below the 2030 Substantial Progress target threshold of 2.6 MT CO_{2e} per year per service population. Further, with regard to transportation demand management and alternative modes of travel, the Project has committed to providing no less than four EV charging stations; one month free car share membership or transit pass for each unit; one on-site cargo bicycle available for residents' use; and establishment and operation of a commute assistance center offering on-site, one-stop shopping for transit and commute alternatives information. Impacts would therefore be less than significant, and there is no mitigation required.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

ENERGY:

Section 2.13 of the GPA EIR (Energy) concludes that while project uses will consume energy, applicable legal requirements and the nature of the use will ensure that the project does not consume energy in a wasteful or inefficient manner, and the impact would be less than significant.⁵² With regard to a substantial increase in demand, the GPA EIR concludes that the project would result in a significant unavoidable impact related to annual increase in Vehicle Miles Traveled (VMT) by 6,357,935 VMT/year, consuming 269,404 gallons per year compared to existing site conditions (vacant), and this impact is without feasible mitigation to reduce it because the site is not downtown or ideally placed for sufficient reductions in vehicle miles traveled through shift to alternative fuels or modes of transportation.⁵³

Project Analysis: The total acres of the residential development area remains the same as studied under the GPA EIR, while the total number of units is 20 less. Therefore, the Project would not substantially change the energy or VMT conclusions reached in the GPA EIR, though some reduction in comparison is anticipated due to increased efforts to implement TDM measures, further buildout of the surrounding area since 2014 that could shorten some estimated trips, and the lower unit count. There are no Project updates since the GPA EIR that would create new or more severe energy impacts, and no new or different mitigation is feasible or required.

Applicable Mitigation: None feasible with regard to demand, and none required with regard to other impacts.

Finding: No supplemental analysis required.

⁵² GPA EIR, pages 143-145.

⁵³ GPA EIR, pages 145-147.

H. HAZARDS AND HAZARDOUS MATERIALS

HAZARDS AND HAZARDOUS MATERIALS. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIR, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☒	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan, or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people	☐	☐	☐	☒

residing or working in the project area?				
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.11 of the GPA EIR (Hazards and Hazardous Materials) concludes that the project site does not have a history of hazardous waste spills, releases, or hazardous waste incidents, and project uses would not handle hazardous wastes, resulting in a less than significant impact in this regard.⁵⁴ The site is not located within the South County Airport Influence Area, nor is it in the vicinity of a private airstrip, and not near wildlands or otherwise subject to wildfire risk – it would therefore have no impact in those regards.⁵⁵ The site does not contain any recognized environmental concerns, but due to the project site's previous agricultural uses, residual chemicals could be hazardous to future construction workers and residents and result in potentially significant impacts without mitigation.⁵⁶ Therefore, the GPA EIR identifies mitigation measures MM HAZ-1.1 through 1.4 to reduce any potential impacts related to agricultural residual chemicals to a less than significant level.⁵⁷ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁵⁸

Project Analysis: The total residential development acreage remains the same, and proposed Project would not impact any new type of hazardous material or increase the severity of any impact related to potential residual agricultural chemicals identified in the GPA EIR. The Phase I prepared by Blackstone Consulting in August 2012 (GPA EIR Appendix F), to investigate and identify recognized environmental conditions (RECs) which analyzed a larger 88.5 acre area, including the 19.5 acre residential development area and the Central Park, does not identify any RECs within the Project area. There are also no Project details that would result in new or more severe impacts. Therefore, the Project is subject to the same conclusions reached in the GPA EIR, is subject to the same mitigation measure requirements

⁵⁴ GPA EIR, page 130.

⁵⁵ GPA EIR, page 130.

⁵⁶ GPA EIR, page 130.

⁵⁷ GPA EIR, pages 131-132.

⁵⁸ GPA EIR Addendum, page 13.

to confirm that no RECs are present, and would have less than significant impacts with regard to agricultural chemical residue with mitigation incorporated.

Applicable Mitigation: GPA EIR mitigation measures MM HAZ-1.1 through 1.4. The Project may be required to collect soil samples per MM HAZ-1.1 to confirm the lack of RECs and carry out appropriate remediation requirements only if necessary, per MM HAZ-1.2 through 1.4.

Finding: No supplemental analysis required. Mitigation measures MM HAZ-1.1 through 1.4 set forth appropriate performance standards for implementation that would be applied as conditions of approval, and no new or different mitigation measures are required.

I. HYDROLOGY AND WATER QUALITY

HYDROLOGY AND WATER QUALITY. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river,	☐	☐	☒	☐

or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?				
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐
f) Otherwise substantially degrade water quality?	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☒
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.10 of the GPA 14-04 EIR (Hydrology and Water Quality) concludes the project site is not within the 100 year flood zone, has no waterways, or any potential for seiche, tsunami or mudflow, and less than significant impacts to groundwater recharge.⁵⁹ However, development of the site will increase the amount of impervious surfaces in the area, creating potential runoff issues prior to mitigation, and project development could propose removal of the detention pond, potentially further increasing drainage impacts.⁶⁰ The EIR therefore incorporates standard conditions of approval as mitigation measures related to the removal of the detention pond and related to construction and post construction stormwater quality, to reduce them a less than significant level.⁶¹ The

⁵⁹ GPA EIR, pages 120-122.

⁶⁰ GPA EIR, pages 120-121.

⁶¹ GPA EIR, pages 123-124.

GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁶²

Project Analysis: The total residential development acreage remains the same, and the reconfiguration would not result in any new impacts related to hydrology or water quality, or increase the severity of any impact identified in the GPA EIR because site conditions remain substantially the same now as previously. The Project does not propose the removal of the detention pond. Therefore, the Project would not result in the potential detention pond impact identified in the GPA EIR, and likewise it would not result in new or more severe impacts with regards to drainage. It would remain subject to the same applicable, standard conditions of approval as mitigation measures with regards to drainage generally. A report prepared by Schaaf & Wheeler⁶³ concludes the City's temporary stormwater easement is no longer necessary and can be removed, that the City's regional detention basis is appropriate to serve the stormwater for the Project, and recommends appropriate design criteria. The Project has also committed to providing off-site infrastructure improvements to improve the City's infrastructure but not required for the Project. See Section II.Q below for further details.

Applicable Mitigation: GPA EIR mitigation measures SM HYD-1.1 through 1.4.

Finding: No supplemental analysis required. The standard mitigation measures applicable to the Project set forth appropriate performance standards for the preparation of drainage studies and implementation of appropriate requirements that can be applied as conditions of approval to ensure impacts are less than significant, and no new or different mitigation is required.

J. LAND USE AND PLANNING

LAND USE AND PLANNING. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Physically divide an established community?	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted	☐	☐	☐	☒

⁶² GPA EIR, page 14.

⁶³ Schaaf & Wheeler, Butterfield Village Site Hydraulics and Water Quality, 9/22/2016 page 21.

for the purpose of avoiding or mitigating an environmental effect? (Note: the Airport Land Use Plan is discussed in Section VIII.)				
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.1 of the GPA EIR (Land Use) concludes that given surrounding uses and with the approval of the GPA, the development of up to 409 residential units would be in conformance with applicable land use plans, policies, and the project would be compatible with surrounding uses and result in less than significant land use impacts with no mitigation required.⁶⁴ Because the site is vacant, the project would have a less than significant impact with regard to dividing an established community.⁶⁵ With regard to the Santa Clara Valley HCP, the site is covered and future activities will be required to comply with requirements, ensuring less than significant impacts.⁶⁶ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁶⁷

Project Analysis: The total residential development acreage remains the same as does overall proposed use, with 20 fewer units. The Project site's current General Plan designation is Residential Attached Medium (16-24 DU/AC), and its Zoning District is R-3. On January 18, 2018, the City confirmed in a letter to MWest that its application No. RDCS2017-0013 for the Project is consistent with the City's General Plan and Zoning Code. The Project is consistent with and implements the policies and visions of the General Plan. Further, the Project helps to meet the City's goals for smart growth that is affordable and provides a mixture of housing. The Project will consist of 20% units affordable to Very Low Income Households as defined by State Housing and Urban Development Guidelines; it includes a diversity of two housing types, including multi-family units and single family attached townhomes; it includes both one- and two-bedroom apartments; the Project is 100% multi-family rental, which will increase the City's housing stock diversity; The Project will comply with HCP requirements, and this impact is less than significant. The Project site is still vacant, and there would be a less than significant impact with regards to dividing an existing community. Therefore, the Project would not result in new or more severe impacts as identified in the GPA EIR, and no mitigation is required.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

⁶⁴ GPA EIR, pages 15-16.

⁶⁵ GPA EIR, page 16.

⁶⁶ GPA EIR, page 15.

⁶⁷ GPA EIR Addendum, page 15.

K. MINERAL RESOURCES

MINERAL RESOURCES. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

Prior EIR Analysis: Due to a lack of mineral resources on the site or nearby, this topic was scoped out of the GPA EIR for in-depth analysis, and there would be no impact.⁶⁸ As noted in the GPA EIR, the site is developed and does not contain any known or designated mineral resources.⁶⁹ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁷⁰

Project Analysis: Nothing about the Project and/or Project site would cause any different impacts to mineral resources than what was studied in the GPA EIR. The entire Project site remains in a developed area where there are no known mineral resources, and the Project would have no impact.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

L. NOISE

NOISE. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIR
a) Expose persons to or generate noise levels in	☐	☐	☒	☐

⁶⁸ GPA EIR, Appendix A, Notice of Preparation.

⁶⁹ GPA EIR, page 13.

⁷⁰ GPA EIR Addendum, page 16.

excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				
b) Expose persons to or generate excessive ground-borne vibration or ground-borne noise levels?	☐	☐	☐	☒
c) Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
d) Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☒	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

Prior EIR Analysis: Per Section 2.3 of the GPA EIR (Noise and Vibration), the project area is not located within an airport land use plan area, within two miles of a public airports or public use airport, or private airstrip, and therefore would have no impact in that regard.⁷¹ With regard to vibration, project construction activities including drilling, jackhammering, rock drills and other high-powered equipment could generate substantial, temporary vibration, but they would be below the threshold of 0.3 in/sec PPV, resulting in a less than significant impact.⁷² The existing noise environment on the project⁷³ results primarily from

⁷¹ GPA EIR, page 54.

⁷² GPA EIR, pages 56-57.

⁷³ Please note that to the extent this analysis considers noise impacts in relation to future residents of the Project, it does so for informational purposes only pursuant to the judicial decisions in CBIA v. BAAQMD (2015) 62 Cal.4th 369, 386 and Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473, which confirm

vehicular traffic along Butterfield Boulevard and Monterey Road, as well as intermittent railroad noise along the UPRR rail corridor to the west of Monterey Road.⁷⁴ The GPA EIR identified potentially significant impacts prior to mitigation, related to interior noise exposure for the residential units adjacent to Butterfield Road and the UPRR rail corridor, and related to exterior noise impacts for the residential units adjacent to Butterfield Road, Monterey Road and the UPRR rail corridor.⁷⁵ The GPA EIR also identified short term construction noise impacts that would be potentially significant prior to mitigation.⁷⁶ The GPA EIR therefore incorporated mitigation measures to reduce all impacts related to interior, exterior, and construction noise to a less than significant level.⁷⁷ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁷⁸

Project Analysis: The Project proposed is substantially similar to that studied in the GPA EIR, and would not change the conclusions reached in the GPA EIR with respect to anticipated impacts due to distance to sources of exterior noise and interior noise, as discussed in the GPA EIR Addendum.⁷⁹ The amount and duration of construction is substantially the same as studied in the GPA EIR, and therefore construction-related noise and vibration impact conclusions are unchanged. The Project would not have any new or more severe impacts than identified in the GPA EIR, and the applicable mitigation measures identified in the GPA EIR would reduce impacts to a less than significant level.

Applicable Mitigation: Per GPA EIR mitigation measures MM NOI-1 through 3. Per MM NOI-1, the Project will be required to prepare a detailed acoustical analysis, and incorporate sound control treatment to meet City standards in the final design. Per MM NOI-2, the Project will need to incorporate design to reduce exterior noise impacts to a less than significant level, and MM NOI-3 requires compliance with a list of standard measures to reduce construction noise levels.

Finding: No supplemental analysis required. Mitigation measures set forth appropriate performance standards for the implementation of requirements necessary to reduce Project impacts to a less than significant level will be applied as conditions of approval, and no new or different mitigation measures are required.

that the impacts of the environment on a project are excluded from CEQA unless the project itself “exacerbates” such impacts. As such, any noise impacts on the future residents of the Project is not an impact under CEQA.

⁷⁴ GPA EIR, page 49.

⁷⁵ GPA EIR, pages 54-55.

⁷⁶ GPA EIR, page 56.

⁷⁷ GPA EIR, pages 57-58.

⁷⁸ GPA EIR Addendum, page 18.

⁷⁹ GPA EIR Addendum, page 18.

M. Population and Housing

POPULATION & HOUSING. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

Prior EIR Analysis: The GPA EIR notes that the site is vacant, and approval of the project would therefore not displace any people or housing, and there is no impact in that regard.

Project Analysis: As noted in the GPA EIR, the Project site is currently vacant – that includes the portion not specifically studied in the GPA EIR. It would therefore similarly have no impact with regard to displacing people or homes. Further, the Project has the same residential development acreage and 20 fewer units, and as such would have the same analysis with regard to induced growth through the construction of new residential units. While the Project is exempt from the RDCS program, it will still need to meet City requirements for sufficient services and infrastructure for development approval, ensuring less than significant impacts. Further, the Project helps to meet the City's goals for smart growth that is affordable and provides a mixture of housing. The Project will consist of 20% units affordable to Very Low Income Households as defined by State Housing and Urban Development Guidelines; it includes a diversity of two housing types, including multi-family units and single family attached townhomes; it includes both one- and two-bedroom apartments; the Project is 100% multi-family rental, which will increase the City's housing stock diversity. There are therefore no new or more severe Project-related impacts than studied in the GPA EIR.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

N. Public Services

PUBLIC SERVICES. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☐	☒
Police protection?	☐	☐	☐	☒
Schools?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.14 of the GPA EIR (Public Services) concludes that the GPA will not result in a significant impact to any public services.⁸⁰ With regard to fire protection, future residences must be constructed in compliance with building and fire codes, and review of the specific design by CalFire and the City's Police Department will ensure that appropriate safety features are incorporated to result in less than significant impacts; further, the GPA EIR concludes that construction of 409 units would not result in a significant increase in service or facility demand.⁸¹ With regard to police protection, while the increased population would result in increased service calls, future plans would be reviewed by the City's police department to ensure that development does not adversely affect service times; development of 409 units is not anticipated to require construction of new or expanded facilities, and the impact would therefore be less than significant.⁸² With regard to school facilities, the GPA EIR concludes that development of up to 409 units would increase demand on local schools, generating approximately 168 students, but it is anticipated that schools serving future development will have capacity to serve the additional students generated by

⁸⁰ GPA EIR, pages 153-154.

⁸¹ GPA EIR, page 153.

⁸² GPA EIR, page 153.

this development, resulting in a less than significant impact.⁸³ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁸⁴

Project Analysis: The total residential development acreage is the same for the Project as studied in the GPA EIR, in substantially the same location, with 20 less units, resulting in a slightly lower demand for services. Therefore, the Project would not change the conclusions reached in the GPA EIR with respect to Project impacts, and would not result in new or more severe impacts. Further, the Project has committed to the construction of off-site school-related improvements valued at \$1,000 per unit, including sidewalks along the industrial frontage of Butterfield Blvd. (west side), along Jarvis Drive (south side) to provide safe routes for students.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

O. RECREATION

RECREATION. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Result in an increased use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Include recreational facilities, or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.14 of the GPA EIR (Public Services) concludes that the residential development will not result in a significant impact to parkland, because while future development will generate additional residents requiring parkland and recreational facilities, developers will be required to comply with requirements for parkland impact fees

⁸³ GPA EIR, page 154.

⁸⁴ GPA EIR Addendum, page 19.

for the development of public parkland.⁸⁵ Impacts would therefore be less than significant.⁸⁶ The GP Update EIR confirmed that with implementation of updated General Plan and other requirements, impacts would be less than significant.⁸⁷ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁸⁸

Project Analysis: As noted in the Prior EIRs, the Project is required to comply with City park and open space requirements. While the City's parkland dedication requirements do not apply to rental projects, the Project is nonetheless voluntarily providing a total of 5.82 acres of open space and recreational areas, exceeding the City's parkland requirements by more than 50%. The open space includes the 3.2 acre Central Park which is proposed to be privately owned and maintained, but open to the public. The Project also provides two centrally-located private recreation buildings including a fitness room, club room with kitchen, mail room and leasing/management facilities; a pool, child wading pool, and spa immediately adjacent to the recreation buildings; and other recreational elements such as tot lots provided within the development. The Project will therefore voluntarily meet and exceed City requirements for parkland and recreational facilities, and there would be a less than significant impact. The Project would not result in new or more severe impacts than identified in the Prior EIRs.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

P. TRANSPORTATION/TRAFFIC

TRANSPORTATION/TRAFFIC. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and	☐	☒	☐	☐

⁸⁵ GPA EIR, page 154.

⁸⁶ GPA EIR, page 154.

⁸⁷ GP Update EIR, pages 4.13-39-42.

⁸⁸ GPA EIR Addendum, page 21.

mass transit?				
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☒	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☐	☐	☒
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☒

Prior EIR Analysis: Section 2.2 of the GPA EIR (Transportation) assumes and analyzes impacts for up to 410⁸⁹ residential units (21 more than proposed), with a calculated estimated 2,727 daily trips, with 209 occurring during the AM peak hour and 254 trips occurring during the PM peak hour.⁹⁰ This analysis likely overstate trip counts, because the “apartment” category in the model was used, rather than lower trip count “condo/townhouse” or “low-rise apartment” categories.⁹¹ Applying assumptions and specific estimates based on proposed use, the GPA EIR concluded that under existing plus project conditions, the project would not result in significant level of service impacts to roadway intersections, but would result in significant and unavoidable freeway impacts, with no feasible mitigation because Caltrans would be required to widen US 101 between Morgan Hill and Gilroy.⁹² Otherwise with regard to congestion, project impacts would be mitigated to a less than significant level with the implementation of improvements identified

⁸⁹ While the majority of GPA EIR and GPA EIR Addendum assumed up to 409 units, the traffic analysis conducted by Hexagon Transportation Consultants, Inc. dated June 25, 2014 (GPA EIR, Appendix B), conservatively assumed up to 410 units.

⁹⁰ GPA EIR, page 35.

⁹¹ GPA EIR, page 35.

⁹² GPA EIR, pages 36 to 39.

in GPA EIR mitigation measures MM TRAN-2.1 and MM TRAN-3.1, as they become required for future development.⁹³

With regard to transit, pedestrian, and bicycle facilities, the GPA EIR concludes that existing transit facilities and service can serve the development, that future development would improve pedestrian and bicycle circulation, and impacts would be less than significant with no mitigation required.⁹⁴ Further, City requirements for review of site design would ensure that site access and circulation requirements are met and impacts would be less than significant in that regard.⁹⁵ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.⁹⁶

Project Analysis: The total residential development acreage remains the same, with 21 fewer units than analyzed and very similar proposed use pattern, resulting in substantially similar Project trip estimates and impacts. Further, the Project has committed to transportation improvements, including: dedication and improvements to the off-site industrial serving portion of the Sutter Extension from Main Street to Digital Drive; aligning Main Street with the opposing Jarvis entrance to Madrone Plaza and connecting to the new Sutter Extension to be constructed by the Project; extending streets to the adjoining undeveloped industrial land to provide future access; dedicating/constructing the Sutter Extension, which will provide access to the adjacent industrial land via Butterfield Blvd.; off-street bicycle and pedestrian connections including the Monterey/Sutter Greenways and Central Park (aka Butterfield Park) trails; the construction of “complete streets” for the Project; treated pavement at all primary pedestrian street crossings; direct pedestrian access from units to common open space, recreational facilities, and the Central Park. With regard to transportation demand management and alternative modes of travel, the Project has committed to providing no less than four EV charging stations; one month free car share membership or transit pass for each unit; one on-site cargo bicycle available for residents’ use; and establishment and operation of a commute assistance center offering on-site, one-stop shopping for transit and commute alternatives information. The Project is likewise subject to City review requirements to ensure sufficient circulation and access to the Project site, ensuring less than significant impacts. In the event the Project triggers the necessary improvements identified in mitigation measures MM TRAN-2.1 and MM-TRAN-2, such mitigation measures would apply to the Project and be required to reduce impacts to a less than significant levels.

Applicable Mitigation: GPA EIR mitigation measures MM-TRAN-2.1 and MM-TRAN-3.1, if triggered by Project development would be applied as conditions of approval.

Finding: No supplemental analysis required. Applicable mitigation sets forth standards for the City to require a warrant analysis to determine whether such mitigation is necessary to

⁹³ GPA EIR, pages 45-46.

⁹⁴ GPA EIR, page 45.

⁹⁵ GPA EIR, page 45.

⁹⁶ GPA EIR Addendum, pages 22-23.

reduce impacts as part of final project design and conditions of approval. No new or different mitigation is required.

Q. UTILITIES AND SERVICE SYSTEMS

UTILITIES AND SERVICES SYSTEMS. <i>Compared to the assumptions, analysis and conclusions presented in the certified EIRs, would the Project:</i>	Significant and Unavoidable Impact, new or substantially more severe than in the EIRs	Significant and Unavoidable Impact, consistent with the EIRs	Less Than Significant Impact with Mitigation, consistent with the EIRs	No Impact or Less Than Significant Impact, consistent with the EIRs
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment or distribution facilities, or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of a new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider that serves the project area that it does not have adequate capacity to serve the project area's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
f) Be served by a landfill with insufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒

g) Fail to comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☒
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Prior EIR Analysis: Section 2.12 of the GPA EIR (Utilities and Service Systems) concludes that development of up to 409 residential units on the site will not result in a significant impact to any utilities or service systems.⁹⁷ With regard to water service and supply, the GPA EIR estimates that approximately 1,243 residents would live in the 409 units, creating a demand of 241,724 gallons per day, for which developers would need to demonstrate appropriate water service and supplies per City requirements, ensuring a less than significant impact.⁹⁸ Further, as demonstrated in the GP Update EIR, even while under long-term drought conditions, the City has planned for and would have sufficient water supplies to serve buildout under the General Plan from existing entitlements and resources, and new or expanded entitlements would not be required.⁹⁹ Similarly, the GP Update EIR concludes that in the event any new development requires the expansion of water facilities or new facilities, City requirements would ensure that such facilities are constructed and that impacts would be less than significant.¹⁰⁰

With regard to wastewater treatment and sewer capacity, the GPA EIR concludes that based on available capacity at the existing wastewater treatment facility, combined with City approval processes to ensure appropriate facilities for wastewater treatment and sewers are provided for all development, impacts would be less than significant.¹⁰¹ With regard to the storm drainage system, the GPA EIR notes that all development is subject to City drainage requirements, ensuring that impacts would be less than significant; further, capacity of off-site drainage facilities and the potential requirement for new facilities will be confirmed for future development, ensuring less than significant impacts.¹⁰²

With regard to solid waste impacts, the GPA EIR concludes that development of 409 units would result in approximately 2,180 pounds of waste per day.¹⁰³ Per a study, the City's waste diversion rate exceeds the 50 percent standard set by AB 939, and is 62 percent; further, City requirements would ensure appropriate solid waste capacity for any development, and future development would need to comply with all local, state, and federal regulations, ensuring less than significant impacts.¹⁰⁴ The GPA EIR Addendum confirmed that reconfiguration would not change impacts identified in the GPA EIR.¹⁰⁵

⁹⁷ GPP EIR, pages 133-139.

⁹⁸ GPA EIR, page 136

⁹⁹ GP Update EIR, pages 4.15-16 to -20.

¹⁰⁰ GP Update EIR, page 4.15-21.

¹⁰¹ GPA EIR, page 137.

¹⁰² GPA EIR, page 138.

¹⁰³ GPA EIR, page 139.

¹⁰⁴ GPA EIR, page 139.

¹⁰⁵ GPA EIR Addendum, pages 23-24.

Project Analysis: The Project residential development acreage is the same as studied in the GPA EIR, and Project is 20 less units than studied in the GPA EIR. The Project would therefore not result in new or more severe impacts than identified in the GPA EIR, and no mitigation is required. Further, analysis has shown that the Project can be served by existing water distribution lines, the Project has committed to installing a new main in the Sutter Road Extension to contribute toward the City's grid system. Analysis has also shown that the existing wastewater collection system is sufficient to serve the Project, the Project has committed to providing off-site sewer service in the new Sutter Road Extension. With regard to water efficiency, the Project has committed to exceed minimum requirements for indoor water efficiency and conservation by no less than 10% and outdoor per 20% per CalGreen standards, that it will contain no natural turf outside common areas used for active play, and that it will install appropriate subsurface irrigation for all private natural turf areas within the Project.

Applicable Mitigation: None required.

Finding: No supplemental analysis required.

III. DETERMINATION:

On the basis of this evaluation, for the reasons described herein, we conclude that although the Project could have a potentially significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to the Prior EIRs to the greatest extent feasible, including mitigation measures that are imposed upon the proposed project, nothing further is required. In summary, for all impacts that relate to project nature and intensity (e.g. traffic, air quality, water quality, noise, greenhouse gas emissions, public services, utilities, and energy), the project is substantially the same size and density so there is no change in impacts. For all impacts that are footprint related (e.g., cultural, biology, hazardous materials, aesthetics, hydrology), the nature of the resources on the property is essentially the same as the original project site studied in the GPA EIR and was covered by the more geographically comprehensive GP Update EIR, so that there is no change in impacts. Applicable mitigation measures set forth appropriate performance standards for the formation of Project-specific requirements to ensure impacts are reduced to a less than significant level to the greatest extent feasible, and no new or revised mitigation measures are necessary.

Signature

Date

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this 17th day of September 2018, by and between THE CITY OF MORGAN HILL ("CITY"), a municipal corporation, and MWEST PROPCO XXIII LLC d/b/a, DivcoWest Silicon Valley Investments ("MWEST"), referred to herein collectively as the "Parties" and individually as "Party."

RECITALS

- A. The Housing Accountability Act ("HAA") provides, *inter alia*, that "[a] local agency shall not disapprove a housing development project . . . for very low, low-, or moderate-income households . . . or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households," unless the agency makes written findings, based upon a "preponderance of the evidence in the record," that one of five specific criteria in the statute are satisfied, Gov. Code §65589.5(d).
- B. MWEST is the applicant for the Cochrane-MWest Project ("Project"), a 389-unit multi-family rental development in the City of Morgan Hill, which Project consists of only residential units and will provide 20% of the Project's units (78 units) to very low-income households, and which Project, as a large multi-family rental project, is infeasible to finance and construct without sufficient certainty of entitlements to build and occupy the entire project.
- C. The Project qualifies as a housing development project for very low, low-, or moderate income households under the HAA.
- D. Under the CITY's local ordinances, a housing development applicant cannot receive permits from the City to develop housing until the applicant receives sufficient allotments through the Residential Development Control System ("RDCS") program, which program requires the Morgan Hill Planning Commission to evaluate residential developments on the basis of defined criteria adopted by ordinance of the City Council.
- E. MWEST applied for allotments for the Project through the RDCS program in the 2015/2016 and 2016/2017 competitions, receiving zero RDCS allotments in 2015/2016, and ten allotments in 2016/2017, out of 389 units in the Project.
- F. Measure S, adopted by Morgan Hill voters on November 8, 2016, amended the City's RDCS ordinance to, *inter alia*, authorize multi-year RDCS allotments, and to authorize Morgan Hill City Council and Morgan Hill Planning Commission to determine how many multi-year allotments to distribute in a given year based on written findings. MHMC 18.156.140 (E).¹
- G. On January 4, 2018, MWEST submitted its most recent application for the 2017/2018 competition to Morgan Hill Planning Commission ("Commission"), this time for a multi-year allocation of 379 units in order to allow the development

¹ The City adopted a comprehensive zoning code ordinance update on June 6, 2018. As a result of this update, Chapter 78 of Title 18 was renumbered as Chapter 156.

of the Project (RDCS 2017-0013, the "Application").

- H. On May 22, 2018, the Commission adopted Resolution No. 18-13, awarding 71 allotments to the Project, but denying MWEST's Application for multi-year allotments, leaving MWEST with RDCS allotments for only 81 out of the 389 units in the Project.
- I. On June 4, 2018, MWEST timely appealed the Commission's denial of the Application for multi-year allotments (Appeal No. AAE20018-006, the "Appeal") to Morgan Hill City Council ("City Council").
- J. On June 20, 2018, the City Council voted to deny the Appeal, rejecting the Application.
- K. Neither the Planning Commission nor the City Council made the findings required by the Housing Accountability Act, Gov. Code § 65589.5(d) when denying the Application, and none of the findings in Gov. Code § 65589.5(d) could validly be made.
- L. On August 20, 2018, MWEST filed a Petition for Writ of Mandate in Santa Clara County Superior Court, Case No. 18CV333676, *MWest Propco XXIII v. City of Morgan Hill, et al.* ("Action"), which Petition was served upon CITY on August 28, 2018.
- M. The Parties have determined that it is in their mutual interest to settle this dispute without further litigation on the terms and conditions set forth in this Agreement.

WHEREFORE, for valuable consideration, including the obligations and terms as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The CITY and MWEST shall promptly file with the Santa Clara County Superior Court the stipulated judgment and proposed order attached hereto as Exhibit A.

2. The CITY and MWEST shall, no later than October 17, 2018, take any and all actions necessary to agree to, and to introduce an ordinance adopting, a Development Agreement approving the Project, and thereafter promptly schedule a second reading of such ordinance, at which the CITY council will take final action to adopt an ordinance approving such Development Agreement. Such Development Agreement shall confirm that the requirement for building allotments under the RDCS Ordinance is unenforceable as applied to the Project, and shall not condition approval of the Project in any manner that renders the Project infeasible for development. The Development Agreement will be in form and content substantially similar to the draft attached hereto as Exhibit B.

3. Release and Waiver

The Parties hereby release and forever discharge each other and all of their respective present and former subsidiaries, subdivisions, Board, Council, officers, directors, executives, agents, employees, affiliates, attorneys and each and all of their respective predecessors, successors, spouses, assigns and insurers, from any and all liability, claims, demands and causes of action, and all matters relating, involving and/or pertaining, directly or indirectly, to all

aspects of the Action or any other claim related to the Action, known or unknown, which may now be available or may be discovered at a future date.

It is understood and agreed that this is a full and final mutual release of the Action. The Parties agree, as further consideration and inducement for this Agreement, to waive the provisions of California Civil Code §1542 which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This Release and Waiver only releases and waives claims arising from actions, failures to act, events and occurrences taking place on or before June 20, 2018, and does not release or waive any claims arising out of actions, failures to act, events or occurrences taking place after that date.

Notwithstanding any potentially inconsistent provisions in this Section, if CITY does not comply fully with Sections 1 and 2 of this Agreement, MWEST reserves the right to take any and all appropriate legal action to enforce the requirements of the Housing Accountability Act, Gov. Code § 65589.5, including but not limited to proceeding to litigate the claims brought in the Action and seeking an award of any and all attorney’s fees, costs of suits, and fines authorized under the Housing Accountability Act.

4. Cooperation on Additional Documents

Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement, including, but not limited to, any documents requested by the City relating to the dismissal of the Action and this Agreement.

5. Binding Effect and Third Parties

The Parties agree that the obligations and benefits arising out of the Agreement, including, but not limited to, the Release set forth in Section 3, and each of the terms of this Agreement, shall be binding upon and shall inure to the benefit of any successors and assigns of the Parties. This Agreement is not for the benefit of any person not a party to this Agreement.

6. Additional Terms

6.1 Final Integrated Agreement

This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between the Parties, whether written or oral.

6.2 Understanding of Agreement

Each Party understands and agrees to this Agreement, the terms and conditions contained herein and in the documents referred to herein, and has relied upon his, her, or its own judgment, belief, knowledge, understanding, and expertise after careful consultation with his, her, or its own legal counsel concerning the legal effect of all of the terms of this Agreement.

6.3 Voluntary Settlement

Each Party enters into this Agreement knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion, or undue influence and, after careful thought and reflection upon the settlement, this Agreement and the documents referred to herein; and, accordingly, by signing this Agreement and the documents referred to herein, each signifies full understanding, agreement, and acceptance. The Parties acknowledge and represent that this Agreement has been prepared and its negotiation has been carried on by the joint effort of the Parties. This Agreement shall be construed as if it were drafted by all Parties and not strictly for or against any one or more of the Parties. Each Party to this Agreement acknowledges and represents that he/she/it has read this Agreement and understands all of its terms.

6.4 Investigation of Facts; Consultation with Independent Counsel

Each Party has investigated the facts and had the opportunity to consult with independent counsel pertaining to this Agreement and all matters pertaining thereto as deemed necessary by each.

6.5. California Law

This Agreement, and the documents referred to herein, shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

6.6. Severability

In the event that any provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof shall remain in full force and effect.

6.7. Multiple Counterparts

This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles shall constitute good evidence of such execution.

6.8. Waiver, Modification, and Amendment

No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any

respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

6.9. Effective Date

Upon execution by all Parties, this Agreement shall be effective as of the date first above written.

6.10. Captions/Language

Section, paragraph, and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of this Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement. In the language of this document and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neutral genders, shall each be deemed to include all others, and the word "person" shall be deemed to include corporations and every other entity, as the context may require.

6.11. Attorneys' Fees

- a. Fees and Costs Already Incurred. Each Party shall be responsible for its own costs and attorneys' fees incurred.
- b. Proceedings to Enforce Agreement. In any proceeding at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorneys' fees incurred in the enforcement proceeding by the prevailing Party (including, without limitation, such costs, expenses, and fees on any appeals) and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses, and attorneys' fees shall be included in and as part of the judgment.

6.12. Signatories Authority

Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and such Party has full right and authority and has obtained all consents and approvals and taken all actions necessary to enter into this Agreement, perform all of its obligations hereunder, and consummate all transactions contemplated under this Agreement.

6.13. Notice

Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by

certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed to a Party as provided in this Section or such other address as such Party may request by notice given in accordance with the terms of this Section.

Notice to MWest shall be provided as follows:

MWest PropCo XXIII LLC d/b/a DivcoWest Silicon Valley Investments
Attn: Ryan McDaniel
3351 Olcott Street
Santa Clara, CA 95054

With copy to: Tamsen Plume
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111

Notice to CITY shall be provided as follows:

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

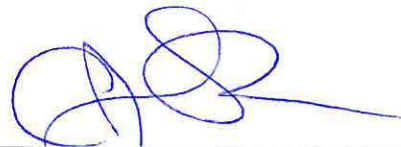
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MORGAN HILL, CALIFORNIA
a California municipal corporation

APPROVED:



DONALD A. LARKIN
City Attorney



CHRISTINA TURNER
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

Signatures to follow on next page

MWest PropCo XXIII LLC, a Delaware limited liability company, d/b/a, DivcoWest Silicon Valley Investments

By:



Signature of Person executing the Agreement on behalf of Developer

Name:

Steve Novick

Title:

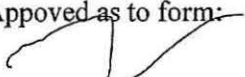
Authorized Signatory

Local Address:

575 Market Street, 35th Floor

San Francisco, CA 94015

Approved as to form:



Tamsen Plume

Holland & Knight

Attorneys for MWest

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

Exhibit A

Form of Stipulated Judgment and Proposed Order

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

Jennifer L. Hernandez (SBN 114951)
 Tamsen Plume (SBN 197557)
 Daniel R. Golub (SBN 286729)
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 MWEST PROPCO XXIII LLC

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Attorney for Respondents
 CITY OF MORGAN HILL and MORGAN HILL CITY COUNCIL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SANTA CLARA**

MWEST PROPCO XXIII LLC,
 Petitioner,

v.

CITY OF MORGAN HILL and MORGAN
 HILL CITY COUNCIL,
 Respondents.

Case No. 18CV333676

**STIPULATED JUDGMENT;
 [PROPOSED] JUDGMENT AND ORDER;
 [PROPOSED] PEREMPTORY WRIT OF
 MANDATE**

Before: Hon. Mary E. Arand
 Department: 9

WHEREAS, the Housing Accountability Act (“HAA”) provides, *inter alia*, that “[a] local agency shall not disapprove a housing development project . . . for very low, low-, or moderate-income households . . . or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households,” unless the agency makes written findings, based upon a “preponderance of the evidence in the record,” that one of five specific criteria in the statute are satisfied, Gov. Code §65589.5(d); and

Settlement Agreement Execution Form 9/12/18

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT**BY AND BETWEEN****THE CITY OF MORGAN HILL****AND****MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY
INVESTMENTS****REGARDING****BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT****Effective Date: _____**

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

Settlement Agreement Execution Form 9/12/18

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MORGAN HILL MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS REGARDING BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the CITY OF MORGAN HILL, a California municipal corporation, (hereinafter "**City**"), and MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS a Delaware limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its MHMC (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer is the fee owner of the approximately 19.5-acre property as more particularly described in Exhibit A (the "**Property**").

C. The Developer proposes to plan, develop, construct, operate and maintain a high quality 389-unit multi-family residential apartment project on the Property, and to make twenty percent (20%) of the units affordable and income restricted to Very Low Income Households earning fifty percent (50%) of the Area Median Income ("**VLI Units**"), and as the project is further defined below ("**Project**").

¹ On June 6, 2018, the City adopted a comprehensive zoning code update, which resulted in a renumbering of all code sections in Title 18 of the Municipal Code. All references are to the revised code section numbers.

D. The Project will be the first market rate project in the City to provide 20% VLI Units, and will help the City meet its Regional Housing Needs Allocation requirements pursuant to California Government Code Section 65584 (“**RHNA**”) for VLI Units, an income category in which the City is currently deficient under State Housing Law.

E. The City and Developer have entered that certain unrecorded Settlement Agreement between the City and Developer dated September [REDACTED], 2018 (“**Settlement Agreement**”), including a Stipulated Judgment (Case #18CV333676) dated September [REDACTED], 2018 (“**Stipulated Judgment**”) related to the City’s violation of Section 65589.5(d) of the California Government Code (the “**Housing Accountability Act**”), whereby MHMC Chapter 18.156 (“**Residential Development Control System**”, or “**RDCS**”) is without legal and/or equitable force and effect as applied to the Project. Pursuant to the Settlement Agreement and Stipulated Judgment, this Agreement serves to: (1) confirm that RDCS has no Legal Effect (as defined below) on the Project; and (2) implement the other terms of the Settlement Agreement and Stipulated Judgment, including securing for the City, in a permanent and enforceable manner, the Developer’s public benefits and voluntary commitments with respect to the Project. These public benefits and voluntary commitments include but are not limited to (and as further and more precisely defined below): (i) providing 20% VLI Units; (ii) the extension of Sutter Road and related utilities from Butterfield Boulevard to Digital Drive to help catalyze industrial development on the adjacent property; (iii) the construction of an approximately 3.2 acre park and a system of trails and pathways that will be publicly accessible, but privately owned and maintained; and (iv) a sidewalk along the Butterfield Boulevard frontage to provide a safe route for pedestrians and school children.

F. And, in light of the commitment to provide 20% VLI Units to help the City meet its RHNA requirements under State Housing Law, this Agreement also confirms, consistent with the Settlement Agreement, the City’s commitments to: (1) expedite and streamline the remaining entitlements to allow for the construction and occupancy of the Project; (2) cooperate and take all actions necessary to assist the Developer to obtain 20-50 Financing (as defined below) for the 20% VLI Units, (3) approve and authorize all actions necessary to remove and terminate that certain temporary overflow stormwater limitation on Lot 26 (“**Stormwater Detention Note**”) as noted on Sheet 2 of that certain Parcel Map recorded in the Official Records of Santa Clara County on September 27, 2000 as Instrument No. 15404436 (“**2000 Parcel Map**”); and (4) to the extent consistent with law, approve and authorize all actions necessary to permit stormwater from the Project to use the City’s detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map.

G. As of the Effective Date of this Agreement, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively “**Existing Approvals**”), including without limitation, all of the following:

1. Environmental Impact Report for Butterfield-MWest General Plan Amendment Project and Addendum (GPA-14-04) (SCH #2014072009 (“**GPA EIR**”)and

Environmental Assessment for Butterfield Village Multi-Family Residential Project Development Agreement (File No. DA-18-) (“**Development Agreement EA**”)

2. Butterfield-MWest General Plan Amendment (GPA-14-04) (“**GPA**”)
3. 2016 Morgan Hill General Plan (“**General Plan**”)
4. Butterfield-MWest Zoning Amendment (File No. ZA-15-12) (“**Rezoning**”)

On January 18, 2018, the City confirmed by letter (Application No. RDCS2017-0013) that the Project conforms to the General Plan and City’s zoning code (the Project has also been referred to by the City as the “Cochrane-MWest Project.”)

H. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City’s General Plan and City’s Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On _____, 2018, following duly noticed and conducted public hearings before the Planning Commission and City Council with respect to the Project, the Morgan Hill City Council (“**City Council**”) introduced Ordinance No. _____ (“**Ordinance**”) affirming CEQA compliance under the GPA EIR and Rezoning EA, finding that the provisions are consistent with the General Plan, finding the provisions are consistent with the Settlement Agreement and Stipulated Judgment, approving this Agreement, and directing this Agreement’s execution by City. The City adopted the Ordinance on _____, 2018, and the Ordinance became effective thirty (30) days later. The “**Effective Date**” in this Agreement shall be the date that the Ordinance became effective, and shall be inserted by the City Clerk shall be inserted on the cover sheet prior to recordation.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

“**20-50 Financing**” shall public financing from any or all of the following sources: (i) private activity tax exempt bond financing (tax-exempt through a volume cap allocation from the California Debt Limit Allocation Committee), (ii) LIHTCs available under Section 42 of the Code and allocated through the TCAC, (iii) any property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise

permitted by the California Board of Equalization, and (iv) any other tax credits and/or other special financing programs that are available to projects that provide at least 20% VLI Units.

“20-50 Financing Requirements” shall mean any and all terms, conditions, obligations, restrictions, requirements necessary for the Developer to apply for, obtain and comply with the 20-50 Financing for the Project.

“2000 Parcel Map” shall have that meaning set forth in Recital F.

“Actual Household Size” means the actual number of persons in the applicable household, as determined by TCAC.

“Administrative Amendment” shall have that meaning set forth in Section 3.05.

“Adjusted for Family Size Appropriate to the Unit” shall be determined consistent with Section 42(g)(2) of the IRC (or successor provision) if applicable.

“Affordable Rent” means the amounts, and fees charged by Developer for occupancy of a VLI Unit by a tenant and required to be paid by such tenant for such VLI Unit on a non-optional basis as determined by Section 42(g)(2)(A) of the Code. For avoidance of doubt, the schedules of Affordable Rent published by TCAC shall be conclusively presumed to be the correct Affordable Rent for the VLI Units.

“Applicable Law” shall have that meaning set forth in Section 2.01(a) of this Agreement.

“Area Median Income” or “AMI” means the median income for Santa Clara County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by TCAC.

“CDLAC” means the California Debt Limit Allocation Committee and any successor agency or authority.

“Central Park” or “Butterfield Park” shall mean that approximately 3.2-acre park as generally consistent with Exhibit B that shall be a privately-owned, privately maintained park subject to public access during standard operating hours and subject to reasonable and uniformly-applied rules and regulations on use and conduct.

“Central Park Construction Costs” shall have that meaning set forth in Section 2.04(c) of this Agreement.

“City Commitments” shall have that meaning set forth in Section 2.04(b) of this Agreement.

“City’s Authorized Representative” means the City Manager of the City of Morgan Hill or his or her designee.

“CSCDA” means the California Statewide Communities Development Authority.

“Construction Codes” shall have that meaning set forth in Section 2.05 of this Agreement.

“Design Review” shall mean approval of architectural, site and landscape approval for the Project prior to construction pursuant to Chapter 18.74 of the MHMC.

“Developer Commitments” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“Development Factors” shall have that meaning set forth in Section 2.06(a) of this Agreement.

“Director” shall mean the Director of Community Development, and his or her designee.

“District” shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 *et seq.*, the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

“Effective Date” shall be as set forth in Section 1.01 of this Agreement.

“Existing Approvals” shall have that meaning set forth in Recital G of the Recitals of this Agreement.

“Existing City Laws” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, green building standards, and other City land use regulations in force and effect on the Effective Date of this Agreement, with the exception of RDCS which is expressly hereby excluded from the definition of Existing City Laws for the purposes of this Agreement.

“General Plan” shall have that meaning set forth in Recital G.

“GPA” shall have that meaning set forth in Recital G.

“GPA EIR” shall have that meaning set forth in Recital G.

“**Gross Income**” shall have the meaning set forth in Section 42 of the IRC, as such section may be revised from time to time.

“**Housing Accountability Act**” shall mean California Government Code have the meaning set forth in Recital E.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Impact Fees**” shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to MHMC Chapter 3.56 and California Government Code Section 66001 *et seq.*

“**IRC**” means the Internal Revenue Code of 1986, as amended.

“**IRS**” means the Internal Revenue Service.

“**Legal Effect**” shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

“**LIHTCs**” means low-income housing tax credits.

“**Ministerial Permits**” shall mean grading permits, building permits, fire permits, improvement plans and improvement agreement, certificates of occupancy, and any other “over-the-counter” permits and approvals required under the MHMC for the construction and occupancy of the Project, consistent with this Agreement, including Existing Approvals, Applicable Law, Construction Codes, Design Review and the Subdivision Document.

“**MHMC**” shall mean the Morgan Hill Municipal Code.

“**New City Laws**” shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes Legal Effect after the Effective Date of this Agreement, and that applies City wide.

“**Official Records**” means the Official Records of the Santa Clara County Recorder.

“**Park Impact Fees**” shall mean those development impact fees related to park and recreational facilities pursuant to MHMC Section 3.56.030(A)(5).

“**Project**” means a high quality 389-unit multi-family residential apartment project, including 20% VLI Units as set forth in Section 2.04(b) of this Agreement, and related

infrastructure, circulation, parking, landscaping, park and open space as conceptually described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property."

"Project Approvals" mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

"Property" shall mean that certain real property consisting of approximately 19.5 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.

"RDCS" means the Residential Development Control System set forth in Chapter 18.78 of the MHMC.

"Required City Entitlements" shall have that set forth in Section 2.04(b)(1) of this Agreement.

"Rent Restricted" means the rent restrictions under Section 42(g)(2)(A) of the IRC.

"Rezoning" shall have that meaning set forth in Recital G.

"Rezoning EA" shall have that meaning set forth in Recital G.

"RHNA" shall have that meaning set forth in Recital D.

"Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.

"Settlement Agreement" shall have that meaning set forth in Recital E.

"Severe Economic Recession" means a decline in the monetary value of all finished goods and services produced in the United States ("US"), as measured by initial quarterly estimates of US Gross Domestic Product ("GDP") published by the US Department of Commerce Bureau of Economic Analysis (and not BEA's subsequent monthly revisions), lasting more than four (4) consecutive quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

"Stipulated Judgment" shall have that meaning set forth in Recital E.

"Subdivision Document" means, pursuant to the California Subdivision Map Act and this Agreement, a lot merger or lot line adjustment necessary and appropriate to make the Property suitable for the construction, operation, ownership and financing of the Project.

"Subsequent Approvals" and "Subsequent Approval" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are

sought by Developer, and that are granted by City after the City Council adopts the Ordinance pursuant to Section 3.01.

“**Substitution of Developer Commitments**” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“**Sutter Road Extension**” shall have the meaning set forth on in Section 2.04(a)(4) of this Agreement.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**TEFRA**” means the Tax Equity and Fiscal Responsibility Act of 1982.

“**Temporary On-Site Stormwater Detention Note**” shall have the meaning set forth in Recital F.

“**Term**” shall have that meaning set forth in Section 1.03 of this Agreement.

“**VLI**” means Very Low Income.

“**VLI Unit**” means a dwelling unit that is Rent Restricted for occupancy at an Affordable Rent by Eligible Households which shall be dispersed throughout the Project, with the exception of the for rent townhome-style units, in compliance with Section 42 of the Code and requirements of the 20-50 Financing, including but not limited to TCAC and CDLAC.

“**Very Low Income Household**” is a household whose household Gross Income is no greater than 50 percent (50%) of AMI adjusted for Actual Household Size, as determined by TCAC.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the MHMC.

1.03 Term.

(a) The term (“**Term**”) of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the issuance of a certificate of occupancy for all units in the Project or (2) ten (10) years plus one day after the Effective Date; provided however that if the Developer constructs the Project, Developer’s obligations pursuant to Sections 2.03 and 2.04 of this Agreement shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement, and provided further that the City’s obligations under Section 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with any 20-50 Financing Requirements until such time as the 20-50 Financing is no longer outstanding or subject to recapture.

(b) If any “**Third-Party Challenge**” (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment (“**Litigation Tolling**”). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, “**Applicable Law**” shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Stipulated Judgment
- (3) Settlement Agreement
- (4) Existing Approvals.
- (5) The Subsequent Approvals, provided such Subsequent Approvals
are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (6) The “Existing City Laws” that are not in conflict with this Agreement and the Project Approvals.

- (7) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law, but only to the extent and as provided in this Agreement.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Existing Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of Impact Fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts,

Community Facilities Districts, Assessment Districts, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by Developer, in its reasonable discretion, pursuant and subject to this Agreement and all appropriate and applicable City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees, but only to the extent such Impact Fees exist and in the amounts in Legal Effect as of the Effective Date, and shall pay such Impact Fees when they become due and payable as provided for in the City's Municipal Code, and to the extent possible Impact Fees will be designated to such capital expenditure related to Project infrastructure.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer or City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

(d) Approval of the Financing Mechanisms. The City and the Developer agree that the construction of public improvements (including but not limited to the Sutter Road Extension and other infrastructure, open space and circulation to serve the Project) may be financed by a District or Districts which could encompass the Property, and, to the extent other property owners outside the Property are interested or benefit and are made part of such District in accordance with all applicable law, such other lands. If the Developer requests formation of a District, the Developer will be deemed to have consented to formation of such District(s), to the

assessments or taxes ratably allocated to the Property by the District(s), and to having the Property included within the District(s). The Developer agrees to cooperate in the City's formation of the District or Districts and in the performance by the District(s) of its responsibilities. The City and Developer agree that, unless the City and the Developer agree otherwise, the assessments or special taxes for any District formed will be collected from any parcels only after the issuance of building permits for such parcels. City, as the legislative body of any District, shall proceed with all good faith to consider at a noticed public meeting of the legislative body, the adoption of a resolution of intention and a rate and method of apportionment or an engineer's report, establishing a special tax or assessment to be levied semi-annually on property within the District(s), subject to the provisions of subsections (a) and (b) below. City, as legislative body of the District(s), shall thereafter, in accordance with the appropriate legislation for the Financing Mechanism, consider a resolution of formation for the adoption of such District(s) and shall further hold all elections of the qualified voters thereof in connection with the establishment of a District(s) and the approval of such special tax or assessment. City, as legislative body of the District, further agrees to simultaneously consider (or at such time as California law shall otherwise require) the adoption of a resolution of issuance of bonds secured by such special tax or assessment in an amount as is necessary to finance the Improvements and the Impact Fees that may be required in connection with the development of the Project; provided, however, that the amount of such bonds shall be dictated by prudent underwriting standards, as may be required by an underwriter selected by the City. In all respects, City agrees to use its good faith efforts to implement such requests, and Owner shall rely on such good faith efforts in connection with the consideration provided hereunder by Owner. City shall also use its good faith efforts to enter into joint facilities financing agreements with other eligible recipients of District proceeds. For the purposes of clarity, the term "Financing Mechanism" as used in this Section 2.03(d) shall not include the 20-50 Financing which is considered separate and essential to support the VLI Units and is not subject to City approval and is instead subject to Section 2.04(b)(2) of this Agreement.

(A) General Parameters for Approval of Financing Mechanisms.

1. Upon written request of City, Developer will advance amounts necessary to pay all costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism. City staff shall meet with the Developer to establish a preliminary budget for such costs, and will confer with Developer from time to time as to any necessary modifications to that budget.

2. Any Financing Mechanism may provide for the reimbursement to Developer of any advances by Developer for any costs incurred in Section (a)1 above, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer at such time as Developer makes application for

reimbursement. Prior to the filing by Developer of a petition to request that the City institute proceedings to create a District, City and Developer shall enter into a deposit and reimbursement agreement, mutually acceptable to both City and Developer that provides for the deposit by Developer of funds sufficient to commence proceedings to form any Financing Mechanism and the reimbursement of such amounts from the available bond or assessment proceeds.

(B) Financing Parameters for Approval of Financing Mechanisms.

1. Any Financing Mechanism shall be secured solely by assessments or special taxes levied within the respective District, proceeds of the bonds issued that are placed in a bond fund, reserve fund or other such fund for the financing and investment earnings thereon. City's general fund shall not be pledged to the repayment of any public financing contemplated by this Section. Notwithstanding anything to the contrary in this Agreement, nothing herein would preclude the City from pursuing other financing alternatives as is necessary to finance infrastructure, public facilities, including but not limited to the Improvements and/or Impact Fees, if it would be in the best interest of the City.

2. The payment of reasonable initial and annual administrative costs of the City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology and the City's general fund shall not be called upon to provide for initial or any annual administrative costs related to the Financing Mechanism.

2.04 Developer and City Commitments and Obligations.

(a) Developer Commitments and Obligations

(1) Developer Commitments. The Developer's public benefit commitments for the Project set forth in Exhibit C ("**Developer Commitments**") are voluntarily proposed and agreed to by Developer in return for benefits derived from this Agreement, including but not limited to the City Commitments in Section 2.04(b). These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition, except as expressly provided in this Agreement. The Developer Commitments set forth in Exhibit C shall be enforceable by the City through this Agreement. In the event of any conflict between Exhibit C and the text of this Agreement, the text of this Agreement shall control. In the event of any conflict between Exhibit B and Exhibit C, Exhibit C shall control. Substitution of Developer Commitments or adjustments in implementation timing may be approved by the Director of Community Development if such substitution or

implementation timing adjustment would not degrade the quality of the Project, materially lower the value of the Developer Commitments, or would subject the Project to further environmental review under CEQA (“**Substitution of Developer Commitments**”). Any approved Substitution of Developer Commitments shall be documented through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(2) Affordable Housing. Twenty percent (20%) of the residential units in the Project shall be Rent Restricted at the Affordable Rent for Very Low Income Units and occupied (or if vacant, available for occupancy) by Very Low Income Households. The Developer shall submit a plan for the location of the VLI Units with the application for Design Review. Developer reserves the right to determine the specific location of the VLI Units provided the location is allowed under the 20-50 Financing. Subject and subordinate to any conflicting 20-50 Financing Requirements (including any required regulatory agreement), the Developer shall enter into a recorded covenant to ensure the VLI Units remain Rent Restricted for at a minimum of fifty-five (55) years prior to the first certificate of occupancy for the Project. The parties acknowledge and agree that the Project and this Section 2.04(a)(2) shall be subject to modification and subordination, if, and to the extent necessary, to meet 20-50 Financing Requirements for the Project, and the City and Developer shall document any such modification through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(3) Central Park. As a multi-family apartment development, the Project is not subject to MHMC Section 17.28. The City confirms it has no desire or intention to take fee title, or to accept operational or maintenance obligations to the Central Park or any other park or open space proposed as part of the Project. The Central Park be designed and constructed generally consistent with the location and amenities (subject to reasonable modification and substitution) shown conceptually Exhibit B, and shall not be (unless voluntarily proposed by Developer) required to meet the City “Public Park Standards.” The City also confirms that the Central Park, as proposed as a private park subject to public access, is consistent with the General Plan and applicable zoning, and the only City approvals necessary for the construction and operation of the Central Park are (i) Design Review and Ministerial Permits. As described in more detail on Exhibit B and Exhibit C, the Developer has voluntarily committed to design, construct and operate the Central Park with the Project and to complete the Central Park prior to the final certificate of occupancy for the Project. Developer shall submit a good faith cost estimate for all design and construction costs associated with the Central Park (including engineering and design costs, land preparation, improvements, equipment, fixtures and finishes, and City fees) (“**Central Park Construction Cost**”) to the City prior to issuance of the first building permit for any residential units in the Project, for review and approval by the City Engineer, in his or her reasonable discretion which shall not be unreasonably withheld or delayed (“**City Engineer Approval**”). If the Central Park Construction Cost is estimated to exceed the amount of Park Impact Fees due from the Project, the Developer shall not pay Park Impact Fees. If the costs are estimated to be less than the Park Impact Fees, the Developer shall pay, when due, only the difference. At the completion of the Central Park (final inspection), the Developer shall submit a reasonable accounting of the actual Central Park Construction Cost for City Engineer Approval, and if the Central Park Construction Cost exceeds the Park Impact Fees for the Project, the Developer shall

not owe any Park Impact Fees for the Project. If the final Central Park Construction Cost is less than the Park Impact Fees for the Project, the Developer shall pay the difference (minus any amount paid previously). If the Developer paid any Park Impact Fees and the actual Central Park Construction Costs exceed the Park Impact Fees, the City shall promptly reimburse the excess to Developer. This Section does not obligate the City to reimburse the Developer for any amount the Central Park Construction Costs exceed the Park Impact Fees.

(4) Sutter Road Extension. In order to help attract users and accelerate new investment on the adjacent industrial property, at the time set forth below, the Developer shall dedicate, design and construct a slightly re-aligned 68-foot public street right-of-way from the intersection of Butterfield Boulevard and Sutter Boulevard to the extension of Sutter Place off of Digital Drive, as conceptually shown on Exhibit B ("**Sutter Road Extension**"), with an approximate full length of 1,490 lineal feet. The proposed realignment is intended to increase the marketability of the industrial lots and allow for development of the Central Park. Developer shall submit revisions to the approved November 30, 2001 "Plans for the Improvement of Sutter Place" to reflect the realignment and current standards per the attached Industrial standard 48-feet (curb-to-curb). Improvements for the Sutter Road Extension shall include, but not be limited to, curb and gutter, compaction, sidewalks, driveway entrances, street paving, joint trench, storm drainage facilities, sewer and water mainlines and laterals, fire hydrants and street lighting. Driveway entrances and sidewalks may be deferred for construction on an individual parcel basis concurrent with the construction of each building site subject to reasonable approval of the City Engineer. Developer and City acknowledge that, as shown on Exhibit B, all but approximately 670 lineal feet of the Sutter Road Extension is anticipated to be required to provide adequate circulation and a secondary access and connection for the Project to Butterfield Boulevard. However, in order to expedite development and make the adjacent industrial property "business ready," Developer commits to and shall commence construction (and complete in 270 days) of the entire length of the Sutter Road Extension from Butterfield Boulevard to Digital Drive once Developer receives building permits for 165 residential units in the Project.

(b) City Commitments

(1) Required Entitlements and Expedited Processing. The City hereby confirms that the only entitlements required for construction and occupancy of the Project are: (1) CEQA compliance, (2) Design Review, (3) a Subdivision Document, and (4) Ministerial Permits ("**Required City Entitlements**"). Pursuant to Section 3.01, the City shall use reasonable and good faith efforts to expedite the Required City Entitlements to allow for the construction and occupancy of the Project.

(2) 20-50 Financing Assistance. In addition to any Financing Mechanisms under Section 2.03(d), the City shall cooperate and take all actions necessary (and when necessary) to assist the Developer to obtain 20-50 Financing and to meet any 20-50 Financing Requirements, including, but not limited to: (i) acting as the local reviewing agency in support of the applications for any bond financing, (ii) approval to use CSCDA, or other joint powers authority selected by the Developer, as the bond issuer and cooperation with their bond counsel

(iii) holding a TEFRA hearing as required by the IRS, and (iv) cooperation with any reasonable requirements of Developer and its lenders with respect to bond financing and the investors with respect to LIHTCs, including refinancing or refunding any previously obtained bond financing, and (v) providing reasonable assistance to the Developer in obtaining a property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise permitted by the California Board of Equalization. The City acknowledges that timing is of the essence to obtain 20-50 Financing.

(3) Termination of City's Use of Property for Temporary Overflow Stormwater Detention Purposes. To allow for development of the Project, the City hereby approves the removal and termination of the Temporary On-Site Detention Note on the 2000 Parcel Map restricting use of Lot 26 for temporary overflow stormwater detention purposes, and hereby authorizes the City Engineer and City Attorney to take all actions necessary to remove the notation for title purposes within sixty (60) days of the Effective Date; and

(4) City Detention Basin. The Developer shall have the right to, consistent with all Applicable Law and Construction Codes, direct stormwater from the Project to the City's detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map for stormwater water quality treatment and detention (storage) purposes.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) The parties acknowledge that Developer cannot at this time predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as the duration of city processing and permitting, the availability of 20-50 Financing, market orientation and demand, interest rates, absorption, completion and other similar factors (the "**Development Factors**"). Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that the Developer shall have the right to develop its Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its subjective business judgment. In the event that a New City Law is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing or sequencing of new development or construction in the City,

such New City Law shall not apply to the Project or any portion thereof. The Parties acknowledge a mutual desire to have the Project develop as quickly as the Development Factors permit.

(b) Securing Building Permits and Beginning Construction. Developer is required to obtain the Required City Entitlements. However, any Subsequent Approval initiated by Developer which substantially changes the permitted uses or substantially increases the height and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

(c) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire Project.

2.07 Intentionally Deleted.

2.08 Overcapacity, Oversizing.

(a) To the extent consistent with this Agreement, City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement, including but not limited to the 20-50 Financing. City shall not apply any New City Law that would adversely affect the financial feasibility of the Project that is subject to 20-50 Financing. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development, including but not limited to, RDCS as in effect as of the Effective Date or as may be later amended from time to time.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(5) Conflict with any aspect of the 20-50 Financing or 20-50 Financing Requirements.

(6) Institute or apply rent or income restrictions other than the Rent Restrictions as to the Project, as such Rent Restrictions may be increased from time to time as provided by TCAC or under the standards of HUD; and

(7) Determine rents with respect to the VLI Units in a fashion that is inconsistent with Section 42 of the IRC or the rules or regulations of TCAC.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply

the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regards to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations pursuant to Section 2.03 and 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is consistent with or authorized by this Agreement, including all Applicable Law and Construction Codes. This Agreement provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regards to the Project Approvals that legally require the exercise of discretion by City, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by this Agreement, including all Applicable Law and Construction Codes. Therefore, so long as the Developer is in good faith compliance with this Agreement, and in the spirit of the mutual benefit of delivering the VLI Units, the City shall prioritize processing of applications related to the Project (including but not limited to public and private improvement plan review and scheduling inspections) and shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Project, including the following actions:

(i) Required City Entitlements; Design Review. Developer shall apply for and obtain all Required City Entitlements prior to construction and occupancy, as applicable. So long as the proposed Project, or portion thereof subject to a formal application, meets the Existing Approvals, Applicable Law, Construction Codes and is in conformance with CEQA, City shall expedite review and approval of all Required City Entitlements. The Design Review process for the Project shall be in accordance with the administrative portion only of Chapter 18.108.040 of the Morgan Hill Municipal Code, subject to normal appeal rights of the Developer under Chapter 18.108.

(ii) General Processing; Third Party Consultants. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance this Agreement. At Developer's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate

with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits needed for development of the Project or any other on or offsite improvements. The City acknowledges that time is of the essence with respect to these actions, particularly as they relate to obtaining and complying with the 20-50 Financing.

(iii) CEQA. City has prepared and certified the GPA EIR, Addendum and Development Agreement EA and has imposed mitigation measures as conditions of approval prior to the execution of this Agreement. This Agreement does not limit City's duty to comply with the provisions of CEQA and the associated Guidelines, as they may be amended from time to time, that comply with the provisions of § 21082 of CEQA. However, City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a subsequent approval or other discretionary action, it shall be in accordance with §§ 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

(iv) Standard of Review. All Required City Entitlements shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

(A) Submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement; and

(B) The application is complete and all fees due related to such application are paid; and

(C) The application demonstrates that Developer has complied with this Agreement, the Existing Approvals, Applicable Law (including CEQA), and Construction Codes.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially

deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Intentionally Deleted.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification qualifies as an Administrative Amendment subject to Section 3.05; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law.

3.05 Administrative Amendment

(a) If the City Manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law ("**Administrative Amendment**"), the City Manager or his designee may approve the proposed Administrative Amendment without notice and public hearing. Any Administrative Amendment must be made in writing signed by the City Manager (and approved by the City Attorney in his or her reasonable discretion) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the Administrative Amendment shall be recorded with the Santa Clara county recorder.

(b) An Administrative Amendment shall not include any of the following:

(i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the Permitted Uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings allowed under the Existing Approvals, (5) provisions for reservation or dedication of land for public purposes, or (6) material changes in the Project allowed under the Existing Approvals (which does not include minor adjustments to the site plan, orientation and location of buildings, floor plans, architecture, landscaping, circulation, etc.); or

(ii) Any material amendment or modification or eliminations of the Developer Commitments set forth in Article 2.04(a) of this Agreement, any reduction in fees, or any reduction or elimination of any Project Mitigations hereunder, except that, upon the written request of, and payment of the established fee by, Developer, a Substitution of Commitments.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). A Default by the City under this Agreement shall be a default under the Settlement Agreement. Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to a party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that neither party shall be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Annual Review.

(a) Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date. Except as affected by the terms hereof, the terms of MHMC Section 18.116.060 shall govern City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement.

(b) Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a compliance letter ("**Compliance Letter**") to the City Manager with copies to the Community Development Director and the City Attorney, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the

Compliance Letter is submitted to City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and Morgan Hill Municipal Code Section 18.116.060.

(c) City's Finding of Compliance. Within sixty (60) days after receipt of the Compliance Letter, the City Manager shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the City Manager finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the City Manager shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review ("**Compliance Certificate**"). Developer may record the Compliance Certificate with the Santa Clara County Recorder's Office.

(d) City's Finding of Non-Compliance. If the City Manager finds the Developer has not complied in good faith with the terms and conditions of this Agreement during the year under review, the City Manager shall specify in writing to the Developer the respects in which the Developer has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. Within ten (10) days of receipt of the notice of noncompliance the Developer may, at its option and in its sole discretion, file a written appeal to the City Council. If the Developer files an appeal, the City Council shall, expeditiously, hold a duly noticed public hearing on the matter. If, after such hearing, the Council finds and determines based on substantial evidence that Developer has complied in good faith, then the City Manager shall issue a Compliance Certificate pursuant to Section 8.03. If, however, the City Council determines based on substantial evidence that Developer has not complied in good faith, the City Manager shall give written notice thereof to Developer terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance, and such notice shall serve as a Notice of Default under Section 4.04. If after receipt of a notice of non-compliance, Developer fails to cure the noncompliance within a reasonable period of time as established by the City Manager, in his or her discretion, may (a) grant additional time for compliance by Developer, or (b) refer the Agreement to the City Council to modify this Agreement to the extent necessary to remedy or mitigate the noncompliance or terminate this Agreement.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, Severe Economic Recession, or litigation (including without limitation litigation contesting the validity, or seeking the

enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge, City shall control all aspects of the defense and City shall pay City's own attorneys' fees and costs (including related court costs) and shall pay any and all third-party fees and costs arising out of such Third-Party Challenge.

(c) Developer shall accept City's Tender, and Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed form of assignment agreement shall be subject to the written consent of City Attorney, which consent shall not be unreasonably withheld, delayed or conditioned. If the City does not respond to a request for approval of the form of assignment within fifteen (15) days such form shall be deemed approved by the City and no signature of the City shall be required. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall

specify the portion of the Project or Property and the rights assigned and obligations assumed. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney. Notwithstanding the above, Developer shall have the absolute right to assign the VLI Units to a separate legal entity to obtain, implement or refinance the 20-50 Financing upon normal and customary terms.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project, including in connection with any solar or renewable energy or conservation improvement financings or encumbrances. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee and each party investing in the LIHTCs (collectively, the "**Affordable Finance Notice Parties**") shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided each such Affordable Finance Notice Party has informed City of its address for notices. Each Affordable Finance Notice Party shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Affordable Finance Notice Party in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Affordable Finance Notice Party's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Affordable Finance Notice Party relief from the automatic stay. Each Affordable Finance Notice Party shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Affordable Finance Notice Party who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs, including interest, as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have

been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. During the term of this Agreement, Developer shall maintain in full force and effect the insurance policies required in Exhibit D. These policies shall be maintained with coverage amounts, required endorsements, certificates of insurance and coverage verifications included, as defined in Exhibit D, attached hereto and incorporated by this reference.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271
<u>If to Developer:</u>	MWest PropCo XXIII LLC d/b/a DivcoWest Silicon Valley Investments Attn: Ryan McDaniel

3351 Olcott Street
 Santa Clara, CA 95054
 Tel: (408) 450-3823

With a Copy To: Holland & Knight, LLP
 50 California St., Suite 2800
 San Francisco, CA 94111
 Attn: Tamsen Plume
 Tel: (415) 743 -6941

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

- Exhibit A Legal Description Property.*
- Exhibit B Description of Project.*
- Exhibit C Developer Commitments.*
- Exhibit D Insurance Requirements*

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL, CALIFORNIA
a California municipal corporation

APPROVED AS TO FORM:

DONALD A. LARKIN
City Attorney

CHRISTINA TURNER
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

ATTEST:

IRMA TORREZ
City Clerk

“CITY”

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

DEVELOPER:

Mwest PropCo XXIII LLC, a Delaware limited liability company, d/b/a, DivcoWest Silicon Valley Investments

By:	_____
	Signature of Person executing the Agreement on behalf of Developer
Name:	_____
	Steve Novick
Title:	_____
	Authorized Signatory
Local Address:	_____
	575 Market Street, 35 th Floor

	San Francisco, CA 94015

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

[Insert legal description from title prior to execution]

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

EXHIBIT B**DESCRIPTION OF PROJECT**

Divco West SVI Measure S Application 2017 Butterfield Village dated January 4, 2018 prepared by TCA Architects and RJA Ruggeri-Jensen-Azar and Alma Du Soleir on file with the City under File No. , expressly excluding any reference to RDCS except as may be helpful for informational reference.

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

EXHIBIT C**DEVELOPER COMMITMENTS****EXHIBIT C****Developer Commitments**

The following chart describes the Developer Commitments for the Project, including the applicable reference in the MHMC, a description, timing of implementation or payment. These commitments are in addition to any Project Mitigation (CEQA), Impact Fees, or other requirements pursuant to federal or state laws, or applicable provisions of the MHMC consistent with this Agreement (See Section 2.03 of the Agreement).

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
1.	Schools		
	Student Transportation Improvements	Project commits to construct off-site improvements valued at (and not to exceed) \$1,000/unit, including sidewalks along the industrial frontage of Butterfield Blvd (west side), along Jarvis Drive (south side) and the Sutter Road Extension (Digital Drive to the Project's proposed Main Street) where shown on the attached Exhibit B. Any remaining funds will be contributed to City's Safe Access to Schools Fund.	Prior to final certificate of occupancy.
2.	Location		
a	Water distribution lines	Local water distribution lines are of sufficient size to serve the Project. The Project does not require replacing existing local water distribution lines with large diameter pipes. New water mains to serve the site do not need to be installed. In-tract extension to occur along Sutter. The 12 inch water lines in Jarvis Drive and Butterfield Blvd provide adequate capacity to serve the site. However, the project is installing a new main in the Sutter Road Extension to contribute	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		toward the City's grid system, which will also serve the adjacent industrial project.	
b	Wastewater collection	The existing wastewater collection system is sufficient to serve the Project. The Project does not require extending or replacing existing sewer pipes or lift stations outside of the Project Site. In-tract extension to occur along Sutter. An existing 10" sanitary sewer line in Jarvis Drive and a 20" sanitary sewer line in Butterfield Blvd provide adequate capacity to serve the project. In addition, the Project is voluntarily providing off-site sewer service in the new Sutter Road Extension to serve the adjacent industrial.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the Project. A 24" storm drain line in Jarvis Drive and a 54" storm drain line in Butterfield Blvd serve the site. In addition, the project site lies adjacent to a regional detention basin that will accommodate stormwater flows from the proposed development.	As needed to serve the Project, but no later than prior to final certificate of occupancy.
3.	Affordable Housing		
	Development of Affordable Units	The Project will make 20% of units affordable to Very Low Income Households as defined by State Housing and Urban Development (HUD) Guidelines. Affordable units will be distributed throughout the site and proportionally amongst unit types.	See Section 2.04(b) of the Agreement.
4.	Housing Diversity		
a	Diversity of Housing Types	The project includes a diversity of 2 housing types: multi-family units, and single family attached townhomes. Both	Design Review; subject to 20-50 Financing Requirements.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		housing types will represent at least 10% of the project.	
b	Variation in Housing Size	The project includes one and two-bedroom apartments. Please see sheet A-1.0 in the Schematic Design package in Exhibit B for full breakdown.	Design Review; subject to 20-50 Financing Requirements.
c	Small Units	A minimum of 50% of units in the Project are less than 1,000 SF. See also Sheet A-1.0 of Exhibit B for a description of unit size and distribution.	Design Review; subject to 20-50 Financing Requirements.
d	Housing Stock Diversity	The project is 100% multi-family rental.	Design Review.
5.	Parks and Open Space		
a	Excess Park Land	The Project shall provide 5.82 acres of dedicated open space area which is more than 50% in excess of the requirement of 3.42 acres (389 @.0088 ac/unit). The project is providing a total of 114,093 sf (2.62 acres) within the residential acreage and a total of 139,000 sf (3.2 acres) for Central (aka Butterfield) Park, for a total of 5.82 acres, which exceeds the requirement under local ordinance by more than 50%. The Project will construct the park improvements, and the Park will be privately owned and maintained, but open to the public via a permanent public access easement.	See Section 2.04(b) of the Agreement.
b	On-Site Recreational Amenities	The Project shall provide a pool, a restroom area, 4 tot lots with at least three age appropriate activities, a clubhouse with kitchen, a jacuzzi and children's pool, and an exercise room. The project includes the following Tier 3 and 4 amenities: Junior Olympic Swimming Pool, Restroom, 4 Tot Lots/Playgrounds, Exercise Room,	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		Clubhouse w/kitchen, Jacuzzi/children's pool. See Sheet R-2.0 of the Schematic Design package in <u>Exhibit B</u> for details. Note Central Park (aka Butterfield Park) amenities are NOT included in this calculation.	
c	Amenities for Age Group	The Project will provide amenities for all ages: Children - 2 tot lots, children's wading pool. Teens - 2 flex playgrounds & outdoor spaces for socializing. Adults - indoor gym, fire pit, bbq/picnic areas. Seniors - senior par course & walking paths. All ages - swimming pool, club room, picnic sites, trails. See Sheets R-2.0 and R-2.1 of the Schematic Design package in Exhibit B for details.	Design Review; prior to final certificate of occupancy
d	Public Gathering Places	Central Park (aka Butterfield Park) will be a high value public gathering space located in a high-density mixed use residential/industrial area with a pedestrian network and easy access to public streets, visible and open to the public, and containing multiple seating areas and sheltered areas for year-round use. The Project will invest a minimum of \$2,000 per unit in park and open space improvements.	Design Review; prior to final certificate of occupancy.
e	Open Space Design	Project will include outdoor rooms; open space of sufficient size; well defined open space edges; visibility; adjacent units; and landscape. See Sheets R-5 and R-6 of the Schematic Design package in Exhibit B for details. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
6.	Environmental Protection		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Indoor Water Use	The Project commits to exceed minimum requirements for indoor water efficiency and conservation by no less than 10% per the California Green Building Standards Code (CalGreen) in place as of the date of the Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of the Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
b	No Natural Turf Outside Common Areas	The Project contains no natural turf outside common areas used for active play.	Design Review.
c	Exceeds Outdoor Water Efficiency 20%	The Project commits to exceed outdoor water efficiency standards by 20% per the California Green Building Standards Code (CalGreen) in place as of the date of Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
d	Subsurface Irrigation	The Project commits to install subsurface irrigation for all private natural turf areas within the Project (not including Central (aka Butterfield) Park).	Design Review; prior to final certificate of occupancy.
e	Sustainable Site and Building Design	The project commits to score 16 BIG points above the minimum 70 points required by the City of MH Municipal Code as of the date of execution of this Development Agreement, for a total of 86 BIG points.	Design Review; prior to final certificate of occupancy.
7.	Transportation		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Off-Site Street and Parking Improvements or Fund Contribution	The Project will provide for the dedication and improvements to the off-site industrial serving portion of the Sutter Extension from Main Street to Digital Drive (a total of 670 LF). This portion is not required to serve the residential project. Project commitment equivalent to \$2,000/unit.	See Section 2.04(a)(4) of the Agreement.
b	Transportation Demand Management (rental projects)	The Project will provide the following TDM measures for the life of the project: (1) Move in package will include one month free car share membership for each unit, (2) one on-site cargo bicycle available for resident's use, and (3) establishment of and operation of a commute assistance center offering on-site, one-stop shopping for transit and commute alternatives information, or (4) other suitable alternate measures acceptable to the City.	Design Review; prior to final certificate of occupancy.
c	Aligns and connects streets	"Main Street" will align with the opposing Jarvis entrance to Madrone Plaza and connect to the new Sutter Extension to be constructed by the Project.	Design Review.
d	Extends Streets	The southern extension of Sutter Road from the Project's private Main Street to Digital Drive will be considered out of tract improvements. The Project will extend streets to the adjoining undeveloped industrial land to provide access in the event of its future development. The Project will dedicate/construct the Sutter Extension, which will provide access to the adjacent industrial land via Butterfield Blvd.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
e	Off-street bicycle and pedestrian connections	The Monterey/Sutter Greenways & Central Park (aka Butterfield Park) trails will be open to the public and secured by	Design Review; as necessary to serve the project, but in no

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		permanent public access easement, providing off-street pedestrian/bike connections to/from Central Park (aka Butterfield Park, the industrial park, & retail on Monterey. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the public.	event prior to final certificate of occupancy.
f	Complete Streets	Sutter and Main are multi-modal complete streets meeting the needs of multiple users with vehicular, pedestrian and bicycle access, as well as ADA compliant access & crossings.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
g	Enhanced bicycle and pedestrian improvements	Treated pavement is provided at all primary pedestrian street crossings. Curb neck downs are provided at pedestrian crossings within Main St. Each unit including a garage with secure bike storage.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
h	Direct pedestrian connections	The project provides direct pedestrian access (trails, sidewalks, crosswalks) from units to common open space, recreational facilities and to the adjacent Central (aka Butterfield) Park.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
i	Neighborhood traffic management techniques	The project includes traffic calming measures to enhance safety. Main St. includes medians, neck-downs, bulbouts & enhanced paving materials at significant entries/crossings.	Design Review; prior to final certificate of occupancy.
j	Electric Vehicle Charging Stations	The applicant commits to install all connections and equipment necessary for 4 charging stations to be ready to use by residents and visitors upon project completion.	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
8.	Municipal Infrastructure		
a	Water Infrastructure	The Project commits to construct off-site water improvements in the Sutter Ext (Digital Drive to Main Street) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
b	Wastewater Infrastructure	The Project commits to construct off-site waste water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site storm water improvements	The Project commits to construct off-site storm water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
d	Installs broadband conduit in public right-of-way	The project will install broadband conduit in the public right-of way, along the project frontages, as necessary to serve the Project. The project does not front on Monterey Road.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
e	Installs broadband conduit to home/buildings	The Project will install broadband conduit from the public ROW and/or from internal streets as necessary to provide service to each occupied building in the project.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
f	Pre-installs indoor conduit	The Project will pre-install indoor conduit, wiring and other necessary infrastructure to allow broadband service to each unit.	Design Review; as necessary to serve the project, but in no event prior to final

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
			certificate of occupancy.
9.	Project Quality		
a	Front Porches	All first floor units will have a front porch with minimum dimensions of 6' x 5' with exterior entries included. (Sheets A-5.0 through A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
b	Balconies Facing Street or Courtyard	All upper floor units facing a street or common interior courtyard include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
c	Balconies Facing Alleys	All upper floor units facing an alley, parking area or drive aisle include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
d	Façade Articulation and Finishes	Elevations feature façade articulation & finishes that break up blank walls thru use of awnings, metal iron work, pot shelves, balcony rails, rafter tails, columns & finials. Sheets A-4.0-A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
e	360-degree Architecture	All buildings have four-sided architecture (Sheet A-4.4 in Exhibit B)The Project has demonstrated	Design Review

EXHIBIT C

-9-

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
f	Corner Treatments	The project includes enhanced corner treatments to support a welcoming and visually interesting public realm. (Sheets A-3.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
g	Colors and Materials	The project incorporates a mix of colors and materials compatible with the style and creates visual interest. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
h	Multi-family Ground Level Entrances	All ground-floor units have private exterior entries (Sheets A-5.0 through A-5.5, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
i	Residential-Scale Design Elements- Attached Projects	Several building details are provided per this narrative (Sheet A-4.0 through A-4.4) in Exhibit B. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
j	Variation in Building Height	Building heights vary between one, two- and three-story elevations. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
k	Variation in Building Placement	The project incorporates variation in building front setbacks to minimize monotony and create visual interest (Sheet A-2.0 and Sheet R-3.0) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
l	Roof Line Variation	Elevation roof lines vary between 1 -3 stories. Some roof lines pop above the 3rd floor eave line. Design employs Hip, gable and shed roofs to articulate the roof line. (Sheets A-4.0 thru A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
m	Height and Project Edge-Attached Projects	2.5 story towns are located on perimeter streets to match exist. homes. Interior buildings step up to 3 stories. Edges/massing are articulated by dropped edges or raised towers. (Sheets A-2.0 - 4.0 thru A-4.4, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
n	Adjacent Building Types-Attached Projects	The project places 2.5 story townhomes along the perimeter street edges that are consistent with the surrounding architecture. (Sheet R-3.0 and Sheets A-2.0, and A-4.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
o	Landscaping-Parkway Design	An additional 50% in planting strip width is provided within public and private	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		street sections. Main Street --the central spine of the community-- includes a planted central median. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
p	Landscaping-Visual Relief	Planting and paving materials are used to minimize appearance of building bulk and to highlight pedestrian routes, encouraging pedestrian circulation throughout. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
q	Exterior Lighting	Exterior lighting on the building will be architecturally integrated with the building design, style, color and material.	Design Review
r	Entrance Pathways	All units have direct pedestrian pathways from public sidewalks. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
s	Public/Private Transitions	The project will include transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation. As shown in the schematic drawings submitted January 4, 2018 in Exhibit B the townhomes create some transition with raised stoops leading to front porches, and the stacked flats provide some transition with low walls enclosing patios/unit entries. (See Sheets A-2.0 and A-5.0 thru A-5.5 in Exhibit B).	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The project will demonstrate compliance through Design Review.	
t	Mechanical Equipment	Mechanical equipment located within roof wells on stacked flats not visible from street or adjacent buildings; in townhomes located on grade at side of buildings and screened from view with landscaping and low fences. (Sheets A-5.0 thru A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
u	Garage Door Orientation	Garage doors do not face forward toward the main streets; they are located to the sides or rear of the buildings. (See sheet R-3.0 and Sheets A-5.0 thru A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
v	Parking-Attached Projects	Parking lots are carefully situated behind buildings so that parking is not located/visible between a building and a public sidewalk or street. (Sheet A-2.0 and Sheet R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
w	Screening	Any parking visible from public streets behind buildings will be screened with landscaping and some low walls as shown on the site plan, building plans or elevations. (Sheets A-2.0 and A-4.0 in Exhibit B)	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
x	Landscaping-Attached Projects	Planting is strategically located throughout the project to minimize visibility of parking. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
y	Pavement Design	Special zones, such as entry gateways, pedestrian crosswalks, speed tables and roundabouts are proposed to be paved with special color and/or textured unit pavers.	Design Review

END OF CHART

EXHIBIT D**INSURANCE REQUIREMENTS**

Developer is required to procure and provide proof of the insurance coverage required by this Agreement in the form of certificates and endorsements. The required insurance must cover the activities of Developer and its subcontractors relating to or arising from the performance of work associated with the Agreement, 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 Agreement terminates.

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. If Developer fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Developer’s expense. Developer further understands that the City reserves the reasonable right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Developer, at any time as deemed necessary to protect the interests of the City.

A. Upon execution of Agreement:

(a) Policies and Limits. The following insurance policies and limits are required:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s (including its agents, representatives, officers, employees, invitees, volunteers, and contractors) activity, use and maintenance of the property 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.

(b) Required Endorsements. Developer shall provide proof of the following endorsement to the General Liability policy:

a. “Additionally Insured” - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

B. Ten (10) days prior to start of any construction within the Project:

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

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’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) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

(2) Workers’ Compensation Insurance and Employer’s Liability: Developer 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 Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Developer is self-insured, Developer must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Developer shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Developer does not own automobiles, then Developer 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 Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Developer’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. Developer shall procure and maintain Pollution Liability covering the Developer’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 Developer under Developer's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Developer shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

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

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

c. "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. Developer must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

C. Certificates. Developer 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 Developer'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 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

Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

1 WHEREAS, under the HAA, a “housing development project . . . for very low, low-, or
2 moderate-income households” includes, *inter alia*, any use consisting of “residential units only,” in
3 which at least 20 percent of the total units shall be sold or rented to lower income households,
4 including very low-income households, Gov. Code § 65589.5(h) & Health & Safety Code §§ 5009
5 & 51005; and

6 WHEREAS, Petitioner MWest Propoco XXIII LLC (“Petitioner”) is the applicant for the
7 Cochrane-MWest Project (“Project”), a 389-unit multi-family rental development in the City of
8 Morgan Hill, which Project consists of only residential units and will provide 20% of the Project’s
9 units (78 units) to very low-income households, and which Project, due to its size, cannot be
10 feasibly developed for the use of very low, low-, or moderate-income households without the
11 certainty of entitlements to build and occupy the entire Project; and

12 WHEREAS, under City of Morgan Hill (“City”) local ordinances, including provisions
13 adopted by voter initiative, a housing development applicant cannot receive permission from the
14 City to develop housing until the applicant receives sufficient allotments through the Residential
15 Development Control System (“RDSCS”) program, which program requires the Morgan Hill
16 Planning Commission to evaluate residential developments based on defined criteria adopted by
17 ordinance of the City Council; and

18 WHEREAS, Petitioner applied for allotments for the Project through the RDSCS program in
19 the 2015/2016 and 2016/2017 competitions, receiving zero RDSCS allotments in 2015/2016, and ten
20 allotments in 2016/2017, out of 389 units in the Project; and

21 WHEREAS, Measure S, adopted by Morgan Hill voters on November 8, 2016, amended the
22 City’s RDSCS ordinance to, *inter alia*, authorize multi-year RDSCS allotments, and to authorize
23 Respondents Morgan Hill City Council and Morgan Hill Planning Commission to exercise their
24 discretion, based on specific findings, when deciding whether to award multi-year allotments,
25 and/or how many multi-year allotments to distribute in a given year; and

26 WHEREAS, on January 4, 2018, Petitioner submitted its most recent application for the
27 2017/2018 competition to Respondent Morgan Hill Planning Commission (“Commission”), this
28

1 time for a multi-year allocation of 379 units in order to allow the development of the Project (RDC
2 2017-0013, the “Application”); and

3 WHEREAS, on May 22, 2018, the Planning Commission adopted Resolution No. 18-13,
4 awarding 71 allotments, but denying Petitioner’s Application for multi-year allotments, and leavin
5 Petitioner with RDCS allotments for only 81 out of the 389 units in the Project; and

6 WHEREAS, Resolution No. 18-13 stated that the basis for denial of the application for
7 multi-year allotments was that the Planning Commission could not make the findings required by
8 section 18.156.140 (E)¹ of the Morgan Hill Municipal Code.

9 WHEREAS, on June 4, 2018, Petitioner timely appealed the Commission’s denial of the
10 Application (Appeal No. AAE20018-006, the “Appeal”) to Respondent Morgan Hill City Council
11 (“City Council”); and

12 WHEREAS, on June 20, 2018, the City Council voted to deny the Appeal on the same basi
13 as the Planning Commission, rejecting the application for multi-year allotments, and requiring the
14 Project to compete for additional allotments in future years; and

15 WHEREAS, neither the Planning Commission nor the City Council made the findings
16 required by Gov. Code § 65589.5(d) when denying the Application, and none of the findings in
17 Gov. Code § 65589.5(d) could validly be made; and

18 WHEREAS, Petitioner has brought this action alleging, *inter alia*, that Respondents violat
19 the Housing Accountability Act, Gov. Code § 65589.5, by denying Petitioner’s application for
20 multi-year allocations under the for the Project; and

21 WHEREAS, Petitioner and Respondents agree that stipulating to judgment in this matter
22 would avoid unnecessary burdens and expenses and the uncertainty of litigation on the parties; and

23 WHEREAS, Petitioner and Respondent agree that the cost, time and uncertainty of litigati
24 require a mutual release which includes this proposed Judgment.

25 THEREFORE, IT IS HEREBY STIPULATED by and among all parties in this action,
26 through their respective counsel, that:

27
28 ¹ The City Council adopted a comprehensive zoning code update on June 6, 2018. Chapter 156 of
Title 18 was formerly Chapter 78.

1 1. JUDGMENT should be entered in favor of Petitioner and against Respondents on
2 the grounds that:

- 3 a. The Housing Accountability Act (Government Code section 65589.5)
4 preempts conflicting requirements of the City's RDCS ordinance.
5 Specifically, provisions of the City's RDCS Ordinance, including but not
6 limited to subsection B of section 18.156.050 of the Morgan Hill Municipal
7 Code, are ineffective and unenforceable as applied to the Project, which
8 qualifies as a housing development project "for very low, low-, or moderate
9 income households" pursuant to Gov. Code § 65589.5(h) and for which non
10 of the findings described in Gov. Code § 65589.5(d) can be made.
11 Accordingly, the Project must be treated as exempt from the requirement to
12 receive RDCS allotments.
- 13 b. Respondents City of Morgan Hill and Morgan Hill City Council did not
14 comply with the Housing Accountability Act, Gov. Code § 65589.5(d), whe
15 denying the Application and Appeal for the Project.

16 2. Petitioner's Petition for a Writ of Mandate should be GRANTED, and a peremptory
17 writ of mandate should issue under seal of this Court, directing Respondents to take action on the
18 Project to comply with the Housing Accountability Act, consistent with this Stipulation and
19 consistent with the Court's judgment and order, within 60 days from the date of the Court's order,
20 pursuant to Gov. Code § 65589.5(k)(1)(A).

21 3. If Respondents take action as described herein on the Project to comply with the
22 Housing Accountability Act, consistent with this Stipulation and with the Court's judgment and
23 order, within 60 days from the date of the court's order, then all parties shall bear their own costs
24 and attorney's fees.

25 4. The Court should retain continuing jurisdiction over this matter to ensure complian
26 with the judgment and the writ of mandate issued pursuant to the judgment, and to adjudicate any
27 disputes between the Parties which may later arise as to whether Respondents have taken sufficien
28 action to comply with the requirements of the Court's judgment and writ of mandate.

1 Respectfully submitted,

2
3 Dated: _____, 2018

HOLLAND & KNIGHT LLP

4
5 _____
6 By: Daniel R. Golub

7 Attorneys for Petitioner
8 MWEST PROPCO XXIII LLC

9 Dated: _____, 2018

CITY OF MORGAN HILL

10 _____
11 By: Donald Larkin

12 MORGAN HILL CITY ATTORNEY

13 Attorney for Respondents
14 CITY OF MORGAN HILL and MORGAN HILL
15 CITY COUNCIL
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[PROPOSED] JUDGMENT AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. JUDGMENT in this action is hereby entered in favor of Petitioner MWest Propco XXIII LLC d/b/a, DivcoWest Silicon Valley Investments ("Petitioner") and against Respondents City of Morgan Hill and Morgan Hill City Council ("Respondents") with respect to the Cochrane-MWest Project ("Project"), on the grounds that:

- a. The Housing Accountability Act (Government Code section 65589.5) preempts conflicting requirements of the City's RDCS ordinance. Specifically, provisions of the City's RDCS Ordinance, including but not limited to subsection B of section 18.156.050 of the Morgan Hill Municipal Code, are ineffective and unenforceable as applied to the Project, which qualifies as a housing development project "for very low, low-, or moderate income households" pursuant to Gov. Code § 65589.5(h) and for which none of the findings described in Gov. Code § 65589.5(d) can be made. Accordingly, the Project must be treated as exempt from the requirement to receive RDCS allotments.
- b. Respondents City of Morgan Hill and Morgan Hill City Council did not comply with the Housing Accountability Act, Gov. Code § 65589.5(d), when denying the Application and Appeal for the Project.

2. Petitioner's Petition for a Writ of Mandate is GRANTED, and a peremptory writ of mandate shall issue under seal of this Court, directing Respondents to take action on the Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and consistent with the Court's judgment and order, within 60 days from the date of the court's order, pursuant to Gov. Code § 65589.5(k)(1)(A).

3. If Respondents take action as described herein on the Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and with the Court's judgment and order, within 60 days from the date of the court's order, then all parties shall bear their own costs and attorney's fees.

1 4. The Court retains continuing jurisdiction over this matter to ensure compliance with
2 the judgment and the writ of mandate issued pursuant to the judgment, and to adjudicate any
3 disputes between the Parties which may later arise as to whether Respondents have taken sufficien
4 action to comply with the requirements of the Court's judgment and writ of mandate.

5
6 Dated: _____, 2018

7
8 _____
9 Honorable Mary E. Arand
10 Judge of the Santa Clara County Superior Court
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Attachment: MWest - Settlement Agreement and Release - Executed (2021 : MWest Development Agreement)

[PROPOSED] PEREMPTORY WRIT OF MANDATE

TO: Respondents City of Morgan Hill and Morgan Hill City Council (“Respondents”):

The court has entered judgment ordering that a peremptory writ of mandate issue under the seal of the court in Santa Clara County Superior Court Case No. 18CV333676. Accordingly,

YOU ARE HEREBY COMMANDED, upon receipt of this writ, to take action on the Cochrane-MWest Project to comply with the Housing Accountability Act, consistent with the parties’ stipulation and consistent with the Court’s judgment and order, within 60 days from the date of the Court’s order, pursuant to Gov. Code § 65589.5(k)(1)(A).

The Court retains continuing jurisdiction over this matter to ensure compliance with the judgment and the writ of mandate issued pursuant to the judgment, and to adjudicate any disputes between the Parties which may later arise as to whether Respondents have taken sufficient action to comply with the requirements of the Court’s judgment and writ of mandate.

Dated: _____, 2018

Clerk of the Santa Clara County Superior Court

Exhibit B

Form of Development Agreement

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: Daniel R. Golub FIRM NAME: Holland & Knight LLP STREET ADDRESS: 50 California Street, 27th Floor CITY: San Francisco TELEPHONE NO.: (415)743-6900 E-MAIL ADDRESS: Daniel.Golub@HKLaw.com ATTORNEY FOR (name): MWest Propco XXIII LLC	STATE BAR NO.: 286729	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: MWest Propco XXIII LLC	CASE NUMBER: 18CV333676	
DEFENDANT/RESPONDENT: City of Morgan Hill and Morgan Hill City Council OTHER:	JUDICIAL OFFICER: Hon. Mary E. Arand	
PROPOSED ORDER (COVER SHEET)		DEPT: 9

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Petitioner MWest Propco XXIII LLC and Respondents City of Morgan Hill and Morgan Hill City Council (all parties)
2. Title of the proposed order:
[Proposed] Judgment and Order
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Verified Petition for Writ of Mandate
 - b. Date and time: Petition filed 8/20/2018
 - c. Place: Department 9, Downtown Superior Court, 191 North First Street San Jose, CA 95113
4. The proposed order was served on the other parties in the case.

Daniel R. Golub

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

EFS-020

CASE NAME:
MWest Propco XXIII LLC v. City of Morgan Hill, et al.

CASE NUMBER:
18CV333676

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.

a. My residence or business address is (*specify*):
50 California Street, 28th Floor, San Francisco, CA 94111

b. My electronic service address is (*specify*): Michelle.Maine@hklaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
Donald Larkin, Morgan Hill City Attorney (Attorney for Respondents City of Morgan Hill and Morgan Hill City Council)

b. To (*electronic service address of person served*): Donald.Larkin@morganhill.ca.gov

c. On (*date*): September 18, 2018

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 18, 2018

Michelle Maine

(TYPE OR PRINT NAME OF DECLARANT)

► 
(SIGNATURE OF DECLARANT)

Signed: 9/25/2018 11:56 AM

M. Olavar

Jennifer L. Hernandez (SBN 114951)
Tamsen Plume (SBN 197557)
Daniel R. Golub (SBN 286729)
HOLLAND & KNIGHT LLP
50 California Street, 28th Floor
San Francisco, California 94111
Telephone: (415) 743-6900
Facsimile: (415) 743-6910
Email: daniel.golub@hklaw.com

Attorneys for Petitioner
MWEST PROPCO XXIII LLC

Donald A. Larkin (SBN 199759)
City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Telephone: (408) 778-3490
Email: donald.larkin@morganhill.ca.gov

Attorney for Respondents
CITY OF MORGAN HILL and MORGAN HILL CITY COUNCIL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MWEST PROPCO XXIII LLC,
Petitioner,

v.

CITY OF MORGAN HILL and MORGAN
HILL CITY COUNCIL,

Respondents.

Case No. 18CV333676

~~PROPOSED~~ JUDGMENT AND ORDER

Before: Hon. Mary E. Arand
Department: 9

~~PROPOSED~~ JUDGMENT AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:
Pursuant to stipulation of the parties,

1. / JUDGMENT in this action is hereby entered in favor of Petitioner MWest Propco XXIII LLC d/b/a, DivcoWest Silicon Valley Investments ("Petitioner") and against Respondents City of Morgan Hill and Morgan Hill City Council ("Respondents") with respect to the Cochrane-MWest Project ("Project"), on the grounds that:

- a. The Housing Accountability Act (Government Code section 65589.5) preempts conflicting requirements of the City's RDCS ordinance. Specifically, provisions of the City's RDCS Ordinance, including but not limited to subsection B of section 18.156.050 of the Morgan Hill Municipal Code, are ineffective and unenforceable as applied to the Project, which qualifies as a housing development project "for very low, low-, or moderate income households" pursuant to Gov. Code § 65589.5(h) and for which none of the findings described in Gov. Code § 65589.5(d) can be made. Accordingly, the Project must be treated as exempt from the requirement to receive RDCS allotments.
- b. Respondents City of Morgan Hill and Morgan Hill City Council did not comply with the Housing Accountability Act, Gov. Code § 65589.5(d), when denying the Application and Appeal for the Project.

2. Petitioner's Petition for a Writ of Mandate is GRANTED, and a peremptory writ of mandate shall issue under seal of this Court, directing Respondents to take action on the Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and consistent with the Court's judgment and order, within 60 days from the date of the court's order, pursuant to Gov. Code § 65589.5(k)(1)(A).

3. If Respondents take action as described herein on the Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and with the Court's judgment and order, within 60 days from the date of the court's order, then all parties shall bear their own costs and attorney's fees.

Mary E. Arand
 Honorable Mary E. Arand
 Judge of the Santa Clara County Superior Court

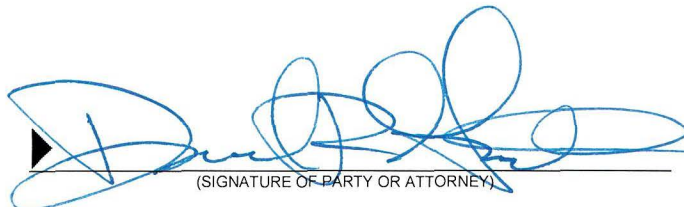
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 286729 NAME: Daniel R. Golub FIRM NAME: Holland & Knight LLP STREET ADDRESS: 50 California Street, 27th Floor CITY: San Francisco STATE: CA ZIP CODE: 94111 TELEPHONE NO.: (415)743-6900 FAX NO.: (415)743-6910 E-MAIL ADDRESS: Daniel.Golub@HKLaw.com ATTORNEY FOR (name): MWest Propco XXIII LLC		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: MWest Propco XXIII LLC DEFENDANT/RESPONDENT: City of Morgan Hill and Morgan Hill City Council OTHER:		CASE NUMBER: 18CV333676
		JUDICIAL OFFICER: Hon. Mary E. Arand
PROPOSED ORDER (COVER SHEET)		DEPT: 9

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Petitioner MWest Propco XXIII LLC and Respondents City of Morgan Hill and Morgan Hill City Council (all parties)
2. Title of the proposed order:
[Proposed] Peremptory Writ of Mandate
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Verified Petition for Writ of Mandate
 - b. Date and time: Petition filed 8/20/2018
 - c. Place: Department 9, Downtown Superior Court, 191 North First Street San Jose, CA 95113
4. The proposed order was served on the other parties in the case.

Daniel R. Golub

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

EFS-020

CASE NAME: MWest Propco XXIII LLC v. City of Morgan Hill, et al.	CASE NUMBER: 18CV333676
---	----------------------------

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.

a. My residence or business address is (*specify*):

50 California Street, 28th Floor, San Francisco, CA 94111

b. My electronic service address is (*specify*): Michelle.Maine@hklaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
Donald Larkin, Morgan Hill City Attorney (Attorney for Respondents City of Morgan Hill and Morgan Hill City Council)

b. To (*electronic service address of person served*): Donald.Larkin@morganhill.ca.gov

c. On (*date*): September 18, 2018

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 18, 2018

Michelle Maine

(TYPE OR PRINT NAME OF DECLARANT)

► 
(SIGNATURE OF DECLARANT)

Jennifer L. Hernandez (SBN 114951)
 Tamsen Plume (SBN 197557)
 Daniel R. Golub (SBN 286729)
 HOLLAND & KNIGHT LLP
 50 California Street, 28th Floor
 San Francisco, California 94111
 Telephone: (415) 743-6900
 Facsimile: (415) 743-6910
 Email: daniel.golub@hkllaw.com

Attorneys for Petitioner
 MWEST PROPCO XXIII LLC

Donald A. Larkin (SBN 199759)
 City Attorney
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Telephone: (408) 778-3490
 Email: donald.larkin@morganhill.ca.gov

Attorney for Respondents
 CITY OF MORGAN HILL and MORGAN HILL CITY COUNCIL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MWEST PROPCO XXIII LLC,
 Petitioner,

v.

CITY OF MORGAN HILL and MORGAN
 HILL CITY COUNCIL,

Respondents.

Case No. 18CV333676

**~~[PROPOSED]~~ PEREMPTORY WRIT OF
 MANDATE**

Before: Hon. Mary E. Arand
 Department: 9

[PROPOSED] PEREMPTORY WRIT OF MANDATE

TO: Respondents City of Morgan Hill and Morgan Hill City Council ("Respondents"):

The court has entered judgment ordering that a peremptory writ of mandate issue under the seal of the court in Santa Clara County Superior Court Case No. 18CV333676. Accordingly,

YOU ARE HEREBY COMMANDED, upon receipt of this writ, to take action on the Cochrane-MWest Project to comply with the Housing Accountability Act, consistent with the parties' stipulation and consistent with the Court's judgment and order, within 60 days from the date of the Court's order, pursuant to Gov. Code § 65589.5(k)(1)(A).

The Court retains continuing jurisdiction over this matter to ensure compliance with the judgment and the writ of mandate issued pursuant to the judgment, and to adjudicate any disputes between the Parties which may later arise as to whether Respondents have taken sufficient action to comply with the requirements of the Court's judgment and writ of mandate.

Dated: Sept. 25, 2018

M. Olaivar

Signed: 9/25/2018 02:48 PM

M. Olaivar

Clerk of the Santa Clara County Superior Court





CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 “AFFORDABLE HOUSING FEE” AND 15.23 “BELOW MARKET RATE PROGRAM”

RECOMMENDATION(S)

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
 - A. Adds Chapter 14.08 to institute a Housing in-lieu fee of \$19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, \$13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, \$29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and \$14.50 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
 - B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Program Application Guide;
 - C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
 - D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors

2018 Strategic Priorities

Regional Initiatives

and Entire Community
Preserving and Cultivating Public Trust

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

In-Lieu Fee

Should the City Council:

1. Formally modify the housing in-lieu fee from \$12.92 per square foot of the total project (8% affordability) to housing in-lieu fees that will equate to the recently adopted 15% and 10% ownership Inclusionary Housing Policy as adopted on July 25, 2018?
2. Adopt a rental housing in-lieu fee to equate to the rental Inclusionary Housing Policy, reflecting the distribution of affordability level requirements?

BMR Program

Should the City Council:

1. Adopt a revised Below Market Rate (BMR) Ownership Program *Participation* Guide (also known as the BMR Program Manual) for existing BMR homeowners?
2. Adopt a BMR Ownership Program *Application* Guide for potential homebuyers?
3. Adopt a policy that would establish a baseline for allowing a BMR homeowner a minimum return upon resale?
4. Adopt a policy that would permit an inheriting BMR homeowner to have the first right of refusal to purchase the BMR home if they income qualify under the BMR program and sign a new performance deed of trust requiring an additional 45-year affordability agreement.
5. Adopt the use of a state approved form titled "Revocable Transfer on Death Deed" to be used by BMR homeowners to identify their named beneficiaries?
6. Adopt revised BMR Program Development Standards, consistent with the Inclusionary Housing Ordinance?

REPORT NARRATIVE:

Building upon the City Council Housing workshop and discussion that was held on September 26, 2018, and the previously published staff report titled "*Housing Program, In-Lieu Fees, BMR Program Workbooks, BMR Program Development Standards,*" staff is recommending a comprehensive Housing Ordinance to include the following.

NEW IN-LIEU FEES

The most recent tool added to the Housing Program is the adopted Inclusionary Housing Ordinance (Chapter 14.04 of the Morgan Hill Municipal Code). The Council voted to increase the previous 8% affordability goal for new BMR rental and ownership units to 15% for projects outside of Downtown and 10% for projects in the Downtown. This report serves as a follow up to the July 18, 2018 City Council Meeting, where the Inclusionary Housing Ordinance was introduced and discussed in conjunction with the

need to update the corresponding housing in-lieu fees for both rental and ownership projects. An analysis summary of corresponding fees was prepared by Keyser Marston and Associates (KMA) and presented to the Council on September 26, 2018.

The City retained KMA to conduct an analysis of the impact of the City's Inclusionary Housing Ordinance (IHO) and Residential Development Control System (RDSCS) requirements, and to estimate the financial cost to developers of providing on-site BMR units. The KMA summary report (Attachment No. 2) titled "Summary of Per Square Foot, In-Lieu Fee Amounts Equivalent to Range of On-site BMR Requirements" dated September 25, 2018, provides guidance for consideration of new rental and ownership In-lieu Housing fees. This change makes the fee equitable to the new 15% and 10% requirement, and accounts for the differences in affordability level, unit sizes and sales prices across projects.

Although staff is recommending the following fees based on a unit size that is equivalent to 75% of the size of the market rate units, Council may choose to select an alternative option for the ownership units; these options are provided in the KMA summary (Attachment No. 2). Based on KMA's analysis, the Housing Team is recommending the following Housing In-Lieu fees:

The recommended fees are as follows:

For-Sale Ownership Residential Projects outside of Downtown for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents **(\$19.70)** per habitable square foot of the residential building area of market-rate housing.

For-Sale Ownership Residential Projects Within Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects within the Downtown for which there is a 10% Inclusionary Housing Requirement is thirteen dollars and twenty cents **(\$13.20)** per habitable square foot of the residential building area of market-rate housing.

Rental Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects outside of Downtown for which there is a 15% Inclusionary Housing Requirement is twenty-nine dollars **(\$29.00)** per habitable square foot of the residential building area of market-rate housing.

Rental Residential Projects Within Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects within the Downtown for which there is a 10% Inclusionary Housing Requirement is fourteen dollars and fifty cents **(\$14.50)** per habitable square foot of the residential building area of market-rate housing.

The proposed In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project, and will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund 236.

Example Calculation of Proposed (Ownership – Outside Downtown) In-Lieu Housing Fee Amount \$19.70: The In-Lieu Housing Fee contribution is equated to what the developer would pay if they were to build the BMRs instead of paying. This will rarely occur given the new IHO requirement. One could view this fee as a per BMR unit fee equivalent to their 15% IHO requirement or one could view it as a cost to the entire project per door of every unit in the project. Both views are correct. In a 56-unit project, where there is a 15% IHO requirement equivalent to 8.40 BMRs, a developer would build, unless there are extenuating circumstances that lead to a finding that prompts a payment of the fee.

In the 56-unit project, the average habitable square footage of each unit is 2,000 square feet. The calculation shall be $\$19.70 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$2,206,400$. This could be articulated as \$262,666.67 per each BMR unit required (8.4 is the 15% requirement) or it could be viewed as \$39,400 per each unit/door in the 56-unit development.

Lastly, if the Council chooses to approve the new fees, they will become effective with any RDCS and Development Agreement application received and approved after the adoption of the Inclusionary Housing Ordinance, and the effective date of this fee ordinance.

BMR PROGRAM

The second part of this report discusses the BMR Ownership Program. Since 1977, the City has established a robust BMR Program that provides much needed first-time homebuyer opportunities to low-income and moderate-income households. A family of four with an annual income of \$94,450 is low income. A family of four with an annual income of \$150,250 is a moderate-income family. The Housing Team is recommending that the City Council adopt a BMR Program Participation Guide and an Application Guide to clarify, fortify, and address some of the recent questions about covenants and restrictions, as well as program practices raised by BMR homeowners.

Housekeys staff and the Housing Team have created a revised BMR Ownership Program Participation Guide (Attachment No. 4) (this was formerly known as the BMR Program Manual that is Attachment No. 3) and a Program Application Guide (Attachment No. 5). The purpose of the program Application Guide is to describe the BMR opportunity and the application process. The purpose of BMR Program Participation Guide is to further provide participation guidance and formalize the BMR Program, related to the following:

- Program participation guidelines
- Resale price determination
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests

- Capital Improvements and Special Assessments
- Transfers
- Inheritance

BMR MINIMUM RETURN ON DOWNPAYMENT POLICY CONSIDERATION

Recent inquiries from a select number of BMR homeowners requested that the City revisit the resale calculation defined in their older agreements from years 1983 to 2012, especially in the Madrone and Viale developments. Several homeowners were concerned that after years in their BMR home they would not recoup their out of pocket down payment, or much more than that, based on their older version of the resale calculation. The Madrone Development and others built by South County Housing were unique in that they were provided a significant amount of down payment and closing cost assistance to fill the gap between the maximum purchase money mortgage loan (first mortgage) and the sale price. Thus, the new homebuyer bought at a market rate price but was given substantial down payment from various entities. Fast forward to today, and homeowners have requested that a policy be considered to permit them to receive a minimum return. The current price determination method used in resale restriction agreements is the Indexed Price Based on Consumer Price Index.

It is important to note that this recommendation only attempts to assist the homeowners with older agreements so that they may have the same opportunity to receive the same return as newer BMR homeowners who at a minimum receive a return on their out of pocket down payment plus ten percent simple interest for each year that they stay in the home per their newer agreements.

The Housing Team is recommending that the City allow the BMR homeowner to receive their initial out of pocket down payment plus a minimal annual return based on the number of years that they occupied the unit. The following is an example of the recommendation. If an Owner made a down payment contribution of \$20,000 to purchase a BMR home that they want to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a \$14,000 (\$2,000 x 7 years) return on their initial down payment for a total of \$34,000. The City could also base the increase on any of the price determination methods above.

Allowing them to receive a minimum return is beneficial to the Program as it will encourage them to resell their units; thus, creating a new opportunity for another qualified family. A minimum return on their down payment will only be permitted, provided that the market conditions allow for a return and the City determines that enough sale proceeds are available, and the resulting resale price will not remove the housing asset from the Program.

Alternatively, the Council could choose to 1) not make any changes to the older agreements, or 2) permit the return on their out of pocket down payment with no interest.

OWNERSHIP, ESTATE PLANNING AND INHERITANCE

Additionally, several BMR households have raised concerns regarding the topic of “Ownership and Estate Planning.” The following is stated in the ownership guide, “New purchasers of BMR Units may not purchase the BMR Unit through a trust of any kind, including but not limited to living trusts. Existing BMR Owners may not transfer ownership of their BMR Units to trusts of any kind, including living trusts. Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term.”

In the event a death of the owner takes place and a Transfer must occur, the person inheriting the Home (the 'Inheriting Owner') must have their income and eligibility reviewed and approved by the City or Administrator to determine if they are an Eligible Purchaser. If approved, new documents will need to be signed and a new 45-year term will be enforced." Language has been added to the guide that addresses Transfers upon death of the Owner. Payable-on-Death (POD) Accounts and Transfer-on-Death (TOD) Deeds are two methodologies to provide a path for BMR Owners to designate beneficiaries and avoid having a BMR Unit become part of a probate case. Homeowners will be asked to sign a state approved form (Attachment No. 7) that designates their beneficiary. The New Participation Guide will say the following:

“In the event a Transfer occurs, or a person receives the Home by devise, inheritance, or operation of law due to death of the Owner, the person inheriting the Home (the “Inheriting Owner”) must have their income and eligibility reviewed and approved by the City or Administrator to determine if they are an Eligible Purchaser. If approved, new documents will need to be signed and a new 45-year term will be enforced.”

New purchasers of BMR Units may not purchase the BMR Unit through a trust of any kind, including but not limited to living trusts. Existing BMR Owners may not transfer ownership of their BMR Units to trusts of any kind, including living trusts.

Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term.

BELOW MARKET RATE (BMR) PROGRAM DEVELOPMENT STANDARDS

The Affordable Housing Development Standards establish criteria and requirements that the City will use to ensure that affordable residential units (rental and ownership), are planned and designed to guide the implementation and construction of the units, to ensure quality homes. A provision has been added to provide the flexibility to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project provides more community benefit. It is recommended that the revised BMR Development Standards (Attachment No. 6) be implemented for this next RDCS competition to encourage market rate and affordable housing developers to partner whenever possible to promote mixed income developments.

REORGANIZATION OF THE MORGAN HILL MUNICIPAL CODE

In conclusion, staff is recommending reorganization of existing Chapters in the Municipal Code for consistency. Chapter 15.22 “Affordable Housing Fee” is repealed

and replaced by Chapter 14.08 “In-Lieu Housing Fee” in Title 14 of the Morgan Hill Municipal Code (Attachment No. 1). By way of this Ordinance, Chapter 15.23 titled “Below Market Rate Program” of the Morgan Hill Municipal Code is repealed in its entirety from Title 15 for organizational purposes and added in its entirety in Title 14 (Housing) as Chapter 14.12 Below Market Rate Program of Title 14 (Housing). Additionally, the following two sections are added to Chapter 14.12, 14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide, and 14.12.120 BMR Ownership Program Application Guide for potential homebuyers. Section 14.12.130 incorporates the Development Standards by reference.

COMMUNITY ENGAGEMENT: Inform, Consult.

A notice of the public hearing was placed in the Morgan Hill Times September 28, 2018.

ALTERNATIVE ACTIONS:

The Council may choose to not approve any one of the recommendations, and/or direct staff to return with alternate considerations. The City Council may choose to not adopt the Below Market Rate Ownership Program Participation Guide and or the Below Market Rate Ownership Program Application Guide, and/or direct staff to return with alternatives.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City’s BMR Program Development Standards (Attachment No. 6) were presented with a report titled “Housing Program Update” and previously approved by City Council Resolution No. 16-081 on May 18, 2016. The BMR Ordinance was adopted on June 15, 2016. Most recently it was presented to the Planning Commission on September 25, 2018.

On July 18, 2018, the City Council introduced the Inclusionary Housing Ordinance No. 2278, adopted it on July 25, 2018, and it became effective on August 25, 2018. At the time of introduction, staff indicated that they would continue further refining the in-lieu fees and development standards.

On September 25, 2018 the Planning Commission received an update on the proposed housing fees and development standards (Attachment No. 8).

On September 26, 2018, the City Council held a Housing workshop to discuss the proposed Housing Ordinance and received a supplemental report correcting one of the fees (Attachment No. 9).

FISCAL AND RESOURCE IMPACT:

In-lieu fees are used for the preservation, creation, and administration of affordable housing projects and programs, and managed as part of the City’s existing affordable housing program. There is no fiscal impact associated with this report.

CEQA (California Environmental Quality Act):

Not a Project: This report is to inform policy regarding the Housing In-Lieu Fees and the Below Market Rate Program. Under the CEQA guidelines, activities that qualify to be listed as “Not a Project” include general policy and procedure making.

LINKS/ATTACHMENTS:

1. Housing Ordinance 10.10.2018
2. KMA Summary of Fees 2018
3. 2014 BMR Manual
4. Morgan Hill BMR Ownership Participation Guide 10.8.2018
5. Morgan Hill BMR Ownership Application Guide 10.8.2018
6. Development Standards 10.8.2018
7. Revocable Transfer on Death Deed
8. September 25, 2018 Planning Commission Staff Report (weblink)
9. September 26, 2018 City Council Staff Report (weblink)

ORDINANCE NO. _____ NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING NEW CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO TITLE 14 (HOUSING) OF THE MORGAN HILL MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND RENTAL PROJECTS WITHIN THE CITY AND ADDING CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND REPEALING CHAPTERS 15.22 “AFFORDABLE HOUSING FEE” AND 15.23 “BELOW MARKET RATE PROGRAM”

WHEREAS, this proposed Ordinance was considered by the City Council of the City of Morgan Hill at its regular meeting of [September 26, 2018 and October 17, 2018](#); and

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials submitted as a part of public hearing, have been considered in the review process; and

WHEREAS, to increase the supply of affordable housing in Morgan Hill, the City of Morgan Hill has both a 15% (outside of downtown) and a 10% (within downtown) Inclusionary Housing Ordinance, and the Residential Development Control System (“RDSCS”) that awards points to projects correlated to the provision of affordable housing in the proposed development; and

WHEREAS, applicants competing in the RDSCS competition obtain points to satisfy the affordable housing requirement to build a percentage of their project as Below Market Rate (BMR) units or in some cases they pay the In-Lieu Housing Fee in lieu of building affordable housing on-site; and

WHEREAS, since 1977, the City has amassed one of the largest BMR property portfolios per capita in the State and established a BMR Program that provides ownership and rental opportunities and affordability to very low, low and moderate-income households; and

WHEREAS, the City retained Keyser Marston and Associates (KMA) to conduct an analysis of the impact of the City’s Inclusionary Housing Ordinance and the RDSCS BMR requirements, and to:

1. Estimate the financial cost to developers of providing on-site BMR ownership and rental units equivalent to the percentages adopted in the Inclusionary Housing Ordinance ;
2. Provide a comparison of the cost of providing on-site BMR units to the RDSCS program’s in-lieu fee and, if appropriate, recommend changes to the in-lieu fee amount so that it more closely approximates the cost of providing on-site units in today’s market; and

WHEREAS, KMA recommended an ownership housing in-lieu fee of \$19.70 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and \$13.20 per square foot for ownership projects in the downtown where there is a 10% Inclusionary Housing Requirement. The recommended fees for Rental projects are \$29.00 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and \$14.95 per square foot for projects in the downtown where there is a 10% Inclusionary Housing Requirement. This would replace the previously adopted \$12.92 per square foot of the total project's livable space; and

WHEREAS, the Legislature of the State of California has found that the availability of housing is of critical statewide importance, and that providing housing for all Californians requires the cooperative participation of state and local governments and the private sector; and

WHEREAS, the City intends to establish In-Lieu Housing Fees in order to promote this objective, mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation (RHNA), and assist in implementing the goals, policies and actions specified in the Housing Element of the City's General Plan; and

WHEREAS, the City Council adopted an Inclusionary Housing Ordinance No. 2278 on July 25, 2018, establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 14.08 of Title 14 is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.08 – IN-LIEU HOUSING FEES

- 14.08.010 Findings and Purpose.**
- 14.08.020 Fee Established.**
- 14.08.030 Applicability**

14.08.010 Findings and Purpose.

1. Need for in-lieu housing fees. The City Council has determined, based on the City's General plan including the housing element, and existing statutes and regulations of the State of California, that the In-Lieu Housing Fee is needed in order to finance the preservation of the existing Below Market Rate Portfolio, the administration of the Housing Program, future affordable housing programs and new projects.

2. Consistency with City General, Specific and Master Plans. In establishing the In-Lieu Housing Fee, the City Council finds that it is consistent with the City's General plan, including the housing element and applicable specific plans and master plans.
3. The City of Morgan Hill Residential Development Control System ("RDSCS") awards competing developments points for construction of very low, low-income and moderate-income housing or for the contribution of In-Lieu Housing Fees to the Housing In-Lieu Fee Fund.
4. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios per capita in the State and established a BMR Program that provides ownership opportunities and affordability to very low, low-income and moderate-income households.
5. In-Lieu Housing Fees provide for the cost of administering the City's Housing Program, maintaining the BMR portfolio, as well as the creation and preservation of affordable units, as funding is available.

14.08.020 – Fee Established.

1. There is created an In-Lieu Housing Fee for new residential development for Residential Projects that are required or which volunteer to pay an In-Lieu Housing Fee.
2. For-Sale Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents (\$19.70) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDSCS) by contributing additional funds equivalent to 20% (5% above the 15% commitment), the in-lieu fee is twenty seven dollars and ten cents (\$27.10).
3. For-Sale Residential Projects Within Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is thirteen dollars and twenty cents (\$13.20) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDSCS) by contributing additional funds equivalent to 15% (5% above the 10% Downtown commitment), the in-lieu fee is nineteen dollars and twenty cents (\$19.20).
4. Rental Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is twenty nine dollars (\$29.00) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDSCS) by contributing additional funds equivalent to 20% (5% above the 15% commitment), the in-lieu fee is forty two dollars (\$42.00).
5. Rental Residential Projects Within Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is eleven-fourteen dollars and fifty cents (\$141.050) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDSCS) by contributing

additional funds equivalent to 15% (5% above the 10% Downtown commitment), the in-lieu fee is twenty one dollars (\$21.00).

6. Basis for calculation of the In-Lieu Housing Fee. The City approves, adopts and incorporates the summary report from Keyser Marston Associates (KMA), entitled "Summary of Per Square Feet In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements, and Summary of Per Square Feet In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements for Morgan Hill" dated ~~August 23~~ September 25, 2018. This establishes the value of the In-Lieu Housing Fee, which is determined to be a fair and effective fee to maintain the BMR Program.

14.08.30 Applicability

1. The In-Lieu Housing Fees are established for Residential Projects and will be incorporated into development agreements entered into after the effective date of this ordinance.
2. All collected In-Lieu Housing Fees shall be used to finance the administration and implementation of affordable housing programs and projects within the City of Morgan Hill in support of the goals and objectives established in the City of Morgan Hill housing element.
3. The In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project.
4. The In-Lieu Housing Fee will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund.
5. Example Calculations of In-Lieu Housing Fee:
 1. Amount, \$19.70: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$19.70 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$2,206,400$.
 2. Amount, \$13.20: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$13.20 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,478,400$.
 3. Amount, \$29.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$29.00 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$3,248,000$.
 4. Amount, ~~\$144.500~~ \$144.050: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = ~~$\$144.500 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,624,000$~~ $\$144.050 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,624,000$.
6. The In-Lieu Housing Fee must be provided to the Housing Division in proportion to the market rate units being delivered prior to Housing Division signing off for occupancy.
7. Whenever application of the Inclusionary Housing Requirements results in a fractional number of required Inclusionary Units of .49 or less, the Applicant may elect to pay the In-Lieu Housing Fee instead of developing the Inclusionary Unit.
8. Example Calculation of Fractional In-Lieu Housing Fee: the fractional BMR threshold is .5 to encourage the construction of new BMR units. The program applies the fractional fee to fractional requirements less than 0.5 of a unit. Project has 56 total units; average size of market rate units is 2,000 square feet. To receive maximum RDCS points the 56-total unit

project has committed to a 15% affordable commitment, 56 units x 15% = 8.4. This equates to 8 on-site BMR units and a fractional fee payment due for the “.4” units. First, calculate the implicit in-lieu fee: 56 units X 2,000 square feet X \$19.70 per SF = an implicit in-lieu fee of \$2,206,400. From that implicit in-lieu fee, calculate the per BMR unit cost: \$2,206,400. / 8.4= \$262,666. per BMR unit cost. The fractional payment owed for this project.

SECTION 2. Chapter 14.12 Below Market Rate Program of Title 14 (Housing) is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.12 – Below Market Rate Program

14.12.010	Purpose and Findings
14.12.020	Definitions
14.12.030	Applicability
14.12.040	Duties of Program Administrator
14.12.050	Occupancy and Sale Restrictions
14.12.060	Affordable Housing Agreement
14.12.070	Approved Program Participants and Vendors
14.12.080	Default, Foreclosure, and Loss of Unit
14.12.090	Annual Report
14.12.100	Enforcement
14.12.110	Below Market Rate (BMR) Ownership Program Participation Guide
14.12.120	Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers
14.12.130	Below Market Rate (BMR) Program Development Standards

14.12.010 – Purpose and Findings.

The City Council finds that:

1. The City of Morgan Hill Residential Development Control System ("RDCS"), awards competing developments points for provision of low-income and moderate-income housing and housing for the elderly.
2. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios in the state and established a BMR program that provides ownership opportunities and affordability to low-income and moderate-income households.
3. The excess sales proceeds value in each below market rate property represents a bona fide City asset that subsidizes the affordability for each BMR property owner ("owner") and is a vehicle that can be used to renovate older units, build new units and help pay for program administration.
4. The City recognizes that the declaration of restrictions, which secures the excess sale proceeds, is a covenant that runs with the land by and between the BMR property owner

and the City of Morgan Hill that restricts the right of use or enjoyment and should be enforced judicially.

5. A program and program guidelines are essential to maintain integrity of the BMR program and compliance therewith and these guidelines and policies will be updated from time to time to address challenges and changes in the market and economic environment.
6. In order to respond to program needs, the City Manager or his or her designee should be empowered to approve BMR program guidelines and BMR agreements.
7. In order to ensure compliance with the City's program the program must be actively administrated. The administration of the program can be achieved by City staff and/or an outside Administrator. The City is empowered to delegate the day-to-day management of the program to a third-party Administrator.
8. Either in-house or third party administration is vital to ensure program integrity and continued affordability of below market rate properties.
9. In response to the dissolution of the City's redevelopment agency, schedules have been put in place to pay for the costs of services funded by former redevelopment agency funds.

14.12.020 - Definitions.

When used in this chapter, these terms mean the following:

1. "Adjacent lots" means parcels with boundary lines that touch at any point. "Adjacent lots" includes parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.
2. "Administrator" means below market rate program Administrator which may either be the City itself or a third party Administrator acting as an agent for the City in connection with all aspects of the operation of the City's below market rate program pursuant to an agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.
3. "Area median income (AMI)" means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).
4. "BMR assisted housing" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.
5. "Assumed household size" means, for the purpose of establishing affordable sales prices, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any). For example, the assumed household size for a three-bedroom home is a four-person household.
6. "Below market rate (BMR) ownership housing" means dwelling units developed to be sold and affordable to lower to moderate income households and regulated by this chapter. "BMR unit" means one BMR ownership housing dwelling unit.

7. "CC&Rs" means, covenants, conditions and restrictions containing a covenant that runs with the land existing in favor of the City where a development project contains at least one BMR unit.
8. "Covenant that runs with the land" means the BMR property interest held by the City of Morgan Hill as a result of the recorded declaration of restrictions that restrict the right of use of enjoyment by the BMR owner-occupant.
9. "Decision-making body" means the Planning Commission or City Council, whichever is authorized to make a final decision on the project application for land use approvals.
10. "Excess sale proceeds" means the difference between the fair market value of a BMR property and the maximum restricted resale price.
11. "Eligible buyer" means a household which meets the requirements of this chapter to buy, or in the case of acquisition of a BMR unit through devise or inheritance, to occupy, a BMR unit; or a public or non-profit housing agency able to acquire and manage dwelling units for rental to eligible persons.
12. "Fee schedule" means the schedule of fees, adopted by City Council resolution and published annually, that outlines charges to program participants, including, but not limited to applicants, owner-occupants, housing professionals and developers.
13. "Gross annual household income" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR ownership housing guidelines.
14. "Housing cost" means the monthly mortgage payment (principal and interest), property taxes, owners' association dues, and owner's insurance.
15. "Low income household" means a household with a gross annual household income between fifty-one percent and eighty percent of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.
16. "Market rate unit" means a dwelling unit that is not subject to the occupancy or sale regulations in this chapter or any other affordability restrictions or covenants.
17. "Moderate income household" means a household with a gross annual household income between eighty to one hundred twenty percent of AMI for Santa Clara County. This definition corresponds to the definition of moderate income household for state-assisted housing programs.
18. "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.
19. "Property" means properties contained with the below market rate program portfolio subject to occupancy and sale restrictions.
20. "Very low income household" means a household with a gross annual household income that does not exceed fifty percent of AMI for Santa Clara County. This definition

corresponds to the definition of very low income household used for state- and federally-assisted housing programs. Very low income households are a subset of lower income households.

14.12.030 - Applicability.

- A. Residential Development Control System ("RDSCS"). All projects subject to RDSCS that provide units to meet the City's need for low and moderate income and elderly housing and the extent to which such units meet the goals of the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.
- B. BMR Ownership Housing Guidelines. The Administrator develops detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. The BMR ownership housing guidelines shall be approved by the City Manager or the City Manager's designee, and approved by the City Council from time to time.
- C. BMR Program Letters. BMR program letters may be issued by the Administrator to update procedures and guidelines not yet incorporated into the BMR ownership housing guidelines. These letters shall be approved by the City Manager or designee and serve as amendments to the guidelines that will be published online and made available to the public including guidelines for refinances, purpose and hardship review.
- D. BMR Agreements. Declaration of restrictions and affordable housing agreements may be amended from time to time subject to the approval by the City Manager or the City Manager's designee.

14.12.040 - Duties of Program Administrator.

The City may either handle in-house or contract responsibility for administration of the BMR ownership housing program and monitoring compliance with the requirements to a program Administrator pursuant to an agreement executed between the City and the Administrator.

The Administrator shall perform the following services, among others:

1. Maintain and update the BMR ownership housing guidelines and BMR program letters;
2. Conduct ongoing homebuyer education training programs, including preparation of program materials;
3. Screen and select qualified buyers according to BMR ownership housing guidelines and maintain qualified owner eligibility list;
4. Assist in seeking and arranging mortgage financing for purchase of the below market units;
5. Administer programs for monitoring compliance with terms and conditions of the occupancy and sale restrictions;
6. Administer BMR ownership housing guidelines concerning sale and resale of the below market units at a restricted price, including exercise of the City's option to buy the below market units upon assignment of such option, and assist in resale of the unit to eligible purchasers or families; and

7. In cases of default, administer the process of taking possession of the BMR property as appropriate, and completing the acquisition, rehabilitation and resale to an eligible buyer.

14.123.050 - Occupancy and Sale Restrictions.

Recordation of Declaration of Restrictions. Before issuance of any building permit for a BMR unit, the property owner, Administrator, and the City shall execute and record a declaration containing the occupancy and sale restrictions in this chapter. The declaration establishes a valid and enforceable covenant that runs with the land in favor of the City and is binding to the heirs, assigns and successors in interest of the property owner.

1. **Timing of Sale.** At completion of each BMR unit, the Administrator will be contacted to coordinate the sale of the property to an eligible buyer. The seller shall accept the first valid offer from a buyer deemed eligible by the Administrator, and shall cooperate to close escrow within the timeframe outlined in the affordable housing agreement.
2. **Term of Restrictions.** BMR units shall be reserved for lower and moderate income households subject to guidelines of the RDCS and shall be subject to the occupancy and sale restrictions for a specified period of time. This term begins upon sale to an eligible buyer. If the BMR unit is sold to another eligible buyer during the term, a new term shall begin upon resale and shall be secured by a new declaration of restrictions.
3. **Maximum Sales Price.** The Administrator shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR ownership housing guidelines as approved by the City Manager. The maximum BMR unit sale prices shall not exceed a price affordable to households at the applicable income level, based on a predetermined housing cost, specified with a maximum percentage of monthly gross household income for the unit's assumed household size. The percentage of AMI used shall be published annually by the Administrator.
4. **Sale Requirements.** The following requirements shall be met in any sale and resale of a BMR unit after the issuance of a building permit and during the term of restrictions:
 - a. The seller shall notify the Administrator of the intent to sell before offering the unit for sale, contacting a real estate agent or listing the property on any listing service
 - b. The Administrator shall respond to the seller with the sales procedure and maximum sale price
 - c. The Administrator shall follow the process outlined in the BMR Ownership housing guidelines to locate and deliver an eligible buyer to complete the home purchase
 - d. The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR ownership housing guidelines; and
 - e. Closing costs and title insurance fees shall be paid or according to the BMR ownership housing guidelines.
5. **Eligible Buyers.** The Administrator shall determine the eligibility of prospective buyers of BMR units. It is prohibited for any person to willfully make a false or misleading representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:

6. **Income Limits.** The prospective buyer's combined household income and assets shall not exceed specific household income limits, as further defined in the BMR ownership housing guidelines;
 7. **Conflict of interest.** The following individuals, by virtue of their position or relationship, are ineligible to purchase a BMR unit:
 - a. Any Administrator, City official or employee who administers or has policy-making authority over City housing programs;
 - b. The developer of the unit; or
 - c. The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, Administrator employees, City employees, officials, developers, or owners who are not eligible to purchase a BMR unit; and
 8. **Additional Criteria.** The Administrator may establish other reasonable eligibility criteria, ownership and occupancy requirements in the BMR ownership housing guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.
 9. **Occupancy and Rental Restrictions.** BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:
 - a. BMR units that are owned by a public or nonprofit housing agency may be rented to eligible households with prior written approval of the Administrator; and
 - b. The Administrator may allow the temporary rental of a BMR unit upon a finding of hardship beyond the control of the owner and after a full review of the hardship documentation.
 10. **Refinancing.** BMR home owners shall not refinance a BMR unit without prior written approval of the Administrator. BMR units shall not be used as collateral to secure liens or debts with a combined loan to value ratio in excess of the BMR ownership housing guidelines of the maximum BMR resale price applicable to the unit at the time of the proposed refinancing.
 11. **Additional Refinancing Criteria.** The Administrator may establish other refinancing criteria in the course of seeking financing to change the rate and/or term of a mortgage, consolidate purchase money lines or cash out a portion of the excess sale proceeds that would be due to the owner upon sale.
- 14.12.060 - Affordable Housing Agreement.

A. **Required Before Final Map or Building Permit.** Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record an affordable housing agreement (agreement) with the Administrator and City outlining the details of the below market rate unit commitment as outlined in the "specific restrictions and requirements (including RDCS requirements)" of the development agreement.

B. Agreement Provisions. The agreement shall include, at a minimum, the following provisions:

1. Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the agreement;
2. Binding of Project Site. The obligation for the entire project site to fulfill the for the project under this chapter;
3. Liens. A lien on each unit identified to meet the BMR ownership housing requirement, or if the alternative to pay an in-lieu fee is approved, a lien on every unit;
4. Transaction Processing Fee. For each BMR unit, the developer shall pay a BMR transaction processing fee to the City according to the most current fee schedule approved by the City. The City may provide this fee to the Administrator as an offset to charges incurred. This fee is not a real estate commission or real estate broker commission. This fee shall be listed as an "additional settlement charge" fee paid by the seller as reflected in section 1300 of the U.S. Department of Housing and Urban Development (HUD) Settlement Statement (HUD-1) or "other costs" paid by the seller in the new closing disclosure as determined by the TILA-REPA Integrated Disclosure rule.
5. Project Covenants, Conditions and Restrictions. A provision that prohibits any amendments to the development's covenants, conditions and restrictions that would increase the proportion of the owners' association dues or assessments payable by any BMR unit. The provision must also acknowledge the covenant that runs with the land in favor of the City where the development project contains at least one BMR unit. This provision shall create a right of judicial enforcement by the City or the owner of any affected BMR unit.
6. Enforcement. A provision that shall require the property owner to pay the City rent for a BMR unit from the date of any unauthorized use of the unit, and for the City's recovery of reasonable attorney's fees and costs to pursue legal action in enforcing this agreement.
7. Amendments. Major amendments to the agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the agreement may be reviewed by the Administrator. Upon approval, a new agreement containing the amendments shall be executed and recorded.

14.12.070 - Approved Program Participants and Vendors.

The City and Administrator shall maintain a list of approved program participants and vendors to protect the integrity of the BMR program, BMR properties contained within the portfolio, and excess sale proceeds. The approval requirements and process will be included in the BMR ownership housing guidelines. The program participant list will include, but will not be limited to:

1. Mortgage Lenders. Due to the integral role that mortgage loan officers and lenders play in purchase and refinance transactions, first mortgage and subordinate loan officers and lenders must be approved by the Administrator and a lender agreement will be put in place concerning BMR program compliance during loan origination, underwriting and servicing. In no event shall a deed of trust securing any loan to a BMR Owner be valid or enforceable as to any recorded interest, resale agreement or option of the City of Morgan Hill unless the following conditions are satisfied:

- a. The City of Morgan Hill or its Administrator has first approved the loan;
 - b. The loan is in accordance with the BMR ownership housing guidelines and any and all recorded deed restrictions;
 - c. The City of Morgan Hill or its Administrator has expressly subordinated its recorded restrictions to the specific deed of trust; and
 - d. Prior to making any loan to a BMR property owner for the purchase of a BMR unit intended to be secured by a deed of trust against the BMR unit, a lender shall disclose to the City of Morgan Hill or its Administrator the following information:
 - i. The borrower's loan application describing the loan terms; and
 - ii. Provide an acknowledgement in writing that that the total encumbrance does not exceed the maximum restricted resale value for the BMR unit as determined by the City of Morgan Hill or its Administrator according to the BMR ownership housing guidelines.
2. Real Estate Agents. Real estate agents and brokerages involved in the purchase or sale of BMR properties must be approved by the Administrator and a vendor agreement will be put in place concerning BMR program compliance during the listing, purchase and escrow process.
 3. Escrow Companies. An approved list of escrow officers and escrow companies will be maintained by the Administrator.
 4. Contractors. For work on BMR properties that exceed certain dollar amounts, as outlined in the BMR ownership housing guidelines, an approved list of contractors will be maintained by the Administrator.

14.12.080 - Default, Foreclosure, and Loss of Unit.

- A. Default. Upon declaration of a default by the City of any agreement between the City and the owner or if the owner or owner's proposed purchaser makes any misrepresentation in connection with receiving any benefits under the declaration of restrictions, the City or Administrator may apply to a court of competent jurisdiction for specific performance of this chapter, for an injunction prohibiting a proposed sale or transfer in violation of this chapter, for a declaration that a transfer in violation of this chapter is void or any such other relief at law or in equity as may be appropriate.
- B. Option to Purchase. If a notice of default is recorded on a BMR unit by a third party secured creditor or a lien is filed against the BMR unit, or any breach of any provision of any agreement between the City and the owner, and the owner fails to correct it, an eligible buyer, or the Administrator on behalf of the City or the City itself, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR ownership housing guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the owner. All other resale provisions of the guidelines apply.

- C. Loss of Unit. BMR units which have not been completed or sold to initial eligible buyers shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.
- D. Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the owners' association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows.
1. Owner. To the owner, up to the net amount the owner would have received under the sale price in the BMR ownership housing guidelines if the City had purchased the unit on the date of the loss; and
 2. City. To the City, any surplus remaining after payment to the owner.

14.12.090 - Annual report.

The Administrator shall provide an annual informational report to the City Council on the status of BMR units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each BMR unit completed during the year, as well as the number of BMR resales and BMR defaults and losses, if applicable.

14.12.100 - Enforcement.

The City, or Administrator if authorized, may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide

The purpose of the Below Market Rate (BMR) Ownership Program Participation Guide (Ownership Guide) is to describe the BMR Program policies and procedures to an existing BMR homeowner who is a Program participant. The Ownership Guide includes the following and is intended to be an overview for a Program participant who is occupying a BMR home. The Ownership Guide describes the policies and procedures for a BMR homeowner, including:

- Program participation guidelines
- Resale price determination and Household Information Profiles
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Ownership Changes, Re-Sales, and Approved Vendors

The Ownership Guide is prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed and may serve as amendments to the Ownership Guidelines that will be published online and made available to the public.

14.12.120 Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers

The purpose of the Below Market Rate (BMR) Ownership Program Application Guide (Application Guide) describes the BMR Program policies and procedures to a prospective BMR homeowner who is considering the BMR Program application process. The Application Guide includes the following and is intended to be an overview for a Program applicant who is considering applying for a BMR home.

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria, Online Web Portal, Establishing an Account
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria and Preference Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria and Title Requirements
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation
- Below Market Rate Pricing and City's Option to Purchase

The Application Guide may be prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the Application Guidelines that will be published online and made available to the public.

14.12.130 Below Market Rate (BMR) Program Development Standards

- A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood, and providing guidance for the inclusion of materials and amenities within each unit.
- B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.

- C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:
1. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.
 2. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.
- D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

SECTION 3. Subsection D of Section 14.04.060 is repealed.

SECTION 4. Chapters 15.22 "Affordable Housing Fee" and Chapter 15.23 "Below Market Rate Program" of the Morgan Hill Municipal Code are hereby repealed in their entirety.

SECTION 5. The revised Below Market Rate (BMR) Program Development Standards are hereby adopted.

SECTION 6. The City Council hereby finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Guidelines for CEQA. The proposed In-Lieu Housing Fee and Below Market Rate Program Ordinance are covered by the general rule that CEQA applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Adoption of this ordinance does not create changes in the physical environment and is therefore exempt pursuant to the exemption described above.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF ____, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date:

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, ~~New Series~~, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____th day of _____ ~~2018~~ 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

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Table A

Summary of Per Square Foot In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements¹
Morgan Hill

	Outside of Downtown 15% On-Site; 10% @81% and 5% @110% - Table 13 of RDCS Manual	Downtown 10% On-Site; 6% @81% and 4% @110% Table 17 of RDCS Manual	Outside of Downtown 20% On-site; 13% @ 81% and 7% @ 110% Table 12 of RDCS	Downtown 15% On-Site; 9% @ 81% and 6% @ 110% Table 12 of RDCS Manual
Size of BMRs Relative to Market Rate Units				
Equal in Size to Market Rate Units	\$32.30	\$22.50	\$43.30	\$31.60
80% of Size of Market Rate Units	\$22.40	\$15.20	\$30.60	\$21.80
75% of Size of Market Rate Units	\$19.70	\$13.20	\$27.10	\$19.20
72% of Size of Market Rate Units (Avg. condition of analyzed projects)	\$18.20	\$12.00	\$25.10	\$17.70

¹Following projects were analyzed: Madrone Plaza, Tilton, Loden Place, Stonebridge, Terra Mia-Mission Ranch, Paseo Seville and Esperanza

Table B

Summary of Per Square Foot In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR
Requirements Morgan Hill

	Outside of Downtown 15% On-Site; 6% EL; 6% VL; 3% Low Table 15 of RDCS Manual	Downtown 10% On-Site; 8% VL; 2% Low Table 18 of RDCS Manual	Outside of Downtown 20% On-site; 8% EL; 8% VL; 4% Low Table 12 of RDCS Mnl	Downtown 15% On-Site; 12% VL; 3% Low Table 12 of RDCS Manual
Size of BMRs Relative to Market Rate Units				
75% of Size of Market Rate Units	\$29.00	\$14.50	\$42.00	\$21.00



Below Market Rate Program Manual

The City of Morgan Hill

2014 - 2015

Introduction

About the Manual

This manual contains the guidelines that establish the process for the City of Morgan Hill's affordable housing program, also known as the Below Market Rate (BMR) housing program. The purpose of this manual is to outline:

1. Program eligibility criteria
2. Application processes for prospective purchasers
3. The processes and procedures for owners that currently own in the program.

All interested applicants are encouraged to review the BMR program manual **prior** to application, to learn more about the benefits as well as the process for purchasing a BMR home through the City of Morgan Hill; to learn more about what to expect when applying to the program and during homeownership.

All applicants will receive a copy of the BMR program manual and a sample deed restriction package to review prior to the execution of any sales agreement.

The program manual may be updated from time to time to increase the program's effectiveness. Modification may require City Council approval.

In the event there is a conflict between the BMR deed restrictions and the BMR program manual, the recorded BMR deed restrictions will always prevail.

BMR Program Administration

The [City of Morgan Hill's Housing Division](#) in cooperation with [Neighborhood Housing Services Silicon Valley](#) (NHSSV) operates the Below Market Rate (BMR) housing program to provide affordable homeownership opportunities in the City of Morgan Hill. The City of Morgan Hill has contracted with NHSSV to act as the BMR Program administrator. The following are the services provided by NHSSV on behalf of the City of Morgan Hill

- Homebuyer education
- Homebuyer application evaluation and selection processing
- Mortgage counseling and financial servicing
- Facilitation of homebuyer/developer interaction
- Compliance monitoring
- Annual certifications
- Customer service activities
- Real estate sales (real estate agent for listing and selling new development and re-sale BMR homes)

Fair Housing Policy

Program participants must comply fully with all Federal, State, and local non-discrimination laws. Specifically, program participants and program administrators will not be permitted to discriminate against any prospective applicant based on race, color, sex, religion, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, or deny any family or individual the opportunity to participate in the City of Morgan Hill BMR program.

Privacy Rights

All eligibility applications are held in strict confidence and are not considered public records (H&SC Section 34332). Requests received by the City to release information involving a homebuyer or homeowner must be accompanied by a written release request from the homebuyer or homeowner and/or court order, unless disclosure is authorized under Federal or State law.

H&SC Section 33334.3 requires redevelopment agencies to compile, maintain and make available to the public on the internet, a database of existing new and substantially rehabilitated homes that are subject to income and BMR deed restrictions. The online database can be annually updated. With the dissolution of redevelopment agencies in 2012, successor agencies of redevelopment agencies are required to compile information.

NHSSV

Brokerage: Neighborhood Housing Services Silicon Valley
BRE# 01324196 & NMLS# 259971

Broker: Robyn Van Ekelenburg
BRE# 01336834 & NMLS# 334668

City of Morgan Hill's BMR Program History

Authority for the administration of the City of Morgan Hill's BMR program is found in provisions contained in the Residential Development Control System (RDCS) in the Municipal Code (Chapter 18.78) and further upheld in the policies adopted in the Housing Element of the Morgan Hill General Plan.

The Residential Development Control System (RDCS) was enacted by the residents of Morgan Hill in 1977 to regulate the growth of the major residential developments of five or more homes. Today more than 450 BMR units, individually owned, have been made available to the Morgan Hill community. These homes continue to be made available through re-sale, at affordable values, for up to 45 years, generating an on-going affordable resource for the City. With each new housing development in Morgan Hill, new affordable ownership opportunities are created adding to the City's total supply.

BMR Program Contact Information

Online: www.NHSnow.org
Email: HOO@nhssv.org
Phone: 408.579.6550
Address: 31 North Second Street #300
San Jose, CA 95113

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Section 1: Introduction to the City of Morgan Hill's Below Market Rate Program

The purpose of the BMR program is to provide long-term affordable homeownership opportunities for low and moderate-income households in the City of Morgan Hill. BMR homes are sold for less than market value to low - moderate income and program eligible homebuyers. *See Section 2 for additional details on eligibility.*

Applicants that purchase a BMR home will be required to sign affordable housing documents (also known as resale agreements or BMR deed restrictions, as well as a deed of trust and a promissory note) to ensure homes remain affordable and homeowner occupied for the restricted term (generally 45 years). Homeowners can sell their home on the open market at the end of the restricted term.

The deed restrictions give the City of Morgan Hill (or its assigned program administrator NHSSV) the First Right of Refusal to purchase the BMR home for a restricted sales price if the homeowner should choose to sell during the term of the restriction. If the City of Morgan Hill opts to purchase the home, then they exercise what is known as the Option to Purchase. The City or administrator can also assign another program eligible buyer to purchase the BMR home.

The City is not obligated to exercise its Option to Purchase but the seller is obligated to give the City the option to do so.

Section 1.1: About NHSSV's Housing Department

NHSSV is a 501C3 nonprofit housing organization that serves as the BMR program administrator, as well as exclusive real estate brokerage for the City of Morgan Hill's affordable housing program.

NHSSV was incorporated in 1995 as a non-profit Community Development Organization by a group of local citizens with a mission "to promote community revitalization and economic stability by providing responsible homeownership and neighborhood services to low and moderate income families."

NHSSV is a member of the NeighborWorks America Network, a congressionally created and funded effort, and a national affiliation of 235 independent, community-based nonprofit organizations committed to community revitalization. NHSSV is a non-profit realty company and certified by the US Department of Treasury as a Community Development Financial Institution (CDFI). NHSSV is the only community-based non-profit organization in the Silicon Valley area that is approved as a direct seller and servicer by Fannie Mae.

NHSSV acts as the exclusive real estate agent for the City of Morgan Hill's BMR program. NHSSV's Housing Department contains a dedicated agent, who exclusively handles all BMR transactions. The brokerage will represent both the buyer and the seller as a dual agency in the BMR transaction and includes the following:

Contracts Administrator - supports internal staff and external partners to execute the sale and administration of BMR homes.

BMR Real Estate Coordinator - coordinates and communicates with multiple parties to close complex and multi-layered BMR transactions.

BMR Real Estate Agent – executes BMR sales including real estate, escrow and marketing activities associated with special projects and inventory. As needed, the BMR agent will hold open houses and events to market the property for sale.

BMR Processor - assists applicant BMR homebuyers and renters in the application and purchase process from orientation to move-in day and beyond.

BMR Underwriter - verifies BMR applicants meet each program and property's BMR qualifications and down payment assistance eligibility standards.

BMR Monitoring Specialist - monitors and reports on BMR homeowner deed restriction compliance.

Section 1.2: NHSSV's BMR Process Cycle

NHSSV administers the 9-step BMR Process Cycle assisting to place eligible homebuyers into homes. Each step is executed in sequential order to practice and fulfill BMR program guidelines:

Opportunity Created – NHSSV, the City and builders identify BMR homes for sale and confirm marketing responsibilities by signing a Developer Agreement and Affordable Housing Agreement; or when BMR program homeowners decide to sell, they must contact NHSSV and notify them of the intent to re-sell the home.

Structure – As in any purchase, the BMR seller must prepare the home for sale and NHSSV will determine the BMR financial program for the purchase. Staff will structure the income limits, program guidelines, deed restrictions, NHSSV approved BMR loan officers and down payment assistance.

Orientation – Applicants attend a Homebuyer Opportunities Orientation (HOO) to learn about program and mortgage qualifications and indicate interest in participation through the Self Evaluation Form.

Application – Applicants submit a BMR application with supporting documents and a mortgage pre-qualification from an NHSSV preferred lender.

Approval – NHSSV performs BMR program eligibility verification, household income certification and lender’s credit approval to issue BMR approval. Applicants attend HUD homebuyer education class.

Property Selection – Approved applicants will select homes including size and type based on unit availability and their approval from NHSSV, which will include a review based on the financing available for the purchase and the applicants’ loan pre-approval.

Contract – Approved applicants enter into a binding real estate sales contract. Deed restriction packages are prepared by NHSSV staff weeks prior to the anticipated closing. The documents will be executed by all parties and routed to the Title and Escrow Company by NHSSV staff.

Closing – This is a formal process whereby all the milestones of the purchase have been completed. These include: all loan documents are signed; funds to close are in escrow; resale restriction and deeds of trust are recorded; and the transfer of title from the seller to homebuyer occurs.

Ownership – Homebuyers become Homeowners!

Annual occupancy certification will be conducted by NHSSV staff. Homeowners are required to participate in this process, verifying that they continue to occupy the home.

Any homeowner who wishes to sell or refinance must contact NHSSV prior to doing so.

Properties are severely restricted from re-financing to access equity as resale values remain at affordable rates as a condition of purchase.

Section 1.3: How the BMR Program Works

The City of Morgan Hill’s BMR program is intended to provide affordable housing to residents who would otherwise have not qualify for purchasing a market-rate home in the City of Morgan Hill.

The BMR program is not intended to help applicants profit from property ownership. It is also not intended to allow homeowners to jeopardize (intentional or not) the City’s investment in affordable housing.

BMR homeowners purchase a home for a lower sales price with BMR deed restrictions which in return:

- Gives the City/NHSSV the First Right of Refusal and Option to Purchase;
- Requires homeowners to remain current on their mortgage payments;
- Mandates BMR homeowners must maintain their BMR home as their primary residence;
- Limits re-sale value or price;
- Limits total loans on title;
- Limits refinance amounts;
- Limits liens placed on title;
- Mandates insurance requirements;
- Requires homeowners to follow City code and ordinances; and
- Requires transfers of title to be made in accordance with applicable deed restrictions

BMR Affordable Sales Prices

The City of Morgan Hill's BMR Program requires that homes sell at an Affordable Sales Price and remain affordable for a term of 45 years. Affordable Sales Prices are assigned prior to marketing the home and are based upon California Department of Housing and Community Development (HCD) established values in Santa Clara County . Affordable Sales Prices will not be revised during a purchase transaction.

The Affordable Sales Price is determined by a formula based on Area Median Income (AMI) and the Housing Affordability Index. The Affordable Sales Price is not related to the fair market value of the home; however, the Affordable Sales Price can never exceed fair market value of the home.

Area Median Income is the median household/family income for Santa Clara County, adjusted for actual household size, as determined annually HCD. The California Association of Realtors (C.A.R.) uses the Housing Affordability Index to measure the percentage of households that can afford to purchase the median priced home in California and specific regions.

Section 1.4: BMR Homeownership versus Market Rate Homeownership

The BMR homeownership path does not mirror the market rate homeownership experience.

Experiences uniquely related to BMR homeownership are:

- Interested applicants must apply to the BMR program and demonstrate they meet defined income and first-time homebuyer eligibility requirements;
- Homebuyers must sign a BMR deed restriction, deed of trust, and promissory note in order to purchase a home at a below market price;
- The deed restrictions and deed of trust are recorded against the home at the time of purchase; and
- The homeowner must meet occupancy and resale requirements defined in the deed restrictions and deed of trust. In general, these requirements are:
 1. The homeowner must live in their BMR homes as their primary residence
 2. A homeowner may not use the home as a rental
 3. **The City of Morgan Hill retains First Right of Refusal** to purchase the property at time of resale from the owner or assign another qualified homebuyer. Failure to meet these requirements will result in default, potential loss of the home, and/or legal action.

Section 2: BMR Eligibility & Application Process

Section 2.1 BMR Program Eligibility Requirements

1. *First Time Homebuyer*

Applicants must be a First Time Homebuyer. A First Time Homebuyer is defined as those:

- Who have not owned a home (mobile homes excluded as defined by HCD) on title or mortgage loan in the last three years: or
- Have owned a home in the last three years, but no longer own the home and are a widow, widower, divorced, or displaced homemaker as defined by HCD.

2. *Household Size & Income Limits*

Low to moderate household income limits are adjusted by household size as determined by HCD. Visit www.hcd.ca.gov to view Santa Clara County income limits

3. *Homeownership Education*

Applicants must attend an NHSSV Homebuyer Opportunities Orientation (HOO) & received a NHSSV approved 8 hour US Housing and Urban Development (HUD) Homebuyer Education Certificate prior to closing (preferably prior to entering into a contract).

4. *Financing Requirements*

Applicants must be first mortgage approved by an NHSSV approved loan officer and meet homebuyer financing requirements as defined in Section 3.

Section 2.2: BMR Household Income versus Borrower's First Mortgage Income

Two types of income are used to determine applicant's ability to purchase a BMR home:

1. *BMR applicant projected household income* adjusted by family size is determined by NHSSV to establish program eligibility; and
2. *Borrower's first mortgage income* is determined by a loan officer to establish mortgage loan qualification.

BMR and first mortgage incomes are derived from using two separate methodologies:

BMR household income

- NHSSV projects household income for the next 12 months to calculate household BMR program eligibility

First mortgage borrower's income

- A loan officer averages the borrower's (person/people on the loan) income for loan qualification.

The BMR projected income versus the lender's averaged income can sometimes differ. This could potentially deem an applicant eligible for the BMR program, but ineligible for a first mortgage loan, or vice versa. In order to become approved for the program, applicants must meet the approval criteria for the BMR program and the loan.

Section 2.3: BMR Application Process & Processing Priorities

BMR homebuyers are offered an opportunity to purchase a BMR home upon program application and approval.

- ***BMR Application Submission***

In order to be eligible to purchase a BMR home, applicants must attend an orientation and submit a BMR application with supporting documentation to NHSSV's Housing Department (this is a different department than NHSSV's Lending Department). The application must include a mortgage pre-approval letter from an NHSSV preferred BMR loan officer.

NHSSV will review the application for completeness and will notify the applicant of any missing information and/or additionally required documents. Incomplete applications may not be considered for eligibility. See Appendix B to learn more about the types of documents that may be requested from the applicant household to submit a complete application. Failure to provide requested information and/or documents during the application process in a timely manner can constitute cause for denial of eligibility.

- ***BMR Application Processing Priorities***

Applications will be processed (reviewed for completeness and underwritten/verified for eligibility) in the following order:

1st Priority: BMR applications received for "First Come First Served" BMR properties. See Section 4.3 for additional details.

2nd Priority: BMR applications received for BMR properties with upcoming application deadlines

3rd Priority: BMR applications received for future available BMR properties

- *BMR Application Processing Milestones*

BMR program applicants participate in a sequential seven-step process to move their applications from submission to approval. The BMR approval process can take as little as 10 working days or as long as 4 – 5 weeks or more depending on the applicant's access to supporting documentation and responsiveness to requests for information.

Each of the seven milestones are:

1st Milestone - Applicant submits application to NHSSV's front desk (in-person or sent via tracking system - USPS certified mail, FedEx, UPS, etc.)

2nd Milestone - NHSSV screens application for processing priority and missing items

3rd Milestone - NHSSV delivers a "Needs List" with additional documents needed from applicant to complete the application

4th Milestone - Applicant submits requested deed restrictions to NHSSV

5th Milestone - Applicant receives a "Submission Notice" from NHSSV that confirms their application is complete and under the BMR Underwriter's review for verification of program eligibility

6th Milestone - BMR Underwriter reviews application and requests information as needed from the applicant

7th Milestone - BMR Underwriter issues BMR program approval, suspense, or denial

- *Application Denial Appeal Process*

The BMR Underwriter issues BMR denial letters with specific reasons for the denial.

Should an applicant receive a BMR program denial letter, the applicant has 3 business days to appeal the denial by sending a certified letter to the BMR Underwriter with third party documentation verifying the inaccuracy of the denial letter issued to the applicant by NHSSV.

For example: If the BMR Underwriter issues a denial to an applicant because a submitted child custody agreement doesn't allow the applicant to claim their dependent child as a BMR household member, and therefore the applicant exceeds the qualifying maximum household income adjusted by family size, then the applicant has 3 working days to submit a letter from the court/court order verifying the applicant meets required 50% physical custody of said child for program eligibility. See Appendix A for definition of BMR Household Member.

- **Co-Applicants**

Every person who is on title must live in the BMR home, must be eligible, must participate in each step of the application and purchase process and must agree to comply with the program requirements.

Section 2.4: Property Selection Process

Currently, the City Council of Morgan Hill has temporarily suspended jurisdictional BMR homebuyer selection preference categories; however, NHSSV employs an internal homebuyer selection process via property application deadlines. If no applicant applies for a property by the indicated deadline, then the home becomes available on a “First Come First Served” basis. All homes will be initially offered for purchase via property application deadline.

- *Homebuyer Approval Process*

Applicants can apply for homes by the indicated deadline that match their loan pre-approval amount from their bank with the home’s assigned income limits (see below).

- *Application Tiers for Property Deadlines*

There are 3 tiers of application rankings used to identify buyers who wish to select a property by the indicated application deadline.

Tier 1 – BMR pre-approved applicants

Tier 2 – BMR applicants in order of milestone that submitted their application but have yet received program approval.

Tier 3 – New BMR applicants who submit their application by the property’s application deadline.

If no Tier 1 applicants apply for the home by the application deadline, then Tier 2 applicants will be entered into a lottery. If no Tier 2 applicants apply by the application deadline, then Tier 3 applicants will be entered into a lottery. If no Tier 3 applicants apply, then the home will become available on a “First Come First Served” basis.

- *Property Points*

Tier 1 BMR pre-approved applicants are selected by total program accrual of BMR property points as explained below.

Applicants receive one BMR property point each time they submit a qualified BMR Property Interest Form (one entry per homebuyer per property per application deadline). Pre-approved applicants will receive information about how to complete a Property Interest Form upon program pre-approval (Milestone 7).

A drawing will be held if there are more than one homebuyer with the same amount of property points. If the selected homebuyer decides not to purchase the property, they lose their accrued "to date" property points.

- *Property Drawing Policy*

When it is necessary for NHSSV to conduct a drawing to select a homebuyer, it is done so privately. In order to protect the privacy of homebuyers and the program's integrity, several NHSSV staff members and occasionally a representative from the City of Morgan Hill is present at the drawing and signs a drawing affidavit to confirm homebuyer selection fairness and transparency.

Section 2.5: BMR Program Affidavit

Purchasers must sign a program affidavit and take a test to solidify their understanding of the BMR program and deed restrictions prior to closing escrow.

Section 3: City of Morgan Hill BMR Financing Requirements

BMR applicants must obtain conventional, fully amortizing, fixed interest rate mortgages with a term of no more than 30 years. No interest only loans, negative amortization loans, balloon payment loans or variable interest rate loans are permitted as they affect the homeowners long-term ownership stability.

- Homebuyers must commit at least 3% of their own funds (cannot be financed) towards the purchase transaction;
- Homebuyers must also pay applicable closing costs; and
- Mortgage loans cannot exceed 100% of the sales price + 5% for closing costs

For the purpose of ensuring that risks to homebuyers and the City are minimized, applicants' proposed mortgage financing terms are subject to approval by NHSSV.

- *Preferred BMR Lending Teams*
BMR applications will only be accepted with supporting documentation from a NHSSV preferred BMR loan officer with preferred operations teams.

NHSSV maintains a preferred lender list. To be eligible to finance a BMR home, the lender must have been included on the NHSSV preferred lender list for at least sixty (60) days prior to the closing of the sale of the BMR home.

BMR loan officers and their teams must have previously approved the BMR deed restrictions, recording requirements and all other City-required documents associated with the sale of BMR homes.

If an applicant chooses a lender not on the list, then they should email HOO@NHSSV.org to work with NHSSV to get that lender to approve the City-required documents associated with the sale of the BMR homes.

In order for a loan officer and their operations team (loan processor & loan underwriter/operations manager) to be approved for placement on the preferred lender list, they are required to attend a lender orientation and provide written verification that all resale restriction documentation has been reviewed and approved by their legal and underwriting departments of the funding lender.

Section 4: BMR Policies & Procedures for Homeowners

BMR deed restrictions dictate policies and procedures specific to individual properties.

Some of the policies and procedures outlined in the deed restrictions that are specific to each individual BMR purchase are:

- Homeowner Occupancy Requirements & Annual Homeowner Occupation Certifications
- City Consent for Refinance Process
- Title Transfers (Including through marriage, divorce & inheritance)
- Selling Process & Procedures

Current BMR homeowners can contact NHSSV at HOO@NHSSV.org for a personalized deed restriction counseling session to discuss any questions regarding their property covenants.

Section 4.1: Homeowner Occupancy Requirements

BMR homeowners are required to live in their home as their primary residence.

NHSSV will routinely monitor homes for owner occupancy. It is a requirement of the program that homeowners are required to cooperate with NHSSV and the City to promptly provide information requested by the City when monitoring homeowner occupancy requirements.

Section 4.2: Deed Restriction Defaults

If homeowners are thought to be in default of the occupancy requirement, or any other such violation of their restriction, including first mortgage loan default, NHSSV will work with the homeowner to give them the opportunity to cure the default or the City/NHSSV could choose to exercise its Option to Purchase.

- *Homeowner Occupancy Default Referrals*
NHSSV and the City will follow up on homeowner occupancy default referrals that are received by outside parties. Such follow up will be made providing that the referral contains at least one item of information that is independently verifiable.
- *Notices of Default/Foreclosure*
The BMR program is not intended to allow homeowners to jeopardize (intentional or not) the City's investment in affordable housing. BMR homeowners must remain current on all their mortgage payments.

If a Notice of Default is recorded by a lender against on a home in the BMR program, then the homeowner will be in default of the covenants established in the restriction with the City. NHSSV or the City shall inform the owner of the action that needs to be taken to cure the default, as well as a date to remedy said default and may assist the owner to understand their options. The owner's failure to cure the default may result in the City's enforcement of its right to declare a default and exercise its Option to Purchase.

Section 4.3: Home Maintenance and Insurance Requirements

Most deed restrictions require BMR homeowners to maintain the home in good repair.

Failure by the owner to maintain their home can constitute a default under their deed restrictions and the City may then exercise remedies including exercising the Option to Purchase.

Owners are required to maintain a standard all risk property insurance policy equal to the replacement value of the home (adjust every five (5) years by appraisal, if required by the City), naming the City, and their employees, agents, officers, board members as additional insured.

Section 4.4: Military Leave & Vacated BMR Home Exemption

BMR homeowners who currently serve in the U.S. Armed Forces and are deployed out of state and cannot occupy their BMR home for more than 90 days but less than (3) years will be allowed to rent their BMR home.

BMR homeowner(s) on Military Leave will need to:

- Provide the City with a copy of their deployment orders;
- Follow NHSSV's direction on how to identify and approve a prospective tenant ;
- Sign an amendment to the BMR deed restrictions for rental due to military service with an expiration date which the City will record against said BMR home;
- The income level (as defined by HCD) of the prospective tenant will correspond to the home's BMR income category (as defined by the deed restrictions);
- Contract with a property management company during deployment.
- Will be required to re-occupy the BMR home within 90 days from the end of deployment and provide the City with a copy of any lease/ rental agreement. The lease/ rental agreement may not be for a term in excess of the period of time owner(s) will be deployed out of the area.
- If there is an active lease/ rental agreement between the owner and the tenant, then the owner must wait till the end of the lease agreement to move back in.
- However, upon a mutual agreement between the owner and the tenant, the lease may be terminated at any time. Should there be disagreement between the owner and tenant, the City will refer both owner and tenant to a landlord/ tenant arbitrate, such as

Project Sentinel for further assistance.

Section 4.5: Refinance & Subordination Requests

*BMR homeowners may be allowed to refinance their home, provided it is done in accordance with the resale restriction guidelines. BMR refinance and subordination applicants must obtain conventional, fully amortizing, fixed interest rate mortgages with a term of no more than 30 years. No interest only loans, negative amortization loans, balloon payment loans or variable interest rate loans will be allowed. **No refinance may exceed the restricted re-sale value of the home.***

The City/NHSSV may agree to subordinate the deed restrictions and may require that affordability restrictions be re-recorded if the proposed financing complies with the requirements imposed by the City of Morgan Hill BMR program.

Requests to subordinate the City's BMR deed restrictions must be made to NHSSV (HOO@NHSSV.org) by homeowners. NHSSV will review and approve or deny refinance/subordination requests.

NHSSV approval of subordination requests are subject to the determination that the homeowner is in compliance with program requirements and that the mortgage conforms to the established requirements.

It is important to note that all non-traditional mortgage loan products will not be permitted as part of any refinance. This includes ARM's of any period of time and non-amortizing loans. Therefore, only fully amortized 15-30 year loans will be allowed as part of any refinance and/or subordination approval.

In accordance with a City Council resolution, a subordination request fee will be imposed. The fee must be paid upon subordination application submission to NHSSV.

- *BMR Mortgage Refinance Amount*

Homeowners must review their deed restrictions to understand their maximum refinance amount. BMR homes can be refinanced up to 95% of their resale value.

In most cases, the maximum refinance amount is valued at the percentage change in CPI Index between the date the BMR deed restrictions were recorded and the refinance date. In other cases, the refinance amount is valued with the percentage change in the Area Median Income (AMI) between the date the BMR deed restrictions were recorded and refinance date.

NHSSV will initially assess current BMR value at subordination application and the valuation is valid for six months. BMR valuation for refinance purposes will only be assessed once every six months.

BMR Mortgage Refinancing Requirements

A BMR home that is 100% financed and the owner requests a refinance to substantially reduce the housing payment will be permitted (\$200 per month or more).

- *Second Mortgages*

Second mortgages or lines of equity, except for the Housing Trust Silicon Valley's BMR Re-hab Loan Program, are not allowed under the BMR program.

For more information about the Housing Trust Silicon Valley's BMR Re-hab Loan Program, please visit their website at www.HTSV.org

- *BMR Homeowner Refinance Reminders*

- Call NHSSV for information and support before talking to a lender about refinancing
- Refinancing is only allowed with prior approval from NHSSV
- Don't lock your interest rate before receiving NHSSV's refinance approval
- Refinance with cash out require a hardship letter for City approval
- The refinance approval process can take up to 3 weeks or more to process
- DO NOT sign loan documents without receiving NHSSV's approval letter; and
- Homeowners may refinance up to 95% of the current BMR value (in accordance with the formula listed in the Resale Agreement)

Section 4.6: Title Transfers - Including Through Inheritance

Homeowners must review their BMR deed restrictions in order to determine if and how their homes' title can transfer.

Homeowners are not permitted to transfer title to anyone unless NHSSV has provided written approval to do so.

In most cases, title transfers can only occur between a husband and wife at marriage or divorce.

Deed restrictions dictate who can inherit the BMR home.

Homeowners with questions should contact NHSSV's Housing Department at HOO@NHSSV.org.

Section 4.7: BMR Capital Improvements & Resale Prices

The value of "capital" improvements on a depreciating scale may be added to the resale price of the home at the time of sale only.

Capital improvements are those that enhance the value of the property (verified by an appraisal) and cannot be removed at time of sale without damage to the premises.

BMR homeowners need to aware that in order for capital improvements to be calculated into the resale value of the home they must:

- Show receipts for items to receive credit (must not be handwritten)
- Understand that capital improvements will not be equaled on a dollar to dollar expenditure
- Provide proof of all required building permits including final inspection
- Show City/NHSSV approval was obtained prior to improvement for which they want credit

Section 4.8: Reselling a BMR Home

BMR homeowners who wish to sell their home before the end of the term of the re-sale restriction are subject to the City's First Right of Refusal and must sell to another BMR program approved buyer.

BMR homes may only be placed on the open market if the deed restrictions have expired.

▪ *Re-Sale Process*

Each individual property's BMR deed restriction outlines the BMR resale process. Sellers must comply with all terms and conditions that determine resale process indicated in the home's recorded BMR deed restrictions.

The first action is usually to notify NHSSV or the City of the intent to sell the BMR home. The "Owner's Notice of Intent to Transfer" must be sent to NHSSV by certified mail with a return receipt requested. Notices are considered effective as of the date received.

Resale prices are assigned prior to marketing the home and are valid upon initial listing agreement through close of escrow. Re-sale prices will not be reassigned within a current transaction.

▪ *Real Estate/BMR Transaction Representation*

NHSSV acts as the exclusive real estate agent for the City of Morgan Hill BMR Program. NHSSV's BMR Real Estate Agent represents BMR buyers and sellers during the BMR transaction process.

▪ *Real Estate/BMR Transaction Fee*

Real Estate commission fees are the responsibility of the seller.

▪ *BMR Resale Price*

Homeowners must review their deed restrictions to understand their resale price.

In most cases, resale price is valued at the percentage change in CPI Index between the date the BMR Deed restrictions were recorded and the resale date. In other cases, resale

price is valued with the percentage change in the Area Median Income (AMI) between the date the BMR deed restrictions were recorded and resale date.

- *Seller's Responsibilities*

The seller must review their deed restrictions and follow the procedures indicated in the document to resell their home.

Seller must make home marketable as needed (This may include carpet cleaning and painting, etc.)

In accordance with California real estate laws, seller will disclose all aspects of the material facts that could affect a buyer's decision to purchase including but not limited to Homeowners Association (HOA) dues, Mello Roos Assessment District Fees, structural issues, etc.

- *Homeowners of Previously Owned (Resale) BMR Homes*

Homebuyers for BMR homes that are being resold back into the program will be chosen in the same manner the initial homebuyers were selected.

Appendix A: BMR Program Eligibility Underwriting Guidelines

Household Size

BMR income limits (determined by HCD) are adjusted by household size.

One of the first steps in determining program eligibility is determining the size of a household.

All household members who are not applicants or co-applicants, must be legal dependents and listed as a current dependent of the applicant or co-applicant on federal tax returns.

Household members are required to demonstrate one full year of current joint residency. Acceptable verification of joint residency may be in the form of the following: joint bank accounts or other shared financial history, leases or other evidence of cohabitation, or credit reports showing evidence of joint residency.

Unborn children, foster children, or children who are being pursued for legal custody or adoption cannot be used when determining household size.

- *Shared Custody*
Children living in the home under shared custody agreements must reside in the house at least 50% of the year to be counted.
- *Divorced Household Members*
Divorced or legally separated household members must provide a copy of the divorce decree or legal separation documents signed by a court officer and filed with the Court. Otherwise separated married household members must demonstrate at least one year of complete financial and residential separation at time of application for the couple to be considered separate for purposes of determining eligibility. If this cannot be demonstrated, the couple must submit the application as co-applicants.

BMR Household Income

The Morgan Hill BMR program requires that the combined gross income ("Gross income" means all income as defined in California Code of Regulations (CCR) Title 25, Section 6914.) for all household members (as determined by BMR household size) eighteen or older must be included in the determination of income.

- **Projecting Applicant Income**

BMR programs require that, for the purpose of determining eligibility, NHSSV must project annual income. NHSSV must assume that today's circumstances will continue for the next 12 months, unless there is verifiable evidence to the contrary. BMR annual income is the gross amount of income of all household members that is anticipated to be received during the upcoming 12 months..

At first glance, the income information may seem very basic. NHSSV assesses all the facts underlying the income information collected. We review the basics of how employees are paid - hourly, weekly, monthly, and with or without overtime or bonuses or if on commission. It is important to clarify whether overtime is sporadic or predictable component of an employee's income.

An annual salary is counted as annual income regardless of the payment schedule. For example, if a teacher's annual salary is \$30,000, this is the annual income regardless if the teacher is paid over a 9 or 12 month period.

- **Business Income**

Net income from a business owned in part or full by a BMR homebuyer will be considered when determining income eligibility.

Net income is defined as business receipts or sales less expenses plus depreciation that are essential to the operation of the business.

To estimate current net business income, NHSSV will require the three most recent Federal tax returns. At the discretion of the BMR Underwriter, one full year of business and personal checking, savings, and other investment account statements for all business owners/partners may be requested.

Applicants must also itemize business expenses that were applied to determine net business income. NHSSV will analyze all tax returns, year-to-date profit and loss statements, account statements, and income/expense forecasts when determining net business income.

NHSSV reserves the right to request an audited profit and loss statement certified by a licensed Certified Public Accountant at the expense of the applicant and/or co-applicant.

- *Asset Income*

We also examine all other types of income that come into the household, including asset income.

When an applicant household has net assets in excess of \$5,000, gross income shall include the greater of:

Actual amount of income, if any, derived from all the net household assets

Or

2.5% (passbook rate) of the value of all such assets.

Household assets are defined as liquid savings accounts, individual retirement, keogh, self-employed SEP accounts and stocks, bonds, and other forms of capital investments. Employer retirement accounts, furniture, or automobiles are excluded.

Applicants' assets shall only be considered in the transaction for the determination of income eligibility calculation. If assets are less than \$5,000, they are not counted in the income eligibility calculation. If assets are \$5,000 or above, the income derived from the assets is counted in the income eligibility calculation.

- *Supporting Documentation*

The BMR program requires that NHSSV determines income eligibility of BMR applicants by examining supporting documentation submitted with application.

NHSSV will always use third-party verification to provide independent verification of information.

Third-party employment verifications (Verification of Employment of "VOE") should state whether or not overtime and any other additional income (e.g. bonuses, commissions, cash tips) will continue.

Appendix B – BMR Application Checklist

The following materials may be requested from the applicant(s) and their household members by NHSSV during the application process to determine program eligibility and qualification.

Mortgage pre-approval letter from a NHSSV approved BMR Loan Officer stating the terms of the home loan for which you can qualify. Loan must be for a 30-year fixed loan and include the loan amount, homebuyer' name and address, purchase amount (if known), rate, and expiration date – include full loan amount on FHA & PMI amount	Determines homebuyer mortgage qualification
BMR Application Affidavit (signed by all household members 18 years old and older)	Confirms all adult household members understand the BMR application process & BMR program
Borrower Certification and Authorization (signed by all household members 18 years old and older)	Confirms all adult household members understand how the information in their application will be used to determine eligibility
Attendance at NHSSV BMR Orientation – Homebuyer Opportunities Orientation “HOO”	Verifies applicants completed the required Orientation
Verification of Employment for all adult household members	Third Party Income Verification
Borrower's (person on the loan) credit report	Confirms first time homebuyer status
Federal Tax Returns & W-2's	Analyzes First Time Homebuyer eligibility, household income confirmation, household size confirmation and reviews assets and confirms address
Paycheck Stubs	Assists in determining household earned income and frequency
Proof of Additional Income such as unemployment or other sources (For All Adult Household Members 18 Years Old & Older)	Assists in determining household income and frequency
Alimony or Child Support Documentation – if applicable	Assists in determining household income and frequency
Year-to-Date Profit & Loss Statement (self-employed borrowers)	Analyzes self-employment income
Bank Statements: Checking, Savings, Retirement, Investment, Etc. (For All Adult Household Members 18 Years Old & Older)	Assesses information about assets, deposits, transfers, and payments for BMR income qualification and lending requirements

CA IDs for Adult Household Members 18 Years Old & Older)(front and back) Copies of Social Security Cards (For All Household Members) , Birth certificates or copy of valid US passport (For All Household Members 17 years old and younger) Copies of H-1 Visa or Green card (front and back) (For All Adult Household Members 18 Years Old & Older)	Helps to establish household identity and current address
Divorce Decree or Separation Agreement	Verifies household income, assets and debts
Custody Orders	Verifies custody arrangement for household size
8 Hour Homebuyer Education Certificate - - Email David Kausek for registration info at: dkausek@nhssv.org	Confirms program eligibility
Other Requested Documentation	NHSSV may request additional documentation as necessary to confirm BMR program and first mortgage eligibility and qualification.

Appendix C: Frequently Asked Questions about Program Eligibility

Question: Are mobile homeowners eligible to apply?

Answer: Yes. Those who own mobile homes are not considered home owners under the BMR program and are eligible to participate if they meet eligibility criteria.

Question: Can non-U.S. citizens apply?

Answer: Although proof of U.S. citizenship is not required to apply for the BMR program, non-permanent residents will need to obtain information from their lender on requirements for non-permanent residents to obtain financing.

Question: How much of down payment do I need?

Answer: The BMR program requires a minimum down payment of 3%. The lender may determine an amount above the program's requirement of 3%.

Be aware: this 3% does not include nonrecurring closing costs.



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City of Morgan Hill Below Market Rate (BMR) OWNERSHIP Program Participation Guide



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1.INTRODUCTION

Buying, owning, and selling an Affordable Below Market Rate (BMR) Ownership Unit differs in many ways from buying, owning, and selling a market rate. It is important that the buyers and sellers of BMR Ownership Units understand the rules and procedures of the Program fully.

HouseKeys is the City of Morgan Hill's Affordable Housing Program Administrator. This Program Guide includes the guidelines, policies, and procedures that comprise the affordable homeownership program for below market rate (BMR) homes.

The Program Guide and other relevant information (e.g., Ordinance procedures and income limits) will be amended and updated from time to time, so long as such rules, policies and procedures do not violate any affordable housing laws. All proposed changes are subject to approval by the City Council prior to implementation.

Updates to this Program Guide and other relevant information will be posted on the [HouseKeys Website](http://www.housekeys.org)

Please contact the City or HouseKeys regarding any conflicts between this Program Guide, the Developer's Affordable Housing Agreement, the owner's BMR Agreement, and/or the City's recorded documents.

Please contact HouseKeys with any questions or concerns regarding this document or any other question regarding the City's affordable housing program:

Online: <http://www.housekeys.org>

Email: programs@housekeys.org

Phone: 1-877-460-KEYS (5397)

Address: 17575 Peak Avenue, Morgan Hill, CA 95037



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2.HOUSEKEYS HOUSEHOLD PROGRAM DASHBOARD

		
Information Profiles	Tools & Planning	Program Center
Information Profiles are used to gather important facts that determine your eligibility and qualification. These profiles will be used to complete your program applications and participate in program activities.	There are lots of calculations involved in an Affordable Homeownership Program. From calculating the income category of your household, to determining your maximum restricted resale price, it's important to understand the math behind these programs.	All Application, Opportunity, Opportunity Drawing, and Participation Activity is captured in your Program Center. As soon as you complete your initial registration, this is where you'll spend the most time participating in the programs.
		
Program File Cabinet	Program Marketplace	Community Center
As you start to apply for and participate in program activities, your file cabinet is where you'll track progress, exchange information, and communicate with program administrators.	The program marketplace is where you can shop for ownership, rental, and financing opportunities.	The online community center will have a classroom, a bulletin board, and chatroom so you can stay educated, informed and in touch with other program participants and stakeholders.



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3. ESTABLISHING AN ACCOUNT IN THE HOUSEKEYS SYSTEM

The following four (4) actions are the initial steps needed to establish your household's affordable housing account.

REGISTRATION PROCESS	ACTION OR MILESTONE
1. Initial Signup	 Start out by completing our simple registration form. This step collects very basic information from you to establish a User Account, including your name, contact information, and your household size and income.
2. Complete the Registration Wizard	 The next step includes additional details about your address, household members, income profiles, and preference criteria. The preference criteria are described on Step 5 of the Registration Wizard. Completion of the Wizard will create a summary of your household and provide you with access to additional features of the Administrator Platform.
3. Browse the Marketplace	 The Participation I.D. allows the Program Provider (City of Morgan Hill) and the Administrator (HouseKeys) to confirm your identify and match you up with the Program File. It also will be used to track your Service Request Tickets.
4. Open a Service Request Ticket	 Whether you want to remodel your home, refinance your mortgage, or sell – it all starts with opening a Service Request Ticket so that the Administrator can gather the information needed to help you.



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4. HOUSEHOLD INFORMATION PROFILES

When you establish an account in the MyHouseKeys system, **Household Information Profiles** are used to organize information about your household. This information is used to help you complete your annual certifications. While there are 10 total information profiles listed in the Program Application Guide, the list below includes the five (5) that involve your program participation and compliance.

#	Information Profile Name	Description	Purpose
1	Location Profile	Where you live and where you work	Most Restriction Agreements have an owner occupancy certification to confirm that you occupy the property the minimum 10 out of 12 months per year.
2	Member Profile	The people who live in your housing unit	The members of your household are asked to confirm that no renters are living in your household without city notice and approval
3	Expense Profile	Documenting monthly expense obligations	Every refinance request must be reviewed by the administrator to ensure that the payment-to-income ratio of any proposed financing is in line with the program guidelines.
4	Liability Profile	Your Debt	Keeping your mortgage paid on time is not only good for your credit report, but it is an important part of making sure that the home is not at risk of loss to the City's proposal. If a homeowner falls behind on their mortgage, the City reserves the option to step in and make a purchase to avoid foreclosure.
5	Public Record Profile	Collections, Liens, Bankruptcies and Foreclosures	Bankruptcies, foreclosures, and divorces are all part of the public record and notices are issued that include the property address. As the City and Administrator monitor these events, you may be contacted to ensure that the property is not at risk of being lost from the portfolio during the 45-year term.



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5.PROGRAM PARTICIPATION

The purpose of the Below Market Rate (BMR) program is to provide long-term affordable homeownership opportunities for low and moderate-income households in the City of Morgan Hill. Households that purchase a BMR home will be required to sign affordable housing documents to ensure the home **remains affordable**, and the homeowner occupies the home, for the entire restricted term (generally 45 years). Homeowners can sell their home at a market rate price at the end of the restricted term (46th year).

Between the time the BMR home is purchased and the 46th year is reached, there may be a series of requests and communications between the homeowner, the City and Administrator. These requests and communications can involve compliance certifications, requests to refinance a mortgage, remodeling the home, or initiating a property sale. The rules governing these, and other issues of concern, are outlined in the Resale Restriction Agreements that contain definitions and covenants that determine compliance. Over the past 40 years, the City of Morgan Hill has amassed a Program Portfolio of over 80 development projects containing over 550 BMR Units, each with its own unique agreement.

Generally, when a request is made to review any refinance or sale request, there are three stages of review:

1. Preliminary Review of the Agreement and Program File to determine whether the participant Household is following the program rules and the Agreement language allows what has been requested.
2. Evaluation of the proposed financing package or sale transaction to ensure that it fits program guidelines and complies with Agreement language.
3. Coordinating and tracking the transaction to make sure that approved vendors are used and/or that the home is sold to an eligible purchaser from the program applicant list. BMR Transactions take longer than conventional financing and sale transactions because of the number of payoffs needed, the city authorization required, and the legal documents involved.

Each review stage can take 30 to 90 days to complete, dependent upon the details involved with each request.

It is important that any current or prospective BMR homeowner review their Agreement in its entirety to make sure that they understand the conditions and restrictions that they will be expected to adhere to during the Agreement term. They should seek their own legal counsel if further clarification is needed.



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6. RESALE PRICE DETERMINATION, OWNER DUE PROCEEDS, AND COMPLIANCE STATUS

Each resale restriction agreement has a price determination method that outlines how the resale price is calculated if the City were to exercise its option to purchase the unit, assign its option to a designee or eligible buyer, or instruct the Administrator to facilitate a resale to an eligible purchaser. Each Owner must use the price determination method contained in their agreements unless otherwise instructed by the City. There are five primary ways that resale prices are determined

#	Price Determination Method	Description
1	Indexed Price Based on Consumer Price Index	Throughout the year, the U.S. Department of Labor's Bureau of Labor Statistics publishes a Consumer Price Index for metropolitan areas throughout the United States. This determination method allows for a resale price that is based on the increase in the Housing Component of the Consumer Price Index based on the month and year of purchase.
2	Indexed Price Based on Area Median Income	Each year, the State of California Department of Housing and Community Development publishes the statewide income limits . This determination method allows for a resale price that is based on an increase in the applicable Median Income based on the year of purchase.
3	Equity Share Agreement	Some Agreements have an Equity Share Provision that is based on the initial subsidy provided by the City or Agency when the BMR Unit was purchased.
4	Forgivable Loan	Agreements that have a promissory note with a forgivable amount of principal and interest in the final years of the agreement term that reduces by a certain percentage each year until there is no balance remaining. This enables the Owner to sell for full price if they remain in the home for the entire term
5	Shared Appreciation	Agreements that require a percentage of the Fair Market Value to be paid to the City as a Share Appreciation Payment. The remaining amount is paid to the Owner.

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SALE PROCEEDS AND OWNER'S MINIMUM RETURN ON DOWN PAYMENT

Depending on the Price Determination Method used, the Fair Market Value of the home, and any liens and/or encumbrances recorded (including any interest or fees owed at time of sale), there will be a portion of the sale proceeds that are due to the Owner and a portion of the sale proceeds that are due to the City. The City's portion is considered Program Equity or Public Equity. Provided that the City determines that enough sale proceeds are available and due to the Program, the City can ensure that the Owner receives his or her initial down payment plus an annual return based on the number of years that they occupied the unit. The City can use any one of the price determination methods above or assign a fixed percentage to the minimum return calculation.

For example, if an Owner made a down payment contribution of \$20,000 to purchase a BMR home that they went to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a \$14,000 ($\$2,000 \times 7$ years) return on their initial down payment for a total of \$34,000. The City could also base the increase on any of the price determination methods above.

AGREEMENT COMPLIANCE STATUS AT THE POINT OF SALE OR REFINANCE

All BMR Homeowners must be in good standing with the program at the point that they would like to sell their home or refinance home. If there are outstanding compliance findings, the City reserves the right to reject a request to sell or refinance.



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7. OWNERSHIP AND ESTATE PLANNING

A “Transfer” means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest (unless the lease is approved in advance by the City), or land contract. For the purposes of your Agreement, transfers by devise or inheritance to an existing spouse, Domestic Partner, child, surviving joint tenant, or a spouse as part of a dissolution proceeding in connection with marriage – are not considered Transfers. All Transfers must be approved by the City in advance and may be subject to the City’s Option to Purchase (See Section 5 to see description of “City’s Option to Purchase”).

In the event a Transfer occurs, or a person receives the Home by devise, inheritance, or operation of law due to death of the Owner, the person inheriting the Home (the “Inheriting Owner”) must have their income and eligibility reviewed and approved by the City or Administrator to determine if they are an Eligible Purchaser. If approved, new documents will need to be signed and a new 45-year term will be enforced.

New purchasers of BMR Units may not purchase the BMR Unit through a trust of any kind, including but not limited to living trusts. Existing BMR Owners may not transfer ownership of their BMR Units to trusts of any kind, including living trusts.

Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term.

Note: An Exhibit has been added to the City’s Resale Restriction Agreement in response to the State of California’s 2016 update to the Probate Code that created the “Simple Revocable Transfer on Death (TOD) Deed ([California Probate Code Section 5642](#)).



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8.COMPLIANCE, ANNUAL CERTIFICATION, & ENFORCEMENT

All BMR homeowners will be re-certified once a year for compliance with their signed and recorded deed restrictions on the property, including but not limited to occupancy, current title, and liens. Homeowners are to provide the program Administrator all pertaining documents listed on the program checklist for a full re-certification review and certificate of compliance.

ANNUAL COMPLIANCE CERTIFICATION

1. The Owner will receive an annual notification via US mail for the annual certification process. This notification will include a questionnaire and request for supporting documents (most current utility bill, mortgage statement, and insurance declaration page). The owner will have 30 days to comply.
2. If an owner does not comply with the requirements or documentation within 30 days of the annual certification notice being sent, a 2nd notice will be sent providing a final deadline.

CERTIFICATION PROCESS

Once all documents are received, the City or Administrator will:

1. Ensure that there are no inconsistencies between the application file and compliance file that indicate that misinformation or fraud was committed during the application process
2. Determine if the property is owner occupied and confirm that it isn't being rented
3. Review all liens against the property to ensure the property is not over encumbered
4. Review all transfers of title on the property reports
5. Review default notices or statements of any loans, taxes, or Homeowner Association dues
6. Determine if the property is adequately insured and if secondary liens (i.e. down payment assistance loans, city loans or state loans) are referenced on the Insurance Declaration page.

If any of the above review steps require additional information from the Owner, a document request will be made and the Owner will be provided with a deadline to return the requested documents to the Administrator.



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CERTIFICATION OF COMPLIANCE

The BMR Owner will receive a certificate of compliance if the review is approved and in compliance with the requirements above

ENFORCEMENT ACTIONS AND TIMELINES

If the homeowner does not comply after the 2nd notice, the City or Administrator will file a Notice of Default with the County Recorder's Office and the homeowner will be notified. This Notice of Default becomes public record and may trigger additional action by any lenders who have an interest in the property.

If the homeowner is out of compliance on any of the above requirements, the homeowner will be provided with 60 days to comply and will be provided with action steps needed to cure any defaults (if there are possible actions to cure the default).

90 Days from the date that the Notice of Default is filed with the County Recorder's Office, the City or Administrator

If the owner fails to cure the violation, the City will exercise its Option to Purchase the BMR home from the homeowner at a restricted resale price.

The City reserves the option to apply to a court of competent jurisdiction if it deems legal action appropriate

The City/Administrator reserves the option to apply to a court of competent jurisdiction if it deems legal action appropriate



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9. REFINANCE & SUBORDINATIONS REQUESTS

The information below and on the following page outlines the process for refinancing existing City loans and Agreements, or subordination of any loan or deed of trust associated with a BMR property. Subordination of loans not issued by the City is necessary to protect the City's interest in maintaining the affordability of the property for the duration of the restriction term (typically 45 years). In most cases, the City's interest will be subordinate to any mortgage loans on the home, as outlined in the deed of trust and/or the signed resale restriction documents.

SUBORDINATION REQUIREMENTS

BMR homebuyers may be allowed to refinance up to 95% of the Maximum Restricted Sale Price described in the signed deed restriction, or the remaining balance of the loan amount, whichever is less. The total payoff amounts for all recorded liens and encumbrance amounts are used to determine the maximum refinance percentage mentioned above (95%). This percentage is sometimes called the Maximum Combined Loan to Value (Max CLTV). Please note the following requirements:

1. Accrued interest on any subordinate financing will be considered in the Max CLTV.
2. HouseKeys will calculate the maximum restricted sale price according to the deed restrictions.
3. The refinance amount cannot exceed the maximum restricted sale price.
4. If the remaining balance of the original first loan is more than 95% of the maximum restricted sale price, the original loan will need to be paid down.
5. Cash out is allowed up to 80% of the restricted resale price
6. Payoff of purchase money mortgages are not considered cash out.
7. Payoff of equity lines or junior financing that are not purchase money loans are considered cash out.
8. Homeowners cannot add or change names to title without approval of the City/Administrator. Any request to change names on title shall be submitted to the City with supporting documents.
9. If the requested change is due to marriage, the person being added will need to be on the first mortgage and addendums will need to be signed by that person.
10. If the requested change is due to divorce, addendums to the subordinate financing and deed restrictions will need to be signed by that person.
11. A Performance Deed of Trust is required to protect the deed restrictions and will be recorded against the property.

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MORTGAGE REQUIREMENTS

1. First mortgage loan terms of 30, 20, or 15-year fixed rate fully amortized
2. Equity lines, lines of credit (HELOCs), etc. or any junior loans are not allowed
3. Adjustable rate, interest only, negative amortization, or balloon payments loans are not allowed
4. Homeowner is required to use a loan officer on the program-approved lender list
5. Rate and term refinance up to \$1,500 maximum cash out
6. Recurring closing cost will not be allowed to be financed
7. Non-recurring closing cost will be allowed to be financed as long as the new loan amount does not exceed 95% of the restricted value
8. Escrow will be required to be opened with a Title company in Santa Clara County

Please Note: FHA/VA loans do not typically work with resale restricted properties due to federal requirements and/or lender requirements. Please check with your lender to ensure that they have reviewed the restrictions and whether the legal department has accepted the use of Government National Mortgage Association (“Ginnie Mae”) financing with your resale restricted property.

REQUEST TO REFINANCE PROCESS

1. Complete the **BMR Homeowners Inquiry Form** on www.housekeys.org
2. HouseKeys will calculate the maximum restricted sale price within 14 days of receiving a complete application. However, if more information is needed, the process will be delayed until HouseKeys receives the requested information. Once all of the information is received and a price has been issued, it is valid for 6 months.
3. Homeowners shall then complete the refinance request forms and provide all of the supporting documentation to HouseKeys
4. HouseKeys will review the fully-packaged refinance request file and issue a final approval or denial of the request within 14 days of receipt of all required documents.

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MINIMUM REQUIRED DOCUMENTS FROM THE HOMEOWNER

1. Signed BMR refinance application
2. Current mortgage statements with all balances
3. Current Federal Tax returns
4. 2 months consecutive paystubs
5. 2 months current bank statements
6. Copy of Driver's License and Social Security Card
7. Subordination fee

LENDER DOCUMENTS

1. Borrower's authorization
2. Credit report
3. 1008 (transmittal)
4. 1003 (application)
5. DU (desktop underwriting)
6. Preliminary Report
7. Appraisal
8. Approval letter

ESCROW COMPANY DOCUMENTS

1. Estimated Closing statement
2. Payoff demands

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REFINANCE REQUEST APPROVAL

Once all documents are received, HouseKeys will:

1. Determine if the refinance follows the deed restrictions and does not exceed the maximum restricted price
2. Determine if the borrower is in a better financial situation with the new refinance terms.
3. Determine whether all requirements have been met.
4. Review any additional liens on the property.
5. Determine whether all existing loans, HOA dues and taxes are current. If not current, the application will be rejected.
6. Once approved, subordination documents and escrow instructions will be drawn and routed to the City for signatures.

Please note that City signatures can take up to 14 business days to obtain. It is highly suggested that you do not lock any interest rates on your proposed financing until you obtain city signatures.



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10. CAPITAL IMPROVEMENTS AND SPECIAL ASSESSMENTS

BMR Units may begin claiming capital improvements toward their Maximum Resale Price that are made no sooner than 1 year after the BMR Unit was first occupied. Exceptions are made for critical modifications made during the original purchase of a BMR Unit as approved by the City beforehand.

Once the BMR Unit becomes eligible for capital improvements credit, BMR Owners may begin submitting documentation of completed work. City or Administrator will review all capital improvement claims and categorize them into three distinct categories:

1. Eligible Capital Improvements	Major structural system upgrades, new additions to the BMR Unit and improvements related to increasing the health, safety and energy efficiency of the property. The Improvements must conform with applicable building code, be approved in writing in advance, initial cost must exceed one percent (1%) of the purchase price paid by the Owner. Improvements that meet these criteria will be given 100% credit.
2. Eligible Replacement and Repair	Eligible Replacement and Repair includes in-kind replacement of existing amenities, repairs and general maintenance that keeps the property in good working condition. Costs that meet these criteria will be given 50% credit for repairs.
3. Ineligible Costs	Cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures. Homeowners may undertake these projects at their discretion, however they will not be given capital improvements credit.

Procedure for Submitting Capital Improvements

BMR Owners must submit capital improvements to Administrator for review within 6-months of the completion of the project. In order to document the improvements, each BMR Owner must submit the following documentation: (1) A list of the capital improvements with a description on a form provided by Administrator; (2) The receipt and invoice for each eligible improvement; (3) Proof of payment, such as a cancelled check, bank account statement or credit card bill; (4) A copy of site or building permits, if required; and (5) Contractor's license number for Projects exceeding \$500. Upon receipt of a complete capital improvements claim, Administrator staff may arrange a site visit to inspect the completed Project.

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Once the improvements have been verified, Administrator will send a written response to approve or deny the submitted capital improvements within 60 days of original receipt. This information will be placed in the property file at the City for use when the property is being sold.

Special Assessments Homeowner's Association initiated special assessments are considered capital improvements and will be added to the resale price of the home at the full amount of the special assessment paid by the BMR Owner. In order to receive credit for special assessments, homeowners must submit the following documentation within 6-months of payment: (1) An invoice for the special assessment; and (2) Proof of payment, such as a cancelled check, bank account statement or credit card bill.

Capital Improvements Cap

At the time of sale, City may cap all eligible capital improvements over **10% of the resale price**. This is to preserve the affordability of the BMR unit.

Maintenance and Insurance Requirements

The Owner shall maintain the Home, including landscaping, in good repair and in a neat, clean and orderly condition and will not commit waste or permit deterioration of the Home.

The Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the Home (adjusted every five years by appraisal, if requested by City, naming the City as an additional insured. Additional insurance requirements are set forth in the City Deed of Trust.



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11. OWNERSHIP CHANGES, RE-SALES, AND APPROVED VENDORS

The table below, and on the following page, outlines the process for transferring or changing ownership of the BMR home.

OWNERSHIP CHANGES	• Homeowners must review their BMR deed restrictions in order to determine if title can be transferred. • Outside of divorce, marriage or name change, the new owner will need to be eligible and qualified for the BMR program. • Written approval from the City/Administrator is required. • Changes are not permitted if the homeowner has violated any of their Deed Restrictions. • Any request to remove, add, or otherwise change ownership of the BMR home shall be accompanied by the following documents: • Divorce: Copy of court order • Name change: Copy of legal documents • Marriage: Copy of Marriage Certificate • New ownership: All required documents per HouseKeys • Trusts are not allowed. • Inheritance is not permitted, unless otherwise allowed per the deed restrictions.
RE-SALES	• The homeowner shall complete a ticket (request) on the HouseKeys website to begin the process for potential resale. • Once all required documents have been received, HouseKeys will: • Review the deed restrictions along with any liens recorded on the property. • Assignment of Option is required if owners want to continue with sale • Complete an initial walk-through of the property, to determine the amount of work needed to sell the BMR home. • Schedule inspections of the property (contractors, appraiser, vendors, etc.) • Obtain a preliminary quote from vendors. • Review quotes and schedule a walk-through of the property with the City. • Adjust contractor/vendor bids, if needed, and obtain a final quote for property improvements. • Obtain approval of the quote from the City. • Calculate the <u>Maximum Restricted Sale Price</u> per the deed restrictions, accounting for all required and approved improvements to the property.



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	• Create the listing agreement or purchase agreement if needed. • Prepare the property for resale through the Lottery/Opportunity Drawing process. • All real estate/transaction fees are the responsibility of the seller. • The owner shall sign the Property Pricing form and Opportunity documents.
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APPROVED VENDORS

All vendors shall be approved by HouseKeys. The table below outlines the minimum requirements for any vendor associated with resale of the property:

CONTRACTORS	• Contractors shall have a valid California Contractor License.
LENDER/LOAN OFFICERS	• Loan Officers shall have previously attended HouseKeys loan officer orientation class. • The lender's legal department shall approve all BMR documents prior to resale. • All Loan Applications must be taken and completed by the Loan Officer listed on the Loan Application (including NMLS License) and must match the name on the Program Approved List
TITLE COMPANY	• The Title Company shall be based in Northern California and preferably in the County of Santa Clara.
APPRAISER	• Appraisers shall have a valid California State Certification or California State License that has not expired.



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City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



1.INTRODUCTION

Buying, owning, and selling an Affordable Below Market Rate (BMR) Ownership Unit differs in many ways from buying, owning, and selling a market rate. It is important that the buyers and sellers of BMR Ownership Units understand the rules and procedures of the Program fully.

HouseKeys is the City of Morgan Hill's Affordable Housing Program Administrator. This Program Guide includes the guidelines, policies, and procedures that comprise the affordable homeownership program for below market rate (BMR) homes.

The Program Guide and other relevant information (e.g., Ordinance procedures and income limits) will be amended and updated from time to time, so long as such rules, policies and procedures do not violate any affordable housing laws. All proposed changes are subject to approval by the City Council prior to implementation.

Updates to this Program Guide and other relevant information will be posted on the HouseKeys Website

Please contact the City or HouseKeys regarding any conflicts between this Program Guide, the Developer's Affordable Housing Agreement, the owner's BMR Agreement, and/or the City's recorded documents.

Please contact HouseKeys with any questions or concerns regarding this document or any other question regarding the City's affordable housing program:

Online: <http://www.housekeys.org>

Online: <https://www.myhousekeys.com>

Email: programs@housekeys.org

Phone: 1-877-460-KEYS (5397)

Address: 17575 Peak Avenue, Morgan Hill, CA 95037



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2. ONLINE WEB PORTAL DASHBOARD OVERVIEW

		
Information Profiles	Tools & Planning	Program Center
Information Profiles are used to gather important facts that determine your eligibility and qualification. These profiles will be used by the Program Administrator to complete your Program application and determine your eligibility to participate in Program activities.	There are many calculations involved in an Affordable Housing Program. From calculating the income category of your household, to determining your maximum restricted rent price and utility allowance, it's important to understand the math behind these Programs.	All Application, Opportunities, Opportunity Drawings, and Participation Activities are captured in your Program Center. As soon as you complete your initial registration, this is where you'll spend the most time participating in the Program.
		
Program File Cabinet	Program Marketplace	Community Center
As you start to apply for and participate in Program activities, your file cabinet is where you'll track progress, exchange information, and communicate with Program administrators.	The Program marketplace is where you can shop for ownership, rental, and financing opportunities.	The online community center will have a classroom, a bulletin board, and chatroom so you can stay educated, informed and in touch with other Program participants and stakeholders.



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3. ESTABLISHING AN ACCOUNT (HOUSEHOLD PROFILE) IN THE MYHOUSEKEYS (WWW.MYHOUSEKEYS.COM)

The following five (5) actions are the initial steps needed to establish your household's affordable housing account.

REGISTRATION PROCESS	ACTION OR MILESTONE
1. Initial Signup	 Start out by completing our simple registration form. This step collects very basic information from you to establish a User Account, including your name, contact information, and your household size and income.
2. Complete the Registration Wizard	 The next step includes additional details about your address, household members, income profiles, and preference criteria. The preference criteria are described on Step 5 of the Registration Wizard. Completion of the Wizard will create a summary of your household and provide you with access to additional features of the Administrator Platform.
3. Browse the Marketplace	 The Marketplace allows you to shop for Ownership, Rental and Finance Program opportunities that interest you. Make sure to read the Program Profile and get an understanding for how it works, the intent, the rules and the process.
4. Request an Application I.D.	 The Application I.D. allows the Program Provider and Administrator to identify your household as a prospective applicant household. It also puts you on the notification list to receive information and updates.



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5. Find an Opportunity and Enter an Opportunity Drawing



Each Opportunity is placed into an Opportunity Drawing that allows HouseKeys to facilitate multiple applicant interest. Application I.D.s are prioritized through a Random Selection Process (Lottery) or by Time and Date Stamp (First-Come-First-Serve).

4. HOUSEHOLD INFORMATION PROFILES

HouseKeys holds orientation classes to introduce the Program and help applicant Households organize their application files and prepare for the application process. The application packet is broken down into 10 **Household Information Profiles**:

#	Information Profile Name	Description	Purpose
1	Location Profile	Where you live and where you work	The address where you live and work is an important factor in determining your eligibility. The county you presently live in, or may be moving to, is often used to determine how to categorize your household.
2	Member Profile	The people who live in your housing unit	The number of people in your household determines your household size and household size is used to determine income category.
3	Income Profile	Documenting the total income of all household members.	Income documentation is required by all household members who are 18 years of age or older
4	Expense Profile	Documenting monthly expense obligations	It's important to ensure that your total monthly expenses show that you can afford the monthly rent for the unit you are applying for
5	Asset Profile	Deposit Funds and other Assets	You need to document your rental deposit funds. Please note that Assets are included in income calculations using the income shown on statements or calculations used by the Program Underwriter. See Asset Limits below.
6	Liability Profile	Your Debt	Your debt adds to monthly expenses and the maximum monthly rent that you can afford is an important qualification factor
7	Credit Profile	Your Credit Score	All three credit bureaus (Equifax, Experian, and TransUnion) are evaluated to ensure you meet minimum credit requirements



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8	Public Record Profile	Collections, Liens, Bankruptcies and Foreclosures	These are evaluated to determine whether or not there is any risk that the finalization of lease signing or meeting any of the property management requirements.
9	Demographics Profile	Applicant Characteristics	Demographic information is critical to ensure fair housing compliance and to track how Program Providers are meeting their housing goals.
10	Program Preference Profile	Program Factors that determine Applicant Priority	While all applicants may apply for a housing program, applicants that live and work where the program is located are prioritized in many jurisdictions.

5A. APPLICATION PROCESS (ORIENTATION, PRE-APPLICATION, AND PREFERENCES)

The application process is summarized below and on the following pages:

ORIENTATION

- All applicants, co-applicants, married couples, domestic partners, and any person that can or will be on title, must complete the Orientation before being eligible to participate in an Opportunity Drawing. Any exceptions to this rule will be posted in the Opportunity Drawing details. Applicants can sign up for an orientation class on the HouseKeys website.

PRE-APPLICATION AND APPLICATION ID ASSIGNMENT

- Request an Application ID in the Program Center
- Answer all of the Pre-Application Questions in the Request Wizard
- The applicant will either receive a pass or fail rating based on the information in the pre-application wizard
- If the applicant passes, an Application ID will be assigned immediately. If there is a system delay or malfunction, Application IDs can take up to 10 business days to be assigned.
- An Application ID does not mean you are eligible or approved for the Program. It provides the applicant Household with the ability to enter Opportunity Drawings.

PREFERENCES AND RANKING

In all instances, the live in Morgan Hill / work in Morgan Hill preference (described in Section 9) will be used and verified by HouseKeys during the application process. Applicant Households that meet the stated preference criteria will be assigned a higher ranking. Once



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the preferred Household list is exhausted, HouseKeys will begin processing the files for the non-preference households.

Continued next page



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5B. APPLICATION PROCESS (OPPORTUNITY DRAWINGS)

Affordable Ownership Opportunities are marketed through an Opportunity Drawing (i.e., lottery). Applicant Households enter an Opportunity Drawing using their Application ID number.

OPPORTUNITY NOTIFICATION

- A notification email will be sent out to Application ID holders. When a new Opportunity Drawing is released it will be posted in the Program Center
- Follow the instructions and review the terms in each Drawing Notification. It is the applicant Household's responsibility to follow all instructions in each Opportunity Drawing, based on the method used. Each Opportunity Drawing announcement will include the selection method, file submission instructions, and one or more deadlines that the applicant Household must meet.

OPPORTUNITY DRAWING ENTRY

- Once the applicant reviews the Opportunity Drawing information and is certain that he/she can meet ALL listed requirements, the applicant can follow the instructions to Enter Drawing
- Applicant must complete Authorization Form for verification and sharing information with Lender
- Applicant must complete the Intent to Abide Form to confirm that the applicant understands the Program Requirements
- Applicant Households can only apply for one Opportunity Drawing at any one time. If an applicant Household has entered more than one drawing, the lowest ranked submission will be chosen. Applicant Households are allowed to opt out of any drawing as long as the "opt out form" is submitted before an applicant Household enters another drawing.
- If there is another Opportunity Drawing available at the same time, the applicant can opt out of one Opportunity Drawing to enter another, if it is done before the Opportunity Drawing submission deadline.
- If a household applies for two opportunities at the same time, and obtains two priority numbers, the applicant will be assigned the lower priority number.
- In some cases, the Opportunity Drawing will remain open until all applicable units are sold. Anyone who enters their Application ID into an Opportunity Drawing after the first deadline will be added to the end of the list using the time and date stamp of their Opportunity Drawing entry.
- Ranking and file request numbers are issued to set the processing order for each Opportunity Drawing. A new ranking and file request number will be issued every time an applicant Household participates in a new Opportunity Drawing. Ranking, file request, and Application ID numbers are not transferable.



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5C. APPLICATION PROCESS (OPPORTUNITY DRAWING METHODS)

When an Opportunity becomes available, HouseKeys uses the methods outlined below to determine the order in which Application IDs and files will be ranked and organized for review.

METHOD 1: LOTTERY SELECTION AND ASSIGNMENT

All applicant Households that enter their Application ID numbers into an Opportunity Drawing by the deadline will receive an Application ID ranking. If a Lottery is held, Application IDs will be chosen at random and assigned an Unfiltered Ranking number based on the order in which they were drawn.

Each Application ID on the Unfiltered Ranking list will be re-ordered to account for the Live/Work Preference and a new ranking list Filtered by Live/Work Preference will be created. The Unfiltered Ranking number becomes the tie breaker between households with the same preference category.

Please note: Applicant Households who do not meet the Occupancy Standard will be assigned a lower priority number, regardless of lottery placement, or other eligibility criteria (e.g., First Time Home Buyer [FTHB]).

METHOD 2: FORM SUBMITTAL (DATE & TIME STAMP) TIE-BREAKER

All applicant Households that enter their Application ID numbers into an Opportunity Drawing by the deadline will receive an Application ID ranking. The Unfiltered Ranking in this method is based on the time and date stamp that their entry form was completed.

As with Method 1, the Unfiltered Ranking number list is re-ordered based on Live/Work Preference and the Unfiltered Ranking number is used as the tie breaker between households with the same preference category.

Please Note: Applicant Households that do not meet the Occupancy Standard will be ranked last.



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5d. APPLICATION PROCESS (LOAN REQUIREMENTS, APPLICATION FILE REQUEST, AND APPLICATION COMPLETION)

MORTGAGE LOAN REQUIREMENTS

The applicant Household must obtain a loan pre-approval from an Administrator-approved Lender to enter an Opportunity Drawing. Applicant Household must have acceptable payment-to-income ratios and show enough liquid assets (e.g. cash) to successfully close on the proposed home purchase. Any down payment assistance or closing cost assistance that will be used will need to have a written pre-approval from the program provider as well.

- Applicants must obtain a mortgage pre-approval letter, on mortgage company letter, with loan officer information, including their National Multistate License System (NMLS) ID number and packet must include:
 - Uniform Residential Loan Application and Uniform Underwriting and Transmittal Summary
 - Verification of Employment and Verification of Assets
 - Credit Report and Automated Underwriting System Findings (e.g. Desktop Underwriter Findings)

APPLICATION RANKING AND FILE REQUESTS

- The Opportunity Drawing Terms and Notifications will indicate when, where and how the Program Application Package needs to be submitted
- Applicants must provide a complete Program Application Package, including exhibits and the supporting documents listed on the Document Checklist, to HouseKeys by the deadline stated in the Opportunity Drawing Notification.

PROGRAM APPLICATION PACKAGE COMPLETION

- Once written confirmation has established that an applicant has met all requirements after credit bank background check, the Administrator will request the full application package for Underwriter review.
- Applicants must provide and return all necessary documents to underwrite the file to the Administrator within 3 business days.
- Documentation needs to be dated within 30 days of submission.
- Applicants/Co-applicants, and or household members who submit inaccurate information, altered documentation, or false documentation or certifications, will be disqualified.
- Once all documents are received, the Applicant will be provided with a Submission ID which will be their file in line for Processing and Underwriting



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5e. APPLICATION PROCESS (APPLICATION REVIEW, AND UNDERWRITING)

APPLICATION REVIEW

- The application package will be reviewed, and if complete, will be submitted to the underwriter for review
- If the application is incomplete, applicants will be given written notice to respond with any file updates or missing items
- Applications that remain incomplete after notifications and applicable grace periods, will not be processed or forwarded to the Underwriter for final review

APPLICATION UNDERWRITING

- The Underwriter will complete the review and issue a Program Eligibility and Qualification Certification (AKA "Approval Letter").
- It is important to note that the Program Underwriter may request additional items from the applicant. If the applicant does not respond within the grace period, or a denial is issued, the Underwriter will move to the next Submission ID holder.
- If approved, the Administrator will notify the landlord of the outcome so that the applicant can move on with the leasing documentation and lease/contract signing as described in the next section.

Changing an Application after Submission

No Application changes shall be allowed after an application is submitted and after an application deadline has passed unless the change is (1) the removal of an applicant, (2) the addition of an applicant's Spouse or Domestic Partner or a new Household member in the case of an adoption or new guardianship; (3) an update of income qualification, such as a new job or a job that has ended; or (4) correction of technical errors, such as current phone number or other non-qualifying information.

An application for a BMR Unit must be reviewed and approved for income qualification within one hundred and twenty (120) days prior to the Close of Escrow of a BMR Unit



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5e. APPLICATION PROCESS (APPEAL)

APPEAL

- If the applicant does not agree with the Processor or Underwriter decision, the applicant Household will have 3 business days to appeal. The applicant Household will need to submit clear and sufficient documentation, along with an appeal form that details why they feel the decision is inaccurate, within the timeframe given.
- Administrator Management will review the Appeal and all documentation.
- Administrator will contact the applicant regarding the status of the appeal approximately 7 business days from the date the complete Appeal Package was submitted. Administrator may require additional time as will be indicated during the status notification
- Administrator is unable to hold properties for households in the application or appeal process. Administrator will move on to the next Application ID holder after the initial appeal review



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6. BELOW MARKET RATE OWNERSHIP PRICING AND CITY'S PURCHASE OPTION

The purpose of the Below Market Rate (BMR) program is to provide long-term affordable homeownership opportunities for low and moderate-income households. Households that purchase a BMR home will be required to sign affordable housing documents to ensure the home remains affordable, and the homeowner occupies the home, for the entire restricted term (generally 45 years). Homeowners can sell their home at a market rate price at the end of the restricted term (generally the 46th year).

How Properties are Priced for this Planning Period

Under the current housing planning period (as of August 2018 through 2023), developers earn points for building affordable units that can be sold to low and moderate-income households. New construction residential development units will be priced using a 30 to 35% affordability percentage and prices that range from 81% of Median Income to 110% of Median Income. These homes will be made available to Households whose incomes fall into one of two categories: Median Income (100% of AMI) and Moderate Income (120% of AMI).

	Price Category 1	Price Category 2
Price Level	81% of the Median Income	110% of the Median Income
Eligible Purchaser Household	Household earning up to 100% of the Median Income	Household earning up to 120% of the Median Income

As agreed to in the affordable housing documents, a homeowner may choose to sell the BMR home during the term of the restriction. The City (or Administrator) will either purchase the BMR home for the Maximum Restricted Resale Price or assign the BMR home to another eligible buyer for purchase at the Maximum Restricted Resale Price.

The City is not obligated to exercise its Option to Purchase but the seller is obligated to give the City the option to do so.



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7. THE APPLICATION FILE STRUCTURE & APPLICATION CRITERIA

Program Eligibility and Qualification Criteria

The primary role of a Program Administrator is to determine the eligibility and qualification of applicant Households. A Program Processor serves the role of gathering the documents needed to evaluate the application and a Program Underwriter reviews the application to determine if it meets program requirements.

It is important to understand that there is a lot of information needed to determine whether an application meets all the program requirements. The application criteria used to determine whether an applicant Household will be approved fall into one of two categories:

- **Program Eligibility Criteria:** These are standards that define the characteristics of the target households who are best served by the program and help the program provider meet its intended goals. These standards often follow legal definitions and published documentation requirements. Underwriters evaluate Program Eligibility Criteria to determine if households “check eligibility boxes” that include, but are not limited to, residence address, employment address, household size requirements, total household income requirements, and whether an applicant meets the legal standard to be defined as a first-time homebuyer. Program Underwriters need to consider program eligibility for up to three years before the application date and up to a year after the estimated close of escrow date¹.
- **Program Qualification Criteria:** Once it is determined that an applicant is eligible for the program, the Program Underwriter must also make sure that the home purchase is affordable for the applicant and that they are mortgage and home-purchase ready. In addition to requiring applicants to attend first-time homebuyer classes, an underwriter will evaluate the application to ensure successful and sustainable homeownership.

¹ “Up to three years” speaks to the First-Time Homebuyer Status that is typically verified using 3 years of tax returns. Since Total Household Income is projected forward, it’s important to understand that the Program Underwriter is considering income circumstances going forward one year.



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8. FIRST-TIME HOMEBUYER EDUCATION AND TITLE REQUIREMENTS

First-Time Homebuyer Education Workshop Requirement

All applicants who will take title to the property must attend and complete a first-time homebuyer in-person education workshop and receive a certificate of completion from a HUD and Administrator-approved First-Time Homebuyer Education Provider before going into contract on a BMR Unit. A copy of the certificate of completion is required and certificates will be accepted for up to two years after completion.

Title Requirements

All adult Household members must appear as an owner or co-owner on the BMR Unit title. They also must co-sign for any purchase loan (unless they are a non-borrowing spouse) and sign all affordable housing documents (as defined on page 2) for the BMR Unit with the following exceptions:

1. Legal dependents of titleholders as claimed on the most recent federal income tax return or legal minor children of titleholders. Spouses or Domestic Partners are not considered dependents;
2. Household members younger than age 24 who are the child of a titleholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a titleholder; and
3. Recent immigrants with insufficient credit history as defined as a person who has been in the United States for 2 years or less as supported by entrance documentation or a sworn statement and lender documentation of the reason for a loan denial, including a copy of applicant's credit report.



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9. ELIGIBILITY AND PREFERENCE CRITERIA FOR OWNERSHIP OF BMR UNITS

The City has established a priority system for allocating the limited number of affordable ownership units. Priority shall be given to income eligible residents who live in Morgan Hill or employees of companies located within the City limits.

The preference system will be used to establish a ranking of applicants. An eligible household will be ranked according to where they live or work. While an applicant who lives or works within the city limits will have priority over an applicant who does not, residency/employment status is not a requirement for the Program, and all individuals and households may apply. Households comprised of applicants who do not reside or work in Morgan Hill may occupy a BMR unit if there are no eligible Morgan Hill residents or workers on the eligibility list for occupancy.

BMR PREFERENCE CRITERIA	
Priority: Live in City	Must currently live and must have lived in Morgan Hill for at least 6-months*
Priority: Work in City	Must currently work at a business located in Morgan Hill at least 20-hours per week, and held position for at least 6-months* *This category includes employees of the Morgan Hill School District even though their physical office or school building may be located in San Jose

*Eligibility will be evaluated at the time of opportunity drawing submission and verified again prior to occupancy



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9b. OCCUPANCY STANDARDS FOR BMR UNITS

Applicant/Co-Applicants must occupy the property as their principal residence. This means that the Applicant/Co-Applicants must use the property as their primary place of residence and the property must be owner-occupied upon purchase for the life of the deed restrictions. Use of the property for additional ownership purposes, including temporary leases, sub-leasing or room rentals are not allowed under the program and will trigger immediate action.

To ensure that the City's limited BMR homes are used efficiently, a household must be of a size equal to the number of bedrooms in the BMR unit. Pursuant to fair housing laws, the maximum occupancy allowed in a BMR unit is two people per bedroom, plus one additional person. The table below shows the minimum and maximum household size based on the number of bedrooms. In some cases, an exception to the minimum standard may be made where no other qualified buyers are remaining in the Opportunity Drawing or within 30-days from the time that the first file is requested from Opportunity Drawing entrants.

The City's BMR Administrator will verify household occupancy once per year for the life of the 45-year BMR Agreement between the City and the homeowner(s).

Note: Maximum Household size is subject to change per property management or Affordably Housing Agreement documents.

BMR OCCUPANCY STANDARDS		
Number of Bedrooms	Minimum Household Size	Maximum Household Size
One	1	3
Two	2	5
Three	3	7
Four	4	9
Five	5	11



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9c. INCOME ELIGIBILITY CRITERIA

Income Eligibility is based on household size (number of persons in the household) and whether a household's income is below income category limits published annually by the California Department of Housing and Community Development (HCD) on their [HCD website](#) as well as the Program Website. These resources should be used to determine the income percentage and income category that is applicable to your household. **Note: The following income categories may vary for a particular development.**

Morgan Hill presently defines the three income types most often used in their affordable homeownership program

- "Lower-Income Household" means a household whose household income does not exceed eighty percent (80%) of the area median income applicable to the County
- "Median-Income Household" means a household whose household income does not exceed one hundred percent (100%) of the area median income applicable to the County
- "Moderate-Income Household" means a household whose household income does not exceed one hundred twenty percent (120%) of the area median income applicable to the County

It is very important for the applicant Household to know BOTH:

- Applicant Household Income as a percentage of the published County Median Income (calculated by dividing Household Income by the published Median Income Amount) applicable to your household size
- Whether or not applicant Household Income is below the published income category limit applicable to your household size (e.g. Extremely Low, Very Low, Low, Median, or Moderate)

Income earned from assets, such as dividends, interest, rental income, business income, etc., is included in the household's annual income pursuant to the [Code of Federal Regulations](#), Title 24, Part 5 income inclusions (§ 5.609). Income calculation is also guided by [California Code of Regulations](#), Title 25, Chapter 6.5 Program Operations, Gross Income (§ 6914). To qualify for the City BMR Program, your household's combined gross annual income cannot exceed the maximum income limit for your household size, as established by the HCD. All household members ages 18 or older must have their income verified. Household members that do not work or will not have any income in the next 12 months must complete a zero-income affidavit.

Note: The income categories for a particular development may vary in accordance with the Affordable Housing Agreement.



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9d. ASSET LIMITATION CRITERIA

In addition to meeting the income limit, there are restrictions on the amount of assets that a household may have to be eligible for the City BMR Program. For households applying to be an owner of a BMR unit, the limit is 50% of household AMI plus the down-payment up to 20% of the BMR price, post-closing (after the close of escrow). So for example, the asset limitation for a 4-person household purchasing a 3-bedroom moderate income home with a 20% down payment would be approximately \$185,000 where AMI is \$150,000 and the BMR price is \$550,000².

ASSET LIMITATION EXAMPLE		
Asset limit = 50% of household AMI plus the down-payment up to 20% of the BMR price		
Maximum Household Income	Example Purchase Price	Example Asset Limit
\$150,000	\$550,000	\$185,000
50% = \$75,000	20% = \$110,000	\$75,000 + \$110,000

The City will review household income and assets for all owner-occupants, temporary occupants, and other occupants, regardless of such household member's interest in purchasing or occupying a BMR home. To determine total household assets, HouseKeys will review the household's total assets according to monthly financial statements and/or other valuations. A six-month average will be calculated just prior to Program application to determine eligibility and avoid applicant "asset dumping" (asset liquidation or transfer to other parties). Assets held in IRS-recognized retirement accounts (401-k's, IRA's, etc.) are not included for the purpose of determining whether an Applicant meets the Program asset limits. However, retirement and insurance payments will be used to determine gross household income.

There is a minimum loan amount of 70% of the purchase price. So, for example, with a Sales Price of \$550,000 the first loan amount cannot be lower than \$385,000. All-cash purchase escrows will not be allowed.

² Numbers are rounded for simplicity. 20% of the 550,000 BMR Home Purchase Price = \$110,000; 50% of the \$150,000 Example for Median Income = \$75,000; \$110,000 + \$75,000 = \$185,000 in total liquid assets allowed as projected to be remaining after close of escrow.



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9e. FIRST-TIME HOME BUYER CRITERIA

To be eligible for the City's BMR homeownership program, all household members on Title must be a first-time homebuyer, except as provided below. A first-time home buyer (FTHB) is an individual who has NOT had an ownership interest in a home in the three years immediately preceding their application date, except as follows:

- (1) A displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family; or
- (2) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
- (3) An existing BMR homeowner who no longer meets the occupancy standards in these guidelines and otherwise qualifies to purchase a larger or smaller BMR home at the time of re-application.

Notwithstanding the forgoing, the following interests shall not by themselves, disqualify an applicant from falling within the definition of first time home buyer:

- Applicants who own a mobile home are not considered home owners under the BMR program and are eligible to participate. However, if the mobile home unit is not sold and is retained by the homeowner, the property will be included in asset income calculations along with any rental income.
- Ownership in timeshares.
- Beneficiary of a trust for which the trustor/trustee is still living.
- Ownership of shares in a limited equity co-op.



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9e. FIRST-TIME HOME BUYER CRITERIA (CONTINUED)

To verify FTHB status, HouseKeys will review 3 years of federal tax returns to confirm that the applicant has not claimed any of the tax deductions associated with homeownership (e.g. deductions of mortgage interest or property tax payments). If not legally obligated to file, the applicant must complete a Jurat explaining the reason along with supporting documents. HouseKeys will also review a credit report for mortgage loans and perform title searches to confirm the applicant is not an owner of record on any existing properties for at least 3 years. The applicant must not be on title for any housing unit at all, whether they live in the unit or not. Other documentation may be requested to determine first time homebuyer status.

9f. FORMAL DEFINITION OF THE TERM “HOUSEHOLD” (PRIMARY APPLICANT)

The United States Census Bureau uses a series of terms to determine the definition of a household. The basic meaning of Household is an occupied housing unit. A Householder (Primary Applicant) is the person whose name the housing unit is rented to or owned by. Members of the household share familial ties, living space, expenses, debts and/or assets with the Householder.



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10. APPLICATION CRITERIA – ENTERING HOUSEHOLD INFORMATION INTO THE PROGRAM APPLICATION

10a. Household Size, Location & Member Identification

The Household Location and Member Profiles capture the basic information used by the Program Underwriter to determine who is part of the household and which members will become the title-holding homeowners.

Information Profile	Criteria	Criteria Description
Location Profile	Verification of Residence Location	- At least one member of the applicant Household, who will be taking title to the property, must provide the following proof of residency for the 6 months preceding their entry to an Opportunity Drawing: - One utility bill with a City address dated within 45 days preceding the application date for the BMR Unit. Utility bills can include gas, electric, garbage, or water; or - Current paystubs with City address; or - A current, formal lease with a City address
Location Profile	Verification of Employment Location	Administrator shall verify that a person works in the City by reviewing an applicant's paystubs. If an applicant's employer is not based in City, or if a person's paystubs do not reflect a City work address, the applicant must supply a letter from the employer stating that the person works primarily in City and demonstrates that at least 75% of their working hours are in City
Member Profile	IDENTIFICATION	All applicants will need to provide positive identification including a copy of valid driver's license and a copy of a valid social security card.
Member Profile	HOUSEHOLD SIZE	- Any household members not living in the same household at the time of application will need to be a co-applicant for the first mortgage loan and on title to form a household - Tax returns and current addresses will be used to determine household size - All applicants, co-applicants, married couples, partners, domestic partners etc. that are on title will have to occupy the property for 45 years per the signed deed restrictions



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10b. Income Inclusion and Exclusion

The Federal and State government both have rules that determine how Gross Income is calculated and what income types are included and excluded from the Gross Income total.

Application Criteria Description

- The gross amount, before any payroll deduction, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services
- The net income from the operation of a business or profession (for this purpose, expenditure for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business). The adding back of certain deductions will be subject to underwriter approval (e.g. depreciation).
- Interest, dividends and other net income of any kind from real or personal property.
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as outlined in "exclusions" section)
- Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on a passbook savings rate, up to 10%. The current passbook savings rate used by the Administrator is 2.5%
- Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

The following is an abbreviated list of items that are excluded from income:

- Casual, sporadic or irregular gifts
- Amounts which are specifically for or in reimbursement of the cost of medical expenses
- Lump-sum additions to family assets such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Foster child care payments
- The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible household
- **See full inclusion list on the Program Website**



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



Income Review Procedures

Income maximums are based on “gross” income derived from all sources as detailed in Internal Revenue Code (26 USC Section 61), whether or not exempt from federal income tax. Administrator projects future income based on the gross income on each applicant’s past income. In addition to other items deemed necessary to make this income determination, the Administrator may request up to 4 of the most recent year-to-date pay statements and the previous year’s final pay statement. Administrator must review income documentation for all Household members 18 years and older, regardless of dependency status. Applicants without income will need to sign a Zero-Income Affidavit provided by the Administrator. Unemployment benefits are considered income.

For employed applicants, annual income is generally derived by dividing the year-to-date gross income by the current pay period count and then by annualizing an estimated pay period amount by the total pay period count over one year (12 months). Please note that a Verbal and Written Verification of Employment may be required to be completed by the Employer issuing the pay statements.

#	How Often Paid	How to Determine Annual Income
1	Paid Annually	Annual Gross Pay
2	Paid Monthly	Use monthly gross payment x 12
3	Paid Twice Monthly	Twice monthly gross pay x 2 pay periods x 12
4	Paid Biweekly	Biweekly gross pay x 26 pay periods
5	Paid Weekly	Weekly gross pay x 52 pay periods
6	Paid Hourly	Hourly gross pay x average # of hours per week x 52 weeks
7	Government Employees with Annual Award Letters	Income may be derived by referring to the Annual Award Letter

Continued Next Page



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Variable Income (Tips, Overtime, Bonuses, etc.)

Please Note: All Variable Income is subject to Underwriter Approval. Each circumstance is different and must be considered using the documentation in the file. The words below are meant to be used as a basic guide to help prospective applicant Household's understand how this income type is considered during the underwriting process.

Tips, Overtime, Bonus, and other "variable income amounts" (amounts that change with each pay period) will be annualized separately from the base income outlined on the chart above. All income will be annualized and totaled unless the applicant can provide documentation from the employer. The employer must be available to complete a verbal verification of employment with the Administrator. In cases, where the variable income item is a one-time occurrence, the amount will be removed from the annualized calculation of income and added in a one-time total to determine the annual income.

Example: An applicant earns \$60,000 per year based on base monthly pay statements of \$5,000 (\$5,000 x 12). In addition to the base income show, the applicant received a \$2,500 one-time bonus in the first quarter of the year. If annualized, the \$2,500 quarterly bonus would total \$10,000 and the total income would be **\$70,000** (\$60,000 base + \$10,000 annualized bonus income). If proper documentation shows that the \$2,500 is a one-time payment, and Administrator is able to verify and validate this information, the \$2,500 would be added to the \$60,000 base. The alternative total income would be **\$62,500** (\$60,000 base + \$2,500 one-time bonus).

Seasonal Workers: Administration will not annualize current income for seasonal workers who provide a Verification of Employment from their employer (s) verifying that the work does not occur year-round

Self-Employed Income: All self-employed applicants must submit a notarized Self-Employed Affidavit provided by Administrator. If self-employed for 2 or more years, Administrator will use verifiable (verified using Form 4506-T) federal income tax returns and review the net income for as many as 3 years of tax returns to determine the projected annual income. If self-employed less than 2 years, Administrator will review the submitted Profit & Loss Statement and use it to determine projected annual income. Additional documentation may be needed from the Self-Employed Household Member in order to determine projected annual income.

Calculating Income from Cash Income: In the case of an applicant who is paid cash for employment, Administrator will require a Verification of Employment from the applicant's employer to confirm annual income and IRS Tax Verification Form 4506-T to confirm that no taxes were paid.



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



Variable Income (Continued)

Income from Commercial Property or Land Owned: The net income from any commercial property or land owned by any applicant shall be counted toward the annual Household income.

Unemployed Applicants: Unemployed applicants who are receiving no income at all should submit a Zero-Income Affidavit as provided by Administrator in place of income statements. Applicants receiving unemployment benefits do not need to complete the Zero-Income Affidavit as unemployment benefits are considered income.

Additional Notes on Income Calculation

If applicant has recently changed positions with employer, HouseKeys will determine the effect of the change on the applicant's eligibility and opportunity to receive bonus or overtime pay in the future

If applicant who has historically been employed on a part-time basis indicates that he or she will now be working full time (or vice versa), obtain written confirmation from borrower's employer

A verbal verification of employment (VOE) may be required for each employer

All material alterations, and/or omissions from the initial Registration, Application ID Questions, Opportunity Drawing Entry Form, Application Submission and Supporting Documents; including but not limited to household size, income and asset information, etc., are not permissible and will render all future re-submissions ineligible for review and approval for a period of one year. Exceptions for re-submissions are significant life events such as a job/career change, marriage, death, or the birth of a child and are at the discretion of the Administrator.



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



10C. Determining Mortgage and Home Purchase Readiness

Affordable homeownership programming requires that applicant Households who meet the basic requirements for being considered eligible, must also prove that the home purchase fits within their household budget and that they are able to successfully obtain mortgage financing. The following table summarizes the information needed by the Underwriter to approve a household:

Income Profile & Expense Profile	HOUSING PAYMENT TO INCOME RATIO	- To qualify, an applicant's total housing payment, including principal & interest, taxes, insurance, and association dues cannot exceed 40% of the income for Below Market (BMR) home. For example, if your annual income is \$90,000 your maximum monthly house payment cannot exceed \$3,000 or \$36,000 per year (40% of \$90,000 = \$36,000 divided by 12 = \$3,000). - Additional debts will also be taken into consideration and cannot exceed 45% of income. - Non-borrowing applicant's debt will be added to ratios
Expense Profile	RENT HISTORY	- Applicants/co-applicants will need to show the last 6 months of rent history - HouseKeys will review the current rent vs. the new housing payment for affordability. Any circumstance where the new housing payment exceeds 150% of current rent will be considered a "Payment Shock" risk. For example, if your current rent is \$1,000 per month, then any housing payment exceeding \$1,500 per month would be considered a potential payment shock risk (\$1,000 x 150% = \$1,500). - If Payment Shock risk exists, the underwriter may make an exception if compensating factors are present in the file (e.g. post-close reserves)
Asset Profile	DOWN PAYMENT	- The minimum down payment for the BMR program is 3% of the purchase price with first mortgage loan amount equal to 97% of the purchase price. - The minimum 3% of the purchase price must come from the applicant's own funds, and be present in the applicant's account for at least 6 months - A gift can be used for any down payment amount more than 3% of the purchase price - Note: In some cases, mortgage financing programs may require 5% of the purchase price in order to be approved



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



10D. Public Record and Default Risk

In addition to determining home purchase readiness, the Program Underwriter must also determine the risk of the property being lost to foreclosure or the risk of a lien being attached to the property that can adversely affect the resale process or excess sale proceeds. The following table summarizes the information needed by the Underwriter to reduce risk and approve a household:

Liability Profile & Credit Profile	CREDIT REPORT AND CREDIT SCORES	• A credit report is required for all applicants and non-borrowing applicants • The credit report must include information from all three credit bureaus (Experian, TransUnion, Equifax) and use a mortgage-risk model (used by licensed mortgage lenders) • The lowest median (middle) score is used • The minimum credit score is 620 • An applicant or co-applicant with an unsatisfactory credit report will be denied. • We will be reviewing the Credit Report to identify all of the account balances and monthly payments • The monthly payments on your credit report will be used to determine the total debt ratio (total debt and household payments divided by monthly income) • As stated above, the total debt ratio cannot exceed 45% of monthly income
Public Record Profile	PUBLIC RECORD SEARCH (DETERMINED USING A STATEMENT OF IDENTITY FORM)	• An applicant or Co-applicant may apply for consideration under the following circumstances: • Chapter 13 bankruptcy – after 2 years from discharge or 4 years from dismissal. • Chapter 7 – after 4 years from discharge • Short Sale/Deed in Lieu - after 4 years • Foreclosure - after 7 years • All applicants, co-applicants, and non-borrowing spouse cannot have liens outstanding at the time of the home purchase • All liens, including IRS liens, or any past due money owed to the IRS, shall be required to be paid off prior to being issued a program approval.



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



11. TRANSACTION AND DOCUMENT HANDLING

File Stacking (List of Documents Needed for Each Stage of the Transaction)

If application is approved, and the applicant Household is cleared to move forward with the purchase, the applicant's lender must supply the following documentation to the Administrator (**Financing File Stacking Order**):

1. Lender Checklist (listing all the loan documents)
2. Loan Application with final figures and lending terms (currently known as a 1003)
3. Uniform Underwriting and Transmittal Summary (currently known as 1008)
4. Mortgage Loan Commitment Letter
5. Loan Estimate

Routing documents to the City for signatures can take 10 to 14 business days. Before any transaction documentation can be sent to the City for signature, the following documents will need to be in the Administrator's file (**Pre-Close Stacking Order**):

1. Estimated Settlement Statement – Seller (Re-Sale and Acquisition Transactions Only)
2. Estimated Settlement Statement – Buyer
3. Estimated Settlement Statement – Master
4. Copy of 1st Lender Note & Deed of Trust
5. Copy of 1st Lender Escrow Instructions
6. 1st Lender Request for Notice of Default
7. Copy of any Subordinate Lender Notes and Deeds of Trust
8. Copy of any Subordinate Lender Escrow Instructions
9. Subordinate Lender Request for Notice of Default



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



After closing, the Title Company must provide the following to the Administrator (**Post-Close Stacking Order**)

1. Executed BMR Agreements Docs, Notes and Deeds of Trust
2. Recorded Agreement
3. Recorded Request for Notice of Default
4. Final Settlement Statement – Seller (Re-Sale and Acquisition Transactions Only)
5. Final Settlement Statement – Buyer
6. Final Settlement Statement – Master
7. Alta Policy

Length of Escrow and Fall-Out Risk

The typical escrow period for a BMR Unit sale is 90 days. This period can stretch out longer if the property is under construction and there are delays. Applicant Households must be prepared for a long escrow period and to continually keep their file updated to comply with the one hundred twenty-day (120-Day) application review period. Households must be eligible and qualified through to close of escrow. Unfortunately, a change in the application file during the escrow period can cause the applicant Household to become disqualified and lose out on the purchase opportunity.



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



12. REASONABLE ACCOMMODATION AND EXCEPTION REQUESTS

Accommodations in Program rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities, or a household with a member with disabilities, equal opportunity to apply for a BMR home. The requested accommodation must be reasonably related to the particular disability of the household member, and must be necessary in order to provide the household with equal access to housing.

Households or individual applicants unable to produce any particular document required in the application form for legitimate reasons beyond their control (natural disaster, military service, refugee status, domestic violence, witness protection program, disability etc.) may request an exception for that particular document.

Upon such request, Administrator may request a reasonably equivalent alternative document, and/or any additional supporting documentation deemed necessary by the Program Processor and Program Underwriter to verify eligibility of the Applicant/Co-Applicant and/or their entire Household.

Exceptions related to disabilities (reasonable accommodations) may be requested according to this procedure, with a brief description of the exception(s) needed due to the Applicant's disability. The City and Administrator will consider the requested exception and will provide a written response within 14 calendar days, stating if the requested exception can be granted in full or part and the reason for such decision. The Administrator may approve or deny such request. If denied, Applicants may submit an appeal of such denial to the City.



City of Morgan Hill / HouseKeys Below Market Rate (BMR) Ownership Program Application Guide



13. APPROVED VENDORS

All vendors shall be approved by HouseKeys. The table below outlines the minimum requirements for any vendor associated with resale of the property:

CONTRACTORS	Contractors shall have a valid California Contractor License.
LENDER/LOAN OFFICERS	- Loan Officers shall have previously attended HouseKeys loan officer orientation class. - The lender's legal department shall approve all BMR documents prior to resale. All Loan Applications must be taken and completed by the Loan Officer listed on the Loan Application (including NMLS License) and must match the name on the Program Approved List
TITLE COMPANY	The Title Company shall be based in Northern California and preferably in the County of Santa Clara.
APPRAISER	Appraisers shall have a valid California State Certification or California State License that has not expired.

Below Market Rate (BMR) Program Development Standards

- A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood and providing guidance for the inclusion of materials and amenities within each unit.
- B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.
- C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:
 - a. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.
 - b. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.
- D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

This provision has been added to provide Staff, Planning Commission, and the City Council with the flexibility to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project provides more community benefit than a standard dispersal. Example: A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits, County Measure A funds and other funding sources in order to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's Regional Housing Needs Allocation (RHNA) goals.

BMR units are subject to the following development standards:

1. Location. BMR units shall be distributed evenly throughout the project.
2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project;

3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project;
4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate
5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.
6. Minimum Interior standard finishes will be as follows
 - a. All closets shall have doors
 - b. Interior doors to be raised panel type or same as market rate
 - c. Door hardware to be brass/chrome/brush nickel finish or equivalent
 - d. Appliances shall be major brand name
 - e. Microwave with an exhaust vent shall be installed over the range
 - f. Kitchen counters shall be white ceramic tile ceramic tile; however, granite is preferred if it is standard in the market rate units
 - g. Kitchen cabinets shall be stained wood with white melamine interiors
 - h. If installation of an Air Conditioner is a standard feature for market rate units, then it is a standard for the BMR units.
 - i. If a basic alarm system is a standard feature in the market rate units, then it is a standard for the BMR units.
 - j. Carpet in bedrooms, hallways, family rooms
 - k. Linoleum or tile entry, bathroom kitchens
 - l. Laminate flooring may substitute for carpet or linoleum
 - m. Electric garage door opener
7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the Residential Development Control System (RDCS). For example, for a project with 24 units, with a 15% BMR ownership housing commitment, at least one BMR unit shall be constructed before or concurrently with every 6th market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The Community Development Director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:

NAME

STREET
ADDRESSCITY, STATE &
ZIP CODE

TITLE ORDER NO.

ESCROW NO.

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

SIMPLE REVOCABLE TRANSFER ON DEATH (TOD) DEED
(California Probate Code Section 5642)**ASSESSOR'S PARCEL NUMBER:**

This document is exempt from documentary transfer tax under Revenue & Taxation Code 11930.

This document is exempt from preliminary change of ownership report under Revenue & Taxation Code 480.3.

IMPORTANT NOTICE: THIS DEED MUST BE RECORDED ON OR BEFORE 60 DAYS AFTER THE DATE IT IS SIGNED AND NOTARIZED.Use this deed to transfer the residential property described below directly to your named beneficiaries when you die. **YOU SHOULD CAREFULLY READ ALL OF THE INFORMATION ON THE OTHER PAGES OF THIS FORM.** You may wish to consult an attorney before using this deed. It may have results that you do not want. Provide only the information asked for in the form. **DO NOT INSERT ANY OTHER INFORMATION OR INSTRUCTIONS.** This form **MUST** be RECORDED on or before 60 days after the date it is signed and notarized or it will not be effective.**PROPERTY DESCRIPTION** Print the legal description of the residential property affected by this deed:**BENEFICIARY(IES)** Print the FULL NAME(S) of the person(s) who will receive the property on your death (DO NOT use general terms like "my children") and state the RELATIONSHIP that each named person has to you (spouse, son, daughter, friend, etc.):**TRANSFER ON DEATH**

I transfer all of my interest in the described property to the named beneficiary(ies) on my death. I may revoke this deed. When recorded, this deed revokes any TOD deed that I made before signing this deed.

Sign and print your name below (your name should exactly match the name shown on your title documents)

NOTE: This deed only transfers MY ownership share of the property. The deed does NOT transfer the share of any co-owner of the property. Any co-owner who wants to name a TOD beneficiary must execute and RECORD a SEPARATE deed._____
Date_____
Signature of Grantor_____
Typed or Printed Name of Grantor

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 _____

COUNTY OF _____

On _____ before me, _____
(Date) (Name and title of the officer)personally appeared _____, who proved to me on the basis of
(Name of person signing)

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 of officer



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

UPDATE ON AGRICULTURAL PRESERVATION STRATEGY AND POTENTIAL RELATED LAND USE CONSIDERATIONS

RECOMMENDATION(S)

1. Accept report on the City's Conservation Strategy; and
2. Provide policy direction to staff.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

POLICY CONSIDERATIONS:

1. Should the City consider contracting the City's current Urban Growth Boundary?
2. Should the City convert the property purchased for ballfields on Tennant Avenue from a recreational use to an agricultural use?

REPORT NARRATIVE:

The City of Morgan Hill has a long, successful history of preserving open space in the general Morgan Hill environs. With much of the hillside areas preserved via ownership, easements, or regulation, the City has been steadily shifting toward the preservation of key agricultural properties since the turn of the century. The purpose of this report is to provide the Council and the community with an update on the City's current agricultural protection strategy and to get the Council's direction on some key policy questions.

Agricultural Strategy

With the Council's adoption of the City's *Agricultural Lands Preservation Program* in 2014, the City was officially in the business of actively preserving agricultural lands in the Morgan Hill Priority Conservation Area (MHPCA) – not just on the surrounding hills and open space areas. This seminal program remains on the forefront of agricultural discussions in the County and the City's follow-up implementation actions have placed it at the head of the pack amongst Santa Clara County cities. Actions taken since 2014 include:

- Adopted an Agricultural Mitigation ordinance that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;

- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and identify potential and negotiate conservation easements;
- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development;
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal and allocated over \$1 million in funding;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the City's Agricultural Conservation Priority Areas and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

As described in the attached Conservation Strategy, the City plans the following activities in the coming months:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue;
- Collect mitigation fees or accompanying preservation easements for projects developed on agricultural lands;
- Begin to implement a Transfer of Development Credit program, as enacted by Measure S, to raise additional funding for agricultural preservation; and

- Identify additional parcels in the City's Priority Area that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

With all of the above planned activities, the City can expand its preserved acreage substantially in the coming years. However, some members of the community and others in Santa Clara County argue that the City can do more to preserve agriculture.

Policy Questions

Should the Urban Growth Boundary be contracted?

The City's current Urban Growth Boundary (UGB) is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur and includes land that is currently in agricultural production. By contracting the UGB, the City could signal that urban development in those agricultural production areas is not part of the City's long-term growth plans, which could reduce property values and increase the chance that the land will remain in agricultural production. If the Council wants to consider such a contraction, further direction on the size of the contraction and its associated timing is needed in order to enable staff to move forward.

This is a multifaceted policy question without a clear "science-based" answer. While it would seem that contracting the UGB could only help, not hurt, agricultural preservation efforts, it is also true that 58% of the agricultural land lost in the past two decades has been due to rural development in the County – not urban expansion. Given this statistic, one could argue, as the City unsuccessfully did in the past, that annexing the land into the City could be the best approach to preserving the majority of the land for agricultural purposes as the City could strategically allow some land to develop in order to permanently protect remaining lands. In the absence of the placement of a permanent conservation easement on a property, it remains at risk for development as a rural estate or other allowed use that is consistent with County zoning. In addition, the State's current housing crisis and the threat of "forced urbanization" through legislation only adds to the risk of agricultural land conversion on land that is not permanently preserved with an easement. Nonetheless, it is undeniable that contracting the UGB will reduce the potential for agricultural lands to be lost as a result of the urban expansion within the City.

If the Council is interested in contracting the UGB, staff will perform the necessary analyses and bring back an item for Council consideration detailing optional approaches.

Should the City consider placing an agricultural preservation easement on the ballfield property?

The 26-acre property that the City purchased on the southwest corner of Condit and Tennant is within the area of the UGB that would be considered for contraction. Since the City has long been working on a site for ballfields and both the baseball and softball

community are looking forward to the development of a ballfield site, vacating plans for the existing site only makes sense if an alternate site can be identified. Staff has reviewed opportunities within the City and it is highly unlikely that a site within the City will be available and within a price range near what was paid for the current site. A scenario may be possible where a smaller land acquisition tied with a shared-use agreement with the Saint John XXIII College Preparatory High School involving lands currently proposed to be annexed to the City could meet the needs of the community for ball fields. It should also be noted that the existing Ball Field site provides buy back rights to the former property owner for a small portion of the site for future commercial use if eventually annexed, which would need to be addressed. The freeway adjacency for this commercial along with the sports tourism benefits of another large recreation facility could provide future economic development benefits that may not be obtained if the site is converted.

If this property is retracted from the UGB, it is no longer appropriate or legal for the park impact funding to remain on the property and the park impact fund would need to be reimbursed for the purchase. One solution would be to place an agricultural easement on the property and then resell the land to a farmer or other entity interested in owning agricultural land. Since the City paid \$238,000 per acre for the land, this would be a very expensive agricultural conservation easement. The actual costs of the easement would not be known until the land is resold. In this scenario, the City would also solicit funding from the Santa Clara Valley Water District to use the land as a special “stormwater infiltration basin” that could accept local rainwater and hold it until it percolates into the groundwater aquifer.

If the Council is interested in repurposing the ballfield property, staff will perform the necessary analyses and bring back an item for Council consideration.

COMMUNITY ENGAGEMENT: Inform

As this report is requesting direction from the Council on potential future actions, an extensive community engagement effort was not implemented in advance. However, the City directly informed landowners in the area, via a letter, indicating that the Council may be considering changes to the land use policies affecting their property during tonight’s meeting.

ALTERNATIVE ACTIONS:

Not Applicable – this report involves accepting a report on current activities and providing policy direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On November 5, 2014, the City’s Agricultural Lands Preservation Program was adopted.
- On August 5, 2015, Agricultural Lands Mitigation Ordinance was adopted.
- On July 27, 2016, the current UGB was adopted as part of the City’s General Plan Update process.

FISCAL AND RESOURCE IMPACT:

None at this time, though actions potentially taken as a result of Council direction will have fiscal impacts. These actions will return to the Council and the fiscal impacts will be analyzed and presented at that time.

CEQA (California Environmental Quality Act):

Not a Project

Both the acceptance of a status report on an existing program and directing staff to conduct analyses and bring back reports for future Council action do not constitute projects under the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Ag Conservation Strategy

Morgan Hill's Conservation Strategy



Attachment: Ag Conservation Strategy (1996 : Ag Update)

Morgan Hill's Conservation Strategy

Introduction

Morgan Hill is located within the southern part of Santa Clara County, 10 miles south of San Jose and 10 miles north of Gilroy. Morgan Hill is nestled between the Diablo Mountain Range and the Santa Cruz Mountains, and has a rich history of farming and manufacturing. While Morgan Hill is a part of the Silicon Valley in its business mix, rich entrepreneurial spirit and thirst for innovation, the city's natural geography and open space make it a unique place. The City has made many thoughtful decisions on open space preservation, water and agricultural land conservation, and environmental stewardship.

This whitepaper on Morgan Hill's Conservation Strategy outlines the City's approach to ensuring future open space and agriculture lands remain in South Santa Clara County. The white paper is broken down into policy and plan adoptions, tools that support those policies and plans, and finally challenges and key considerations on environmental stewardship for Morgan Hill.

Policies and Plan Adoptions

A. Agriculture Preservation

As community interest in preserving the agricultural open space areas on the valley floor grew and national interest in farmland preservation increased, the City spent several years evaluating strategies for protecting the agricultural lands surrounding the community. The culmination of this work, the City's *Agricultural Lands Preservation Program* (Program), was adopted by the City Council on November 5, 2014 ([Exhibit 1](#)). In concert with the Morgan Hill [2035 General Plan Update](#) ([Exhibit 2](#)), the City formally identified two Priority Conservation Areas (MHPCA) located adjacent to the City boundary, as the primary focus of future agricultural conservation easement acquisition. While located outside of City limits but within the City's Sphere of Influence, these lands had been the most significantly impacted by development pressure and conversion, and of growing concern to the preservation efforts.

In the years since the Program and General Plan update were adopted, the City has implemented the Program by engaging in the following tasks:

- Adopted an Agricultural Mitigation ordinance ([Exhibit 3](#)) that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;
- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and negotiate conservation easements;

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- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the MHPCA and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

To date, the outcomes from the Program have resulted in:

- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development; and
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal, and allocated over \$1 million in funding.

In the coming months, the City of Morgan Hill plans the following:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue; and
- Identify additional parcels in the MHPCA that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

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B. Conservation of Open Space

The City of Morgan Hill has a long history of preserving open space in the important hillside areas that surround the community. Using a combination of purchases, dedications, regulations, incentives, and open space easements, nearly all of the important hillside areas (totaling more than 595 acres) surrounding the community are restricted from further development.

The City first established a Transfer of Development Credit (TDC) program in the Municipal Code in 1981 ([Exhibit 4](#)). A Transferable Development Credit allows the transfer of development credits from areas where development is restricted such as hillsides to sites in other areas of the City more appropriate for development. TDCs were originally created to help implement the City's hillside preservation activities. TDC acquisition is tied to the City development process where development allotments are competitively awarded based upon a project's public benefit contribution, including pledges to purchase TDCs. In 2001, there were no TDCs available in the market. As a result, the City created a TDC in-lieu fee which allowed projects pledging acquisition of TDC's to incrementally pay an in-lieu fee for that pledge, collected at the final of the building permit.

Morgan Hill Program Implementation Tools

A. Morgan Hill Priority Conservation Area (MHPCA)

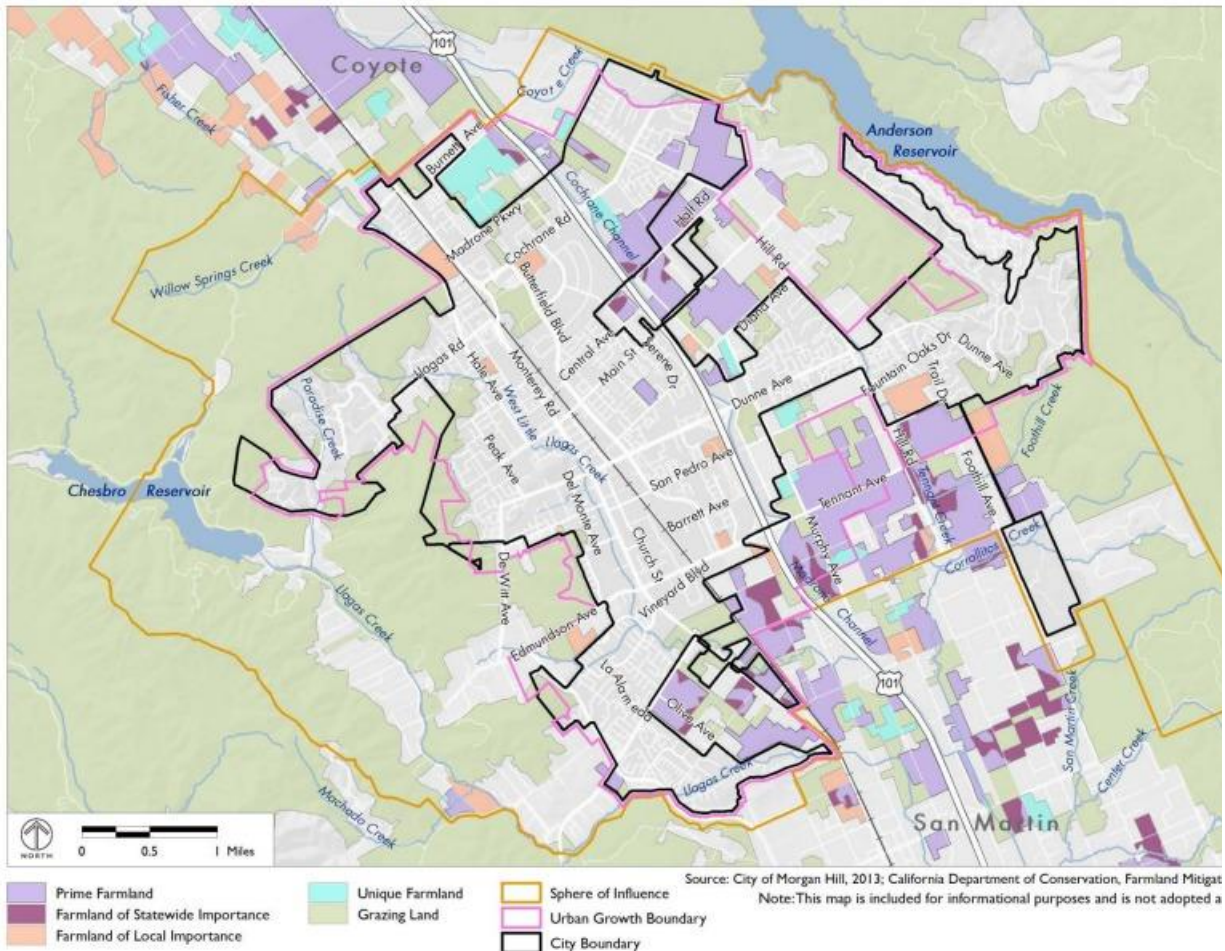
In Figure 1, the City's Priority Conservation Areas are focused in the areas shown in purple east of highway 101. These areas recognize the important farmland consistent with the subareas maps for Live Oak/Half Road and San Martin/Tennant in the recently adopted *Santa Clara Valley Agricultural Plan: Investing in our Working Lands for Regional Resilience* and the agriculture priority area shown in the City's Agricultural Mitigation Program. The MHPCA focuses on agri-hood development in the Live Oak/Half Road area that will benefit from Conservation Easements and larger agricultural land preservation in the areas south of Tennant.

Like most cities in Santa Clara County, Morgan Hill was developed on agricultural land. Agriculture is still an important asset to the region, as evident by surrounding vineyards, which boost the region's economy and tourism industry. However, local farmers continually describe constraints on the continued long-term viability of agriculture within the City's Urban Growth Boundary. Existing orchards and vineyards are experiencing urban encroachment that adversely affects the efficiency of farming operations due to restrictions on pesticide use, noise and dust complaints, trespass, vandalism, and theft. The goal of Morgan Hill's Priority Conservation Areas is to create larger areas of land permanently dedicated for agricultural uses.

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Figure 1: 9,848 acres of Agricultural Lands within Morgan Hill's Sphere of Influence

Figure NRE-2 Important Farmland



Designated farmlands within Morgan Hill Sphere of Influence

Farmland Classification	Within City Limit (Acres)	Total (Acres)
Prime Farmland	314	1,386
Farmland of Statewide Importance	22	196
Farmland of Local Importance	153	346
Unique Farmland	30	234
Grazing Land	1,265	7,686

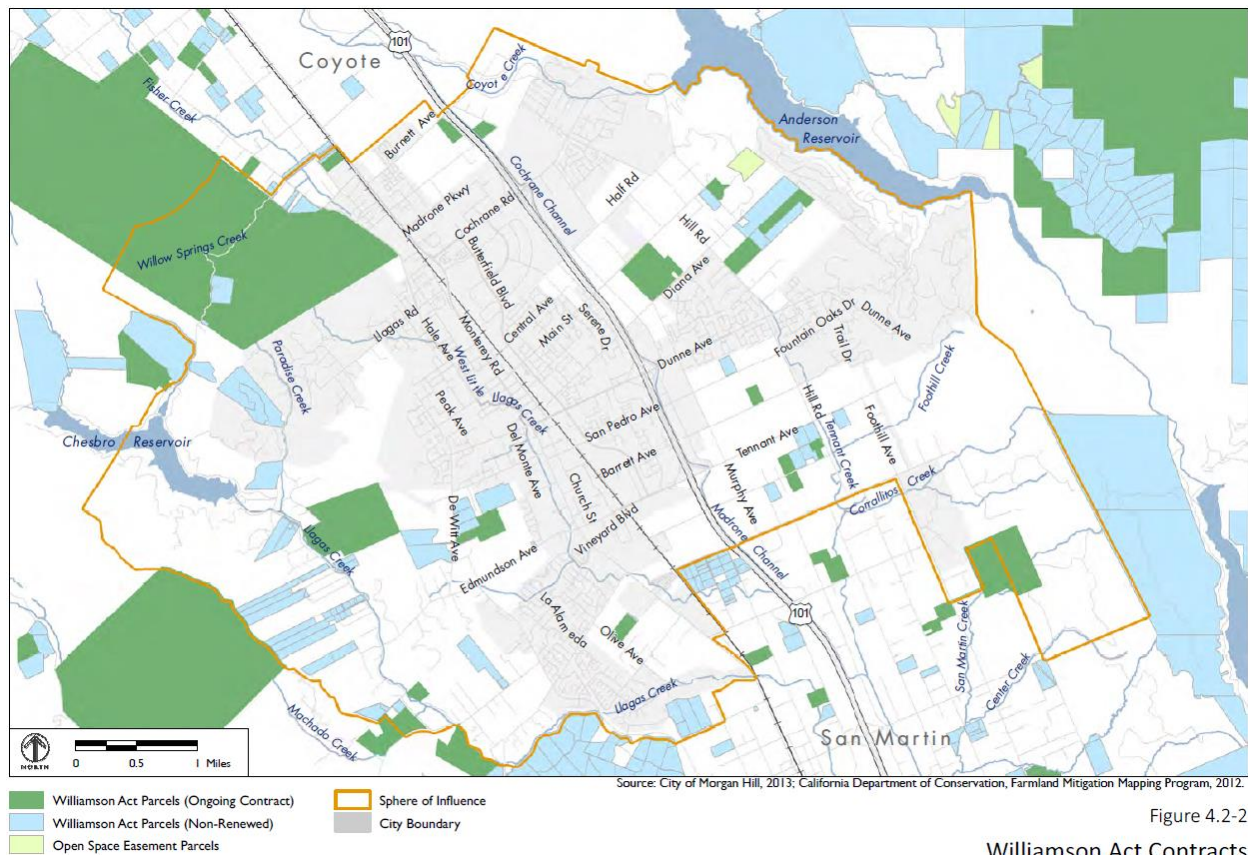
Source: Source: Department of Conservation, Farmland Mapping and Monitoring Program GIS data, 2012.

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B. Williamson Act Contracts

The Williamson Act is one of the most widely used agricultural easement programs in the City of Morgan Hill, Santa Clara County, and the state of California. These areas are shown in the Figure 2. There are 1,703 acres of land that are under on-going Williamson Act contracts that are within the Morgan Hill's Sphere of Influence.

Figure 2. 1,703 acres of Williamson Act parcels in Morgan Hill's Sphere of Influence.



C. Approval of Measure S

Through recommendations contained within the Morgan Hill 2035 General Plan update, City voters approved Measure S, a new residential growth measure, to guide the pacing and total population of the community to mirror General Plan aspirations. In that voter approved measure, the community approved 300 Agricultural Preservation set-aside allotments, at the rate of up to 35 per year, to encourage and promote agricultural preservation in the Morgan Hill Priority Conservation Areas (MHPCA). The set-a-sides translate into Transfers of Development Credit (TDC) ([Exhibit 4](#)), whereby a developer purchases the TDC from the City, and receives the right to build "out-side" of the City's Residential Development Control (RDCS) process. The dollars raised through the sale

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of the TDC's are added to the City's Open Space/Agricultural Conservation fund to be utilized for the purchase of permanent agricultural easements in one of two MHPCA's.

Other important components of Measure S.

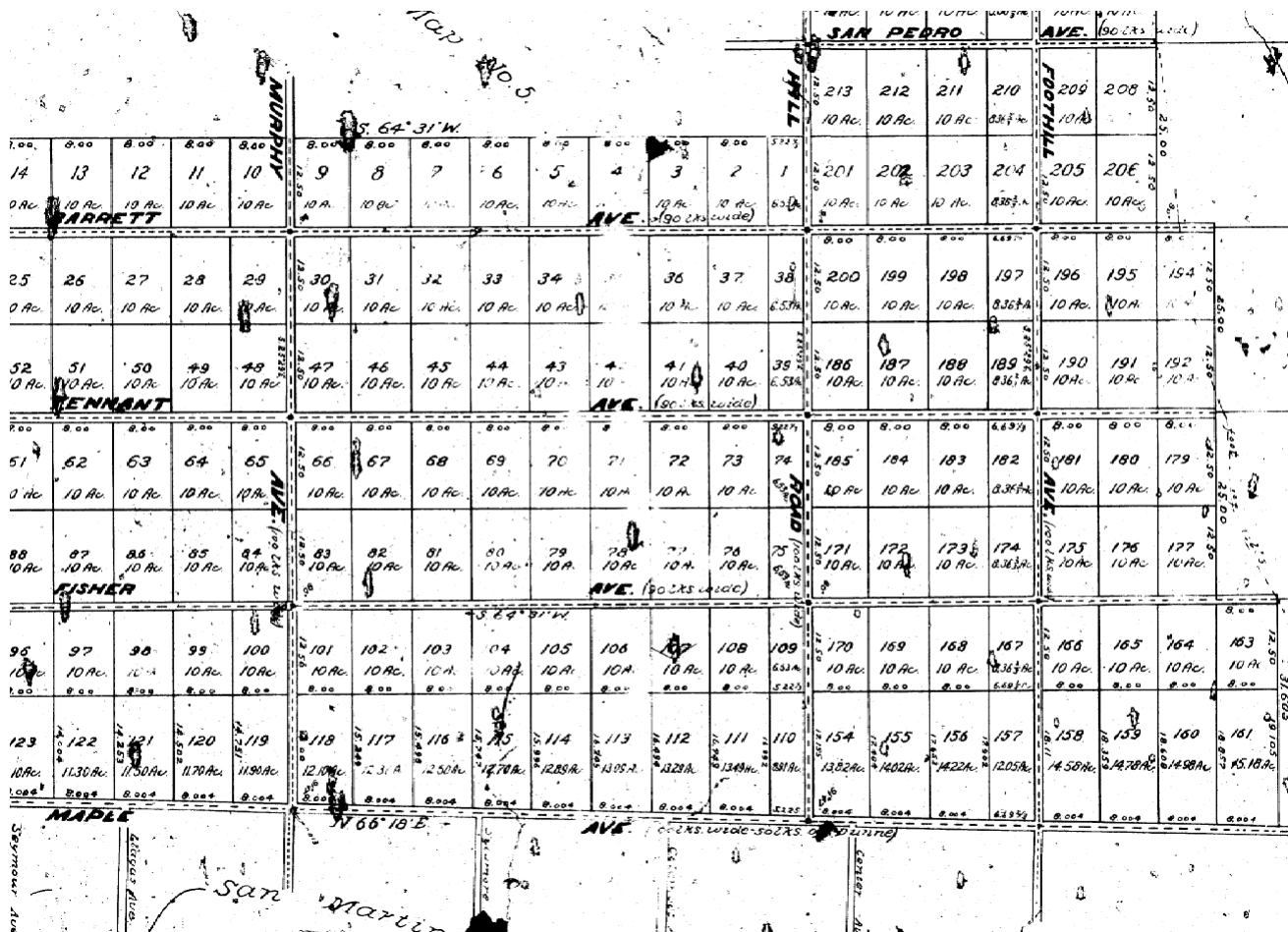
1. A minimum one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land change to a non-agricultural use.
2. Stay ahead provision – conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands.
3. Public benefit financial contributions/pledges made through Residential Development Control System (RDCS) can be used to purchase conservation easements.

Challenges and Key Considerations on Environmental Stewardship

- The majority of remaining farmland in Santa Clara County, including in the MHPCA, is unincorporated and therefore limited land use control.
- The soil in the Morgan Hill area is not highly-valued by farmers for its agricultural productivity. Many of the soils found nearby are considered marginal at best.
- Santa Clara County A-20ac Ag. Zoning requires 20-acre minimum lots, but there are no 20-acre lots that exist in the MHPCA today. Figure 3, Catherine Dunne Ranch Map No. 7 approved in 1905 established 10-acre lots. These lots are small enough to be easily converted into ranchettes. This creates a situation where the "highest and best" economic use of the land is residential estates - not agriculture and farmers continue to face pressure to sell land for nonagricultural development.
- Farming land near nonagricultural uses (homes, schools) is and has become increasingly challenging (dust, noise, traffic, etc.).
- Existing County General Plan and Zoning regulations haven't stopped the patchwork conversion of agricultural lands in the Morgan Hill Priority Conservation Area.

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Figure 3: Catherine Dunne Ranch Map No. 7



- Subsequent subdivision maps approved smaller lots, some as small as 1-acre. Many of these smaller lots are developed with single-family homes. Some undeveloped subdivisions are not apparent when looking at an aerial, but they include smaller legal lots of record that could be developed with uses that are not agricultural (typically single-family homes) (Figure 4)

An aerial photograph of a rural area with various land parcels outlined in black. Each parcel is labeled with a number, such as 81716001 through 81716032. The parcels vary in size and shape, some containing buildings, pools, or agricultural fields. Several streets are visible and labeled: Highway 290 runs diagonally across the middle; Highway 291 runs horizontally at the bottom; Highway 292 runs vertically on the left; and Highway 293 runs vertically on the right. The surrounding areas include green fields, brown plowed earth, and clusters of residential or commercial buildings.



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- In general, land in the County, including agricultural land is expensive, especially when compared with agricultural land outside of the County. Agricultural land in Morgan Hill's SOI, including the Morgan Hill Priority Conservation Area, is even more expensive (\$100,000 to ~\$1million/ac), which means Agricultural Conservation Easements in Morgan Hill's Sphere of Influence (SOI) are also expensive (\$50,000-\$100,000/ac).
- There aren't many available funding sources to support Agricultural Preservation. Where there is funding, it's difficult to compete with funding requests for larger/cheaper lands in other areas. According to a 2017 State Conservation Program funding report, the value of Agricultural Conservation Easements ranged from \$700/acre (Winters in Yolo Co.) to \$7,196/acre (Cotati in Sonoma Co.) to \$23,404/acre (Marina in Monterey Co.).
- For decades Morgan Hill has seen agricultural lands around its boundaries converted to nonagricultural uses¹. The adoption in 2015 of the City's Agricultural Preservation Program and subsequent adoption in 2016 of the Morgan Hill 2035 General Plan, provide a practical approach for how the City can help permanently preserve productive farmland in Santa Clara County, particularly within the City's SOI with a high priority placed on preservation of agricultural lands in the Morgan Hill Priority Conservation Area.

Conclusion

Through various policy mechanisms and tools, the City of Morgan Hill has taken a proactive role in establishing conservation efforts in South Santa Clara County. By adopting land use policies and funding mechanisms, Morgan Hill is working diligently to conserve agricultural land for open space, create opportunities for locally-grown food to be marketed and consumed locally, and preserve open areas that contribute to a unique cultural environment.

¹ 58% of farmland converted in Santa Clara County since 1994 was due to rural development in rural unincorporated areas. *Santa Clara Valley Agricultural Plan*, Page 26.

Exhibit 1: Agricultural Lands Preservation Program**City of Morgan Hill****Agricultural Lands Preservation Program****Adopted: November 5, 2014****Purpose**

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. To be effective for Morgan Hill, the agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City's Southeast Quadrant (SEQ) area, but also encourage preservation efforts throughout the City's SOI.

Definitions

Agricultural Land

For “Agricultural Land” that requires off-setting preservation/mitigation under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that has not been subsequently developed for non-Agricultural Use prior to the adoption of this Program or subsequently developed per the provisions of this Program. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy. The FMMP classifications reflect a finding by the California Department of Conservation of agricultural quality, which is based on a combination of soil quality as measured by the soil surveys of the United States Department of Agriculture (USDA) Natural Resource Conservation Service, together with recent agricultural-usage history.

Agricultural and grazing land definitions, as defined by the Department of Conservation mapping classifications include:

1. **Prime Farmland.** Prime farmland is land with “the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
2. **Unique Farmland.** Unique farmland is “farmland similar to prime farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
3. **Farmland of Statewide Importance.** Farmland of statewide importance is “farmland of lesser quality soils used for the production of the state’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.”
4. **Farmland of Local Importance.** Farmland of local importance is farmland identified as “land of importance to the local agricultural economy as determined by each county’s board of supervisors and a local advisory committee.”
5. **Grazing Land.** Grazing land, defined as “land on which the existing vegetation is suited to the grazing of livestock” is not included in this study’s use of the term Agricultural Land and is not considered as core to the proposed preservation program.

Agricultural Conservation Easement

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting

development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

Agricultural Mitigation Land

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

Agricultural Priority Area

The Agricultural Priority Area is an area within the City's Southeast Quadrant (SEQ) that has been identified as the City's first priority for the acquisition of agricultural land conservation easements. This area was selected because it is the area within the Morgan Hill SOI where agriculture is considered to be the most viable over the long term. Conservation within this area will also contribute toward the City's goals of creating an open space buffer along its southern edge. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

Agricultural Use

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.

Agricultural Lands Preservation Program

Page 4

4. Dairy: Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. Feed Lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field Research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom Farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:
 - a) Direct sales of locally produced agricultural products.
 - b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

Agricultural Preservation In-lieu Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying

Entity and used by either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

Agricultural Lands Preservation Program Surcharge Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

Open Agricultural Land

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land. Because an Open Agricultural Land Conservation Easement would potentially reduce the economic potential for future agricultural uses, it would normally be more expensive to acquire than a standard Agricultural Conservation Easement. The City may however determine that at some locations an Open Agricultural Land Conservation Easement would better implement the City's land use objectives by preserving open space as well as agricultural activity.

Qualifying Entity

A government or nonprofit entity operating in Morgan Hill and/or the surrounding portions of Santa Clara County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The City favors the use of a local government or non-profit agricultural conservation entity, a statewide government or non-profit agricultural conservation entity or entities, or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder. The Qualifying Entity should have appropriate representation and/or participation from the farming community. The City will consider the following criteria when considering the non-profit agricultural conservation entity for these purposes, and when monitoring the performance of Qualifying Entities over time:

1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization whose principal purpose is holding and administering Agricultural Conservation Easements for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
3. Whether the entity has a history of holding and administering easements in Santa Clara County for the foregoing purposes;
4. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
5. Any other information that the City of Morgan Hill finds relevant under the circumstances.

Policies

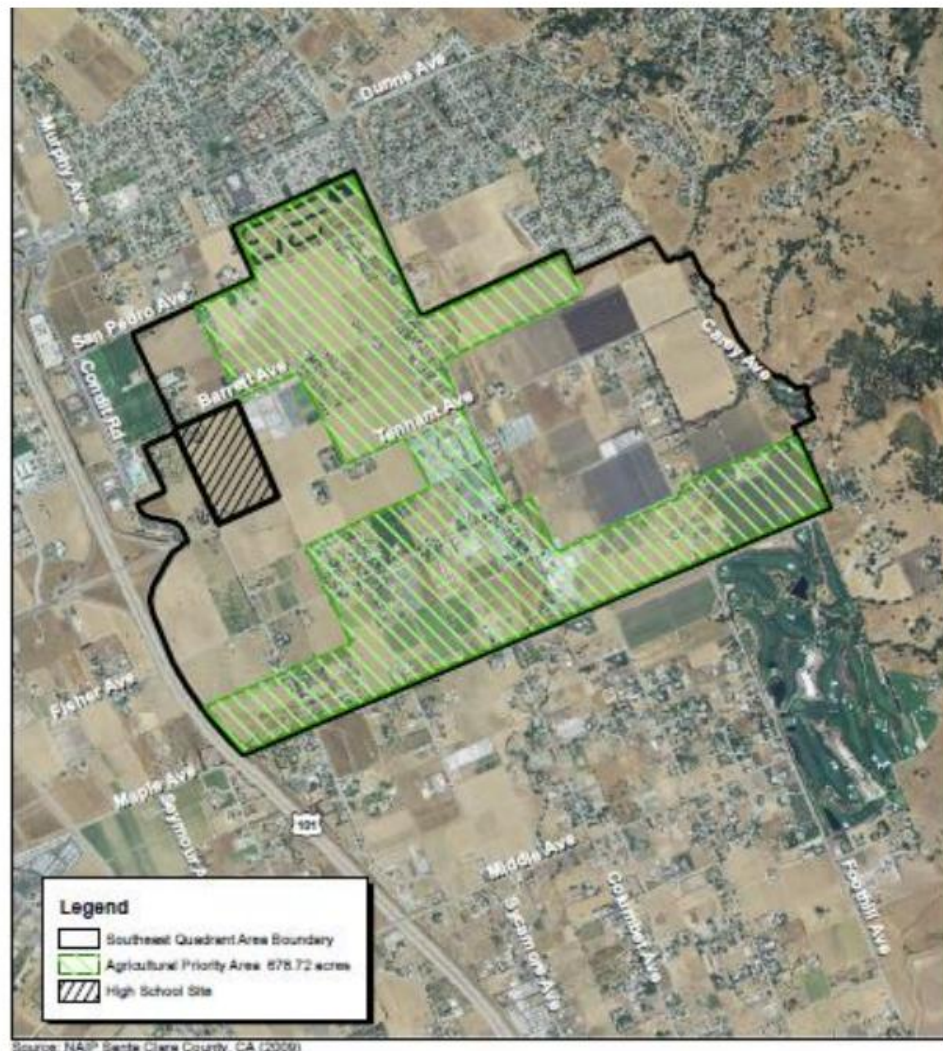
The City will implement the Program in accordance with the following policies:

1. **Agricultural Conservation Easements.** To achieve the Agricultural Lands Preservation Program objectives, activities converting Agricultural Land, such as new private or public development projects, are required to offset the conversion by directly preserving Agricultural Mitigation Land in perpetuity. Agricultural lands will be preserved through the recordation of permanent Agricultural Conservation Easements, which may be directly established by the land developer, obtained by the City or a Non-profit as an intermediary, or established through a developer-initiated transfer of development rights recorded within a development agreement. This offsetting preservation will serve as mitigation to satisfy the requirements for agricultural mitigation under the California Environmental Quality Act (CEQA) as well as to support the continuation of agriculture in and around the City of Morgan Hill consistent with community preferences and City policies.
2. **Alternate Mitigation.** The primary means of mitigation under this program are the direct recordation of conservation easements or the payment of in lieu fees which will be applied toward conservation easements. As an alternative, agricultural mitigation through Planned Development Zoning and/or a Development Agreement is allowed only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, such alternative mitigation shall still be required to achieve a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
3. **Applicability.** All new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of at least one acre of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption of this Policy, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.
4. **Mitigation Ratio.** A minimum of one (1) acre of Agricultural Land (**1:1 mitigation ratio**) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.
5. **“Stay Ahead” Provision.** Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

6. **Measurement of Affected Area.** Consistent with the Santa Clara Valley HCP/NCCP plan, the areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or SRL. These land use designations allow for and typically include a large portion of land reserved for “open space/open fields” that in the future could be put back into Agricultural Use. Areas proposed to be so reserved must have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.
7. **Mitigation Mechanism.** Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.
8. **Eligible Mitigation Lands.** In order to meet the goals of this Program, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:
 - a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;
 - b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
 - c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;
 - d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
 - e) The mitigation land shall be located within Santa Clara County; and
 - f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.
9. **Ineligible Mitigation Lands.** A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:
 - a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

10. **Agricultural Priority Area.** The Agricultural Priority Area within Morgan Hill's Southeast Quadrant, shown on the figure below, is the City's first priority geographic area for conservation. The Agricultural Priority Area encompasses approximately 650 acres of land. The City should use all available tools, including clustering of existing development rights within the SEQ, transfer of development rights (TDR) programs, collaborative land use planning with the County, partnering with local open space conservation agencies, and the use of available grant funding to achieve conservation within this area. Within the Agricultural Priority Area the City should focus on obtaining conservation easements first on land outside of the City's land use control, specifically focusing upon the sub-area located along the southern edge of the City's Sphere of Influence.



11. **Secondary Conservation Areas.** If it is not possible to obtain conservation easements within the Agricultural Priority Area, the City should obtain conservation easements within other areas within the Morgan Hill Sphere of Influence as the next priority. The City may also identify lands intended for conservation within these areas.
12. **Alternative Conservation Areas.** Only when conservation opportunities are not available within the Sphere of Influence will the City consider easements at other locations within the County. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee .
13. **Agricultural Sustainability.** Prioritize acquisition of easements on land that is most viable for long-term agricultural use considering factors such as soil type, water supply and location. Promote agricultural uses within easement areas including the development of high-value crops which are compatible with an urban edge condition while also economically sustainable over the long-term.
14. **Responsibility for Easement Acquisition.** The City's preference is that developers pay the Agricultural Preservation In-lieu Fee so that conservation efforts will be focused within the Agricultural Priority Area and make use of funds from multiple sources. In such cases, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity. However the City will need to be a party to easements obtained by the Qualifying Entity.
15. **Minimum Easement Size.** The minimum land area for an Agricultural Conservation Easement is 10 acres on a single parcel or on multiple adjoining parcels so that the easement area is contiguous. Developments providing less than 10 acres of agricultural mitigation land are thus required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
16. **Management and Monitoring Fee.** As with other agricultural mitigation/preservation programs, a number of responsibilities will come with holding the Agricultural Conservation Easements, including their management and monitoring. The developer will be required to pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost of these activities along with administration of the program including any administrative costs of the Qualifying Entity. The City will establish the Surcharge Fee and monitor it periodically.
17. **Implementing Entity.** The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.
18. **Mitigation Timing and Implementation.** Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or

grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

19. **Planned Developments / Development Agreements.** Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City.
20. **Funding for Easements.** Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of conservation easements.
21. **Clustering of Development.** The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
22. **Educational Center.** Work with local property owners, non-profits, or other agencies to develop an agricultural educational center within the SEQ.

Implementation

Agricultural Conservation Easement Program

Agricultural conservation easements can be obtained via a number of different agricultural preservation tools through dedication, purchase, or donation. The City will focus its agricultural preservation efforts on in-perpetuity Agricultural Conservation Easements. These easements may be established by private developers either to directly off-set a specific project or as part of a transfer of development rights (provided that adequate restrictions are incorporated into the easement) or purchased by the City or Qualifying Entity as defined by this Policy (using either in-lieu fee monies or alternative revenue sources). The City has determined to focus its agricultural preservation efforts in the SEQ as the first priority area, then elsewhere within the Morgan Hill SOI as the second level of priority. This program will be implemented according to the following guidance:

6. Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management. Initially, the group responsible for managing mitigation funds and Agricultural Conservation Easements will be the City of Morgan Hill. However, it is the intent of the City to partner with an established organization or transfer the operational responsibilities for managing and maintaining the City's Agricultural Lands Preservation Program to a third party Qualifying Entity. The third party Qualifying Entity will need to include individuals with direct experience and knowledge of farming activities
7. Implementation of mitigation (whether via conservation easement or payment of fee) will be due prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.
8. The specific terms and acceptance of Agricultural Conservation Easements will be at the discretion of the City of Morgan Hill or Qualifying Entity.
9. Initially, the Agricultural Preservation In-Lieu Fee, including the Program Surcharge Fee, is anticipated to be approximately \$15,000 per acre (based upon the attached Nexus Study). The program will allow for annual adjustments to the fee based on an established index and changes in land values. The In-Lieu Fee should be based on the value of Agricultural Lands at the time of development and must be sufficient to ensure lands can be purchased to meet the City's adopted ratios.
10. The Agricultural Preservation In-Lieu Fee will only be used for the acquisition of Agricultural Conservation Easements. Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
11. The Agricultural Lands Preservation Program Surcharge Fee will be used for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of easements established through the Program.
12. The Agricultural Lands Preservation Program will allow for the use of the City's Open Space Fund for acquisition of Agricultural Conservation Easements. Agricultural Conservation Easements

acquired using Open Space funds must insure that the covered lands be protected as Open Agricultural Land.

13. It is the City's goal to acquire Agricultural Conservation Easements in the immediate future utilizing available Open Space Funds. Where possible, the City of Morgan Hill will partner with conservation entities for the acquisition of easement lands.
14. The following minimum requirements shall be incorporated into all Agricultural Conservation Easements or other instruments recorded to satisfy the requirements of the Agricultural Lands Preservation Program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of the Agricultural Lands Preservation Program are achieved:
 - a) It is the intent of the City to transfer most, if not all, of the easements that are received from this program to a Qualifying Entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions.
 - b) All Agricultural Conservation Easements, or other farmland conservation mechanisms, shall be implemented through a legal instrument acceptable to City Council and the Qualifying Entity that will receive the easement, and signed by all owners with an interest in the mitigation land.
 - c) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this Agricultural Lands Preservation Program. The instrument shall protect the existing water rights and retain them with the Agricultural Mitigation Land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two years in any ten-year period) to other Agricultural Uses within Santa Clara County, so long as sufficient water remains available to continue Agricultural Use of the mitigation land.
 - d) The instrument shall prohibit the presence of a residence, except an existing residence or construction of a comparable replacement for such a home or construction of a single new home of 3,000 square feet or less on a site that does not already include a residence provided that such residence is not located where it would interfere with agricultural activities. (Alternatively, a portion of the subject property of up to 1.5 acres in area may be excluded from the Agricultural Conservation Easement and developed with a single new home provided that no other home is located on the property).
 - e) Instruments that convey an interest in the mitigation land to a Qualifying Entity, shall name the City as a third party beneficiary with full enforcement rights.
 - f) Interests in Agricultural Mitigation Land shall be held in trust by a Qualifying Entity and/or the City in perpetuity. Except as provided below (g), the Qualifying Entity or the City shall not sell, lease, or convey any interest in Agricultural Mitigation Land which it acquires.

- g) The Agricultural Conservation Easement, or other conservation mechanism recorded pursuant to the Agricultural Lands Preservation Program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the Agricultural Mitigation Land is received and used or otherwise dedicated to acquire interests in other Agricultural Mitigation Land in Santa Clara County, as approved by the City and as provided for in this Program.
 - h) If any Qualifying Entity owning an interest in Agricultural Mitigation Land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City or other Qualifying Entity as acceptable and approved by the City.
 - i) The City may at its discretion terminate a relationship with a Qualifying Entity if that entity no longer satisfies the intent of this Program.
15. Utilize the City's Transfer Development Credit (TDC) program for agricultural preservation (Open Agriculture Land) in addition to the current goal of hillside preservation. The revenue comes from RDCS TDC In-Lieu fee paid by residential developers who do not purchase a TDC from a property owner.
16. Add Points to the Residential Development Control System (RDCS) scoring criteria that would be awarded to Projects that commit to support the Agriculture Preservation Program by paying a fee that could be used to pay for the residential development rights (TDR) or agriculture preservation easements for agricultural uses that could not meet the 90 percent open space requirement.

Clustering and Transfer of Development Rights

As opportunities arise, the City may utilize or develop additional methods of preserving agricultural lands through the land use entitlement process, including cooperatively working with property owners or developers to preserve agricultural lands through clustering or transfer of existing development rights. Such clustering or transferring can be implemented through the City's land use entitlement processes as described above. The City may also work with the County to develop a program that would allow transferring of development rights between the County and City in order to further preserve agricultural lands.

General Plan Policies

In addition to the preservation of Agricultural Land through Agricultural Conservation Easements and/or the clustering or transfer of development rights, a broader policy framework is important to support the Program's objectives. In particular, strengthening land use policies that define supporting land uses, limiting speculation associated with the conversion of Agricultural Land, and allowing for agriculture-supporting infrastructure will play an important role in the implementation of the Agricultural Lands Preservation Program. Accordingly, goals, policies, and actions that address the following objectives should be maintained within the General Plan:

- Continue Agricultural Land uses and production in and around the City of Morgan Hill to promote the City's identity and agricultural heritage.

Agricultural Lands Preservation Program

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- Support the development of urban agriculture, and the preservation of the existing Agricultural Lands within or adjacent to Morgan Hill to increase the supply of locally-grown, healthful foods.
- Strengthen the link between the community and local farms and farmers.
- Leverage Agricultural Lands to create and maintain a unique community character, provide open space, link to the region's history, support local agri-tourism, contribute to the local economy, and add to the quality of life.
- Identify potential sites within a centralized urban area of the City appropriate and suited for a community garden.

ATTACHMENT A – Background Information

The City engaged a consultant team to analyze the viability of agricultural activities in and around Morgan Hill and to make policy recommendations for how the City of Morgan Hill could best accomplish its goals of preserving viable agricultural lands. The consultant team, Economic & Planning Systems, Inc. and House Agricultural Consultants, submitted a report in December 2011 that provides background analysis and preliminary recommendations, much of which is incorporated into this Policy. Key findings from this Report are presented within the following Background information.

Agricultural Lands within Morgan Hill

As of 2010, the Morgan Hill SOI included approximately 9,894 acres of agricultural and grazing land, of which 7,739 acres was grazing land. The remaining 2,155 acres were irrigated or irrigable agricultural land uses, which are the focus of the Agricultural Lands Preservation Program (i.e., Farmland Mapping and Monitoring Program (FMMP) classifications of prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance). About two-thirds of this land, approximately 1,436 acres, was classified as prime farmland.

While the FMMP Map identified approximately 2,155 acres of irrigated or irrigable agricultural lands, some of this acreage had already been developed or committed for development at the time of this Policy's drafting.

The table below identifies the total acreage of agricultural and grazing land within the Morgan Hill SOI, City Limits, and unincorporated areas within the SOI based on the 2010 FMMP Map.

FMMP Classification	City Limits	Unincorporated Areas within SOI	Grand Total
Prime Farmland	320	1,116	1,436
Farmland of Statewide Importance	18	187	205
Farmland of Local Importance	153	184	337
Unique Farmland	25	152	177
Grazing Land	1,284	6,455	7,739
Grand Total	1,800	8,094	9,894

Long-term Viability of Agricultural Lands

A simple definition of *agricultural viability* is: agriculture that is economically feasible to maintain and continue. To be viable agricultural activity:

- Land continues to be farmed, returning a net profit, on a multi-year basis.
- Natural resources are stewarded for the long term.
- Agricultural operations are supported by the local community.

This definition makes no distinction as to the type or scale of viable agriculture, which may change along with national and international economic trends. Farmers can be either full-time or part-time. It does, however, exclude hobby farming, meaning farming that does not return a profit. “Supported by the local community” means that agricultural activities are accepted as part of the commerce of the area by the residents of the area, that housing is available to farm laborers and small farmers, that agriculture is integrated into the policies and regulations of the City, and that trade and commerce between the farming enterprises and the residents flourishes, through such means as local sales, including on-site direct sales, and farmers' markets.

Based on data provided by the United States Department of Agriculture (USDA) Economic Research Service (ERS) in 2008, approximately 43 percent of farmers nationally indicate that farming is their major occupation, while 42 percent state that work other than farming is their major occupation; 15 percent do not consider themselves to be in the workforce. In 2008, 88 percent of all farm household income nationally came from non-farm sources. USDA ERS data indicate a long-term trend toward increasing non-farm income and decreasing farm income among United States farmers.

According to a study by the University of California (UC) Davis Small Farm Center, an annual gross income level of approximately \$25,000 per farm business is a threshold for sustainability. A majority of California farm businesses grossing more than \$25,000 annually are profitable, based on data from the 2007 USDA Census of Agriculture. There is no implication that “a living” can be made if a farm grosses \$25,000. The study does imply, however, that since a profit can be expected in this situation, it is likely that small farming will continue to be an occupation, if perhaps only a part time one. Since small farming is profitable in a majority of cases if the gross revenues exceed \$25,000, it is implied that the small acreages in the Morgan Hill area will continue to be farmed.

Examples of small-scale agriculture are:

- Nursery and flowers.
- Farms emphasizing local sales and marketing.
- Community farms and education centers.

There are national trends supporting small farming:

- Urban peoples’ interest in health, open space, and community encourages small farming.
- “Buy local” makes economic, social, and ecological sense.
- There is strong interest by college-age persons in farming.
- There is strong interest by government and nonprofits in small farms.
- Small organic farms have, for the most part, enjoyed economic success in recent years.

The Report indicated that while large-scale agriculture (agriculture generally conducted on 600+ acre farms with minimum lots of at least 40 acres and general separation from urban uses) is not viable in the Morgan Hill area, the outlook for small-scale agriculture is good.

The Report identified key threats to agricultural viability in the Morgan Hill SOI as:

1. High land market values difficult for strictly agricultural producers to afford.
2. Urban proximity conflicts with many farming operations.
3. The incompatibility of small parcel size with large-scale agribusiness.

Policy Context

The Report identified the following overarching contextual issues as important to the development of an agricultural program for the City of Morgan Hill:

- County and LAFCO Policies and Inter-agency Coordination.** For lands proposed to be annexed into the City of Morgan Hill, the successful preservation of agriculture in and around Morgan Hill will require collaboration and coordination with both the County and the Local Agency Formation Commission (LAFCO). Santa Clara County supports the continued agricultural use of lands in the unincorporated County through the use of large-lot agricultural zoning. Santa Clara LAFCO has developed a series of policies regarding agricultural mitigation and will play a critical role in the evolution of the Morgan Hill SOI in its review of boundary adjustment applications. It is important to note, though, that the City of Morgan Hill has the authority to enter into development agreements with property owners outside the Morgan Hill city limits for the purposes of preserving agricultural lands.
- Southeast Quadrant.** The SEQ of the City is of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI and due to its potential as a permanent “greenbelt” between Morgan Hill and the neighboring rural residential area of San Martin.
- Scale and Cost.** The City’s Agricultural Lands Preservation Program must recognize its unique circumstances, including: (1) the relatively small area in agricultural use in the Morgan Hill SOI; (2) the relatively high percentage of agricultural lands that are 10 acres or less in size; (3) the relatively high value of land relative to its potential for agricultural income due to rural-residential demand and speculative influences; and (4) the uncertainty in locating willing sellers of land for preservation purposes.
- Other Goals.** The City of Morgan Hill has multiple goals for its undeveloped land within its SOI in addition to agricultural preservation. Such goals include the establishment of a greenbelt, the development of sports, recreation and leisure (SRL) amenities and uses of public benefit within the SEQ, including a new high school, and the location of appropriate and consistent uses around the adjacent freeway interchange.

Agricultural Mitigation Costs

Agricultural mitigation requirements, whether through land dedications or mitigation fees, result in additional cost to any development that converts agricultural land. In combination with other agricultural land preservation policies, these mitigation requirements increase the costs to new development and could create feasibility challenges. Under a typical agricultural mitigation program, a project found to result in the loss of agricultural land must mitigate the loss through the preservation of agricultural land elsewhere. Preserving land for agriculture means acquiring land in fee title or purchasing a conservation easement that restricts uses on the property. The cost burden of the agricultural preservation required will primarily depend on the non-agricultural value component of the land being preserved.

Land sales for agricultural land in Santa Clara County and around Gilroy steadily averaged between \$15,000 and \$45,000 per acre based on a review of transactions and listings between 2006 and 2009.

Higher agricultural land values in and around Morgan Hill relative to other Santa Clara County areas indicate the greater development pressures in the Morgan Hill SOI than the other agricultural areas in the County. In addition, Morgan Hill's agricultural parcels tend to be smaller in size compared with other County locations.

A market analysis included within the 2011 Report estimated that the cost to preserve agricultural land through fee simple purchases would range from \$50,000 to \$80,000 per acre in Morgan Hill and that the unit cost of agricultural land preservation through easement acquisition would range from \$30,000 to \$48,000 per acre within Morgan Hill's SOI and from \$9,000 to \$27,000 per acre for land outside of the City's SOI. A quick survey of agricultural mitigation programs around the state indicated that most programs result in costs of less than \$30,000 per acre. The actual land costs that individual applicants will face could vary considerably depending on market conditions at the time of land purchase; the availability of willing sellers; and the size, location, and condition of land being preserved, etc. In addition, ongoing costs are incurred to manage and monitor the agricultural conservation easements.

Agricultural Mitigation Costs for Typical Projects:

- Preservation inside Morgan Hill SOI.** With mitigation required to take place within the Morgan Hill SOI, the mitigation cost associated with acquiring an easement was estimated to be \$30,000 to \$48,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$6,000 and \$9,600 per unit. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$2.30 and \$3.60 per building square foot.
- Preservation in Santa Clara County.** With mitigation allowed to occur anywhere in Santa Clara County, the mitigation cost associated with acquiring an easement was estimated to be \$9,000 to \$27,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$1,800 and \$5,400 per acre. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$0.70 and \$2.05 per building square foot.

ATTACHMENT B – Nexus Study

The Nexus Study supporting adoption of the Agricultural Preservation In-lieu fee is available at:
<http://www.morgan-hill.ca.gov/DocumentCenter/View/12622>

EXHIBIT – Draft Agricultural Preservation General Plan Policies for Consideration

The City of Morgan Hill will evaluate the current General Plan policies related to preservation of Agricultural Land and consider updates to those policies that address the following proposed policies and actions.

Policies and Actions

Agricultural Lands Preservation

- Preserve Agricultural Lands and prime soils in non-urban areas in order to provide local and regional fresh food supplies, reduce dependence on foreign products, conserve energy, and retain the aquifer recharge capacity of these lands. Give highest priority to the preservation of Agricultural Lands with the greatest long-term potential to support sustained Agricultural Use.
- Establish and/or maintain General Plan and Zoning land use designations to support Agricultural Uses.
- Encourage contractual protection for Agricultural Lands, such as Williamson Act contracts, Agricultural Conservation Easements, transfers of development rights, or other property tax relief measures as incentives for preservation of these lands.
- Implement the City's Agricultural Lands Preservation Program to preserve Agricultural Lands as part of new annexations or development projects.
- Offer landowners fair market value for their development rights on prime farmland.
- Allow alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- Expand the City's Transfer Development Credit (TDC) program to include agricultural preservation as well as hillside preservation. Use the revenue from new purchases of TDCs, in part, to support the purchase of Agricultural Conservation Easements.
- Award points to projects that compete through the Residential Development Control System (RDCS) competition that commit to purchase TDCs for the purpose of agricultural preservation.
- Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management.
- Promote legislation to establish Countywide and Statewide agricultural preservation programs, including identifying sources of funding necessary for implementation of such programs.
- Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
- Amend existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of this Program.

Sustainable Agricultural Industry

- Require ancillary non-Agricultural Land uses on Agricultural Lands to be ancillary and compatible with Agricultural Land uses, agricultural production, and the rural character of the area, and to enhance the economic viability of agricultural operations.
- Promote an agricultural support system including physical components (such as farm labor housing, retail sales, equipment supply and repair) and institutional components (such as agricultural education and training).
- Pursue additional funding available through State and federal grant programs sources for Agricultural Land preservation, educational/outreach programs, and other activities that support Agricultural Land use.
- Conduct outreach to farmers/landowners about Agricultural Conservation Easements and farming succession planning.
- Encourage Agricultural Uses which follow ecologically sound agricultural practices and minimize the use of chemicals and pesticides in order to promote healthy soils and ground water, provide healthful foods, reduce energy use, and reduce the resource demand attributed to local agricultural industry.
- Seek conservation program funding for farmers planning and implementing conservation practices that improve soil, water, plant, air and related resources on their land.
- Work with agricultural entities (e.g., farming industry, non-profits, land owners), the County, other Santa Clara County cities and the Local Agency Formation Commission and other stakeholders to promote public education to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Local Agricultural – Economic Development

- Enhance viability and profitability of ongoing use of Agricultural Lands by supporting ancillary commercial uses such as produce stands, small-scale environmental and agricultural tourism, and the processing of agricultural products.
- Facilitate the long-term viability of farming within the City's SOI through educational, resource and mentoring programs, including partnerships with educational institutions (e.g. Gavilan College), industry organizations (e.g., California FarmLink), and financial institutions that provide business planning and mentoring for new farmers.
- Work with industry groups, business groups and other organizations to institute direct marketing programs, branding campaigns, and other incentives and programs that increase purchasing agreements between local farmers and local retailers, such as grocery stores, markets, restaurants and local institutional uses, and increase consumer awareness and purchases of local agriculture.
- Support partnerships between school districts and organizations to promote and implement farm to school programs.
- Incorporate agri-tourism destinations on City signage, e.g. farm stands and farms within the city's SOI.
- Encourage and support interested farmers to create public access opportunities through farming areas (e.g., school and public farm tours, roadside stands, and farm trails).

Urban Agriculture

- Maintain existing and support the development of new community gardens, farmer's markets and produce stands at suitable locations throughout Morgan Hill.
- Periodically review and amend the Zoning Code to streamline permit/use regulations to encourage and support the sale of agricultural products within the City.
- Support urban agriculture opportunities such as backyard gardens and edible landscapes that produce ecologically sound food for local consumption.
- Encourage developers of new development projects to incorporate food-producing areas within their project landscape plans.
- Encourage healthful food choices, exercise, and the production of locally grown agriculture for personal use by providing community garden facilities either on public lands or as part of new private developments.

Urban/Agriculture Interface

- Establish an agricultural buffer between urban and rural uses. The buffer's size, location and allowed uses must be sufficient to minimize urban edge conflicts, provide safety to urban residents, and allow the broadest possible farming practices on the urban edge boundary.
- Establish a minimum agricultural buffer requirement around new development adjacent to the City's Agricultural Priority Area and County land with an Agricultural land use designation.
- Restrict land uses within and adjacent to Agricultural Lands that would compromise the agricultural viability of these lands. Require new adjacent land uses to mitigate any impacts on the use of Agricultural Lands.
- When considering annexation applications involving land that is mapped or used for agricultural production, or is located adjacent to such land, implement land use designation(s) and pre-zoning(s) to minimize the potential conflict with surrounding Agricultural Uses in the area.
- Require new development projects to record an agricultural buffer easement on the land that will make up the buffer concurrently with the permitting of any development/grading.
- Strengthen zoning development standards, where necessary, to encourage development placement, scale, and design that are consistent with the preferred rural character adjacent to the City's edge.

Inter-agency Cooperation

- Cooperate with other jurisdictions to achieve agricultural preservation goals.
- Continue to identify opportunities to work with other jurisdictions and organizations in supporting Agricultural Land preservation and the agricultural industry in and around Morgan Hill. Work with the County as a critical partner in these efforts and outreach to other organizations where efforts and resources can be pooled to support agriculture.

Access to Healthy Foods

- Support an enhanced role for local Agricultural Land in providing community farms and local food sources.
- Promote broad access within the community to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.
- Encourage and support the marketing, sale and consumption of locally-grown produce.

Exhibit 2: MH2035 General Plan Agriculture & Open Space Conservation Policies

Attachment: Ag Conservation Strategy (1996 : Ag Update)

Agriculture and Open Space Conservation Policies

Morgan Hill 2035 General Plan

Vision (pg. VIS-4)

The overall combination of actions envisioned by the General Plan will help Morgan Hill grow and prosper while balancing quality of life, economic development, tourism, fiscal sustainability, high-quality planned development, and preservation of habitat, the natural environment, and viable agriculture, without compromising its historic and enduring rural charm.

Urban Growth Boundary (pg. CNF-4)

In 1996, Morgan Hill and Santa Clara County jointly adopted a long-term Urban Growth Boundary (UGB) and associated policies. The UGB is encompassed within the Sphere of Influence (SOI) and is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur. It is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the City. The UGB also helps to ensure that urban services provided by the City to existing neighborhoods will not be reduced by service demands of new urban development at the City's fringe.

Rural Designations (pg. CNF-9)

Rural County. This designation applies to land outside the City limit, but in the SOI. Lots with the Rural County designation are generally 5 to 20 acres in size with one single-family home and/or agricultural operation per parcel. The minimum acceptable lot size for new development is generally 5 acres.

Open Space. This designation applies to land in the City limits and SOI, and includes public parks, private golf courses, and large parcels of land generally 50 acres or more in size. Land designated Open Space is generally meant to remain unimproved and devoted to the preservation of natural resources, managed production of resources, or public health and safety, as well as to complement adjacent, higher density residential and commercial development. Allowed uses include agriculture, outdoor recreation, and a secondary dwelling unit. One single-family home per parcel is allowed, with appropriate permit.

Agriculture. The Agriculture designation identifies lands intended for long-term preservation for agricultural use and intended for a variety of agricultural uses, including grazing, dairying, raising of livestock, orchards, row crops, nursery stock, flower growing, ancillary residential uses, ancillary commercial uses such as fruit stands, agricultural research and the storage and processing of agricultural products. This designation supports open space uses such as preservation of natural resources, outdoor recreation and public health and safety, including infrastructure (such as infiltration ponds) that is similar to other open space uses. The designation also supports agricultural commercial uses such as

Agriculture and Open Space Conservation

roadside stands, wineries, farm-based tourism, u-pick, rodeos, farmers markets and crop-based seasonal events. Building intensity in this designation will be greatly limited. The minimum parcel size in areas designated as Agriculture is generally 20 acres; the designation however supports the clustering of existing development potential in order to preserve larger agricultural sites. Please note at the time of publication of this General Plan, the Agriculture designation had not been applied to any parcels.

Overlays and Areas of Special Consideration

East of 101 Area Plan Overlay. The East of 101 Area Plan Overlay applies to the area roughly between Half Road and Diana Avenue to the north and south and Condit Road and Hill Road to the west and east. The purpose of this overlay is to require the preparation of a comprehensive master plan when new residential development is proposed to create well-planned, cohesive neighborhoods. Development within the East of 101 Area Plan Overlay shall:

- Employ high-quality site planning, architecture, and design that reflects the rural and agricultural history of the area, following traditional town design principles, and support green building methods that reduce the environmental impact of new development.
- Seek to preserve the agricultural heritage of the area and integrate ongoing agricultural uses into future development, as indicated by the Agriculture/Open Space overlay symbol.
- Include a variety of residential housing types as permitted by the underlying General Plan land use designation.
- Include services and amenities to serve new residents so daily needs can be met close to home.
- Provide an easily accessible, fully connected street and trail network that encourages walking and biking and provides access to existing community amenities such as Live Oak High School and Nordstrom Elementary School.

Open Space/Agriculture: This symbol indicates that open space and agricultural uses should be integrated into future development in areas with a strong agricultural heritage.

Southeast Quadrant. The Southeast Quadrant (SEQ) is approximately 1,300 acres, generally bounded by Condit Road and Highway 101 to the west, San Pedro Avenue to the north, Carey Avenue to the east, and Maple Avenue to the south, as shown in Figure CNF-5. The City has adopted an Agricultural Lands Preservation Program to permanently preserve agricultural lands with the SEQ and Citywide.

Land Use Policies

CNF-3.14 Agricultural Preservation Set-Asides. Set aside at least 300 allotments for housing that may be applied anywhere in the City through 2035. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area.

CNF-4.1 Future Growth Areas. Use the current Urban Service Area and Urban Growth Boundary to identify future urban development areas based on adequacy and availability of municipal services.

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- CNF-4.2 Urban Growth Boundary.** Maintain a long-term Urban Growth Boundary that:
- a) provides greater stability of future land use patterns than is currently provided by the existing "short term" urban service area (USA) boundaries;
 - b) indicates the preferred extent and direction of the City's future urban expansion and capital improvements planning;
 - c) encourages compact and concentric urban growth and development;
 - d) promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time;
 - e) provides for an adequate land supply necessary for sustainable economic growth;
 - f) compensates for the impacts of the City's historical patterns of urban growth;
 - g) achieves greater compatibility of land use planning and decision-making for lands of mutual interest to the City and County; and
 - h) provide additional certainty to rural landowners needed for purposes of planning investments and maintaining viable agricultural operations.
- CNF-4.3 Prerequisites for Urban Development.** Consider land adjacent to the City as available for urban development only when it is included within the Urban Service Area and Urban Growth Boundary, can be developed in a manner that will be cost-effective to the City, and will be served by adequate public services and facilities.
- CNF-4.7 Urban Growth Boundary Modification Criteria.** Significant modifications to the UGB are strongly discouraged in order to ensure the long term stability of the boundary by directing urban growth to areas of the city that are urbanized or planned for urbanization.
- a) Significant modifications to the UGB, or significant modifications to the General Plan text supporting the boundary, will only be considered in the context of a major, comprehensive update of the General Plan which fully considers all of the implications of expanding the limits of urbanization.
 - b) Minor modifications to the UGB may be considered during an annual General Plan review. To qualify as a minor modification a proposed modification of the UGB must meet the following criteria:
 - Be no larger than 5 acres in size; or
 - If the modification includes both areas of expansion and areas of contraction, the net expansion area is no larger than five acres in size; and

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- The expansion area must be located contiguous to lands with an urban land use designation on the City's General Plan Land Use Map.
- c) All proposed modifications must:
 - Demonstrate consistency with the applicable goals and policies in the General Plan and the surrounding General Plan Land Use designations.
 - Demonstrate a fiscally neutral effect on City finances at the time of development in the future.
 - Be adequately served by public services and infrastructure without decreasing City adopted level of service standards.
 - Demonstrate a public benefits such as the preservation of sensitive habitat or prime farmland, provision of affordable housing, provision of public park or open space land, or a public benefit established by the Morgan Hill City Council.

- CNF-4.8 Land Supply.** Include enough land within the Urban Service Area to provide for a rate, amount, and type of development consistent with the General Plan; review and modify the Urban Service Area boundaries as needed.
- CNF-4.9 Orderly Growth.** Urban growth should occur in an orderly and contiguous pattern, within the designated Urban Service Area, encouraging infill of vacant urban land. (South County Joint Area Plan 1.09 & 1.10)
- CNF-4.10 Urban Service Area Expansions.** Base expansion of urban service areas and annexations on the General Plan, consistent with the City's schedules for development and extension of services. (South County Joint Area Plan 1.11 & 1.12)
- CNF-4.11 Urban Service Area Expansions Within UGB.** Allow Urban Service Area expansions only within the long-term UGB and for lands with urban designations; the timing and extent of Urban Service Area expansion shall remain consistent with established Urban Service Area expansion policies and ordinances.
- CNF-6.1 Services to Serve Growth.** Manage and schedule urban growth consistent with the ability to provide a full array of urban services and facilities, such as sewer capacity, water, transportation, schools, public safety and other urban services. (South County Joint Area Plan 1.08)
- CNF-7.1 County General Plan Policies.** Promote the maintenance of current County General Plan policies encouraging low-density uses, including large lots and agriculture, for County projects adjacent to the UGB. Encourage the County to retain large minimum parcel sizes, and promote agricultural and open space uses on unincorporated lands.

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- CNF-7.2 Rural Landowner Home Occupation.** Support the County's effort to promote the use of expanded home occupations for rural landowners and agriculturists, within the parameters of the County's zoning ordinance.
- CNF-7.3 Rural Land Uses.** Land uses in rural areas should be low-intensity and limited in number, and public services to rural areas should be appropriately limited. (South County Joint Area Plan 1.07)
- CNF-7.4 Agricultural Land Use Conflicts.** Work with Santa Clara County to minimize potential land use conflicts between urban uses within the UGB and rural lands adjacent to the growth boundary.
- CNF-7.5 Inter-Jurisdictional Support for Agriculture.** Coordinate measures to enhance the economic viability of agriculture in conjunction with other inter-jurisdictional planning in the South County.
- CNF-20.3 East of 101 Area Design.** Require new residential development to be designed to minimize adverse impacts on adjacent residential and agricultural uses.
- CNF-20.4 East of 101 Area Integrated Agriculture.** Strongly encourage new development to preserve existing agricultural uses as feasible and integrate agricultural features into new development to reflect the history of this area.

Open Space (pg. NRE-1)

The abundance of open space within and around Morgan Hill is a key contributor to quality of life for City residents and visitors. Preserving open space, including in conjunction with new development, is essential to maintaining the uniqueness and quality of life of Morgan Hill.

Greenbelts (pg. NRE-2)

The Natural Resources and Environment Element identifies a Greenbelt, which is intended to physically define the City and separate it from San Jose and San Martin. The Greenbelt includes both public open space and private properties as shown on Figure NRE-1. Identification of areas as "Greenbelt" does not change the development potential or restrictions imposed under Santa Clara County development policies and regulations. Rather, it indicates that the City will work with the County to minimize off-site visual impacts of new development. In addition, the Greenbelt is intended to identify areas where a targeted program of acquisition of open space easements or fee title to land may occur.

Areas outside of the Urban Growth Boundary that have been substantially subdivided into parcels smaller than 10 acres generally are not included in the identified Greenbelt areas. Many of the parcels in these areas are developed or are eligible for construction of single-family homes. The existing and potential density of development in these areas minimizes their value as Greenbelt areas. However, the

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rural character of these areas does help to define and distinguish the urbanized City area from other urban and rural county areas.

Agricultural Resources (pg. NRE-2)

Agriculture has been important to the City throughout its history as an industry and employment generator, in addition to contributing to the City's rural character. The City's economy once depended on the cultivation of stone fruits, pears, apples, and nuts. Although the local economy diversified, agriculture is still an important asset to the region, as evident by the surrounding nurseries, orchards, and vineyards, which boost the region's economy and the local tourism industry.

Supporting agriculture requires finding innovative ways to help farming and ranching operations become and remain competitive in an increasingly global economic environment. Agricultural development policies intend to retain the historic agricultural character of lands surrounding Morgan Hill, and to minimize conflicts between urban development and agricultural uses.

Agricultural land can be found within the Morgan Hill City limit and within the Sphere of Influence (SOI). The Morgan Hill area includes prime farmland, farmland of statewide importance, farmland of local importance, unique farmland, and grazing land, as classified by the State Department of Conservation. As shown in Figure NRE-2, most of the prime farmland is located on the eastern side of the City, east of Highway 101. However, the Department of Conservation's data reflect conditions as of 2010. Since the time the State published the data, some limited pieces of land may have been developed or may now be under development review. Nevertheless, the data provide a broad picture of the agricultural resources within Morgan Hill today.

The California Land Conservation Act of 1965, also known as the Williamson Act, provides tax relief for landowners who preserve their agricultural and open space property under Williamson Act contracts. Under contract, the tax on a Williamson Act property is assessed at a rate consistent with its actual use, rather than the potential value. These contracts run for 10 years, are automatically renewable on an annual basis, and may be terminated by the initiative of either the property owner or the legislative body. There are a number of parcels under Williamson Act contracts in and around Morgan Hill.

Conservation Policies

- NRE-1.1 Natural Features.** Preserve outstanding natural features, such as the skyline of a prominent hill and rock outcroppings.
- NRE-1.2 Large Open Space Areas.** Work with the County, the Open Space Authority, appropriate conservancy organizations and land trusts, and property owners to preserve large open space areas, such as agricultural lands and outdoor recreation areas, to conserve natural resources and retain the City's unique identity.
- NRE-1.3 Designated Open Space.** Maintain land designated as "Open Space" on the Morgan Hill General Plan Land Use Map (Figure CNF-3).

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- NRE-1.4 South County Open Space.** Preserve and maintain the wide variety of open spaces in the South County; including greenbelt areas, parks, and agricultural uses. (South County Joint Area Plan 16.00)
- NRE-1.5 Coordinated Action.** Continue to coordinate with Gilroy and Santa Clara County to implement South County open space goals and objectives and participate in the development of regional open space preservation programs. (South County Joint Area Plan 16.19 & 16.20)
- NRE-1.6 Open Space Preservation Tools.** Use a variety of open space preservation tools to protect open space, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development. (South County Joint Area Plan 16.17)
- NRE-1.7 Priority Areas for Preservation.** The South County includes a variety of open space areas, including the valley floor, stream corridors, lands around reservoirs, foothills, inter-mountain valleys, and mountain areas beyond the foothills. Of these geographic areas, stream corridors, lands around the reservoirs, lands which provide greenbelts, and significant hillside features should receive highest priority for preservation as open space and future regional park location. (South County Joint Area Plan 16.01 & 16.02)
- NRE-1.8 County Parks and Open Space Programs.** Support County programs to:
- a) acquire and develop regional parks in the South County, providing just compensation for the taking of private lands;
 - b) protect open space resources by prohibiting the introduction of uses incompatible with open space resource preservation, and preserve open space through planning, regulation, acquisition and/or development rights transfer programs;
 - c) plan and regulate land use to avoid hazardous areas and protect critical natural resources; and
 - d) continue to provide property tax relief via the Williamson Act to land owners who agree to maintain their lands in open space uses. (South County Joint Area Plan 16.21)
- NRE-2.1 Hillside and Ridgeline Views.** Protect views of hillsides, ridgelines, and prominent natural features surrounding the City. These features help define the City's historic rural character, sense of place, image and identity.
- NRE-2.2 El Toro Mountain as Landmark Feature.** Retain the City's unique identity by preserving its landmark natural feature, El Toro Mountain.

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- NRE-2.3 Scenic Hillside Preservation.** Preserve scenic hillsides around the City in an undeveloped state, wherever feasible. Provide for retention of hillside areas as open space through the dedication and/or purchase of scenic easements and/or open space easements, transfer of development rights and other appropriate measures.
- NRE-2.4 Building Distance below Ridgelines.** Limit all building pads located within the hillside areas to an elevation at or below the 80-foot vertical drop from the ridgeline.
- NRE-3.1 Greenbelt as a Community Separator.** Maintain a greenbelt to separate the northern and southern boundaries of the City from surrounding rural lands and the urbanized areas of San Jose and San Martin.
- NRE-3.2 San Jose Coyote Valley Greenbelt.** Work with the City of San Jose and Santa Clara County to ensure that the San Jose Coyote Valley Greenbelt, which includes the area south of Palm Avenue and north of the Morgan Hill City limits and is located within the San Jose Sphere of Influence, shall continue to provide the non-urban buffer for the north side of Morgan Hill.
- NRE-3.3 Greenbelt Easements.** Acquire easements on properties using an approach that would maintain some appropriate development potential, maximize the use of available funds for greenbelt and open space protection, and minimize land management and maintenance costs.
- NRE-3.4 Land in Fee Title for Greenbelts.** Acquire land in fee title when the City's objectives include allowing public access to the site for recreational or related activities.
- NRE-3.5 "Willing Seller" Greenbelt Acquisition.** Acquire properties and easements on a "willing seller" basis.
- NRE-3.6 No Commercial/Industrial Uses within Greenbelts.** Support County policies prohibiting commercial and industrial uses (excluding agricultural industry) in the unincorporated and greenbelt areas surrounding the City.
- NRE-3.7 Appropriate Greenbelt Land Uses.** Encourage land uses appropriate within a greenbelt, which might include: a) low-density residential development on lots 10 acres or more in size; b) public parks and recreational areas; c) privately operated recreation areas (e.g., golf courses and riding stables); and, d) agriculture. (South County Joint Area Plan 16.16)
- NRE-3.8 Appropriate Greenbelt Land Uses.** Require appropriate uses within Greenbelt areas such as parks and other designated open spaces, scenic/open space easements, golf courses, low intensity public facilities involving minimal permanent improvements and agricultural activities are appropriate uses. Existing residential may remain and new residential uses should be located and designed to have minimal visual and other environmental impacts.

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- NRE-3.9 Greenbelt Areas on Private Land.** Greenbelt areas which are privately owned are not intended for public recreational use.
- NRE-3.A Tools to Create a Greenbelt.** Use a variety of tools to create a greenbelt, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development.
- NRE-3.B Greenbelt Acquisition Program.** Pursue a targeted program for acquisition of Greenbelt land in fee title or conservation easements. Prioritize undeveloped properties that are most threatened with development which, if acquired, would provide significant public benefit.
- NRE-4.1 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.2 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.3 Agriculture in the Sphere of Influence.** Support significant agricultural activity within the Sphere of Influence by providing a market for agricultural products (e.g., farmers' markets) and decreasing the costs associated with agriculture by allowing such uses to occur in the Sphere of Influence.
- NRE-4.4 Farming Cooperatives in Buffer Areas.** Support use of farming cooperatives within agricultural buffer areas.
- NRE-4.5 Local Agricultural Products.** Purchase locally-produced agricultural products for City functions and encourage Morgan Hill Unified School District and other local agencies to do the same, whenever feasible.
- NRE-4.6 Agricultural Education.** Support programs to foster agricultural education.
- NRE-4.7 Long-Term Maintenance of Agriculture.** Continue to support the long-term maintenance of agricultural land uses and agriculture, including vineyards and wineries, as an economic enterprise in South County. (South County Joint Area Plan 14.00)
- NRE-4.8 Policy Support for Agriculture.** Take positive action to encourage agriculture by supporting local, county, and State policies favorable to agriculture. (South County Joint Area Plan 14.01)

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- NRE-4.9 Urban Encroachment.** Require new urban development adjacent to an existing agricultural operation to create an appropriate buffer area, on land within the proposed development, between urban uses and agricultural activities.
- NRE-4.10 Land Use to Support Agricultural Viability.** Maintain the economic viability of agriculture using a variety of methods, such as:
- Designating land outside urban areas as agricultural;
 - Requiring minimum lot sizes in agricultural areas;
 - Requiring land uses that support agricultural activities;
 - Marketing the benefits of agricultural uses to the public. (South County Joint Area Plan 14.02)
- NRE-4.11 Agricultural Mitigation.** Enforce the agricultural mitigation requirement of requiring the preservation of a minimum of 1 acre of agricultural land for each acre of agricultural land changed to a non-agricultural use, consistent with the City's Agricultural Lands Preservation Program.
- NRE-4.12 Permanent Preservation of Agriculture.** Establish areas for the permanent preservation of agricultural lands and programs to accomplish that objective, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (South County Joint Area Plan 14.03)
- NRE-4.13 Urban Growth.** Wherever existing development patterns and existing and planned roads and other public facilities permit, concentrate urban development adjacent to existing developed areas in order to minimize the impact of development on agricultural land. Plan for further urban growth to occur in areas which will avoid encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. (South County Joint Area Plan 14.07)
- NRE-4.14 LAFCO Policies.** Support policies of the Local Agency Formation Commission (LAFCO) which would guide urban development away from those agricultural areas with the greatest potential for long-term economic viability. Use policies for Urban Service Area extensions and utility extensions to guide urban growth away from long-term agricultural areas. (South County Joint Area Plan 14.09 & 14.10)
- NRE-4.15 Conversion to Urban Use.** Convert agricultural land that has been designated for urban growth in an orderly manner to retain the stability and viability of remaining agricultural lands as long as possible. (South County Joint Area Plan 14.08)
- NRE-4.16 Prioritization of Agricultural Land.** Prioritize protection of existing agriculture lands in the Sphere of Influence, outside the Urban Growth Boundary.
- NRE-4.17 Williamson Act Contracts.** Support the preservation of land under Williamson Act contracts within the Morgan Hill Sphere of Influence.

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- NRE-4.18 **Agricultural Operations Disclosure.**** In areas where residential development is adjacent to agricultural operations, require a disclosure to residents that agricultural operations happen nearby and that they will be exposed to impacts from such operations, such as dust, noise, and odors.
- NRE-4.19 **Agricultural Lands Preservation Program.**** Use a wide variety of funding sources to support the Agricultural Lands Preservation Program, including land use regulation, urban development policy, conservation easements (with matching grant funds from appropriate agencies, where possible), transfer or purchase of development rights, increased transfer fees, Residential Development Control funds, or Homeowners Association fees for new development.
- NRE-15.4 **Sustainable Land Use.**** Promote land use patterns that reduce the number and length of motor vehicle trips.

Exhibit 3: Municipal Code Chapter 18.152 Agricultural Mitigation

Chapter 18.152 – AGRICULTURAL MITIGATION

Sections:

- 18.152.010 – Agricultural Lands Preservation Program
- 18.152.020 – Purpose
- 18.152.030 – Definitions
- 18.152.040 – Applicability
- 18.152.050 – Mitigation Ratio
- 18.152.060 – "Stay Ahead" Provision
- 18.152.070 – Measurement of Affected Area
- 18.152.080 – Mitigation Mechanism
- 18.152.090 – Eligible Mitigation Lands
- 18.152.100 – Ineligible Mitigation Lands
- 18.152.110 – Agricultural Priority Area
- 18.152.120 – Responsibility for Easement Acquisition
- 18.152.130 – Management and Monitoring Fee
- 18.152.140 – Implementing Entity
- 18.152.150 – Mitigation Timing and Implementation
- 18.152.160 – Planned Developments/Development Agreements
- 18.152.170 – Funding for Easements
- 18.152.180 – Clustering of Development

18.152.010 – Agricultural Lands Preservation Program

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Morgan Hill.

18.152.020 – Purpose

- A. The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill sphere of influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.
- B. The Morgan Hill agricultural lands preservation program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a

comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill sphere of influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting general plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the city's southeast quadrant

18.152.030 – Definitions

The following terms when used in this chapter shall have the following respective meanings:

- A. **Agricultural Land.** For "agricultural land" that requires off-setting preservation/mitigation under this agricultural lands preservation program, agricultural land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-agricultural use prior to August 1, 2014 or subsequently developed per the provisions of this ordinance. Lands identified as grazing land are not subject to the offsetting preservation/mitigation requirements set forth in this policy.
- B. **Agricultural Conservation Easement.** An agricultural conservation easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive agricultural use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.
- C. **Agricultural Mitigation Land.** Agricultural land (as defined above) that is encumbered by an agricultural conservation easement or other farmland conservation mechanism acceptable to the city. If the agricultural land is also being used to meet open agricultural land preservation goals, the easement or other mechanism must ensure that at least ninety percent of any property being used as agricultural mitigation land remain as open space free of structures or other impervious surfaces so that it retains its value as agricultural

land under the FMMP criteria. Uses allowed on agricultural mitigation land shall be consistent with the agricultural use described below and pertaining land use regulations, and as further defined in the applicable agricultural conservation easement or other farmland conservation mechanism.

- D. **Agricultural Priority Area.** The agricultural priority area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and open agricultural lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the agricultural priority area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The agricultural priority area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.
- E. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities may include:
 - 1. **Agricultural processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
 - 2. **Agriculturally related entertainment and commercial uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site agricultural uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
 - 3. **Agricultural research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
 - 4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.

5. Feed lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and egg farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food paring, local agriculture and local history is also permitted.
12. Ancillary uses: Uses conducted subordinate to the primary agricultural use being conducted upon a property and which do not occupy in total more than ten percent of the property, including:
 - a. Direct sales of locally produced agricultural products.
 - b. One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c. Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d. Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

- F. **Agricultural Preservation In-lieu Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency solely for the purpose of acquiring agricultural conservation easements. The program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the city's ability to preserve open space agricultural lands within the agricultural priority area.
- G. **Agricultural Lands Preservation Program Surcharge Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency for the purpose of administering the agricultural lands preservation program and/or to cover ongoing management and monitoring of the easements. The surcharge fee is either incorporated into the overall in-lieu fee for projects that make use of this option, or charged directly to projects which independently establish an agricultural conservation easement.
- H. **Open Agricultural Land.** Open agricultural land is defined as agricultural land that is at least ninety percent free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other agricultural use. The city may make use of open space funding sources to acquire agricultural conservation easements where that easement specifies that the encumbered property be maintained as open agricultural land.

18.152.040 – Applicability

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of agricultural land (as defined above) will be required to mitigate loss of agricultural land per the provisions of this policy. This includes projects within the existing city boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this policy unless specifically required as mitigation or a condition of project approval.

18.152.050 – Mitigation Ratio

A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

18.152.060 – "Stay Ahead" Provision

Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands. Development occurs with either the issuance of grading permit or building permits that would result in the loss of agricultural land. To meet this provision the city may utilize existing open space funding to establish agricultural conservation easements, or individual projects may establish such easements in advance of development activity.

18.152.070 – Measurement of Affected Area

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a general plan land use designation of open space, public facilities, or sports recreation/leisure. Areas proposed to be so reserved shall have an aggregated area of at least ten acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

18.152.080 – Mitigation Mechanism

Conversion of agricultural land will require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the city of the agricultural preservation in-lieu fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the agricultural preservation in-lieu fee, in either case developers are also required to pay an agricultural lands preservation program surcharge fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

18.152.090 – Eligible Mitigation Lands

In order to meet the goals of this chapter, lands proposed to be used as agricultural mitigation shall conform to the above definitions for agricultural mitigation land and/or open agricultural land and shall meet the following criteria:

- A. Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- B. The property is of adequate size, configuration and location to be viable for continued agricultural use;
- C. The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses, and

the water rights on the agricultural mitigation land shall be protected in the agricultural conservation easement;

- D. Other considerations for appropriate conserved agricultural lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- E. The mitigation land shall be located within Santa Clara County; and
- F. The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

18.152.100 – Ineligible Mitigation Lands

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- A. The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- B. The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the city or other public agency; or
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable agricultural use.

18.152.110 – Agricultural Priority Area

Dedications inside the Morgan Hill sphere of influence (SOI) will be strongly encouraged within the southeast quadrant (SEQ) as the first priority. The city has identified an agricultural priority area within the SEQ as the city's first priority for conservation. The city's secondary priority is the preservation of other rural county agricultural lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'eligible mitigation lands' above. The agricultural priority area encompasses approximately six hundred fifty acres of land.

18.152.120 – Responsibility for Easement Acquisition

- A. In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the in-lieu fee and accompanying responsibility to a qualifying entity.

- B. Developments requiring less than ten acres of agricultural mitigation are required to pay the agricultural preservation in-lieu fee on a per acre basis except that acquisition of agricultural conservation easements of less than ten acres may be allowed when located immediately adjacent to an existing agricultural conservation easement area that when combined, exceeds ten acres in size.
- C. Developers may independently establish an agricultural conservation easement on eligible mitigation lands within the county. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the agricultural lands preservation program surcharge fee.

18.152.130 – Management and Monitoring Fee

The developer shall pay a one-time per acre fee (agricultural lands preservation program surcharge fee) to cover the average cost administration of the program.

18.152.140 – Implementing Entity

The city will hold the easements and collect management and monitoring fees until an alternative implementing entity (qualifying entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

18.152.150 – Mitigation Timing and Implementation

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of agricultural lands, whichever occurs first.

18.152.160 – Planned Developments/Development Agreements

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the city's SOI in which agricultural lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the agricultural priority area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development

agreement with the city specifying the terms of the agreement and the extraordinary benefits accruing to the city.

18.152.170 – Funding for Easements

Given the city's policy objective of agricultural land preservation within the Morgan Hill sphere of influence and within the southeast quadrant in particular, it is anticipated that the city will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the city will use open space funds collected through administration of its residential development control system (RDCS) to supplement the acquisition of conservation easements.

18.152.180 – Clustering of Development

The city may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The city should allow such alternate methods of agricultural mitigation through planned development zoning and/or a development agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an agricultural conservation easement shall be recorded over the agricultural mitigation lands subject to the planned development zoning and/or development agreement.

**Exhibit 4: Municipal Code Section 18.30.040 Hillside Combining District
and Transfer of Development Credits Program**

18.30.030 – Downtown Specific Plan Overlay Zone

- A. Purpose.** The Downtown Specific Plan (DTSP) overlay zone identifies areas where the requirements of the Downtown Specific Plan apply.
- B. Applicability.** The DTSP overlay zone applies to parcels within the boundary of the Downtown Specific Plan as shown on the Zoning Map.
- C. Effect of Downtown Specific Plan Overlay.**
 - 1. All proposed land uses and development within the DTSP overlay shall comply with the requirements of the Downtown Specific Plan.
 - 2. In the case of conflict between the Downtown Specific Plan and the requirements of the Zoning Code, the Downtown Specific Plan shall govern.

18.30.040 – Hillside Combining District

- A. Purpose of Hillside Combining District.** The purpose of the Hillside (H) combining district is to allow for the orderly development of hillside areas while preserving significant environmental features and protecting public safety in geologically unstable areas.
- B. Applicability.**
 - 1. The H combining district applies to all areas within the City having an average slope of ten percent or greater.
 - 2. A planned development overlay zoning district shall be required for all subdivisions in with an H combining district where five or more lots are proposed.
- C. Development Standards.**
 - 1. Building Restrictions on Steep Slopes.**
 - a. Buildings, private streets, and driveways may not be constructed on slopes greater than 20 percent except as allowed by subparagraph b below.
 - b. Minor encroachments onto slopes greater than 20 percent may be allowed when the review authority finds that the proposed encroachment will not conflict with the purpose and intent of the H combining district.
 - 2. Minimum Lot Area.**
 - a. The minimum lot size in the H combining district shall not be less than "A" as determined by the formula:

$$A = S \times 2,000$$

Where "S" is the average slope of the lot to be created in terms of percent.
 - b. For lots with an average slope greater than 50 percent, the minimum lot size is 5 acres.

- c. Lots with an average slope of ten percent or greater may be created in exception to the slope/area formula above if the lots to be created contain an area of slope less than ten percent which is equal to or greater than the minimum lot size required by the underlying zone. In such a case, a deed restriction must be recorded for such lots which restrict building to the area in which the average slope is ten percent or less.

3. **Calculating Ground Slope.**

- a. The average ground slope shall be calculated using the following formula:

$$S=0.00229IL/A$$

Where:

S= Average ground slope in percent

I=Contour interval in feet

L=Combined length of the contour lines in feet

A=The gross area in acres of the parcel or lot

- b. Measurements along contours shall be made at contour intervals not to exceed ten feet, and a horizontal map scale of one inch equals two hundred feet or larger.

4. **Land Modification Restrictions.**

- a. Areas on a lot with a slope exceeding 20 percent may not be altered by grading, altering natural features, removing natural vegetation, or by any activity related to the preparation of the lot for development.
- b. The Planning Commission may allow exceptions to the land modification restrictions above to protect the public health, safety, and welfare. Exceptions may be granted to:
 - (1) Install fire trails;
 - (2) Remove of poisonous or noxious vegetation;
 - (3) Remove or thin vegetation as part of a fire-protection program approved by the Fire Chief;
 - (4) Abate geologic or seismic hazard; or
 - (5) Protect public safety through other methods as approved by the Planning Commission.

- 5. **Open Space Requirements.** Table 18.30-1 identifies the minimum percentage of lot area to remain in open space with no grading or terrain alteration.

TABLE 18.30-1: OPEN SPACE REQUIREMENTS

Average Ground Slope (Percent)	Minimum Percent of Lot Area to Remain in Open Space
12.5 to 14.9	32.5%
15.0 to 17.4	40.0%
17.5 to 19.9	47.5%
20.0 to 22.4	55.0%
22.5 to 24.9	62.5%
25.0 to 27.4	70.0%
27.5 to 29.9	77.5%
30.0 and above	85.0%

6. **One Dwelling Unit Allowed Per Lot.**
 - a. If no portion of a lot contains slopes of less than twenty percent, and the lot is a legally-established lot of record, one dwelling unit may be constructed on the lot.
 - b. Development when allowed by this section shall conform with the recommendations in the engineering geologic or geotechnical report prepared by a qualified engineer geologist as required by the provisions of Chapter 18.70 (Geologic Hazards) and any other conditions of approval or mitigation measures adopted for the proposed project.
7. **Ridgeline Development.** Buildings are prohibited within 80 feet of a ridgeline unless the review authority for the proposed project finds that:
 - a. There are no other feasible locations on the lot other than the proposed ridgeline building site which can accommodate the building;
 - b. The proposed development is consistent with all other requirements of the applicable zone;
 - c. The applicant has attempted a transfer of development credits (TDC) in accordance with Subsection F (Transfer of Development Credits) as an alternative to building on the proposed ridgeline site; and
 - d. The applicant has exhausted all possible avenues to accommodate development in area away from the proposed ridgeline building site.
8. **Cut-and-Fill Slopes.** Cut-and-fill slopes shall not be steeper than two horizontal to one vertical (2:1) unless stabilized by a retaining wall or cribbing, as approved by the Building Official.

9. **Erosion-Control Plan.** The City shall approve an erosion-control plan prior to any physical development within the H combining district. The plan shall meet the standards contained in Municipal Code Chapter 13.30 – Urban Storm Water Quality Management & Discharge Control.

D. El Toro Mountain Open Space Preservation

1. The following hillside areas of El Toro Mountain shall be preserved as open space to the maximum extent possible:
 - a. Areas above the 600-foot elevation in Llagas Valley and Paradise Valley; and
 - b. Areas above the 500-foot elevation in all other areas.
2. Subdivisions proposed in areas specified above shall include open-space easement dedications to guarantee the permanent preservation of open space.
3. Prior to approving development in the areas specified above, the review authority shall find that the applicant made every reasonable effort to avoid the development in these areas, including a transfer of development credits (TDC) and/or the establishing of a Planned Development (PD) overlay.

E. Transfer of Development Credits. This section allows for the transfer development credits (TDCs) from "transferor sites" in areas where development is restricted by the H combining district to "recipient sites" in other areas of the city authorized to receive TDCs. The City Council may from time to time authorize by resolution a TDC from one lot to another lot, where such authorization is found to be consistent with the General Plan and this section.

1. **General Standards.**
 - a. **Permitted Recipient Sites.** Zones in which an increase in the number of dwelling units are permitted are restricted to the residential zones listed in Chapter 18.16 (Residential Detached Zoning Districts).
 - b. **Number of Units on a Site.** The number of dwelling units permitted on a site may not exceed ten percent of the maximum residential development credits transfer, exclusive of density bonuses provided by other sections of this title.
 - c. **Maximum Density Bonus.** The maximum density bonus on any site shall not exceed 25 percent, including affordable housing and TDC density bonuses.
 - d. **Environmental Study.** An environmental study shall be prepared to determine the carrying capacity of the property from which development credits are being transferred. If environmental findings determine that the site, or a portion thereof, is unbuildable due to environmental constraints, the development credits to be transferred shall be reduced accordingly, prior to determining the number of units permissible under the slope-density formula.
 - e. **Minimum Area.** The site to which the TDC is proposed shall be no less than one acre.

- f. **Setback Requirements.** All setback requirements of the more restrictive district found along the perimeter of the site shall apply to perimeter yards on the site to which the transfer of development credits is proposed, unless the site is zoned for PD zoning.
 - g. **Calculation of TDC Credits.** TDCs shall be calculated in accordance with the slope-density regulations of this section, base district minimum lot sizes and this section.
 - (1) In all hillside areas of the City, with the exception of El Toro Mountain, the number of TDCs shall be determined as provided in Section 18.30.040.D (El Toro Mountain Open Space Preservation).
 - (2) On El Toro Mountain, the number of TDCs available to property within the city limits shall be twice that determined as provided in Section 18.30.040.C.2 (Minimum Lot Area). The number of transferable development credits available to property on El Toro Mountain which is outside the city limits shall be twice that allowed by the Zoning Ordinance of Santa Clara County. The calculation of transferable development credits for El Toro Mountain shall be as follows:

$$(\text{Number of Acres/Minimum Lot Size}) \times 2 = \text{Number of transferable development credits}$$
 - (3) The number of TDCs available to properties on El Toro Mountain above that allowed to other hillside areas of the city may only be used for transfer to other properties of slopes less than twenty percent and may not be used to increase on-site development potential.
 - (4) In the calculation of TDCs, a fraction occurring at the end of a calculation which is 0.5 or larger shall be considered a full development credit. The City Council may also exclude from calculation any existing dwelling and appurtenant structures on the site to be preserved.
2. **Application.** An applicant for a TDC shall contain the following information and materials:
- a. A title report and any other documentation disclosing all existing interests or obligations against the transferor site property to be affected by the open space easement. If other interests exist, a subordination agreement (in a recordable form) acknowledging the reservation of the City of Morgan Hill's open space easement claim shall be submitted with the title report.
 - b. When known, the location and land area of the recipient site to which such credits are to be transferred, the projected total number of dwelling units that would result on the recipient site from such a transfer, and a statement of the character of the projected housing development.

- c. A legal description of the open space to be preserved on the transferor site by the transfer, accompanied by an open space (scenic) easement suitable for recordation and the applicable open-space policy to be implemented by the transfer.
 - d. The location, site area, and related residential development credits of the transferor site which the applicant proposes to transfer.
 - e. Where applicable, the number of building allotments granted to the recipient site under the Residential Development Control System (RDSCS).
3. **City Action.** Upon approval of the Planning Commission and the City Council of a TDC application, the City Clerk shall issue a TDC certificate to the applicant in a form approved by the City Manager. The following actions must be taken prior to these development credits being effectively conveyed to and utilized by the recipient property:
- a. Approval by the Planning Commission of a detailed site plan of the recipient site to which the development credits are to be transferred;
 - b. Where recipient site is known, execution and recordation with the County Recorder's Office of an instrument legally sufficient both in form and content to effect conveyance of the TDC from the transferor to the recipient site. Such instrument shall specifically set forth the credits to be conveyed and the resultant total residential development credits assignable to the recipient site;
 - c. Execution and recordation with the County Recorder's office of an instrument legally sufficient in form and content to effect conveyance of a permanent open space easement in the transferor site dedicated to the City. Such open space easement shall be unencumbered by any prior interests or, if so encumbered, shall be accompanied by and recorded together with subordination agreement with evidence that all persons or entities having any interest in the transferor site have acknowledged the creation and transfer of development credits, consented to the terms and conditions of the open space easement, and waived the priority of any rights or claims they may have in the transferor site. Recordation of the executed open space easement and accompanying subordination agreement shall serve as notice of the dedication of open space in the transferor site and shall be incorporated in the deeds of the transferor site; and
 - d. Other requirements as established by the City Council.

18.30.050 – Planned Development Combining District

- A. Purpose of the Planned Development Combining District.** The purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

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

AMEND AGREEMENT WITH MAGICAL BRIDGE FOUNDATION AND RECEIVE PROJECT UPDATE

RECOMMENDATION(S)

1. Receive update on Magical Bridge Morgan Hill Inclusive Playground Project;
2. Authorize the City Manager to execute and administer an amendment to the Consultant Services and Design Agreement with the Magical Bridge Foundation; and
3. Authorize the City Manager to execute and administer a Service Agreement for Design Professionals with the Magical Bridge Foundation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Economic Development and
Telecommunications

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

POLICY CONSIDERATIONS:

The City has partnered with the Magical Bridge Foundation for the last year to fundraise and write grants for the development of an inclusive playground in Morgan Hill. Fundraising goals have not been met, but the City has significant grant funds for the project. Understanding that the timing for grant funds is limited, should the City consider moving forward with constructing a park using the funding available? Should the City continue the partnership with the Magical Bridge Foundation through the design and construction of the playground?

REPORT NARRATIVE:

Since early 2015, the City has been working with a group of volunteers to obtain funding for an Inclusive Playground in Morgan Hill. An "inclusive playground" differs from an "accessible playground" in that it has the aim to make it not only accessible for those with mobility issues, but just as importantly, to encourage and enable all children to engage with one another while using the playground. Successful fundraising efforts for inclusive playgrounds have occurred in several nearby communities, including Salinas,

Palo Alto, San Jose and Redwood City.

The Morgan Hill Inclusive Playground Committee was initially formed under the Morgan Hill Community Foundation. The Committee worked for two years and raised over \$70,000 during this effort.

In November 2015, the City Council authorized Verde Designs, Inc. to begin work on concept designs for the Morgan Hill Inclusive Playground. During the design process, the volunteers of the Morgan Hill Inclusive Playground Committee (Committee) worked with the team at Verde Designs to gather input from the community on the wants and needs for the playground. This included three sessions with students at different schools, one community meeting, and a design session with the volunteers of the Committee. Over the next several months, the Committee and Verde Designs worked to develop concept designs for the playground (Attachment No. 3).

The concept designs call for the new inclusive playground to replace the existing playground at Community Park. The design of the park pulls some elements from other inclusive playgrounds that have been found successful and integrates them with the ideas brought forward through the community outreach, to create a design that will be unique to the Morgan Hill playground. The City Council, after a recommendation from the Parks and Recreation Commission, approved the concept designs on May 18, 2016. At that time the cost to develop the playground was approximately \$5.2 million, not including adjacent offsite improvements.

After two years, the Morgan Hill Inclusive Playground Committee had brought significant community awareness to the project, but fundraising had stalled, and no major donors had been secured. At that time the County of Santa Clara had established funding for a grant program for inclusive playgrounds. Concurrently, staff members from the Magical Bridge Foundation reached out to City teammates and volunteers in relation to a potential partnership on Morgan Hill's Playground. At that time Magical Bridge had relationships with Palo Alto, Redwood City, and was working with Sunnyvale to establish a partnership. In July 2017, the City entered a formal partnership agreement with the Magical Bridge Foundation to support the fundraising, marketing/promotion, grant writing, and design expertise for Morgan Hill's playground. The key component of the agreement would be the fundraising aspect. The structure of agreement provided for much of the payment to the Magical Bridge to be contingent upon them reaching milestones, including raising the necessary funds to build the park. However, \$200,000 would be the initial retainer to Magical Bridge for work to be performed for up to the next five years (the contract term).

The design component would be to support a separate landscape architect, hired by the City, in the development of the design with the interest in finding cost savings in the design and to ensure the playground is built to the Magical Bridge standards. It was noted that the existing approved conceptual design of the park would require only minimal changes to meet Magical Bridge standards. Primarily, this would be a change to the "tree house" that would also potentially save costs. It is important to note that the agreement would also require the park to be named the Magical Bridge of Morgan Hill.

Staff believed that partnering with the Magical Bridge Foundation would be important for the County grant process and a good option related to the stalled fundraising efforts. The Morgan Hill Inclusive Playground Committee had extensive discussions on the agreement with City staff and was supportive of the partnership.

Magical Bridge immediately began the fundraising effort and took the lead in partnership with City staff on writing the County Grant. The City of Morgan Hill was awarded the maximum \$2 million grant. The fundraising effort over the last year engaged much of the community and has raised over \$220,000 in donations and commitments for park funding. This fundraising has included several individual donors, a school coin drive, and several community members leading individual Magical Bridge campaigns.

Magical Bridge will continue to lead fundraising efforts but does not have a prospect for a major donor. Due to grant funding timing constraints the City is recommending the project be value engineered and that it moves forward immediately. By value engineering, the scope of the playground project would be reduced and altered to meet the budget constraints of the project. During the value engineering process, the following considerations would be a priority:

- Keeping the existing inclusive amenities, although the footprint of the park may be reduced.
- Reviewing the value of each component versus the cost.
- Consideration of holding off on amenities that could be added at a later date without significant increased costs.
- Relocating amenities to reduce costs by using natural features already in existence.

Should the Council authorize moving forward with the project, the proposed budget would be recommended:

Project Expense Estimates

Design/Fundraising Costs	Costs	
Concept Designs (Already Complete)	\$ 100,000	Paid
Fundraising/Marketing/Design Input	\$ 200,000	Paid
Design/Construction Docs/Construction Support	\$ 150,000	
Subtotal	\$ 450,000	
Project Costs		
Playground Construction	\$ 4,200,000	
Parking Lot Improvements	\$ 250,000	
Other City Costs	\$ 115,000	
Project Implementation (CIP Admin)	\$ 300,000	
Subtotal	\$ 4,865,000	
Total Project Budget	\$ 5,315,000	

This proposed budget uses the existing allocated funds from the City, donations, and grants. The proposed budget further anticipates \$80,000 in additional fundraising through the Magical Bridge Foundation, totaling \$300,000 prior to the park opening. The following table outlines the current estimated funding.

Estimated Funding	
State Grants	\$ 220,000
County Park Grant	\$ 150,000
Fundraising with Community Foundation	\$ 70,000
Park Impact Fund*	\$ 2,630,000
County Playground Grant	\$ 2,000,000
Magical Bridge Fundraising	\$ 300,000
Project Total Funding	\$ 5,370,000

*\$1,730,000 in FY 18/19, \$200,000 in FY 19/20 and \$700,000 appropriated in prior years.

Understanding the fundraising goal was not achieved, City staff and Magical Bridge have worked to update the agreement for services with an amendment which removes \$150,000 in future payments to Magical Bridge, while at the same time staff is proposing a contract for the design work needed to put the playground out to bid. In the current agreement with Magical Bridge, this design work was not included, and the plan of action was to hire a separate landscape architect to complete the plans. The proposed plan of action is recommended for several reasons:

- The Magical Bridge Foundation has obtained appropriate insurance and has a licensed architect to complete the design.
- The cost will be significantly less than going through a standard architectural firm.
- Magical Bridge has partnered with Verde Design, Inc. as a subconsultant to support development of construction drawings. Verde Design was the landscape architect that produced the City's current playground concept design. Staff believe this component is critical to provide the capacity to the Magical Bridge Foundation to complete the design work.
- There are long-term post construction benefits to moving forward with a Magical Bridge Playground, including the formalized Magical Bridge "Kindness Ambassadors" volunteer program, "Kindness Corner" curriculum for local school use, and other Magical Bridge network resources.

Through the agreements, the Magical Bridge Foundation would be compensated a total of \$350,000 (original \$200,000 retainer and \$150,000 in additional payments for design work). The City previously paid approximately \$100,000 for concept design work, which will bring the total payment for design and fundraising consulting to approximately \$450,000. This total is viewed by staff as appropriate for a project of this size and complexity.

Should the Council choose to move forward, the value engineered concept would be

brought back to the Community, the Commission and the City Council for approval very quickly, with the intent for the project to be under construction before the end of the Fiscal Year. This timeframe is very important to ensure grant funding is not lost.

COMMUNITY ENGAGEMENT: Consult

This project was brought forward by community members and was initially driven by community members. The initial design process was developed and coordinated by the Morgan Hill Inclusive Playground Committee volunteers. This group of community members would again be consulted through the redesign process prior to the designs returning to the Parks and Recreation Commission and ultimately the City Council.

ALTERNATIVE ACTIONS:

The Council could alternatively look to move forward without the Magical Bridge Foundation as a partner. City staff believe continuing the partnership with Magical Bridge is in the best interest of completing the playground as soon as possible due to the rationale outlined in the narrative of this report. However, should the Council wish the City move forward independently from Magical Bridge, the Council could direct staff to engage with the Magical Bridge Foundation on concluding the partnership and contracting with a landscape architect to complete the designs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

May 17, 2016 – Council approved the concept designs for the Inclusive Playground Project.

June 21, 2017 – Council approved updates for the Capital Improvement Plan, including funding in FY 2017-18 for the Inclusive Playground Project.

July 19, 2017 – Council approved an agreement with the Magical Bridge Foundation for support in fundraising, grant writing, and design for the Morgan Hill Inclusive Playground.

October 4, 2017 – Council authorized the City Manager to apply for the County of Santa Clara All Inclusive Playground Grant, which the City ultimately was awarded \$2 million towards the playground.

FISCAL AND RESOURCE IMPACT:

The proposed action would not create any unplanned fiscal impacts associated with the park design, as funding has already been appropriated for this design work. The value engineering of the playground is proposed to meet the budget constraints of the project.

CEQA (California Environmental Quality Act):

Categorical Exemption

A Notice of Exemption was filed for the project in October 2017 based on the categorical exemptions 15301. Existing Facilities, 15304. Minor Alterations to Land and 15311. Accessory Structures.

LINKS/ATTACHMENTS:

1. Amendment to Agreement
2. Design Agreement
3. Final-Concept-Graphic-11x17

FIRST AMENDMENT TO THE CONSULTANT SERVICES AND LICENSE AGREEMENT

This FIRST AMENDMENT TO AGREEMENT ("FIRST AMENDMENT") is made and entered into as of this ____ day of _____, 2018 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the Magical Bridge Foundation ("Magical Bridge"), a California non-profit corporation.

RECITALS

The Parties intend that the following recitals are a substantive part of this FIRST AMENDMENT:

1. CITY and Magical Bridge entered into a "Consultant Services and License Agreement" effective August 16, 2017.
2. This FIRST AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on October 17, 2018.
3. CITY and Magical Bridge intend to enter into a separate consultant agreement for the design of the inclusive playground concurrently with the execution of this amendment.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

SECTION 1. Amendments: The Parties agree that all of the terms and conditions of the AGREEMENT attached hereto as Exhibit "A", shall remain in full force and effect except that the parties hereto agree that the following amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 4.2 of the AGREEMENT, shall be amended to read in its entirety as follows:

4.2. Milestone Payments. City will pay to Magical Bridge a milestone completion payment totaling an additional \$75,000 for reaching the fundraising goal for the Community Donation as specified in Exhibit B dated October 17, 2018. In the event that the Total Funding Goal increases or the City Contribution decreases, Magical Bridge shall be entitled to an additional Contingency Milestone Payment equal to 15% (up to \$175,000) of the resulting increase in the amount of the Community Donation, the Contingency Milestone Payment to be payable upon completion of the Fundraising and transfer of funds to the City. An amount sufficient to pay the additional Contingency Milestone Payment shall be included in the increased Funding Goal so that there is fiscal neutrality for the Project. Grants or funding received from government entities awarded

directly to the City shall be deemed a City Contribution, and would not be deducted from the increased Community Donation and not be subject to the 15% Contingency Milestone Payment.

B. SECTION 4.6 of the AGREEMENT, shall be amended to read in its entirety as follows:

4.6. Total Compensation. Total Compensation under this agreement including any Contingency Milestone Payment shall not exceed \$275,000.

SECTION 2. Conflicts. If any Design services described in section 1 of Exhibit A1 “Scope of Services” of Agreement conflict with the scope of services in the separate consultant agreement (“Service Agreement for Design Professionals”) for the design of the playground, the terms of the Service Agreement for Design Professionals shall control.

IN WITNESS WHEREOF, the parties to this FIRST AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

ATTEST:

Michelle Wilson, Deputy City Clerk
Date: _____

APPROVED AS TO FORM:

Donald Larkin, City Attorney
Date: _____

CITY OF MORGAN HILL:

Christina Turner, City Manager
Date: _____

MAGICAL BRIDGE FOUNDATION

 Olenka Villanreal
By: _____
Title: Founder Executive Director
Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date: October 11, 2018

 Jill Asher
By: _____
Title: Co-executive Director
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 10/11/18

EXHIBIT B – MILESTONE PAYMENTS**October 17, 2018**

City shall pay Milestone Payments to Magical Bridge, referenced in Section 4.2 of the Agreement, according to the following schedule:

<u>Task</u>	<u>Milestone</u>	<u>Payment Amount</u>
Retainer: Includes retaining Magical Bridge for life of project: design, community engagement, fundraising, and licensing	Effective Date of Agreement	\$200,000
Final Design Certification	City's receipt of the Final Design certification based on Magical Bridge input in design process and review of Final Design	\$0 – No Payment
Fundraising	City's receipt of the Community Donation in full from Magical Bridge	\$75,000
Completion and Opening	The latter of (i) the date of the Opening Event; or (ii) the last transfer of the Excess Funds to City	\$0 – No Payment
Contingency Milestone Payment	City's receipt of the additional Community Donation in excess of the original target of \$1,230,000	15% of the amount of the Community Donation over \$1,230,000.

126-04-17-011

CONSULTANT SERVICES AND LICENSE AGREEMENT

This Consultant Services and License Agreement (“**Agreement**”) is made and entered into as of August 16, 2017 (the “**Effective Date**”) by and between City of Morgan Hill (“**City**”), a [California municipal corporation], and the Magical Bridge Foundation (“**Magical Bridge**”), a California 501(c)(3) corporation. Magical Bridge and City are individually referred to in this Agreement as a “**Party**” and collectively as “**Parties**.”

WHEREAS, Magical Bridge Foundation has created a design and community engagement process for developing inclusive playgrounds in which children of all abilities can play;

WHEREAS, Magical Bridge’s inclusive playgrounds are designed to promote well-being by increasing meaningful connections in the community, increasing inclusivity and empathy among children of all abilities, and creating a sense of ownership and engagement in the community that complements and strengthens existing programs and the investments communities are already making to provide therapies and services for children with special needs; and

WHEREAS, City desires to (i) use certain of Magical Bridge’s proprietary processes and designs to build such an inclusive playground (the “**Playground**”); (ii) retain Magical Bridge’s assistance throughout the design and construction process to create a hub for play in the community that increases the opportunities for and amount of play for all families, in particular for those with special needs who have fewer opportunities for play in community playgrounds (the “**Project**”); (iii) have Magical Bridge assist with fundraising for the Project; and (iv) have Magical Bridge advise City on designing and implementing a TV, print media, and social media campaign to co-market and build community support for the Project, including an opening event to commemorate the opening of the Playground (“**Opening Event**”);

WHEREAS, City has developed an initial design (“**Concept Design**”) for the Playground that will be used as the base for the all future design work.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the Parties agree as follows:

1. **Fundraising**. The Parties acknowledge and agree that:

1.1. **Total Funding Goal**. City will require an estimated five million two hundred thirty thousand dollars (\$5,230,000) to design and complete the Project;

1.2. **City Contribution**. City has or will allocate \$2,000,000, and, with the assistance of Magical Bridge, will apply for a matching funds grant of up to \$2,000,000 from the County of Santa Clara, for the Project for a total allocation of \$4,000,000 (collectively the “**City Contribution**”); and

1.3. **Community Donation**. City desires to partner with Magical Bridge to raise the remaining funds necessary to construct the Playground from significant entity and individual donors and grants (the “**Community Donation**”). For the avoidance of doubt, donations to Magical Bridge will only be deemed to be Community Donations if they are

designated by their donor for use in connection with the Project or, if they are not designated by their donor for any particular purpose, if Magical Bridge, in its sole discretion, designates such funds as Community Donations.

2. Magical Bridge Responsibilities. City retains Magical Bridge to perform, and Magical Bridge agrees to perform, the services described in Exhibit A1 ("Services"). In the event of a conflict between the provisions of Exhibit A and the terms of this Agreement, the terms of the Agreement shall prevail. City shall have the right to modify the Services to delete tasks in whole or in part, provided that such modifications do not affect the City's payment obligations hereunder.

3. City Responsibilities. Magical Bridge's performance of the Services is conditioned upon City's timely assistance and performance of all other tasks which are reasonably necessary in connection with the Project, including, without limitation, those described in Exhibit A2 ("City Responsibilities"). Accordingly, notwithstanding anything to the contrary in this Agreement, in any circumstance in which Magical Bridge's performance of the Services depends or is contingent upon activities or assistance of City, for example in obtaining permits for and developing the Project, as reasonably determined by Magical Bridge, if City fails to perform such activities or provide such assistance in a timely manner, Magical Bridge shall be excused for any delay in its performance of the Services for so long as City fails to perform such activities or provide such assistance, and such delay shall not constitute a breach of this Agreement by Magical Bridge.

4. Compensation.

4.1. Retainer. City will pay to Magical Bridge a one time retainer payment (the "Retainer") of \$200,000 due upon the Effective Date of this Agreement to support the community engagement activities, fundraising, design work, licensing, and all other services provided by Magical Bridge.

4.2. Milestone Payments. City will pay to Magical Bridge a series of milestone completion payments ("Milestone Payments"), totaling an additional \$225,000; each Milestone Payment is due upon completion of the associated milestone as specified in Exhibit B. In the event that the Total Funding Goal increases or the City Contribution decreases, Magical Bridge shall be entitled to an additional Contingency Milestone Payment equal to 15% (up to \$175,000) of the resulting increase in the amount of the Community Donation, the Contingency Milestone Payment to be payable upon completion of the Fundraising and transfer of funds to the City. An amount sufficient to pay the additional Contingency Milestone Payment shall be included in the increased Funding Goal so that there is fiscal neutrality for the Project. Grants or funding received from government entities awarded directly to the City shall be deemed a City Contribution, and would not be deducted from the increased Community Donation and not be subject to the 15% Contingency Milestone Payment.

4.3. Donation Processing Fee. Magical Bridge agrees to waive any processing fees associated with Community Donations.

4.4. Invoicing, Taxes. Magical Bridge shall submit to City a written invoice for each payment of the Retainer and each Milestone Payment as it becomes due, and City agrees to pay all invoiced amounts within thirty (30) days after the date of the applicable invoice. The Retainer and Milestone Payments are exclusive of, and City shall be responsible for paying, any applicable taxes which may be owed for or upon such payments, other than any taxes Magical Bridge may owe with respect to its net income notwithstanding Magical Bridge's non-profit status.

4.5. No Other Compensation. The Retainer and Milestone Payments shall be the full and complete compensation to which Magical Bridge is entitled for the completion of the Services (provided that the costs of actually constructing the Playground will be drawn from the City Donation and the Community Donation), which sum shall include all costs or expenses incurred by Magical Bridge, unless otherwise expressly set forth herein or agreed in writing by the Parties. Notwithstanding the foregoing, City is solely responsible for all costs and expenses associated with City Responsibilities, and for those associated with the Opening Event and any media campaigns associated with marketing and building community support for the Project.

4.6. Total Compensation. Total Compensation under this agreement including any Contingency Milestone Payment shall not exceed \$600,000.

5. Intellectual Property.

5.1. License to Designs and Equipment. Magical Bridge hereby grants to City a non-exclusive, fully paid up, non-transferrable license to use, reproduce, internally distribute, and create derivative works of any documents and materials depicting the design elements, equipment, and layout characteristic of a Magical Bridge playground (collectively "**Magical Bridge Designs**"), in whole or in part, to prepare a design for a playground incorporating those design elements that is tailored to the unique geographic features of the Playground site as well as the needs and budgetary constraints of City ("**Final Design**") and to build the Playground according to the Final Design. City shall be responsible for preparing the Final Design in consultation with its design team, architect, and Magical Bridge as needed. City shall retain final decision making authority on all aspects of the design of the Playground.

5.2. License to Magical Bridge Trademarks.

5.2.1. Initial License. Subject to City's compliance with the terms and conditions of this Agreement and Magical Bridge's trademark guidelines, the current version of which is attached hereto as Exhibit D and which are subject to revision by Magical Bridge from time to time in its sole discretion (the "**Trademark Guidelines**"), Magical Bridge hereby grants City the non-exclusive right to use Magical Bridge's name, trademarks, service marks, and trade names ("**Magical Bridge Marks**") solely to promote and solicit donations and funding for the Project, provided that all such uses are subject to Magical Bridge's prior approval, which shall not be unreasonably withheld or delayed.

5.2.2. Final Design Certification. Upon completion of the Final Design, City shall transmit a copy of the Final Design to Magical Bridge. Magical Bridge shall, within thirty (30) days of receipt of the Final Design, review the Final Design to determine whether the Final Design meets the criteria of a Magical Bridge Playground, attached hereto as Exhibit C and incorporated herein by reference (“**Magical Bridge Standards**”). If Magical Bridge determines that the Final Design meets the Magical Bridge Standards, Magical Bridge shall provide a certification to City so stating (“**Final Design Certification**”). If, in its reasonable discretion, Magical Bridge determines that the Final Design does not meet the Magical Bridge Standards, Magical Bridge shall provide City with a written rationale for its decision, including specific recommendations for conforming to the Magical Bridge Standards. Magical Bridge shall then work in good faith with City to revise the Final Design to meet the Magical Bridge Standards.

5.2.3. Final License. Upon receipt of the Final Design Certification for the Playground, subject to City’s compliance with the terms and conditions of this Agreement and the Trademark Guidelines, City shall have the non-exclusive right to refer to the Playground as a “Magical Bridge Playground” and, subject to Magical Bridge’s prior approval, which shall not be unreasonably withheld or delayed, to use the Magical Bridge Marks in signage located at or directing visitors to the Playground and in advertising and promotional materials regarding the Playground. Without limiting the foregoing, City shall display and maintain at the Playground a sign, at City’s expense, not less than ten (10) square feet in size, including Magical Bridge’s name and at least one Magical Bridge Mark.

5.2.4. License Review. Magical Bridge reserves the right to periodically review the Playground’s continued compliance with the Magical Bridge Standards and to revoke the foregoing license and all associated rights to designate such playground as a “Magical Bridge Playground” upon notice to City that the playground no longer conforms to the Magical Bridge Standards. Magical Bridge shall give City at least thirty (30) days’ notice, and meet and confer in good faith with City, prior to revoking any such certification or the foregoing license.

5.2.5. Goodwill. City agrees that (a) as between the parties, all rights in and to Magical Bridge Marks and the goodwill associated therewith are owned by Magical Bridge, (b) City will do nothing inconsistent with such ownership, (c) all uses of Magical Bridge Marks shall inure to the sole benefit of and be on behalf of Magical Bridge, (d) City will not challenge or assist others in challenging the validity of such Magical Bridge Marks or attempt to register in any jurisdiction any confusingly similar marks, and (e) any use of the Magical Bridge Marks shall be in accordance with Magical Bridge’s Trademark Guidelines.

5.2.6. Magical Bridge Playgrounds Only. City shall not display Magical Bridge Marks on or in relation to any playgrounds that were not designed by Magical Bridge, or whose Final Design Certification or other certification of meeting the Magical Bridge Standards has been revoked by Magical Bridge as provided above,

except that City may use Magical Bridge Marks in communications and materials, in any medium, involving both Magical Bridge Playgrounds and other playgrounds where the Magical Bridge Playgrounds are clearly identified as such.

5.3. Ownership. As between the Parties, the Magical Bridge Designs, the Final Design, the Magical Bridge Marks, any and all derivative works thereof, and the design, layout, and features of the Magical Bridge Playgrounds, including all intellectual property rights therein, are and shall remain the sole property of Magical Bridge. Each Party will retain all right, title, and interest in and to all marketing materials that it provides to the other Party under this Agreement. All rights not expressly granted in this Agreement are reserved by the Parties.

6. Termination.

6.1. Term of Agreement. This Agreement shall cover services rendered from the Effective Date of this Agreement for a period of five years. The City Manager is authorized to extend the term of the Agreement for a maximum of one year.

6.2. Termination for Lack of Progress. City may terminate this Agreement upon not less than thirty (30) days' written notice to the other Party pursuant to the notice provisions of this Agreement if (a) City decides to abandon or postpone the Project; (b) Magical Bridge fails to raise and transfer the Community Donation within twelve (12) months of the Effective Date, subject to extension at City's reasonable discretion; (c) City reasonably determines that there has been no substantial progress on the Project for at least twenty-four (24) months; or (d) Magical Bridge ceases to operate or otherwise loses its ability to perform the Services.

6.3. Termination for Cause. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other if the other Party is in material breach of this Agreement and fails to cure such breach within such thirty (30) day period.

6.4. Effects of Termination.

6.4.1. Upon termination of this Agreement, Magical Bridge shall transfer to City all funds collected in support of the Community Donation still in Magical Bridge's possession ("**Remaining Funds**"). After Magical Bridge transfers the Remaining Funds to City, City will have sole and exclusive responsibility for management of the Remaining Funds. City shall use the Remaining Funds for the sole purpose of (a) maintaining or enhancing the Playground, if it has been built prior to termination; or, if the Playground has not been built prior to termination, (b) funding modifications to other playgrounds to increase inclusive play opportunities for children with disabilities, provided that Magical Bridge is permitted to participate in an oversight committee with respect to the use of such funds.

6.4.2. City shall remain obligated to pay Magical Bridge any payments owed prior to the effective date of termination, and all such payments shall become immediately due and payable.

7. Warranties; Disclaimer.

7.1. Warranty. Each Party represents and warrants that (i) it has the full power and authority to enter into and fulfill the terms of this Agreement (ii) it will perform its obligations under this Agreement in a professional and workmanlike manner and in compliance with all applicable laws; and (iii) it has not entered and will not enter into any agreements that interfere or conflict with the terms hereof.

7.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THIS AGREEMENT, THE MAGICAL BRIDGE DESIGNS, OR ITS SERVICES, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8. Indemnification.

8.1. By Magical Bridge. Magical Bridge shall defend or at its option settle any third party claims brought against City, its officers, and employees to the extent that they allege: (a) any grossly negligent or intentionally wrongful act of Magical Bridge, its employees, contractors or agents in performance of the Services prior to the Opening Event or (b) any violation or claimed violation of a third party's intellectual property or proprietary rights resulting from the use by City of the Magical Bridge Designs or Magical Bridge Marks in accordance with this Agreement, except to the extent such claims are attributable to the negligence or willful misconduct of City, including their officers and employees, or third parties (collectively, "Magical Bridge Claims"). Subject to Section 9, Magical Bridge will indemnify City, its officers, and employees against any liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments (collectively "Losses") for Magical Bridge Claims, where such Losses are finally awarded by a court of competent jurisdiction to resolve, or agreed to by Magical Bridge in settlement of, such Magical Bridge claims. Notwithstanding the foregoing, Magical Bridge will have no liability for infringement claims to the extent arising from: (i) combination of the Magical Bridge Designs or Magical Bridge Marks with other materials or marks not provided by Magical Bridge, if the infringement would not have occurred if the Magical Bridge Designs or Magical Bridge marks had not been so combined; or (ii) the modification of the Magical Bridge Designs, in whole or in part, by anyone other than Magical Bridge, if the infringement would not have occurred but for such modification. THIS SECTION 8.1 STATES THE ENTIRE LIABILITY AND OBLIGATION OF MAGICAL BRIDGE, AND THE SOLE AND EXCLUSIVE REMEDY OF CITY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE MAGICAL BRIDGE DESIGNS OR MAGICAL BRIDGE MARKS.

8.2. By City. City shall defend or at its option settle any third party claims brought against Magical Bridge or its affiliates or their directors, officers, or employees,

and, subject to Section 9, indemnify them against all Losses associated with such claims, where such claims arise from (i) any negligent or intentionally wrongful act or omission of City or City's employees, contractors or agents, (ii) any breach by City or its employees, contractors or agents of its agreements with third party contractors performing services related to the Playground, and (iii) any bodily injury, including death, or damage to real or tangible personal property caused or occurring at the Playground.

8.3. Process. The indemnitee will provide the indemnitor with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at the indemnitor's expense) to defend and/or settle such claim. The indemnitee may participate in the defense of a claim asserted hereunder after the indemnitor has assumed the defense or settlement, provided that the indemnitee will bear any legal fees and expenses or other costs it incurs in so participating.

9. Limitation on Liability. Except for the Parties' indemnification obligations under Section 8 and breaches of a Party's confidentiality obligations under Section 11, neither Party will be liable to the other for any consequential, incidental, special, or exemplary damages arising out of or related to this agreement, including but not limited to lost profits or loss of business, even if such Party is apprised of the likelihood of such damages occurring. Magical Bridge's aggregate liability in connection with this Agreement shall not exceed the value of all applicable, valid, and collectible insurance.

10. Insurance.

10.1. Generally. Magical Bridge shall obtain and maintain insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Magical Bridge or Magical Bridge's agents, representatives, and employees at all times during the performance of the Services. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-VII."

10.2. Coverages and Limits. Magical Bridge, at its sole expense, shall maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing.

10.2.1. Commercial General Liability Insurance. Magical Bridge shall maintain occurrence based commercial general liability coverage with limits not less than one million dollars (\$1,000,000) per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the Services, project, or location that is the subject of this Agreement or the aggregate will be at least twice the required per occurrence limit.

10.2.2. Business Automobile Liability Insurance. Magical Bridge shall maintain business automobile liability coverage with limits not less than one million dollars (\$1,000,000) per each accident for owned, hired and non-owned automobiles.

10.2.3. Workers' Compensation Insurance. Magical Bridge shall maintain workers' compensation coverage to the extent required by the California Labor Code.

The policy shall contain an endorsement stating that the insurer waives any right to subrogation against City, its officers, agents, employees and volunteers.

10.2.4. Employer's Liability Insurance. Magical Bridge shall maintain employer's liability coverage with limits not less than one million dollars (\$1,000,000) per each accident for bodily injury or disease.

10.3. Notice of Cancellation. This insurance coverage will be held at all times during the performance of the Services and will not be canceled during the Term without Magical Bridge providing thirty (30) days prior written notice to City sent pursuant to the Notice provisions of this Agreement.

10.4. Providing Certificates of Insurance and Endorsements. Within thirty (30) days of City's request therefor after the Effective Date, Magical Bridge shall provide to City certificates of insurance and above-referenced endorsements.

11. Confidentiality

11.1. Confidential Information. "**Confidential Information**" means any proprietary information, data, trade secrets, or know-how, including any information disclosed prior to the Effective Date, either directly or indirectly in writing, orally or by inspection of tangible objects (including, without limitation, designs, research, product plans, products, services, equipment, customers, inventions, discoveries, ideas, processes, drawings, hardware, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, equipment, and the terms and existence of this Agreement), whether or not designated as "confidential" disclosed by one party ("**Discloser**") to the other ("**Recipient**") under this Agreement. Without limiting the foregoing, Confidential Information of Magical Bridge shall include (a) Magical Bridge's playground designs, plans, and know-how, including the Magical Bridge Designs and the Final Design, and including with respect to types of equipment, colors, zone setup, and slide designs, and (b) all donor names, preferred physical and/or electronic contact information, amounts of donations, and other donor information ("**Donor Information**"). Confidential Information does not include information which Recipient can demonstrate (i) is known to Recipient without a confidentiality obligation at the time of disclosure to Recipient by Discloser, (ii) has become publicly known and made generally available through no wrongful act of Recipient, or (iii) has been rightfully received by Recipient from a third party who is authorized to make such disclosure.

11.2. Use of Confidential Information. Recipient will not, during or subsequent to the Term of this Agreement, use the Discloser's Confidential Information for any purpose other than the performance of Recipient's obligations under this Agreement, or disclose Discloser's Confidential Information to any third party. Without limiting the foregoing, City will hold all donor information in the strictest of confidence and in accordance with all laws applicable to personally identifiable information, and neither disclose such information to any third party nor use such information for any purpose other than internal analysis of the present fundraising progress and recognition of donors

consistent with City policies thereon, subject to consent of the donors. As between the parties, it is understood that Confidential Information of Discloser shall remain the sole property of Discloser. Recipient further agrees to take all reasonable precautions to prevent any unauthorized disclosure of Discloser's Confidential Information including, but not limited to, having each employee or contractor of Recipient, if any, with access to any Discloser's Confidential Information, execute a nondisclosure agreement containing provisions at least as protective of Confidential Information as this Agreement.

11.3. Compelled Disclosure. If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice, if legally permissible, and will use its best efforts to assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient's compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

11.4. Return of Materials. Upon the termination of this Agreement, or upon Discloser's earlier request, Recipient will deliver to Discloser all of Discloser's Confidential Information that Recipient may have in Recipient's possession or control, and/or destroy such Confidential Information and provide written certification of such destruction.

11.5. California Public Records Act. Notwithstanding any other provision of this Section, the Parties acknowledge that if City is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"), then if Confidential Information is contained in documents submitted by Magical Bridge to City, and Magical Bridge expressly claims that such information falls within one or more CPRA exemptions, Magical Bridge must clearly mark such information "CONFIDENTIAL" or "PROPRIETARY". In the event of a request for such information, City will make reasonable efforts to provide notice to Magical Bridge prior to such disclosure, allowing enough time for Magical Bridge to seek a protective order, injunctive relief, or other appropriate remedy. If Magical Bridge contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it may at its own cost, liability, and expense seek to obtain a protective order, injunctive relief or other appropriate remedy from a court of law having jurisdiction over the matter before City's deadline to respond to the CPRA request. City shall provide Magical Bridge with all reasonable assistance, at Magical Bridge's expense, in obtaining such protections. If Magical Bridge fails to obtain such a remedy before the deadline for City's response to the CPRA request, City will disclose the requested information and shall not be liable or responsible for such disclosure.

11.6. Publicity. Any publicity or press releases with respect to the Project or Services shall be by mutual agreement of the Parties. Magical Bridge shall have the right, however, without City's further consent, to state that it is providing the Services to City in Magical Bridge's promotional and professional materials, and to communicate with

persons or public bodies where necessary to perform under this Agreement.

12. Miscellaneous

12.1. Independent Contractors. The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either Party the power to act as an agent or direct or control the day-to-day activities of the other. Neither Party will make any federal or state tax withholdings on behalf of the other Party or its agents, employees or subcontractors. Neither Party will be required to pay any workers' compensation insurance or unemployment contributions on behalf of the other Party or its employees or subcontractors.

12.2. Audit. City shall have the right to examine, monitor and audit all records, documents, conditions and activities of Magical Bridge and its subcontractors related to services under this Agreement. Pursuant to Government Code section 8546.7, because 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. Magical Bridge 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.

12.3. Assignment. Unless otherwise expressly provided in this Agreement, neither Party may assign, delegate or subcontract any right, obligation, or interest hereunder without the express written consent of the other Party. Any assignment in derogation of the foregoing shall be null and void. Notwithstanding the foregoing, Magical Bridge may assign or transfer this agreement in its entirety to an affiliate of Magical Bridge or in connection with a corporate reorganization, merger, acquisition, or other transfer of all or substantially all of the business or assets to which this Agreement relates.

12.4. Subcontractors. Magical Bridge shall be fully responsible for the acts and omissions of subcontractors or their employees hired or retained by Magical Bridge. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor of Magical Bridge and the City. Magical Bridge shall be solely responsible for payment of its subcontractors.

12.5. 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 not resolved in accordance with Section 12.5 below shall only be brought in Santa Clara County.

12.6. Dispute Resolution; Jurisdiction, Venue. If there is a dispute between the Parties arising out of or otherwise relating to this Agreement, the Parties agree to promptly meet in good faith to try to resolve such dispute. If such dispute is not resolved by the

Parties within thirty (30) days following the date on which either Party provided written notice of such dispute to the other Party, the dispute shall be escalated to the senior management of each Party for resolution. If the dispute is not resolved in accordance with such procedures, then the Parties agree that any dispute arising out of or relating to this Agreement, or the breach thereof, may be settled by mediation or non-binding arbitration in Santa Clara County, California, administered by a mutually agreeable mediator or arbitrator, respectively. Notwithstanding the foregoing, the Parties agree that nothing in this Agreement will be deemed to waive, preclude, or otherwise limit either Party's rights to: (i) seek injunctive relief in a court of law; or (ii) file suit in a court of law to address intellectual property infringement claims.

12.7. Paragraph Headings. Paragraph headings as used herein are for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning thereof.

12.8. Waiver. The waiver by either Party of any breach of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation under this Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

12.9. Severability. If any part of this Agreement is unenforceable, the remaining portions of this Agreement will remain in full force and effect.

12.10. Force Majeure. Nonperformance of Magical Bridge will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, or any other reason where failure to perform is beyond the reasonable control of Magical Bridge.

12.11. Execution in Counterparts. The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute the same instrument.

12.12. Original Signatures. The parties hereby agree that electronic signatures, whether transmitted by telephonic facsimile machine or computer transmitted files will be considered original signatures for all purposes including, but not limited to, authentication of this document (or any amendment prepared and executed in accordance with the terms of this document) in any legal proceeding.

12.13. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede any other attachment or exhibit. Neither this Agreement nor any of its provisions may be amended, modified, waived, or discharged except in writing signed by both Parties.

12.14. Authority. The individuals executing this Agreement and the instruments

referenced in it on behalf of Magical Bridge and City each represent and warrant that they have the legal power, right and actual authority to bind Magical Bridge and City respectively to the terms and conditions of this Agreement.

12.15. Notices. Any notice to be given hereunder shall be addressed to City or Magical Bridge at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

For City:

City of Morgan Hill
Attention: City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

For Magical Bridge:

Magical Bridge Foundation
Corporate Office
654 Gilman Street
Palo Alto, CA 94301

[Signatures on Following Page]

IN WITNESS WHEREOF, City and Magical Bridge have executed this Agreement as of the Effective Date.

CITY:

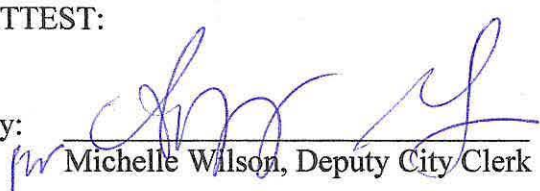
City of Morgan Hill

By:


Steve Rymer, City Manager

ATTEST:

By:

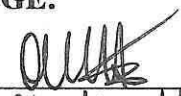

Michelle Wilson, Deputy City Clerk

MAGICAL BRIDGE:

By:

Name:

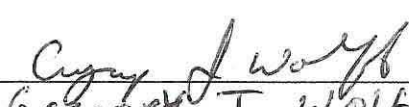
Title:


Olenka Villarreal
Founder

By:

Name:

Title:


Gregory T. Wolff
Director

APPROVED AS TO FORM:


Cynthia Hassen, Assistant City Attorney

EXHIBIT A1 – SCOPE OF SERVICES

1. DESIGN

1.1. Design Consulting. The “Magical Bridge Team,” defined individually and collectively as the individuals listed in Exhibit E, shall participate in meetings with City’s designated team and consultants to advise on all aspects of playground design, including but not limited to equipment selection, site preparation meetings, criteria for quality control, and methods for making the Playground more inclusive of children with disabilities. Magical Bridge reserves the right to modify the list of individuals and subcontractors in Exhibit E in its reasonable discretion, in accordance with changes to Magical Bridge’s staffing.

1.2. Construction Consulting. The Magical Bridge Team shall advise City throughout the development of the Playground on an as needed basis. City shall retain final decision making authority on all matters relating to the construction, including but not limited to selecting construction contractors, obtaining permits, and overseeing construction.

1.3. Access to Playground. City shall provide Magical Bridge, its employees and agents, with reasonable access to the Playground for the purpose of fulfilling its responsibilities under this Agreement.

2. FUNDRAISING

2.1. Fundraising Goal. Magical Bridge will use commercially reasonable efforts to solicit a total amount of donations to support the Project not less than the amount of the Community Donation.

2.1.1. Magical Bridge, with the guidance and recommendation of City and affiliated community groups, shall have full discretion in identifying, soliciting, and accepting donations for Project from individuals, foundations, businesses, and other organizations.

2.1.2. For potential funders who require applications directly from the City, Magical Bridge will, at the request of City, prepare grant application materials and supporting documentation, attend meetings, and respond to requests for information in the support of applications by the City for matching grants or other funding opportunities from potential funders. Any resulting funds which are provided directly to City by funder will not be subject to the Processing Fee.

2.1.3. If the successful bid for the construction contract for the Project exceeds the original amount of the Community Donation, Magical Bridge will use its best efforts to obtain additional donations to meet the shortfall, which additional donations shall be added to and increase the amount of the Community Donation.

2.2. Collection and Holding of Community Donation.

2.2.1. Magical Bridge will maintain its tax exempt 501(c)(3) status.

2.2.2. Magical Bridge will accept and hold donations made towards the Project, including donations solicited by City, until no later than fifteen (15) days after the Opening Event.

2.2.3. Magical Bridge will not use any donated funds for any purpose, except to cover the Processing Fee, without express written consent of City.

2.3. Transfer of Funds to City.

2.3.1. Within ten (10) days of receiving the full amount of the Community Donation, Magical Bridge shall submit a request for donation pursuant to City's donation policy ("**Request for Donation**") for an amount equal to the Community Donation (the "**Playground Funds**"). Upon approval of the Request for Donation by City, Magical Bridge shall promptly transfer the Playground Funds to City. After Magical Bridge transfers the Playground Funds to City, City shall have sole and exclusive responsibility for management of the Playground Funds.

2.3.2. Within ten (10) days of the Opening Event, Magical Bridge shall submit an amount equal to all donations to the Project Magical Bridge has collected since the transfer of the Playground Funds to City ("**Excess Funds**"). Upon approval of the Request for Donation by City, Magical Bridge shall promptly transfer the Excess Funds to City. After Magical Bridge transfers the Excess Funds to City, City shall have sole and exclusive responsibility for management of the Excess Funds.

2.3.3. The Playground Funds and the Excess Funds shall be restricted donations. City shall use the Playground Funds and Excess Funds solely to pay for costs relating to the planning, designing, constructing, launching, operating, promoting, and maintaining the Playground, including amounts owed to third party contractors for performing environmental and other assessments, and designing and building the Playground, and amounts owed in connection with the Opening Event, except that the Excess Funds may also be used to fund other projects related to accessibility or to the Playground, including but not limited to handicap parking spots, disability access ramps, and bathrooms. City shall have sole and exclusive responsibility for payment of all costs related to the construction and maintenance of the Playground.

2.4. Donor Information and Acknowledgements.

2.4.1. Magical Bridge shall maintain a list of all donors to the Project that shall include the Donor Information for each donor, and whether the donor would like to be publicly recognized.

2.4.2. Magical Bridge shall send acknowledgements to each donor to the Project according to City's donation policy.

2.4.3. Upon transfer of the Playground Funds and the Excess Funds, Magical Bridge shall transfer to City the names and any other necessary information of donors for whom recognition under City's donation policy requires City action, subject to the donors' consent to such transfer.

3. Community Engagement

3.1. Communications Strategy and Marketing Materials. Within thirty (30) days after the Effective Date, Magical Bridge shall provide City with the following:

3.1.1. A draft communications strategy that includes (i) a public relations and marketing plan for the Playground; and (ii) a TV, print media, and social media campaign to engage and educate the public in relation to the Project ("Communications Strategy").

3.1.2. Copies of all applicable Magical Bridge Marks in electronic form.

3.1.3. Marketing collateral relating to the launch and promotion of Magical Bridge playgrounds, including template press releases, fundraising emails, fundraising kits for community members, and talking points for briefings with key officials

3.2. Communications Consulting. At City's request, the Magical Bridge Team shall advise City on revising and executing the Communications Strategy, including developing marketing material specific to the Playground and planning the Opening Event. City shall conduct the activities specified in the Communications Strategy, including selection of the date for the Opening Event in its sole discretion.

3.3. Community Engagement Activities. The Magical Bridge Team shall conduct community engagement activities, including but not limited to hosting community input meetings, school visits, and community events, for the purpose of promoting the Playground and raising awareness about inclusive play.

3.4. Participation in City Events. Prior to and including the Opening Event, the Magical Bridge Team shall appear at up to [5] City sponsored events related to the Project at City's request and upon reasonable notice.

3.5. Recruiting and Training Volunteers. Prior to the Opening Event, the Magical Bridge Team shall recruit and train no fewer than five (5) volunteers to conduct educational programming about inclusive play at the Playground.

4. REPORTING

4.1. Magical Bridge shall provide City with monthly reports, due on the 30th day of each month after the Effective Date, or as otherwise agreed by City, that shall include the amount of funds raised to date, and a summary of Magical Bridge fundraising activities and community engagement activities conducted over the previous month.

EXHIBIT A2 – CITY RESPONSIBILITIES

1. CITY RESPONSIBILITIES. City is responsible for the following activities:

- 1.1. Identifying a location (at least one (1) acre in size) for the development of the Playground (the “Site”);
- 1.2. Obtaining all required licenses, permits, and approvals for development of the Playground, including any required approvals from the City;
- 1.3. Performing a timely planning review of the Playground designs and providing responses from all essential City departments regarding any and all concerns to be addressed in the Playground designs;
- 1.4. Raising the City Donation within [six (6)] months after the Effective Date and designating those funds solely for the purpose of building the Playground;
- 1.5. Using its best efforts, with reasonable assistance and cooperation from Magical Bridge, to solicit and procure Community Donations for the Playground;
- 1.6. Allowing for reasonable access to the Site by Magical Bridge employees and agents, including but not limited to the Magical Bridge landscape architect;
- 1.7. Facilitating meetings and discussions between Magical Bridge and various stakeholders in order to ensure community support for the Playground;
- 1.8. Providing all reasonable assistance to Magical Bridge in arranging a meeting with a custom playhouse designer to develop the theme, colors, and unique features of the Playground;
- 1.9. Entering into and performing all obligations under all agreements with third party contractors performing services related to the Playground;
- 1.10. Maintaining the Playground in good order, condition, and repair during and following the expiry or termination of this Agreement for the useful life of the Playground (useful life shall be solely determined by the City and a minimum of 10 years) and removing the Playground and/or the Magical Bridge branding associated with the Playground after the expiration of the useful life of the Playground;
- 1.11. Advising community groups in relation to on-going programs and activities at the Playground; and
- 1.12. Procuring and maintaining general liability insurance in respect of the Playground in an amount no less than the industry standard, equivalent to other City parks

and playgrounds, including bodily injury, property damage, and personal injury liability coverage

EXHIBIT B – MILESTONE PAYMENTS

City shall pay Milestone Payments to Magical Bridge, referenced in Section 4.2 of the Agreement, according to the following schedule:

<u>Task</u>	<u>Milestone</u>	<u>Payment Amount</u>
Retainer: Includes retaining Magical Bridge for life of project: design, community engagement, fundraising, and licensing	Effective Date of Agreement	\$200,000
Final Design Certification	City's receipt of the Final Design certification based on Magical Bridge input in design process and review of Final Design	\$75,000
Fundraising	City's receipt of the Community Donation in full from Magical Bridge	\$75,000
Completion and Opening	The latter of (i) the date of the Opening Event; or (ii) the last transfer of the Excess Funds to City	\$75,000
Contingency Milestone Payment	City's receipt of the additional Community Donation in excess of the original target of \$1,230,000	15% of the amount of the Community Donation over \$1,230,000.

EXHIBIT C – MAGICAL BRIDGE STANDARDS

Branding.

- Branded with the Magical Bridge Playground and/or Magical Bridge Foundation logo at the entry points of the playground.
- Playground signage, donor wall, playhouse, woodwork and artwork is unified with a consistent color palette as defined by the Magical Bridge style guide. Color palette may vary by location.

Layout.

- Distinct play zones based on types of play or motion, such as swinging, sliding, and spinning.
- The zones are distinguished by signage at each zone entrance that explains the benefits of that particular mode of play.
- Includes a smaller scale Tot Zone mimics the equipment in other areas of the Playground.

Accessibility.

- Seamless ground turf for easy navigation
- Accessible equipment with manageable transfer points
- Group play opportunities
- Ramps and walkways that enable wheelchair users to access all areas of the playground, including the top of the slide mound and second story of the playhouse.
- Play zone entry signs feature Braille for those visually-impaired.
- At least one slide contains a patent-pending extension bench on the end of the slide giving people who need more time a place to wait without blocking others from using the slide.

Kindness.

- Feature a Kindness Corner for individual and group reflection and educational programs

Innovation.

- Features interactive play experiences utilizing technology, art, music and design to stimulate the full array of human senses.

Imagination.

- Custom designed, handcrafted, two-story Playhouse with play stage
- Audience style seating in front of the Playhouse

Community.

- A Magical Bridge Playground includes shaded group gathering areas.
- Tables are designed for wheelchair access.

Stewardship.

A Magical Bridge Playground is open to the public, clean, and well-maintained.

EXHIBIT D – MAGICAL BRIDGE TRADEMARK GUIDELINES

1. ALWAYS USE MAGICAL BRIDGE FOUNDATION TRADEMARKS IN AN APPROVED FORM.

Our trademarks should always be presented in the styles in which they were delivered to you by the Magical Bridge Foundation (including all font faces and styles, all caps, upper and lower case, or a combination of large and small caps). Changes, distortions, or alterations in the trademarks are not generally allowed. Any variation must be cleared through the Magical Bridge Foundation.

2. ALWAYS USE MAGICAL BRIDGE FOUNDATION TRADEMARKS IN A MANNER CLEARLY INDICATING THAT THEY ARE TRADEMARKS OWNED BY MAGICAL BRIDGE FOUNDATION.

Our trademarks should be properly marked to give notice that they are, in fact, trademarks of the Magical Bridge Foundation. Registered trademarks should always be used with the federal registration symbol “®”, while marks that have not been registered (including marks that are the subject of “pending” applications) should be used with the symbol “™” where the mark initially appears. Use of the registration symbol or “™” must appear with the first usage of the trademark in a document; subsequent occurrences do not require the symbols. When used in a printed document, the symbols should be half the point size of the word and then superscripted half the point size of the word.

A footnote reference to ownership of the trademarks must be used on all Magical Bridge playgrounds and all marketing, fundraising, and promotional materials in the following format:
 “_____ are trademarks of the Magical Bridge Foundation.” Where appropriate, a subset of this attribution may be used.

The list of registered and unregistered marks will change periodically as pending applications mature to registration, and as such, it is important to determine status of the marks before using either symbol.

Our trademarks should not be joined with other terms (by a hyphen, for instance) nor used with unapproved logos, graphics, photos, slogans, numbers, design features or symbols. Our trademarks should never be “made plural,” never be mixed with other trademarks, and a trademark's spelling should never be altered.

3. ALWAYS USE MAGICAL BRIDGE FOUNDATION TRADEMARKS AS ADJECTIVES, NEVER NOUNS, AND THE MARKS SHOULD BE FOLLOWED BY THE APPROPRIATE GENERIC TERMINOLOGY.

Trademarks are meant to signify the brand or source of a product and should not be used in a manner which suggests that the trademark is the name of the product. Companies that allow their trademarks to be used as nouns risk losing their rights in those trademarks. Classic examples of words that began as trademarks but were lost due to misuse include “aspirin,” “escalator” and “cellophane.” Because the public came to see these terms as the product names instead of the brand names, trademark rights were forfeited. The most common mistake is to use the trademark as a noun instead of as an adjective followed by the generic term.

4. DO NOT IMPLY OR SUGGEST THAT A PLAYGROUND BASED ON MAGICAL BRIDGE FOUNDATION'S DESIGNS OR TECHNOLOGY IS A MAGICAL BRIDGE PLAYGROUND OR THAT THE MAGICAL BRIDGE FOUNDATION SPONSORS THE PLAYGROUND.

While the Magical Bridge Foundation understands and appreciates your need to accurately describe the designs and technology incorporated into your playgrounds, your playgrounds and promotional or fundraising materials cannot wrongly imply that your playgrounds are Magical Bridge playgrounds, explicitly or implicitly. Care must be taken to clearly distinguish the Magical Bridge Foundation’s playgrounds (and trademarks) from your other playgrounds and marks, as discussed more specifically in these guidelines.

5. NEVER USE A MAGICAL BRIDGE FOUNDATION TRADEMARK AS PART OF YOUR NAME OR TRADEMARK.

Magical Bridge Foundation trademarks may not be used as part of another entity’s mark or name. While the Magical Bridge Foundation’s marks can be used in explanatory fashion, the mark cannot be used as part of another entity or product name.

Also, you may not personify Magical Bridge Foundation trademarks or create characters that represent the trademarks. However, the trademarks may be used in taglines in accordance with the guidelines listed above.

Magical Bridge Foundation Portfolio & Team

The core Magical Bridge design team includes key leaders of the inclusive play movement who came together to envision the original Magical Bridge Playground in Palo Alto and worked tirelessly together to overcome the many barriers and challenges to build that playground and show the world that it was possible to build a truly inviting play space that welcomed individuals of all ages and all abilities. Together this core team of staff and key partners is deeply committed to making every Magical Bridge Playground an overwhelming success and has the depth and breadth of skills necessary to engage the community, create an effective design, and see each project through to completion. Collectively this team has participated in the creation of dozens if not hundreds of playground projects and lead managed several projects, including those listed below. Note that in addition to the core team listed below, there are a large number of individuals and organizations that volunteer with, advise, and support the Magical Bridge Foundation projects. We are grateful for the support of all those individuals and, most especially, the members of each community we serve who volunteer their time, effort, and knowledge to create each Magical Bridge Playgrounds and make them great experience for all visitors.

Magical Bridge Design Team

Olenka Villarreal Chairperson, Founder, Visionary and Executive Director

- 2014 Winner of the Jefferson Award for Community Service and 2015 Winner of the Palo Alto Tall Tree award
- Founder of the Magical Bridge Playground in Palo Alto and Vice President of the Friend of the Palo Alto Parks, Olenka has a rare ability to view the design and equipment of play spaces from a child's point of view. She is co-inventor of several new technologies that enhance the play experience for individuals with special needs.
- Prior to leading development of the Magical Bridge Playgrounds, Olenka has served as the Director of Marketing for TotalPass, Inc. and Siemens Communication amongst other roles for Silicon Valley companies. She has a degree in Economics / Public Policy and an MBA in Marketing.

Jill Asher co-Founder, Public Relations and Development

- In addition to leading the Public Relations and Digital Media strategy

for the Magical Bridge projects, Jill has served as Director of Public Relations for Appcelerator, Co-Founder and General Partner of SVMoms group, Vice President of Human Resources for Bessemer Ventures and Gloss.com and played similar roles for a number of other Silicon Valley companies. She holds degrees in Economics and English.

Kris Loew co-Founder, Marketing, branding, visual design

- Kris led the effort to create the inviting color scheme and visual appeal for Magical Bridge spaces that helps fosters a sense of well being and calm amongst visitors, especially for individuals who may be highly sensitive to their visual surroundings. She runs her own Graphic Design firm, is Co-Founder of Poketti, LLC, and previously served as Director of Marketing Communication for Brio Technologies.

Greg Wolff board member, Founder of the UnaMesa Association

- As Executive Director of the non profit UnaMesa Association, Greg helped the original Magical Bridge team establish the Magical Bridge Foundation as an independent non profit with the processes and resources necessary to partner with cities to create additional Magical Bridge Playgrounds that build upon and improve the original design. Greg founded the UnaMesa Association to support community based innovations in health, education, and social services. Prior to that, Greg served as a Vice President for Ricoh Innovations and has been a lead inventor and research scientist spanning the fields of information technology, machine learning, and professional services.

Barbara Butler Owner & Lead Designer, Barbara Butler Artist-BUILDER, Inc

- Barbara is one of the nation's premier architects and builders of custom treehouses and playgrounds. Over the past 30 years, she has constructed hundreds or thousands of imaginative play spaces for both public and private spaces. projects that involve tough terrains, unusual sites, special circumstances or special requests,

such as matching existing architectural elements. Her projects have long exceeded ADA accessibility standards and ASTM compliant, and use all natural and sustainable materials.

Jay Beckwith Playground apparatus designer

- Since the 1970, Jay has been a leading voice in the design and development of play experiences that align with and support the critical needs of both children and adults for physical activity that enhances their growth and well being. Jay's design for a "Post and Deck" system can be seen in almost every modern playground.
- Jay has written several books on designing and building children's play equipment. He has also been involved with safety commissions, is a Certified Playground Safety Inspector, and has written publications and developed programs for playground safety. He has consulted with several playground manufacturers in their design processes and pushed towards new directions in play environments.
- Jay has led many organizations that have designed and built playspaces and equipment. He holds a lifetime achievement from Gymboree Play and Music for making this world a better place to play. For Jay, his work to help create the Magical Bridge Playgrounds is truly the realization of a long held dream to create a place where truly everyone plays.

Groundswell Design Landscape architects

Peter Jensen is been the key architect behind the Magical Bridge Playground designs. A founder and principal at Groundswell Design, Peter has been the Lead Manager for both private and public projects, including these public projects:

- Northwest Park – Las Vegas (2004)
- Jefferson Elementary School Playground – Santa Monica (2008)
- Eleanor Pardee Park Playground – Palo Alto (2011)
- Magical Bridge Playground – Palo Alto (2012)
- Bowden Park Playground – Palo Alto (2016)

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS MAGICAL BRIDGE FOUNDATION

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

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2020 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be Design of an Inclusive Playground and adjacent amenities as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$150,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One 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 FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00), unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. 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, in whole or in part, on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit A, "Schedule of Services," 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/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

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

7.1. **Insurance Types and Amounts.**

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

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury,

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

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

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

7.1.5. Professional Liability.

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

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software

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

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

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

7.2.1. **General Liability**.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation**.

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.

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

- 7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall

be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Magical Bridge Foundation
654 Gilman Street
Palo Alto, CA 94301

Address of CITY is as follows:

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

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

15. **Maintenance of Records**.

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

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

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

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

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.
18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. **Defense and Indemnification.**
- 20.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 20.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Magical Bridge Foundation

City Attorney

By:

Donald A. Larkin
Print Name

Olenka Villarreal, Founder & ED

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

Date: _____

Date: October 11, 2018

By:

Jill Ashner, Executive Director

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

Date:

10/18/18

Exhibit A – Scope of Work

Summary of Scope

A conceptual site plan was developed and approved in 2015, with a program design that includes: assorted play area spaces, play area theming, pathways, walls, elevated walks, shade structures, fencing, site furnishings, and landscaping. The play area conceptual phase also included a parking study and development of a parking layout that maximizes accessible circulation, ADA and standard parking stall counts. The scope shall include all necessary design for constructing an inclusive playground and adjacent amenities required to complete the project. These amenities include, but are not limited to, parking lot reconfiguration, adjacent pathway development, restroom construction and security lighting.

Services for construction documents for the playground development will include design and documentation for the following facilities/elements:

1. Base plan development and updates.
2. Site preparation, grading, drainage and sediment and erosion control prevention.
3. Utilities and lighting.
4. Entry signage and entry plaza.
5. Bridge interface with ramps and ADA access compliance
6. Pathways, plazas, play area border, planter walls.
7. Play features and site furnishings and signage.
8. Restroom construction.
9. Landscaping and irrigation.
10. New ADA parking stalls and adjusted design of existing parking lot.

Required Sub-consultants or certified in-house staff members

The following sub-consultants are required and must be identified and approved during Task 1 of the scope of work.

1. Civil
2. Geotechnical
3. Electrical Engineering
4. Structural Engineering
5. Certified Playground Safety Inspection

Project Budget and Design Constraints

The project budget shall be established by the City of Morgan Hill. The initial construction budget shall be \$4.2 million for all amenities outlined in this scope, less parking improvements. Consultant is responsible to design to this budget. Should additional funding for the project construction become available the City shall notify the consultant in writing of this increase.

Project Schedule

Schedule for the project is to start construction in the summer of 2019.

Scope of Work

The Tasks shall be mandatory for the consultant to complete the playground design.

Task 1 – Project Start-up

1. Project Initiation:
 - a. Receive all available data, maps, reports, previous concept designs, and other City documents related to the project.
 - b. Update and provide detail on the milestone schedule with design team.
2. Kick-Off Meeting: Meet with the design team to review the project intent, scope, budget and timetable.
 - a. Identification of roles and responsibilities
 - b. Identification of all sub-consultant representatives
 - c. Discuss the conceptual plan and initial value engineering ideas
 - d. Schedule review and finalization
 - e. Budget review and discussion, implementation strategy and work tasks for design phase.
3. Site and Data Review
 - a. Review assembled data and historical information.
 - b. Review City codes, ordinances and policies pertaining to project design.
 - c. Review existing utility systems and locations.
 - d. Site visit to review prepared survey, perform visual analysis and become familiar with to existing conditions and constraints. We recommend walking the site with city staff to review conditions and known issues or constraints.

Task 2 – Final Conceptual Plan

1. Final Conceptual Plan Development- will update and develop the final conceptual plan to be utilized in the construction documents. Consultant will work with the City, volunteer committee and design team to set up the final concept design for the playground area.
 - a. Setup site base plan based on survey prepared by survey consultant.
 - b. Meeting with the City staff and volunteers to review approved concept and discuss updates to the layout design.
 - c. Update the concept with comments received
 - d. Review meeting with City staff and volunteers
 - e. Prepare final conceptual plan and **detailed cost estimate** with input
 - f. Final concept review meeting with City and volunteers
2. Meetings with appointed and elected officials
 - a. Meeting with the Parks and Recreation Commission
 - b. Meeting with the City Council
 - c. Final revisions to concept following meetings
 - d. Follow-up meetings with elected and appointed officials required if requested.
Additional revisions to concept and cost estimates shall be required if necessary based on meetings with elected and appointed officials

Task 3 – 65% Construction Documents

This stage requires detailed design of the project's improvements and refinement of the play areas, entry features, hardscapes, site furnishings, natural elements, planting, irrigation, construction details, etc. We will coordinate design of the demolition, grading, drainage, parking facilities, lighting, irrigation, signage, and utilities within the scope. This submittal is the opportunity to prepare documentation of the initial phase of construction to a level enabling the City and design team to review all design components, then make informed decisions about elements that should be included or excluded based on the prepared cost analysis included with this submittal.

1. Prepare a 65% Design Development Submittal
 - a. The submittal includes plans, a draft technical specifications book, and a submittal book.
 - b. Plans will be setup at 20' scale, sheet size to align with City requirements, and enlargements (this format will apply to all CD submittals). The plans include the following:
 - i. Cover sheet
 - ii. Existing Conditions Plan
 - iii. b. Erosion and Sediment Control Plan
 - iv. Demolition Plan
 - v. Grading Plan
 - vi. Drainage and Utilities Plan
 - vii. Layout Plan
 - viii. Material and Detail Reference Plan
 - ix. Irrigation Plan
 - x. Planting Plan
 - xi. Construction Details
 - xii. Playhouse Plans
 - xiii. Electrical Plans
 - c. Draft technical specifications, setup per the improvement plans, in CSI format.
 - d. Detailed preliminary construction cost estimate
 - e. The submittal book supplements the plans and specifications showing:
 - i. Progress Report.
 - ii. Material Reference/Catalog Cut Sheets.
 - iii. Questions and Comments – Design Log
 - f. In-house redline and review
 - g. Submittal preparation and coordination meeting with City staff. Provide one set of plans, specifications and cost estimate in PDF format to the City for review, at this meeting we will review and coordinate comments.

Task 4 – Construction Documents

The following outlines the work to complete the plans and specifications for bidding construction.

1. Review 65% DD Submittal comments and coordinate modifications with design team. Modify base plan as required to incorporate design team comments.
2. Design team meeting to coordinate comments and updates for final package submittals.
3. Prepare a 90% Construction Document Submittal.
 - a. The submittal includes updated plans, technical specifications and cost estimate.

- i. Cover sheet
 - ii. Existing Conditions Plan
 - iii. Access Plan
 - iv. Erosion and Sediment Control Plan
 - v. Demolition Plan
 - vi. Grading Plan
 - vii. Drainage and Utilities Plan
 - viii. Layout Plan
 - ix. Layout Plan – Play Equipment
 - x. Material and Detail Reference Plan
 - xi. Irrigation Plan
 - xii. Planting Plan
 - xiii. Construction Details
 - xiv. Playhouse Plans
 - xv. Electrical Plans
 - xvi. Structural Plans
- b. Updated technical specifications.
- c. Updated construction cost estimate.
- d. In-house redline and quality control review.
- e. Submittal preparation and coordination. Provide one set of plans, specifications and cost estimate in PDF format to the City for review, comment and distribution to Building Department.
- f. Submittal review meeting with City staff.
- g. Update documents with City staff and Building Department comments
- h. Building Department submittal for approval
- i. Revisions to designs if required by Building Department
- 4. Construction Document Submittal
 - a. Review 90% submittal comments from the City and design team.
 - b. Revise plans, specifications and cost estimate to incorporate comments.
 - c. In-house redline and quality control review.
 - d. Submittal preparation and coordination.
 - e. Provide City with one set of wet stamped bond plans and specifications, and one final statement of probable construction costs. Cad and PDF files of documents will be provided to the City in a format that aligns with their software.

Task 5 – Bidding Support

The consultant shall provide the following services to the Client on an on-call basis following submittal of the bid submittal.

- 1. Attend Prebid meeting
- 2. Answer questions informally from City staff and at during bidding meeting via email and phone and formally in writing when requested by City staff.
- 3. Assist in bid evaluation and contractor selection.

Task 6 – Construction Services

The consultant agrees to provide the following services to the Client on an on-call/as needed basis following the award of construction contract. City will perform the project inspections and testing.

1. Attend the preconstruction meeting
2. Respond to questions, request for information and provide clarifications.
3. Review submittals and shop drawings.
4. Review price requests and change orders.
5. Attend site observation visits to review specific stages of construction. A minimum of 12 meetings is anticipated, but additional meetings may be required. Site observation reports shall be provided by the consultant for each meeting attended.
6. Two playground and equipment inspections by a Certified Playground Safety Consultant.
7. Provide playground safety inspection certification.
8. Attend Substantial Completion site walk and provide a punch list.
9. Attend Final Site walk.
10. Review contractor as-built plans and setup a cad file of the plans and submit to the City.

Responsibilities Associated with all tasks

1. Project Administration as needed to coordinate work with the City and design team.

Schedule of Services

The City of Morgan Hill has developed the following schedule with the intent to bid the project in January 2019 with construction commencing by June 1, 2019. This schedule is necessary to avoid loss of grant revenue for this project.

Task 1 - Project Start-up - 2 Weeks – October/November

Task 2 - Concept Design- 3 Weeks – November

1. Commission approval of concept November 20
2. Council Approval of Concept December 5

Task 3 - 65% Submittal – 2 Months – Due February 15

Task 4 – Construction Documents – 2 Months - Due April 12

Exhibit B Schedule of Compensation

The compensation for this agreement shall not exceed \$150,000. Compensation shall be paid following completion of work at the following intervals.

Task 1 - \$5,000

Task 2 - \$25,000

Task 3 - \$25,000

Task 4 - \$50,000

Task 5 - \$10,000

Task 6 - \$35,000



Inclusive Playground
Final Concept - Natural Stones, Trees And Animals
Morgan Hill Community Park
Morgan Hill, CA



LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
SPORT PLANNING & DESIGN
2455 The Alameda, Ste. 200
Santa Clara, CA 95050
tel: 408.985.7200
fax: 408.985.7260
www.verdedesign.com



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

APPROVE UPDATED CONCEPTUAL DESIGN FOR LIBRARY EXPANSION PROJECT

RECOMMENDATION(S)

Approve the updated Conceptual Design for the Library Expansion Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The Morgan Hill Public Library was completed in August 2007. In 2014, the Friends of the Library commissioned a space needs study to evaluate the current floor plan and a future expansion plan to meet both the current and future needs of the Library. The findings from the space needs study produced an initial conceptual design for the Library Expansion Project.

In August 2016, the City Council awarded a consultant services agreement with Weston Miles Architects (WMA) to further develop the concept design, and to provide design and construction plans for the Library Expansion Project. WMA met on several occasions with representatives from the Santa Clara County Library, other Library stakeholders, and City staff to develop a concept plan for this project.

In April 2017, City staff and WMA shared the concept plans for the Library Expansion Project with the Library and Cultural Arts Commission and City Council. The City Council approved proceeding with design and construction documents for this project.

The project plans and specifications were completed in April 2018 and the project was advertised for bidding in May 2018. The scope of work for this project included the following:

- Base Bid - 5,392-square foot addition to the northwest corner (New Children's area and Program Room) along with site work.
- Add Alternate #1 – 1042-square foot addition to the new lobby.
- Add Alternate #2 – Front entry exterior footings and front entry overhang area.
- Add Alternate #3 – Remodeling of existing flex service area and circulation desk.

- Add Alternate #4 – Storm drain retention system.

The bid opening was held on July 17, 2018 and the base bids received are listed below:

	Base Bid	Add Alternate #1	Add Alternate #2	Add Alternate #3	Add Alternate #4
Kent Construction	\$5,526,682	\$667,961	\$67,475	\$139,525	\$64,856
Avila Construction Company	\$5,581,611	\$804,836	\$120,000	\$210,000	\$65,000
Tombleson Incorporated	\$5,932,500	\$962,000	\$63,000	\$250,000	\$50,000

The apparent low bidder, Kent Construction, was \$3,666,499 above the engineer's estimate of \$2,800,000 (including add alternates). Due to insufficient funds available for this project, the project bids were rejected.

In reviewing the bidding and engineering estimate discrepancy, WMA has indicated that there has been a significant cost increase for publicly-bid Capital Improvement Projects (especially building projects) over the last two-plus years. During the initial design of the Library Expansion Project, WMA used a square foot cost of \$350 for rough estimating purposes. For the updated conceptual plans, WMA is using a square foot cost of \$750.

Over the past two months, City staff, Library Staff, and WMA collaborated to reduce the project scope and value engineer the Library Expansion Project to meet the project budget. While the newly proposed Library Expansion concept plan has been reduced, it still meets the library's need for additional public space for both the program room and children's activity area. Library staff have indicated that this additional space is critical to their daily operations and is fully supportive of the updated design.

The updated project scope includes a 2,528 square foot expansion and includes the following (Attachment No 1):

Program Room

- 1,681 square foot open space plus:
 - Counter and sink
 - Storage areas
 - Projector and AV setup
 - Door to main library area
 - Double sliding door to new Children's Activity Area

Children's Activity Area

- 847 square feet plus:
 - Book stacks
 - Double Sliding Door to new Program Room

The reduced scope prioritizes program space and child activity space, which were identified by the Library staff as the core components of the project. The Friends of the Library and Library Staff are engaged in discussions on possible fundraising to support the improvements related to the Friends Bookstore at the Library. Those potential improvements would occur separate from the initial construction bid and are anticipated to be managed by the Library.

Staff recommends approval of the updated conceptual design and proceeding with the completion of design and construction documents in preparation for project bidding.

COMMUNITY ENGAGEMENT: Inform

On September 4, 2018, City staff provided the concept for the reduced scope to the Library, Culture and Arts Commission. While the Commission was disappointed with the scope reduction of the project, they understood the fiscal limitations. The Friends of the Morgan Hill Library have also been kept up to speed on the necessary project scope reduction to this project.

ALTERNATIVE ACTIONS:

The City Council has previously requested staff to review the concept of delaying projects until the construction climate cools. Based on conversations with potential bidders, recent bid results, and potential tariff related issues, staff does not believe there are indications of seeing reduced construction costs in the immediate future. Therefore, the wait time on an improved bidding climate is unknown. Library staff does not recommend waiting as the new smaller program space could provide for immediate value to users.

Should the City Council direct staff to hold off on bidding the project, design work would be halted immediately to make future decisions on design criteria once and if the bidding climate improves. Alternatively, the Council may also elect to continue moving forward with design/bidding and make the decision on awarding the project after the bids are received. In both cases, if the project is delayed to a later date, additional funding would be required for increased design work when the project does move forward.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

August 24, 2016 – The City Council approved a Service Agreement for Design Professionals with WMA for Design and Construction Support Services for the Library Expansion Project.

April 4, 2017 – Library and Cultural Arts Commission reviewed conceptual design and forwarded recommendations to City Council.

April 5, 2017 – The City Council approved the conceptual design for the Library Expansion Project.

June 7, 2017 – The City Council approved the First Amendment to WMA for the Library Expansion Project.

November 15, 2017 – The City Council approved the adoption of a resolution approving the Design Permit for the Library Expansion Project.

August 22, 2018 – Rejection of bids for the Library Expansion Project.

September 4, 2018 – Library and Cultural Arts Commission reviewed updated conceptual design and forwarded recommendations to City Council.

September 26, 2018 – The City Council approved the Third Amendment to WMA for the Library Expansion Project.

FISCAL AND RESOURCE IMPACT:

Developing the updated conceptual plan was included in the current WMA consultant agreement. Construction cost estimate will be prepared as part of the next steps and is included in the current agreement.

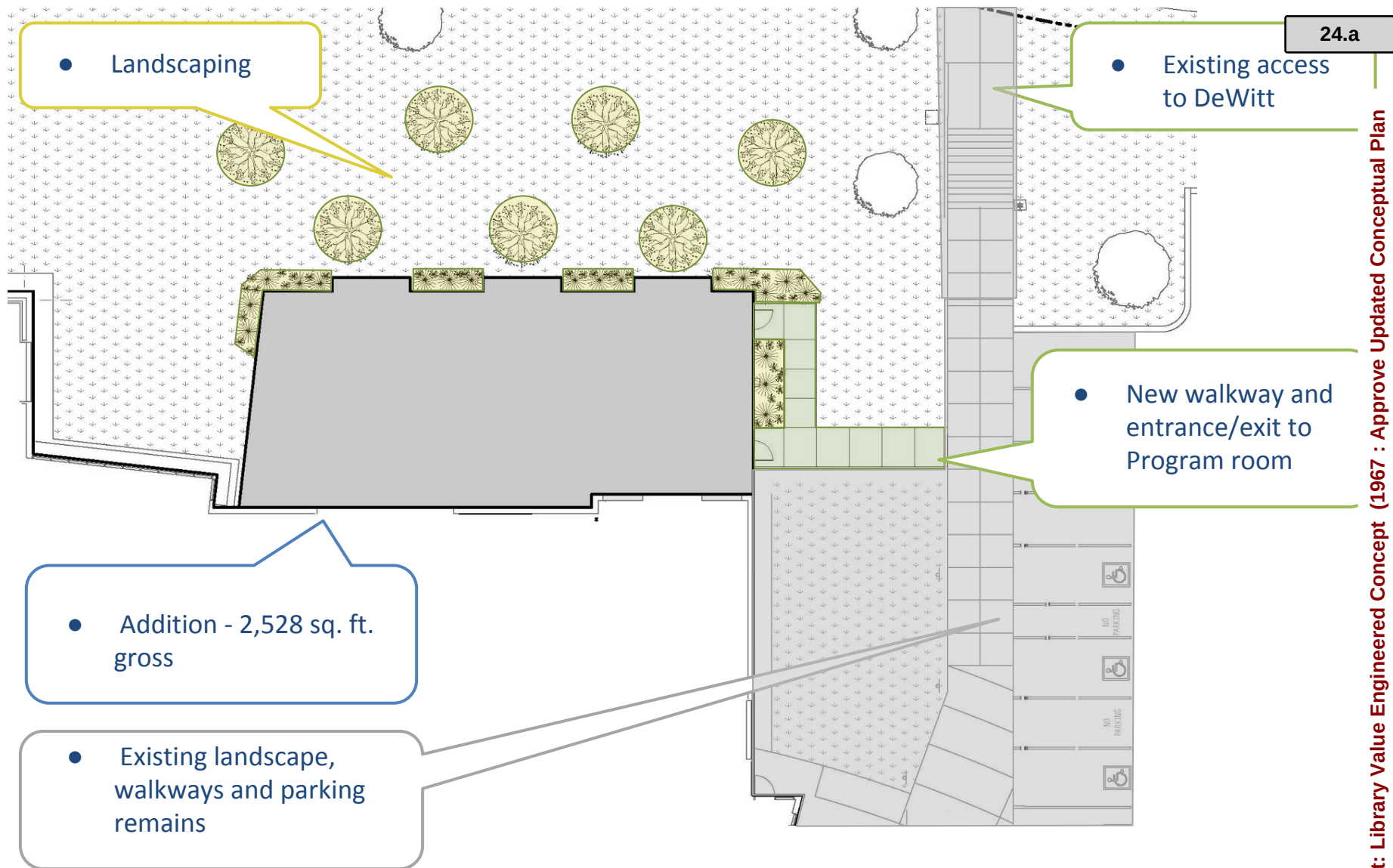
CEQA (California Environmental Quality Act):

Categorical Exemption

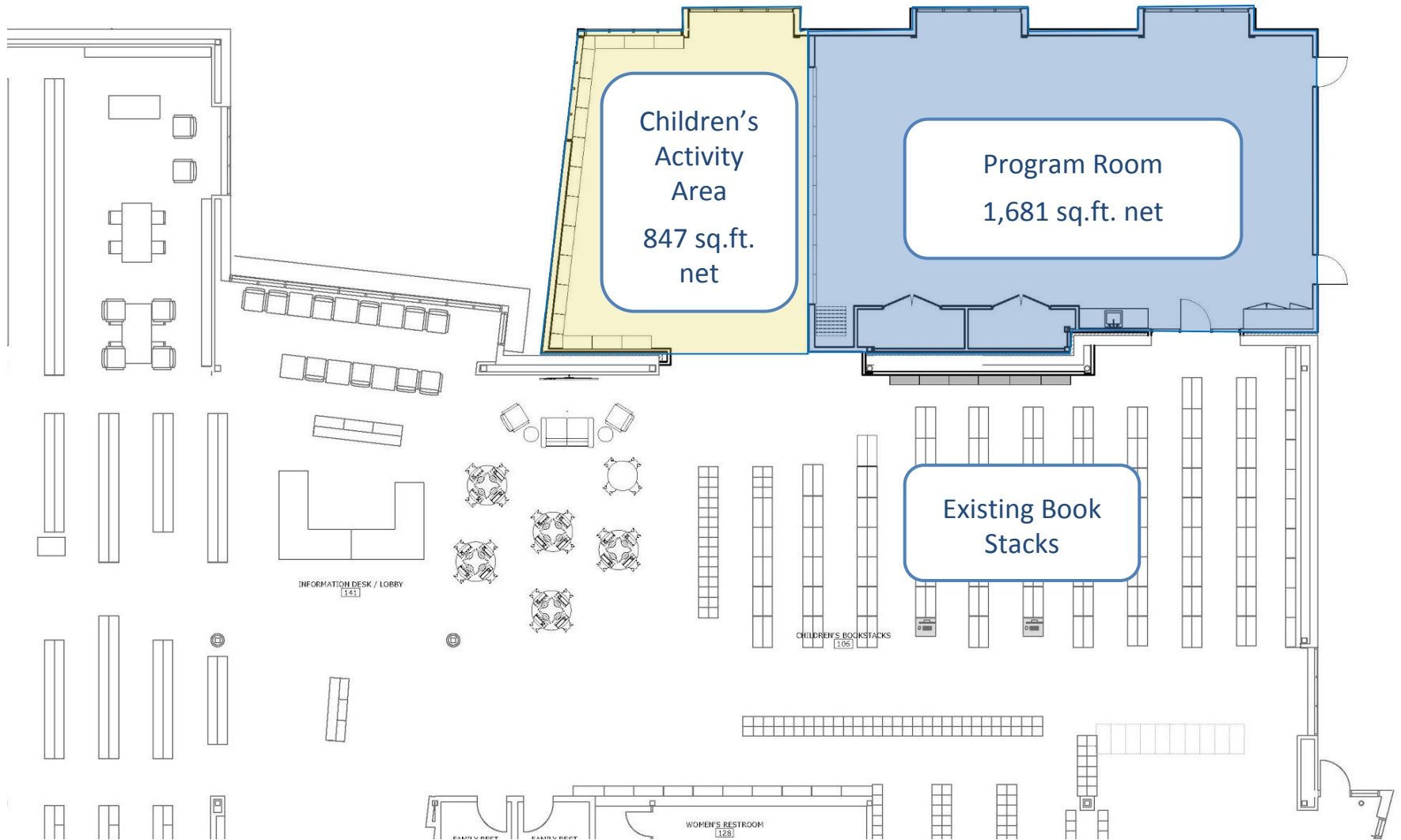
The Library Expansion Project is exempt from the California Environmental Quality Act (CEQA) under Section 15301 (Existing Facilities) (e) (1) of Guidelines for CEQA and Section 21083 of the Public Resources Code.

LINKS/ATTACHMENTS:

1. Library Value Engineered Concept



SITE DESIGN - CHILDREN'S ADDITION



CHILDREN'S ADDITION DESIGN

Note: Sq.Ft. is measured from outside face of wall

Attachment: Library Value Engineered Concept (1967 : Approve Updated Conceptual Plan



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Yat Cho, Senior Project Manager

APPROVED BY: City Manager

APPROVE UPDATE TO THE CENTENNIAL RECREATION CENTER EXPANSION PROJECT

RECOMMENDATION(S)

Direct staff to proceed with the completion of the project documents and bidding of the project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

POLICY CONSIDERATIONS:

The CRC Expansion is a high priority project that will promote community health, cost recovery for the Recreation Division, and is a top priority of the City's Bikeways, Trails, parks and Recreation Master Plan. Given the cost increases observed for public projects (building projects in particular), city staff has worked with Westin Miles Architects (WMA) on developing a conservative cost estimate and reducing the project scope to meet budget limitations. With this careful planning it has been determined that the cost to build the proposed CRC Expansion project still exceeds the project budget. With this understanding, the Council may wish to consider the following policy questions:

1. Should the City proceed with bidding the project or should the project be delayed?
2. If the bid results are higher than the engineer's estimate, would the Council consider delaying other projects in the Bikeways, Trails, Parks and Recreation Master Plan to construct this project?

REPORT NARRATIVE:

The Centennial Recreation Center (CRC) opened in October 2006 and is currently operated by the City of Morgan Hill in partnership with the YMCA of Silicon Valley. The initial constructed facility was anticipated to accommodate 2,250 membership units (8,000 members). By 2009, the facility had nearly 3,200 membership units (over 10,000 members). As the popularity of the CRC increased, it necessitated the first expansion in 2010. This resulted in the addition of over 2,000 square feet of useable fitness space and a variety of additional fitness equipment.

Since the completion of the first CRC expansion, facility membership has continued to rise. The current facility membership base is currently at 5,100 units (over 16,000 members). While creative use of programming and space have been used to make the current facility work, another facility expansion is recommended to accommodate both current and future programming needs and membership growth.

On December 6, 2017, the City Council awarded the design agreement for the CRC expansion to Weston Miles Architects (WMA). Once the agreement was executed, WMA began work to further understand the City and user needs for this phase of the expansion. With a construction budget of \$1.8 million, WMA design and estimate includes additional parking spaces as well as a 4,000 square foot expansion specifically for additional group exercise and storage space.

As WMA proceeded with the construction documents for the CRC expansion, staff and WMA struggled with escalating construction costs. At 75% design completion, both staff and WMA realized the original budget of \$1.8 million dollars was no longer feasible in constructing the originally planned 4,000 square foot expansion with a parking lot. Staff and WMA worked together to update the design with a smaller footprint and minimalistic yet functional finishes. This resulted in a project that would support the minimum needs for the expansion. Here are two options that may become part of the bidding and construction documents for the project:

Option #1

The first option provides a 3,640 square feet expansion. The square footage reduction includes a larger interior space while decreasing the overall enclosed hallway space. This proposal also includes interior finishes that are minimalistic in nature and provide consistency with the existing building. A new parking area with 25 additional spaces would also be included. The current engineer's estimate for this option is estimated at \$2.4 million.

Option #2

The second option is similar to Option #1, but further reduces the interior space to 3,140 square feet expansion. This space would be the minimum square footage for the space to function appropriately for group exercise classes. The current engineer's estimate for option #2 is estimated at \$2.2 million.

If City Council directs staff to proceed with the bidding of the project, staff proposes to bid the project based on option #1 with a deductive alternate for the square footage

reduction of option #2 (500 sf). This option would allow for flexibility during the bid award process.

Staff is recommending that the project proceed to the bidding stage. If bids are above budget significantly, then bids may be rejected, and the project rebid at a later date. Staff does not recommend a further reduction in scope and additional value engineering as the project is at its minimally functional threshold.

COMMUNITY ENGAGEMENT: Inform

From June through August of 2017, staff conducted a needs assessment to determine the expansion areas of health, wellness, and recreation. Staff collected feedback on the proposed expansion from facility users and staff, using four data points: review of customer comment cards, results of the annual customer satisfaction survey conducted by SEER Analytics, a separate online survey for member use and expansion, and staff and member focus groups.

Staff shall continue to provide information on the project with additional design information and sketches at the CRC.

ALTERNATIVE ACTIONS:

During the design of the CRC Expansion Project, the City has seen extreme cost escalation. Council members have previously suggested staff to review the opportunity for the City to hold off on projects until the construction climate cools. While this is an alternative action, based on conversation with potential bidders, recent bid results, and potential tariff related issues, staff do not believe there are indications of a cooling construction climate or reduction in construction costs in the immediate future. Therefore, should the Council direct staff to hold off on the project, it will require the cooling of the economy as a whole to take place. The design work of this project is nearly complete, so any cost savings from not bidding will be related to City capital project implementation costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

December 6, 2017 – Approve an agreement with Weston Miles Architects for design and construction support services for the Centennial Recreation Center Expansion Project.

April 17, 2017 – The Parks and Recreation Commission reviewed the conceptual plan for the Centennial Recreation Center Expansion Project and recommended approval by the City Council.

May 2, 2018 – Approve Conceptual Design for Centennial Recreation Center Expansion Project

FISCAL AND RESOURCE IMPACT:

This project is funded in the current adopted capital improvement program and is budgeted under Project No. 138016. The project is funded through the Recreation

Center Impact Fund (360). Costs associated with preparation of construction documents for bidding stage are included in the current budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

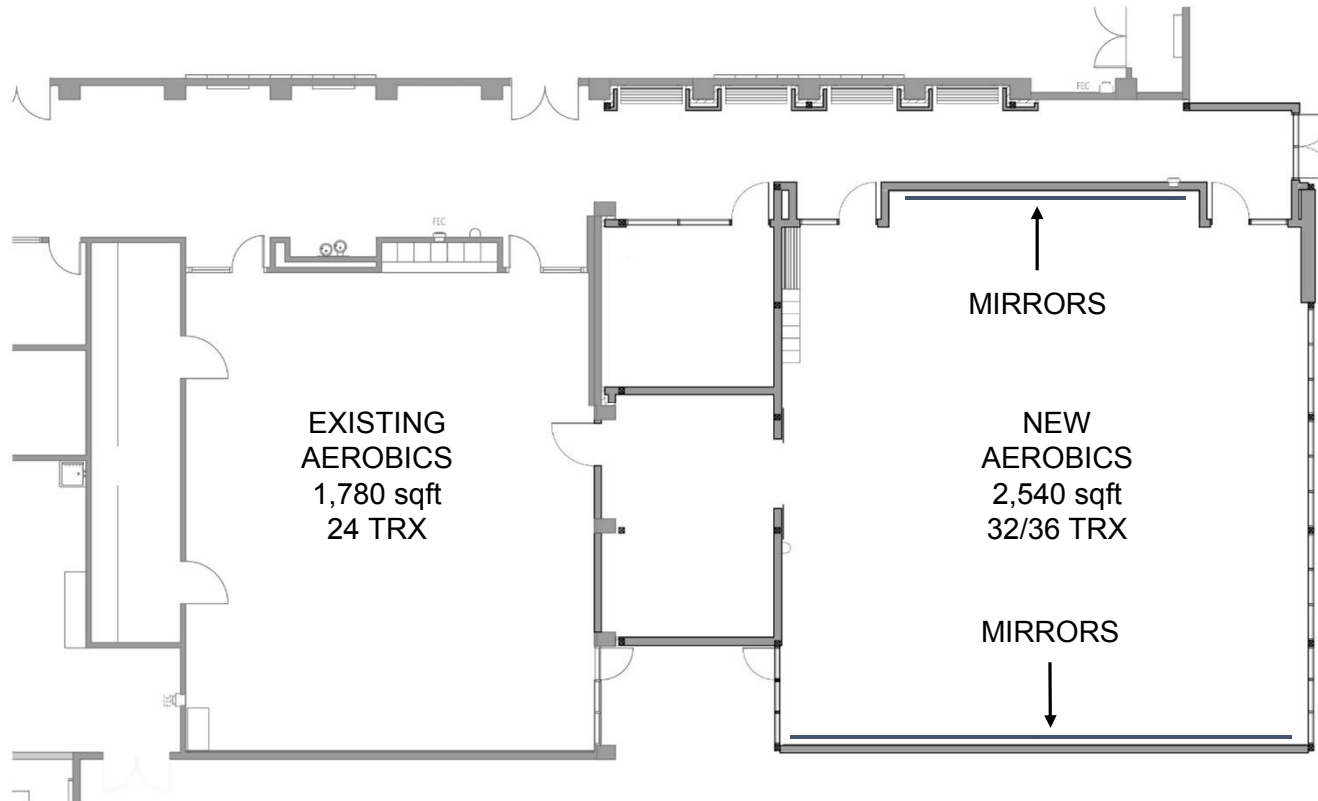
The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Section 15301 of CEQA Guidelines (Existing Facilities, Section E2), as this project will be an addition to existing structures less than 10,000 square feet meeting the following criteria:

- (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
- (B) The area in which the project is located is not environmentally sensitive.

LINKS/ATTACHMENTS:

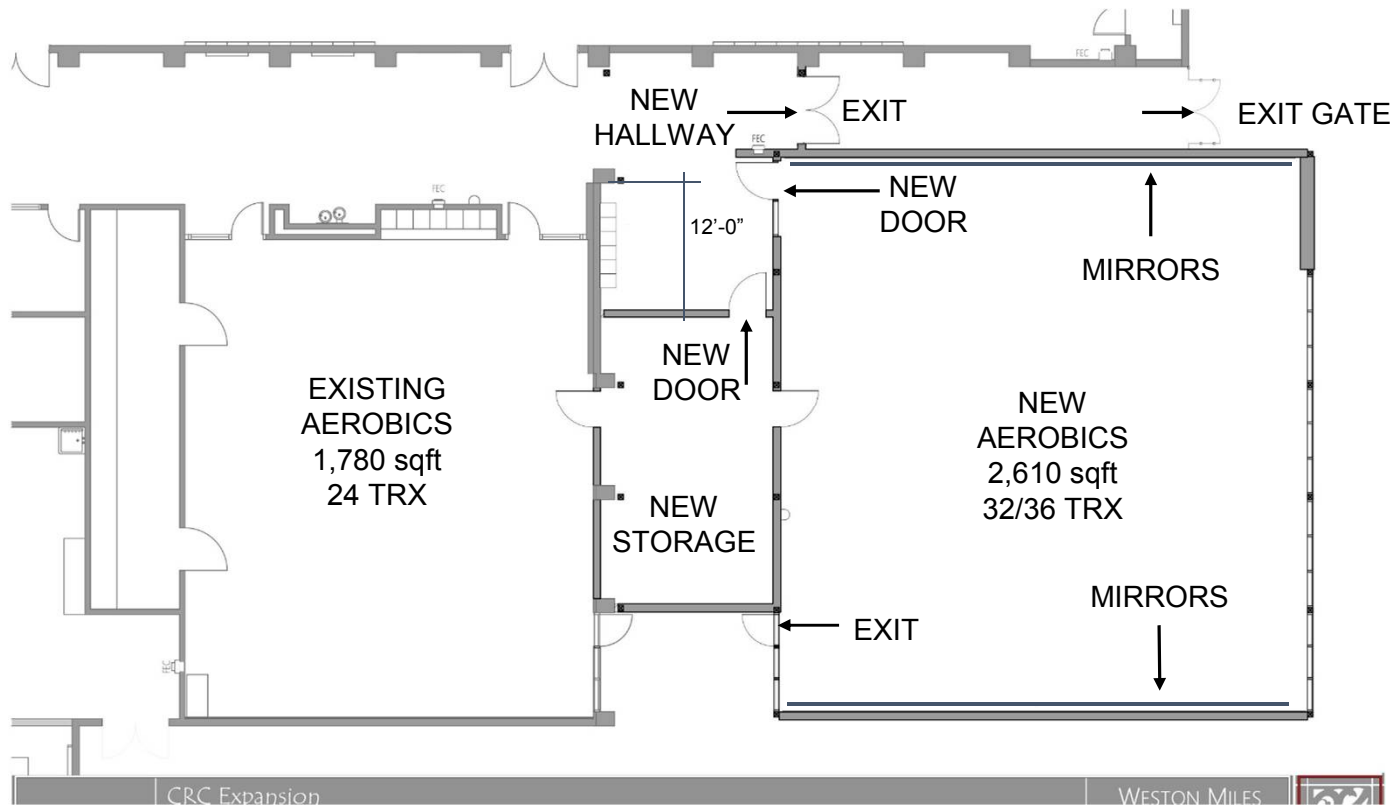
1. CRC Design Update 10-17-18

Original Floor Plan - 4,020 sqft

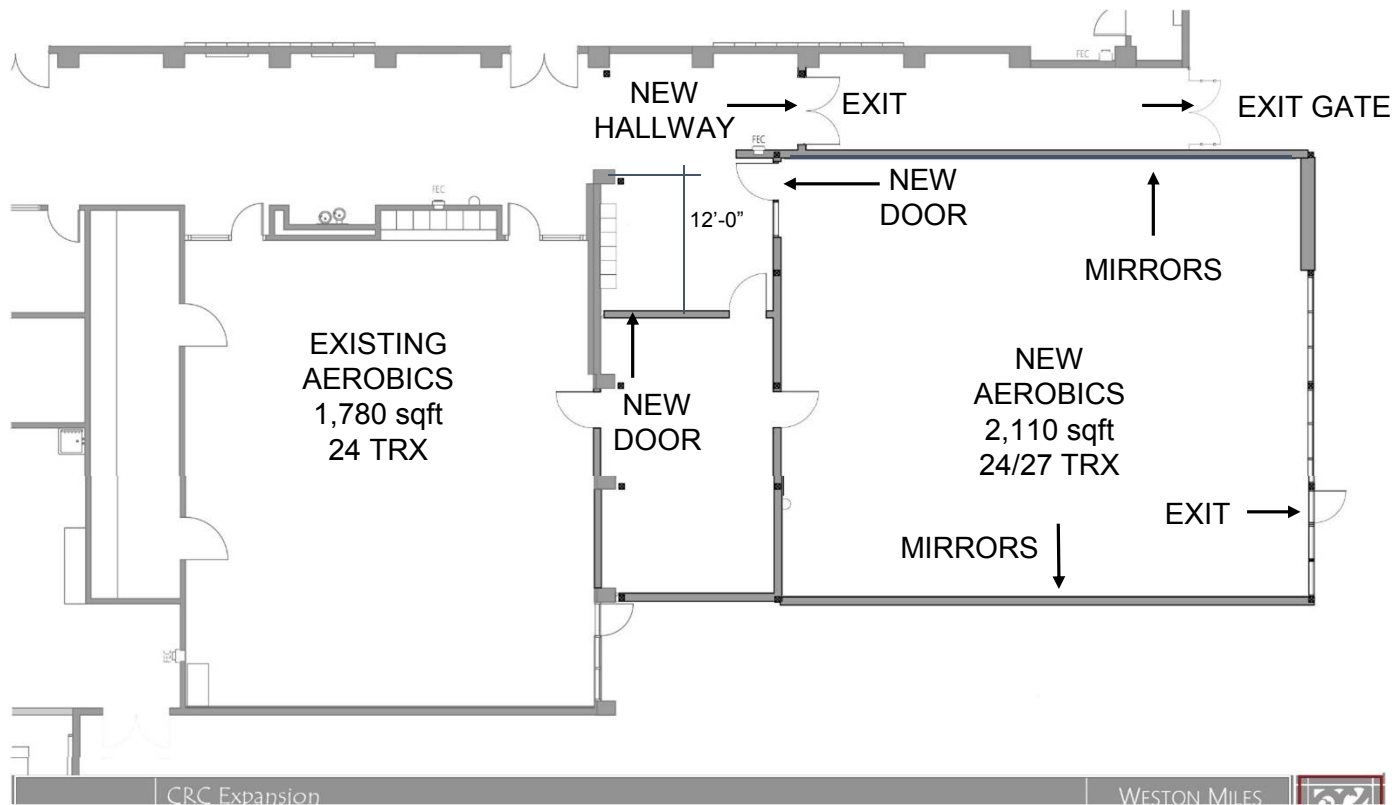


1

Option #1 Floor Plan - 3,640 sqft



Option #2: Floor Plan - 3,140 sqft





CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: John Lang, Economic Development Coordinator
APPROVED BY: City Manager

APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH EVERGREEN DEVCO, INC. FOR 20.43 ACRES LOCATED ON THE EASTERLY SIDE OF BUTTERFIELD BOULEVARD BETWEEN COCHRANE ROAD AND JARVIS DRIVE IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-32-021 AND 726-25-035.

RECOMMENDATION(S)

1. Approve an Impact Fee Freeze Agreement with Evergreen Devco, Inc. for the development of a 195,500 square foot retail center located at the corner of Butterfield Boulevard and Cochrane Road; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Economic Blueprint

General Plan/Housing Element

REPORT NARRATIVE:

When the Economic Blueprint was adopted in May 2017, it identified four key industry segments of focus including Innovation and Advanced Manufacturing, Retail, Tourism and Healthcare. The Economic Development team continues to receive a great deal of interest from businesses exploring relocation and expansion in Morgan Hill. With limited vacancies in the City's industrial areas there is renewed interest in new construction in Morgan Hill. Frequently impact fees associated with new development is a key part of a decision to build in Morgan Hill. A key Morgan Hill fiscal strategy includes collecting impact fees to finance critical community infrastructure to accommodate new development as the City grows. While the need to collect Development Impact fees is necessary, it can also be a deterrent to those businesses which the City has targeted.

A City commissioned study prepared by Strategic Economics compared development impact fees between the cities of San Jose, Morgan Hill and Gilroy using three sample prototype projects. The study analyzed a prototype for a hotel, new automobile dealership and manufacturing/R&D development project. While impact fees are not comparable from city to city because each municipality is solving for different infrastructure needs, the results of the study found that the City of Morgan Hill's

development impacts fees were higher for both the advanced manufacturing/R&D development prototype and the automobile dealership project, making the City of Morgan Hill less competitive in two out of the three prototypes. However, the City of Morgan Hill's Auto Dealer Strategy, which provides a mechanism to offset impact fees through a sales tax rebate, makes Morgan Hill more competitive than Gilroy and San Jose for automobile dealers.

To create consistency in the cost of development, the Economic Blueprint recommends policy and programmatic changes the City should employ to encourage investment in Morgan Hill. The first public policy recommendation formalized from the Economic Blueprint recommendations was approved on June 21, 2017, when the City Council adopted the Development Impact Fee Freeze Program that locks in Fiscal Year (FY) 2016-17 Development Impact Fees for a period of three years for new commercial/industrial development projects that enter into a Development Agreement approved by City Council. On February 21, 2018 City Council amended the Development Impact Fee Freeze Program to require an Impact Fee Freeze Agreement instead of a Development Agreement, to lock in impact fees.

Evergreen Devco Inc, a Southern California developer, is looking to develop a mixed-use 195,500 square foot retail center at the intersection of Butterfield Boulevard and Cochrane Road. Evergreen Devco is in the process of closing on the purchase of the property from South Bay Construction Management & Development Company. On August 8, 2018, the City Council approved a Precise Development Plan for the development of a 195,500 square foot development entitled "the Village."

Site Development in summary:

- Retail (62,500 sq. ft. total)
 - 4,500 sq. ft. Convenience store with Gas Station and Car wash
 - 3,500 sq. ft. quick services restaurant with a drive thru
 - 4,500 sq. ft. quick services restaurant with a drive thru
 - 6,000 sq. ft. retail shop space
 - 6,000 sq. ft. retail shop space
 - 10,000 sq. ft. tire store
 - 22,000 sq. ft. grocery store
 - 6,000 sq. ft. retail/service space (flexible)
- Office (49,000 sq. ft. total)
 - 35,000 sq. ft. medical office building
 - 14,000 sq. ft. office building
- Hotel (44,000 sq. ft. total)
- Residential Care (40,000 sq. ft. total)

To create certainty for the operator/developer, staff is recommending the City Council approve the Impact Fee Freeze Agreement for the construction of the retail center. The

Impact Fee Freeze Agreement will utilize the FY 2016-17 development impact fee schedule until June 30, 2020. The developer will have three years to apply for and receive building permits to benefit from the impact fee freeze. The estimated development impact fees for the full development of the 2043 acres, using the FY 2016-17 fee schedule, are \$6.36 Million.

Once fully built out based upon the Masterplan, it is estimated the center will generate approximately \$463,000 annually in direct on-going property tax (\$35,000), sales tax (\$165,000) and transient occupancy tax (\$263,000) revenue to the City's General Fund. Additionally, staff estimates the City will receive a one-time construction benefit, in the form of sales tax, of \$84,000.

If the developer applies for building permits before July 2019, the benefit received to the developer from the impact fee freeze is \$277,000. If the developer applies for building permits after July 2019, but before July 2020, the benefit of an impact fee freeze is estimated at \$561,000. The developer receives a greater benefit in reduced impact fees for each year the project is deferred, however it is very likely that the cost of construction will continue to escalate in the coming years and therefore continued delays on building permit submittal will likely cost the developer more than the savings received from an impact fee freeze.

Impact Fee Benefit to Developer

Year		2018	2019	2020
Impact Fee Schedule	2016-17	2018-19	2019-20*	2020-21*
Impact Fee Estimate	\$6,636,000	\$6,913,000	\$7,197,000	\$7,492,000
Potential Savings to Development		(\$277,000)	(\$561,000)	(\$856,000)

*Estimated with an escalation of 4.1% per year

COMMUNITY ENGAGEMENT: Inform

Approving a Fee Freeze Agreement with Evergreen Devco Company is consistent with the Impact Fee Freeze Program, aligns with the Economic Blueprint Strategy #3 "Attract New Development," Action #5, "Explore Incentive Programs to Attract Industry Specific Development."

ALTERNATIVE ACTIONS:

The City of Morgan Hill could choose to not enter into a Fee Freeze Agreement with Evergreen Devco Company to freeze impact fees. This option allows the City to collect \$277,000 more in impact fees should the developer move forward with the implementation of the Evergreen Village's Masterplan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 7, 2017, a Development Agreement with an impact fee freeze was approved for DivcoWest to stimulate new commercial/industrial development for that specific property.

On June 21, 2017, City Council approved the Citywide Impact Fee Freeze Program establishing FY 2016-17 Development Impact Fees as the basis for the three-year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

On February 21, 2018, City Council made a minor adjustment to the Impact Fee Freeze program by changing the agreement structure to an Impact Fee Freeze Agreement from a Development Agreement.

FISCAL AND RESOURCE IMPACT:

The potential loss of impact fee revenue to the City from entering into this Impact Fee Freeze agreement is expected to range between \$277,000 and \$561,000. On the opposite, the City expects to receive one-time construction benefit, in the form of sales tax, of about \$84,000. Once fully built out and operational, the City will receive an ongoing benefit of approximately \$463,000, in direct property tax, sales tax, and transient occupancy tax revenue to the City's General Fund.

CEQA (California Environmental Quality Act):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the General Plan Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. Commercial and industrial development as discussed above is consistent with the general plan policies for which the EIR was certified. There is no substantial evidence that freezing impact fees will have a significant effect on the environment beyond that already analyzed in the certified EIR; therefore, no further environmental analysis is required.

Any project specific development that occurs in the future will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. Evergreen Villages City Agr. Impact Fee Freeze

IMPACT FEE FREEZE AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

EVERGREEN DEVCO, INC., A CALIFORNIA CORPORATION,

AKA EVERGREEN VILLAGES

Attachment: Evergreen Villages City Agr. Impact Fee Freeze (1492 : Agreement with Evergreen Devco Company)

IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
EVERGREEN DEVCO, INC., A CALIFORNIA CORPORATION,
AKA EVERGREEN VILLAGES

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of [insert date_____, 20__], by and between Evergreen Devco, Inc., a California Corporation, aka Evergreen Villages, and its successors and assigns (the "Developer" or "Evergreen") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (the "City") "Developer" or "Evergreen," and the "City" may be collectively referred to herein as the "Parties"), with reference to the following facts and purposes:

RECITALS

- A. Pursuant to the authority of Morgan Hill Municipal Code Sections 3.56.095, 12.02.115, and Resolution Numbers 17-052 and 18-013, the City has established an Impact Fee Freeze Program (the "Program") to freeze Development Impact Fees to the Fiscal Year 2016-2017 Fee Schedule for new commercial/industrial construction.
- B. Developer owns, leases, , or owns an option to purchase, certain real property in the City described in the attached Exhibit A (the "Subject Property") upon which improvements are to be made for a new or expanding industrial or commercial business (the "Project").
- C On [insert date_, 20__], [the City Council of the City] granted a request of the Developer to be a Program participant with respect to locking in Development Impact Fees at the Fiscal Year 2016-2017 Impact Fee Schedule in the attached Exhibit B.
- D. Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in annual changes to Development Impact Fees, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Impact Fee Program was adopted.

ARTICLE 1

ADMINISTRATION

1.01 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(2) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(3) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(4) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.

(5) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(6) **"Property"** shall mean that certain real property consisting of approximately 20 acres located within the City, and as may be further subdivided, as may be more particularly described and shown on **Exhibit A** to this Agreement.

(7) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.02 Term.

The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue for each building, lot or parcel (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) until the earliest of (1) the issuance of certification of occupancy for the for each building, lot or parcel, that is part of the Project, or (2) June 30, 2021.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.

The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any of the fees already agreed to and paid by Developer and not subject of this Agreement. The Subsequent Approvals, provided such Subsequent Approvals are:

- (i) In compliance with all controlling California law;
- (ii) Mutually agreed to by the Parties; and
- (iii) Duly enacted by City.

- (2) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

- (3) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.05. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.05(d).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents

assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. As part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees as described in Exhibit B at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code or as agreed between Developer and City.

(c) Processing Fees. The Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears,

for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.03 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.04 Timing of Development.

Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes, as these exist on the Effective Date. Except as otherwise provided for herein, in the event Developer fails to comply with the above permit issuance and beginning construction by June 30, 2021 the Impact Fee Freeze Program under Resolution 17-052 may expire.

2.05 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-

public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or her designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the City Manager or her designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, and provided further that the Project and the Developer are otherwise in compliance with all agreements and approvals related to the project, the City Manager or her designee may approve the proposed amendment or modification without notice. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals triggering further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer.

(b) For the purpose of this Agreement, a "minor amendment" shall not include any of the following:

- (i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code or by California law, including provisions relating to: (1) the duration or term of this Agreement without Notice to Council (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or
- (ii) Any material amendment or modification, or elimination of provisions set forth in Article 2 of this Agreement.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or her designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

ARTICLE 2

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.02 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.03 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys fees and costs (including related court costs) incurred by the City.

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.04 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate**." A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.04(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

2.02 Assignment.

Developer may assign its rights and obligations under this Agreement to third-parties who apply to purchase or construct a portion of the Project with no additional fees or costs to Developer or Assignee so long as the uses are allowed and/or proposal remains consistent with the uses currently allowed for the subject property or as otherwise allowed in the future.

4.06 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02, or at such other time as this Agreement is terminated in accordance with the terms hereof, or as extended by the agreement of the Parties, whichever occurs last .

ARTICLE 3

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, arbitration fees and costs, court costs, and such other costs as may be fixed by the court or by an Arbitrator.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Except as otherwise set forth herein, Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Except as otherwise set forth herein, Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be

that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(g) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Evergreen Devco, Inc., A California Corporation
aka Evergreen Villages
Rogg Collins
Zach Lauterbach
2390 E. Camelback Road, Suite 410
Phoenix, Az 85016
Tel. (602) 567-7125
Fax: (602) 567-7150
Emails: rcollins@evgre.com; zlauterbach@evgre.com

With a Copy To: Evergreen Devco, Inc., A California Corporation,
aka Evergreen Villages
c/o Christy Smith, General Counsel
2390 E. Camelback Road, Suite 410
Phoenix, Az 85016
Tel. (602) 567-7114
Fax: (602) 567-0459
Email: csmith@evgre.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(h) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(i) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(j) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(k) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument, and may be executed and delivered by each Party to the other Party by electronic means.

(m) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B 2016/2017 Impact Fee Schedule

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

DEVELOPER:

s/ _____

s/ _____

Christina J. Turner
City Manager

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

s/ _____

Attest:

Attachment: Evergreen Villages City Agr. Impact Fee Freeze (1492 : Agreement with Evergreen Devco Company)

s/ _____

Name/Title [print]

Date: _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney
Date: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED

Attachment: Evergreen Villages City Agr. Impact Fee Freeze (1492 : Agreement with Evergreen Devco Company)

EXHIBIT B
2016-2017 Impact Fee Schedule

EXHIBIT B
-1-



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: John Lang, Economic Development Coordinator
APPROVED BY: City Manager

APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH BRIDGE GROUP INVESTMENTS FOR INDUSTRIAL DEVELOPMENT ON 7.9 ACRES LOCATED ON JARVIS DRIVE IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-30-013.

RECOMMENDATION(S)

1. Approve an Impact Fee Freeze Agreement with Bridge Group Investments, LLC. for the development of a 503,000 square foot corporate office/warehouse facility located on Jarvis Drive; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Economic Development and
Telecommunications
Financial Stewardship

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

When the Economic Blueprint was adopted in May 2017, it identified four key industry segments of focus including Innovation and Advanced Manufacturing, Retail, Tourism and Healthcare. The Economic Development team continues to receive a great deal of interest from businesses exploring relocation and expansion in Morgan Hill. With limited vacancies in the City's industrial areas, there is renewed interest in new construction in Morgan Hill. Frequently impact fees associated with new development is a key part of a decision to build in Morgan Hill. A key Morgan Hill fiscal strategy includes collecting impact fees to finance critical community infrastructure to accommodate new development as the City grows. While the need to collect Development Impact fees is necessary, it can also be a deterrent to those businesses which the City has targeted.

A City commissioned study prepared by Strategic Economics compared development impact fees between the cities of San Jose, Morgan Hill and Gilroy using three sample prototype projects. The study analyzed a prototype for a hotel development, new automobile dealership and manufacturing/R&D development project. While impact fees are not comparable from city to city because each municipality is solving for different infrastructure needs, the results of the study found that the City of Morgan Hill's

development impact fees were higher for both the advanced manufacturing/R&D development prototype and the automobile dealership project, making the City of Morgan Hill less competitive in two out of the three prototype areas. However, the City of Morgan Hill's Auto Dealer Strategy, which provides a mechanism to offset impact fees through a sales tax rebate, makes Morgan Hill more competitive than Gilroy and San Jose for automobile dealers.

To create consistency in the cost of development, the Economic Blueprint recommends policy and programmatic changes the City should employ to encourage investment in Morgan Hill. The first public policy recommendation formalized from the Economic Blueprint recommendations was approved on June 21, 2017, when the City Council adopted the Development Impact Fee Freeze Program that locks in Fiscal Year (FY) 2016-17 Development Impact Fees for a period of three years for new commercial/industrial development projects that enter into a Development Agreement approved by City Council. On February 21, 2018, City Council amended the Development Impact Fee Freeze Program to require an Impact Fee Freeze Agreement instead of a Development Agreement, to lock impact fees.

Bridge Group Investments, LLC., also known as Shoe Palace Corporation, is a family owned business specializing in footwear and athletic apparel that has strong roots in Santa Clara County. The business started in 1993 with a single retail store in West San Jose and has grown to 100 retail stores throughout the United States. Shoe Palace purchased 38 acres of land and relocated their corporate headquarters and distribution warehouse to Morgan Hill in 2013. They occupied the former 258,000 square foot Abbot Laboratory building at 755 Jarvis Drive. Shoe Palace owns 7.9 acres of vacant land adjacent to their current facility on which they are proposing to develop a 503,000 square foot warehouse/office facility (SR 2018-013). They anticipate submitting building plans once their site review has been approved.

The existing Shoe Palace operation currently has approximately 200 personnel on site Monday through Friday generally between 6 AM to 11 PM. The new facility will result in an additional 100 personnel bringing the total projected personnel to 300.

To create certainty for Bridge Group Investments LLC, staff is recommending the City Council approve an Impact Fee Freeze Agreement for the construction of the new warehouse/office building for Shoe Palace Corporation. The Impact Fee Freeze Agreement will utilize the FY 2016-17 development impact fee schedule through June 30, 2020. The developer will have until June 30, 2020 to apply for, and receive building permits, to benefit from the impact fee freeze. The estimated development impact fees using the Fee Schedule for FY 2016-17 are \$2.17 million.

Once operational, it is estimated the new warehouse/office will generate \$52,000 in direct on-going property tax (\$43,000) and sales tax (\$9,000) revenue to the City's General Fund. Additionally, staff estimates the City will receive one-time construction benefit in the form of sales tax of about \$103,000. If the Developer applies for building permits before July 2019, the benefit received to the developer from the impact freeze is

\$89,000. If the developer applies for building permits after July 2019, but before July 2020, the benefit of the impact freeze is estimated at \$181,000. While the developer receives cost savings for each year the project is deferred, it is very likely that the cost of construction will continue to escalate in the coming years and therefore continued delays on building permit submittal will likely cost the developer more than the savings received from an impact fee freeze.

Impact Fee Benefit to Developer

	Year		2018	2019*
Impact Fee Schedule	2016/2017		2018/2019	2019/2020*
Impact Fee Estimate	\$2,169,000		\$2,258,000	\$2,350,000
Potential Savings to Development			(\$89,000)	(\$181,000)

*Estimated with an escalation of 4.1% per year

COMMUNITY ENGAGEMENT: Inform

Approving a Fee Freeze Agreement with Bridge Group Investments, LLC is consistent with the Impact Fee Freeze Program and aligns with the Economic Blueprint Strategy #3 “Attract New Development,” Action #5, “Explore Incentive Programs to Attract Industry Specific Development.”

ALTERNATIVE ACTIONS:

The City of Morgan Hill could choose to not enter into a Fee Freeze Agreement with Shoe Palace Corporation to freeze impact fees. This option saves the City \$89,000 in forgone impact fee revenue.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 7, 2017, a Development Agreement with an impact fee freeze was approved for DivcoWest to stimulate new commercial/industrial development for that specific property.

On June 21, 2017 City Council approved the Citywide Impact Fee Freeze Program establishing FY 2016-17 Development Impact Fees as the basis for the three-year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

On February 21, 2018 City Council made a minor adjustment to the Impact Fee Freeze program by changing the agreement structure to an Impact Fee Freeze Agreement from a Development Agreement.

FISCAL AND RESOURCE IMPACT:

The potential loss of impact fee revenue to the City from entering into this Impact Fee Freeze Agreement is expected to range between \$89,000 and \$181,000. On the opposite, the City expects to receive one-time construction benefit, in the form of sales tax, of about \$103,000. Once operational, the City will receive an ongoing benefit of

approximately \$52,000 in direct property and sales tax revenue to the City's General Fund.

CEQA (California Environmental Quality Act):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the General Plan Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. Commercial and industrial development as discussed above is consistent with the general plan policies for which the EIR was certified. There is no substantial evidence that freezing impact fees will have a significant effect on the environment beyond that already analyzed in the certified EIR; therefore, no further environmental analysis is required.

Any project specific development that occurs in the future will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. Impact Fee Freeze Agreement- Bridge Group Investments
2. Exhibit B: FY 16-17 Fee Schedule

IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
BRIDGE GROUP INVESTMENTS LLC

IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
BRIDGE GROUP INVESTMENTS LLC

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of _____, 2018, by and between Bridge Group Investments LLC, a California Corporation (the "Developer") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), with reference to the following facts and purposes:

RECITALS

A. Pursuant to the authority of Morgan Hill Municipal Code Sections 3.56.095, 12.02.115, and Resolution Numbers 17-052 and 18-013, the City has established an Impact Fee Freeze Program (the "Program") to freeze Development Impact Fees to the Fiscal Year 2016-2017 Fee Schedule for new commercial/industrial construction.

B. Developer owns or leases certain real property in the City described in the attached Exhibit A (the "Subject Property") upon which improvements are to be made for a new or expanding industrial or commercial business (the "Project").

C. On _____, 2018, the City Council of the City granted a request of the Developer to be a Program participant with respect to locking in Development Impact Fees at the Fiscal Year 2016-2017 Impact Fee Schedule in the attached Exhibit B.

D. Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in annual changes to Development Impact Fees, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Impact Fee Program was adopted.

ARTICLE 1

ADMINISTRATION

1.01 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(2) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(3) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(4) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.

(5) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(6) **"Property"** shall mean that certain real property consisting of approximately __ acres located within the City, as more particularly described and shown on *Exhibit A* to this Agreement.

(7) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.02 **Term.**

The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) until the earliest of (1) the issuance of a certification of occupancy for the Project or (2) June 30, 2020.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All the provisions, terms and conditions of this Agreement.

(2) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes any requirements for notice, acts of protest and/or right to litigation pursuant to the Mitigation Fee Act and/or any other applicable law.

(3) The Subsequent Approvals, provided such Subsequent Approvals are:

- (i) In compliance with all controlling California law;
- (ii) Mutually agreed to by the Parties; and
- (iii) Duly enacted by City.

(4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(5) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.05. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.05(d).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. As part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees as described in Exhibit B at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. The Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus

ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.03 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.04 Timing of Development.

Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction by June 30, 2020 the Impact Fee Freeze Program under Resolution 17-052 shall expire.

2.05 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (e.g., City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve

Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or her designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the City Manager or her designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, and provided further that the Project and the Developer are otherwise in compliance with all agreements and approvals related to the project, the City Manager or her designee may approve the proposed amendment or modification without notice. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals triggering further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer.

(b) For the purpose of this Agreement, a "minor amendment" shall not include any of the following:

- (i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code or by California law, including provisions relating to: (1) the duration or term of this Agreement, (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general

location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or

- (ii) Any material amendment or modification, or elimination of provisions set forth in Article 2 of this Agreement.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or her designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.02 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war,

insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.03 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this

Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.04 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.04(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.06 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02, or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(d) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(e) Requirements of Development Agreement Statute. The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(f) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(g) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(h) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(i) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this

Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(j) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Bridge Group Investments LLC 755 Jarvis Drive Morgan Hill, CA 95037

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(k) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(l) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(m) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(n) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(o) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(p) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B 2016/2017 Impact Fee Schedule

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

DEVELOPER:

Bridge Group Investments LLC

s/ _____

George Marsh
Name/Title [print]

Corporate entities must provide a second signature:

s/ _____

John Mesha
Name/Title [print]

Date: _____

Donald A. Larkin

City Attorney

Date: _____

Attachment: Impact Fee Freeze Agreement- Bridge Group Investments (1991 : Agreement with Bridge Group Investments LLC)

EXHIBIT A
**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED**

Real property in the City of Morgan Hill, County of Santa Clara, State of California, and is described as follows:

PARCELS 5 AND 6, AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1983 IN BOOK 522 OF MAPS, AT PAGES 3 AND 4.

APN: 726-30-013

Attachment: Impact Fee Freeze Agreement- Bridge Group Investments (1991 : Agreement with Bridge Group Investments LLC)

EXHIBIT B

-1-

EXHIBIT B

2016-2017 Impact Fee Schedule

Attachment: Impact Fee Freeze Agreement- Bridge Group Investments (1991 : Agreement with Bridge Group Investments LLC)



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

9.25.18	FEE SCHEDULE: 07.01.2016	Shoe Palace Corp
DATE	PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS	NAME
726-30-013		755 Jarvis Drive
TRACT / APN		MAILING ADDRESS
Morgan Hill, CA 95037		408-629-1000
ADDRESS / LOT		CITY, STATE, ZIP CODE
Shoe Palace Warehouse	N/A	
PROJECT DESCRIPTION	FEE SCHEDULE EXPIRATION DATE	PHONE NUMBER

NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☒ THIS FEE SCHEDULE IS ESTIMATE ONLY

IF BOX ABOVE CHECKED: FEE SCHEDULE IS ONLY FOR ESTIMATE PURPOSES. FEE SCHEDULE CALCULATED BASED ON INFORMATION PROVIDED TO CITY BY APPLICANT. FINAL FEE SCHEDULE MAY DIFFER BASED UPON CHANGE IN SCOPE OF PROJECT.

MJ

CALCULATED BY

CHECKED BY

ESTIMATE

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
 TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☒ RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
 TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☒ NOT IN RDA AREA BOUNDARY

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
 TO ANNUAL CPI INCREASES.

☐ COMMERCIAL OR INDUSTRIAL SHELL

**RDA SEWER ALLOCATION
 COMPLETED BY:**
 (write Initials below)

version 07.01.16 std

WATER FEES:

1. METER DEPOSIT: 650-37672				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1"	\$468	x	0	= \$0
1 1/2"	\$1,434	x	0	= \$0
2"	\$1,619	x	0	= \$0
3" or larger-Time & Material + Meter Cost				= \$0
METER CREDITS				
	\$0	x	0	= \$0
SUBTOTAL = \$0				
2. BACKFLOW CONST. INSPECTION: 650-37859				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
\$62	x	0	Each	= \$0
3. WATER FRONTAGE CHARGE: 650-37663				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1 Side	\$66	x	0	LF = \$0
2 Sides	\$37	x	478	LF = \$17,686
4. WATER IMPACT FEE: 651-37648				
(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)				
a) Residential				
\$3,624 /DU	x	0	DU	= \$0
(Single Family)				
\$3,269 /DU	x	0	DU	= \$0
(Multi Family)				
b) Commercial & Industrial				
(Includes Landscape Service)				
\$10,288 /AC	x	7.9	AC	= \$81,275
WATER CREDITS				
	\$0	x	0	= \$0
SUBTOTAL = \$81,275				
WATER FEE TOTALS = \$98,961				
5. ENGINEERING & INSPECTION FEE: 206-38734				
(Minimum \$500.00):				
(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)				
ENGINEERING ESTIMATE: \$0				
DATE ENGINEERING EST. SUBMITTED: _____				
% APPLIES TO ENGINEER'S ESTIMATE				
13.3%	\$1	to	\$100,000	= \$0
11.8%	\$100,001	to	\$200,000	= \$0
10.3%	\$200,001	to	\$500,000	= \$0
8.8%	OVER		\$500,000	= \$0
ENGINEERING FEE = \$0				
DEPOSIT PAID = \$0				
ENGINEERING FEE TOTAL = \$0				
5A. LONG RANGE PLANNING FEE: 207-37912				
LONG RANGE PLANNING FEE (15% of E&I) = \$0				

SEWER FEES:

6. SEWER FRONTAGE CHARGE: 640-37663				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1 Side	\$66	/LF	x 0	LF = \$0
2 Sides	\$37	/LF	x 478	LF = \$17,686
7. SEWER IMPACT FEE: 641-37648				
(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.16).				
a) Residential				
\$14,183 /DU	x	0	DU	= \$0
(Single Family)				
\$12,004 /DU	x	0	DU	= \$0
(Multi Family)				
b) Commercial & Industrial				
\$48.56 /GPD	x	26680	GPD	= \$1,295,581
\$48.56 /GPD	x	0	GPD	= \$0
SEWER CREDITS				
	\$0	x	0	= \$0
RDA ASSUMED SEWER OBLIGATION				
\$14,183 /DU	x	0	DU	= \$0
(Single Family)				
\$12,004 /DU	x	0	DU	= \$0
(Multi Family)				
\$48.56 /GPD	x	0	GPD	= \$0
(Commercial & Industrial)				
SUBTOTAL = \$1,295,581				
SEWER FEE TOTALS = \$1,313,267				
STORM DRAIN FEES:				
8. STORM DRAIN FRONTAGE CHARGE: 304-37663				
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)				
1 Side	\$108	/LF	x 0	LF = \$0
2 Sides	\$53	/LF	x 478	LF = \$25,334
9. STORM DRAIN IMPACT FEE: 303-37648				
(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)				
\$3,847 /DU	x	0	DU	= \$0
(Single Family)				
\$2,001 /DU	x	0	DU	= \$0
(Multi Family)				
\$41,897 /ACRE	x	0	AC	= \$0
(Commercial & Office)				
\$30,505 /ACRE	x	7.9	AC	= \$240,990
(Industrial)				
STORM CREDITS				
	\$0	x	0	= \$0
SUBTOTAL = \$240,990				
STORM DRAIN FEE TOTALS = \$266,324				

10. UNDERGROUNDING UTILITIES: 350-37649					
<i>(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)</i>					
1 Side	\$681	x	0	LF	= \$0
2 Sides	\$343	x	0	LF	= \$0
11a. PARK IMPACT FEE: 301-37648					
<i>(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$5,378 /DU	x	0	DU	=	\$0
<i>(Single Family - Sub)</i>					
\$3,910 /DU	x	0	DU	=	\$0
<i>(Single Family - No Sub)</i>					
\$5,181 /DU	x	0	DU	=	\$0
<i>(Multi Family - Sub)</i>					
\$3,771 /DU	x	0	DU	=	\$0
<i>(Multi Family - No Sub)</i>					
11b. PARK MAINTENANCE DEV. FEE: 302-37649					
\$0	x	0	DU	=	\$0
PARK CREDITS					
\$0	x	0		=	\$0
PARK FEE TOTAL =					\$0
12. TRAFFIC IMPACT FEE: 309-37648					
<i>(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16).</i>					
\$1,863 /DU	x	0	DU	=	\$0
<i>(Single Family)</i>					
\$1,155 /DU	x	0	DU	=	\$0
<i>(Multi Family)</i>					
\$1,863 /PHT	x	0	PHT	=	\$0
<i>(Commercial)</i>					
\$1,863 /PHT	x	234	PHT	=	\$435,942
<i>(Industrial)</i>					
TRAFFIC CREDITS					
\$0	x	0		=	\$0
TRAFFIC FEE TOTAL =					\$435,942
13. LIBRARY IMPACT FEE: 348-37648					
<i>(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$1,974 /DU	x	0	DU	=	\$0
<i>(Single Family)</i>					
\$1,902 /DU	x	0	DU	=	\$0
<i>(Multi Family)</i>					
LIBRARY CREDITS					
\$0	x	0		=	\$0
LIBRARY FEE TOTAL =					\$0
14. BURROWING OWL MITIGATION: 232-38145					
<i>(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)</i>					
\$200 /DU		0	DU	=	\$0
<i>(Residential)</i>					
\$1,395 /AC		7.9	AC	=	\$11,021
<i>(Commercial/Industrial)</i>					

15a. MAP CHECK FEE: 206-38716					
<i>(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)</i>					
PARCEL MAP:	\$3,805	=			\$0
TRACT MAP:	\$5,667	=			\$0
16. POLICE IMPACT FEE: 311-37648					
<i>(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$767 /DU	x	0	DU	=	\$0
<i>(Single Family)</i>					
\$741 /DU	x	0	DU	=	\$0
<i>(Multi Family)</i>					
\$1,666 /ACRE	x	0	AC	=	\$0
<i>(Commercial)</i>					
\$2,333 /ACRE	x	7.9	AC	=	\$18,431
<i>(Industrial)</i>					
POLICE CREDITS					
\$0	x	0		=	\$0
POLICE FEE TOTAL =					\$18,431
17. FIRE IMPACT FEE: 313-37648					
<i>(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)</i>					
\$118 /DU	x	0	DU	=	\$0
<i>(Single Family)</i>					
\$112 /DU	x	0	DU	=	\$0
<i>(Multi Family)</i>					
\$1,550 /ACRE	x	0	AC	=	\$0
<i>(Commercial)</i>					
\$1,550 /ACRE	x	7.9	AC	=	\$12,245
<i>(Industrial)</i>					
FIRE CREDITS					
\$0	x	0		=	\$0
FIRE FEE TOTAL =					\$12,245
18. PUBLIC FACILITIES IMPACT FEE: 347-37648					
<i>(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$512 /DU	x	0	DU	=	\$0
<i>(Single Family)</i>					
\$493 /DU	x	0	DU	=	\$0
<i>(Multi Family)</i>					
\$1,128 /ACRE	x	0	AC	=	\$0
<i>(Commercial)</i>					
\$1,579 /ACRE	x	7.9	AC	=	\$12,474
<i>(Industrial)</i>					
PUBLIC FACILITIES CREDITS					
\$0	x	0		=	\$0
PUBLIC FACILITIES FEE TOTAL =					\$12,474
20. COMMNTY/REC CTRS IMPACT FEE: 360-37648					
<i>(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)</i>					
\$3,663 /DU	x	0	DU	=	\$0
<i>(Single Family)</i>					
\$3,213 /DU	x	0	DU	=	\$0
<i>(Multi Family)</i>					
PUBLIC FACILITIES CREDITS					
\$0	x	0		=	\$0
PUBLIC FACILITIES FEE TOTAL =					\$0

19. RDCS MEASURE C FEES:		
School Pedestrian Safety	(355-37655)	= \$0
Public Facilities	(346-37649)	= \$0
Park Development	(302-37649)	= \$0
Public Fac. - Circulation	(346-37649)	= \$0
TOTAL RDCS MEASURE C FEES		= \$0

OTHER:		
LED Streetlight Fund	(010-37722)	= \$0
		= \$0
		= \$0
TOTAL FEES DUE		= \$2,168,664

Notes & Comments:

Proposed Shoe Palace "warehouse". Undeveloped apn 726-30-013(7.9 AC). Jarvis Drive Frontage = 478LF (SD,SS,W)

Proposed new Warehouse = 433,400SF. Proposed new office = 70,000sf Total building = 503,400sf.

20% office allowance for warehouse use, therefore, all floor area to be charged as warehouse.

SEWER:

Industrial/Warehouse coefficient = 0.053 gpd/sf

New warehouse building = (503,400 sf)(0.053 gpd/sf) = 26,680 gpd

TRAFFIC:

Warehousing Traffic Coefficient: 0.47 pht/1000sf. ITE 7th Ed. Ave. Veh trip ends vs. 1000sf PM peak of adj street traffic

New warehouse building = (503,400 sf)(0.47 pht/1000sf) = 234 PHT

****THIS ESTIMATE DOES NOT INCLUDE ENGINEERING AND INSPECTION FEES OR WATER METERS.**

**OTHER FEE RESOLUTIONS:

RESOLUTION 5006, EFFECTIVE 07.03.1996
 RESOLUTION 5128, EFFECTIVE 01.05.1998
 RESOLUTION 5658, EFFECTIVE 03.19.2003
 RESOLUTION 5686, EFFECTIVE 08.18.2003
 RESOLUTION 5765, EFFECTIVE 01.21.2004
 RESOLUTION 5837, EFFECTIVE 10.18.2004
 RESOLUTION 6080, EFFECTIVE 01.17.2007
 RESOLUTION 6133, EFFECTIVE 12.05.2007
 RESOLUTION 6326, EFFECTIVE 04.28.2010
 RESOLUTION 6671, EFFECTIVE 09.16.2013



City of Morgan Hill Economic Development

Economic Development Website

Item 18

LAUNCH REVIEW
OCTOBER 17, 2018

OUR GOAL

Create an Economic Development website that will:

- Speak to our target audiences (businesses)
- Project the image we want to communicate
- Facilitate promotion vis-à-vis our Blueprint goals
- Provide essential services to our customers

OUR PROCESS

Engage our stakeholders:

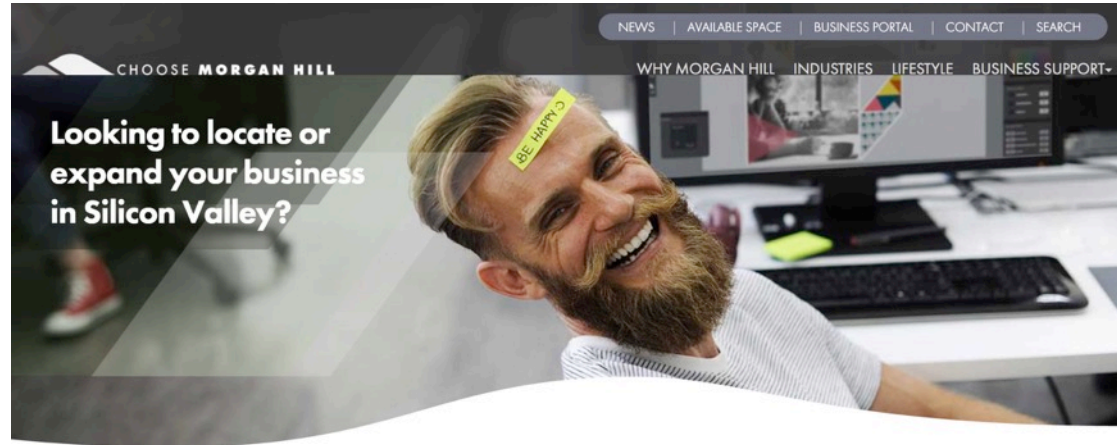
- City teams
- Business owners
- Brokers
- Chamber of Commerce

Design and development:

- Discovery
- “Competitive” research
- Messaging
- Design
- Production

HIGHLIGHTS

A new look, a
new voice for
Economic
Development



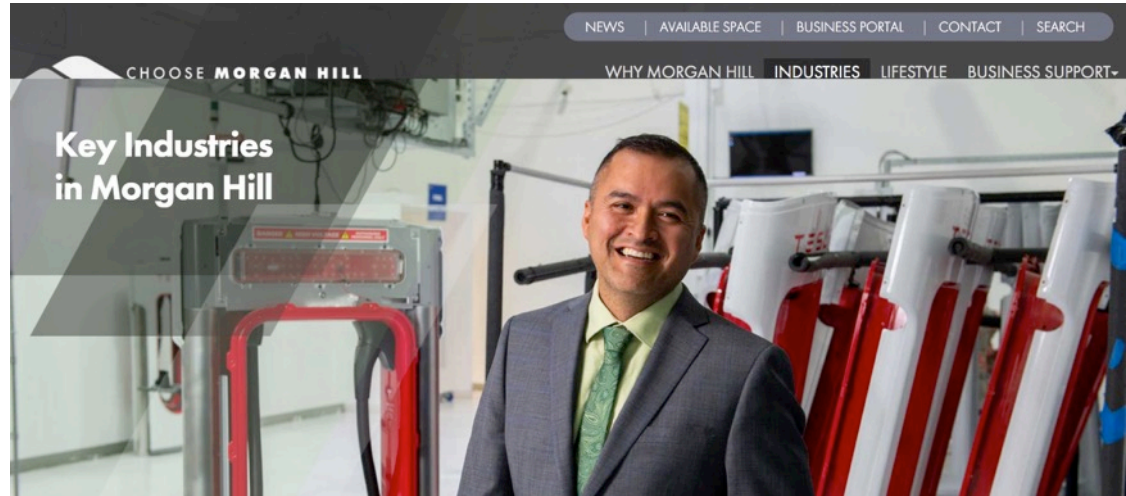
**Love where
you work.**

Morgan Hill is a vibrant and growing community 30 minutes from the San Jose International Airport, and one of the last untapped opportunities in Silicon Valley.

Businesses love Morgan Hill, and we love them right back: the established, the emerging, the expanding and the entrepreneurial. We don't just welcome new businesses, we actively work to support them with a pro-business, pro-development environment. With our business-friendly zoning and public policies, you'll have a partner in your corner working to make it easy every step of the way.

HIGHLIGHTS

Engagement
of our key
industries
and leaders



INNOVATION AND ADVANCED
MANUFACTURING



HEALTHCARE



HOSPITALITY



RETAIL

HIGHLIGHTS

Focus on
our benefits



Quality of life, and a high-quality workforce.

Affordable housing, abundant outdoor recreation activities, and a picturesque and vibrant downtown — many Silicon Valley workers choose to live in Morgan Hill.

[MORE >](#)

300 days of sunshine annually	70° average high temperature	85,000+ skilled workers within 30 min	10 minutes from San Jose
--	---	--	---------------------------------------

HIGHLIGHTS

Access to
new tools



OppSites **Matchmaker**

Features Network **Marketplace** Messenger Sign In Sign Up

Enter address

Show Filters

California

Morgan Hill, CA Follow City Connect

View all of Morgan Hill's opportunities on the [city profile page](#).



SouthBay Site
Posted by City of Morgan Hill, CA
20.31 Acres
Corner of Cochrane Road and Butterfield Boulevard. 20.25 acres of land approved to be subdivided into 7 parcels ranging in

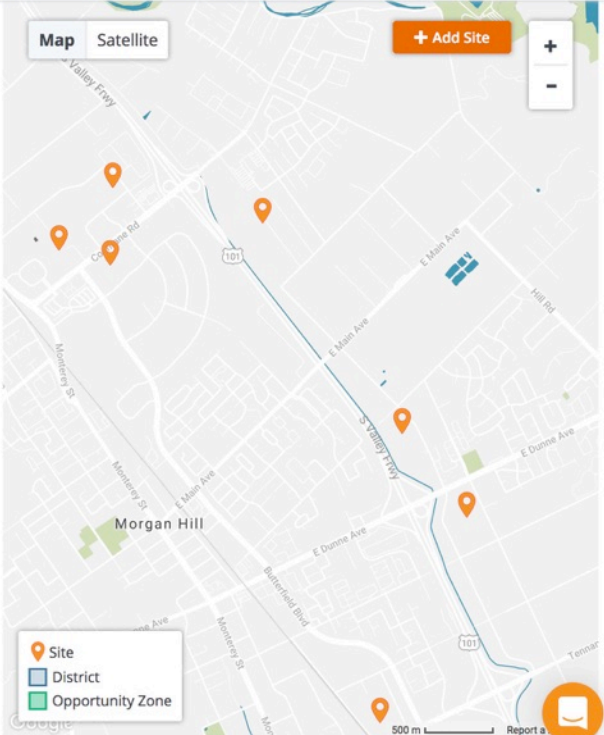

More Details



Condit Road - Auto Dealer ...
Posted by City of Morgan Hill, CA
10.00 Acres
The site on the corner of Condit Road and Diana Avenue is zoned for an Auto Park Planned Development. Uses allowed


More Details

Map Satellite **+ Add Site** 



500 m Report a

HIGHLIGHTS

A platform
for Economic
Development
communication



August 30, 2018

Morgan Hill to celebrate Manufacturing Day-2018

The City of Morgan Hill, Morgan Hill Chamber of Commerce and Morgan Hill Unified School District in recognition of National Manufacturing Day will be hosting a Morgan Hill Manufacturing Day on October 4, 2018 to increase the communities knowledge about the local manufacturing industry and associated career opportunities.

[Read More...](#)



May 28, 2018

Republic Family of Companies Breaks Ground on 83-Unit Mixed-Use Market Rate Apartment Project in Downtown Morgan Hill

On May 24, 2018 Republic Family of Companies celebrated the ground breaking of a signature project, an 83-unit, market rate rental mixed-use project in Downtown Morgan Hill.

[Read More...](#)

HIGHLIGHTS



Ready access
to resources



Meet Morgan Hill Trifold Brochure

The Meet Morgan Hill brochure showcases the many activities that are located in South County. Unfold the map to uncover recreation areas, wineries, farms and parks. Plan your visit and stay in Morgan Hill with this handy map.

[VIEW PDF](#)[VIEW INTERACTIVE MAP](#)

Explore Morgan Hill - Downtown

Downtown Morgan Hill has experienced a renaissance over the last four years and continues to transform. There are 9 key projects that are taking shape within the Downtown Footprint. To learn more about the projects and their locations, this brochure does that.

[VIEW PDF](#)[VIEW INTERACTIVE MAP](#)

Retail Opportunities- Morgan Hill

Whether you are looking for already built retail space or looking to build, there are plenty of opportunities in Morgan Hill. The City has rich demographics that support a variety of retail uses.

[VIEW PDF](#)

RESULTS

Since the site has been live:

- 801 Unique Visitors
- 6,715 Page Views
- 60% of traffic from direct URL search
- Popular: Blog Section & Retail / Available Section

THE FUTURE

Where do we see opportunities?

- Tie into marketing campaigns
- Build engagement with our key audiences
- Assist our brokers and developers
- Modernize our image
- Attract significant investment



OUR SVBJ CAMPAIGN



Rare sighting in Silicon Valley:

Enough open land to build 6,000,000 square feet of office, R&D or manufacturing space.

MORGAN HILL

Looking to build in Silicon Valley?

If you're looking for a large tract of in Silicon Valley, take a close look at Morgan Hill. We offer favorable zoning, progressive support for business and many other advantages.



- A vibrant, growing downtown with upscale restaurants
- Access to skilled talent
- 30 minutes to the San Jose International Airport
- Reverse commute from San Jose
- Abundant housing

Learn about opportunities for healthcare providers
www.ChooseMorganHill.com

MORGAN HILL ECONOMIC DEVELOPMENT 800-XXX-XXXX



Opportunity knocks.

Our growing community has opportunities for healthcare providers

MORGAN HILL

Love where you work

With a growing population, we're looking for urgent care and specialty clinics to open locations in Morgan Hill. If you haven't been to Morgan Hill lately, it's time to take a close look.

"Priority zoning gives healthcare providers their choice of available land in 90% of our districts."

Edith Ramirez
Director of Economic Development

Consider the advantages

- 100,000+ South Santa Clara County residents
- Community mindset toward healthy, active lifestyles
- Available workforce and housing, including affordable housing
- Growing, vibrant downtown with upscale restaurants and wineries

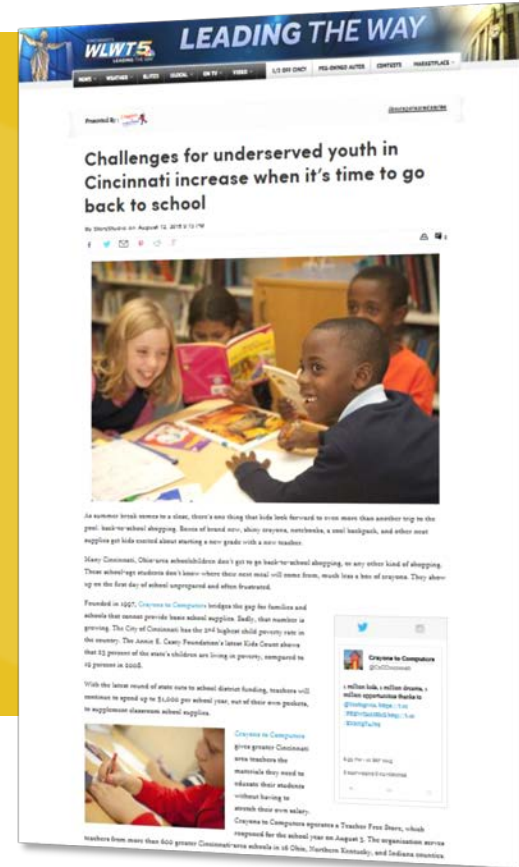
Learn about opportunities for healthcare providers
www.ChooseMorganHill.com

MORGAN HILL ECONOMIC DEVELOPMENT 800-XXX-XXXX

HEARST CAMPAIGN

How to best tell our study?

- Custom Stories Story Studio
- Broad digital, online and mobile platforms
- Guaranteed 5,000+ engagements per story
- Visual and Interactive Elements





Thank you.



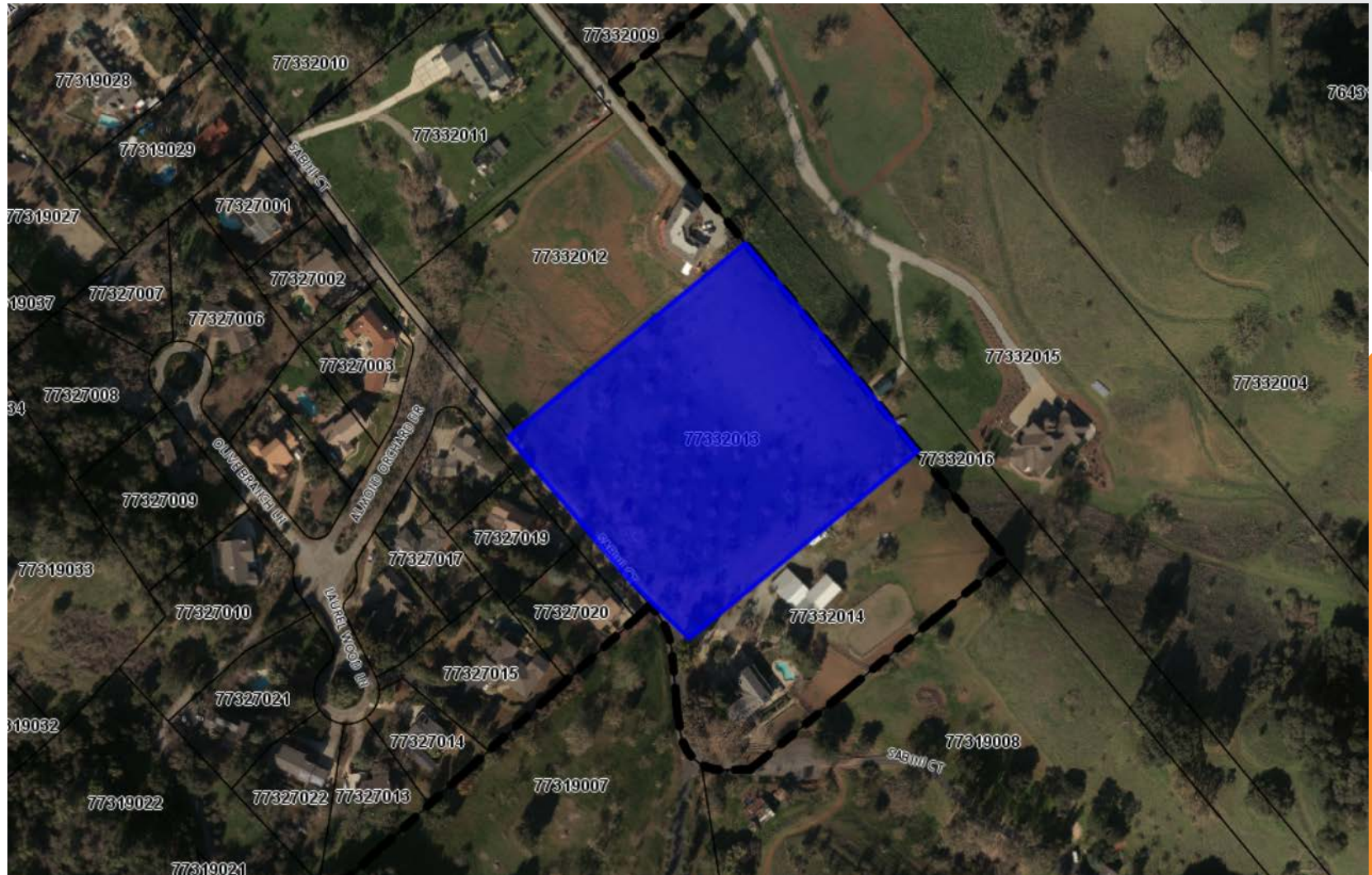
DA2017-0008, EA2017-0016

Agenda Item # 19



October 17, 2018

Project Location



2016 RDCS



1. RDCS

Three Units - Fiscal Year 2018/2019

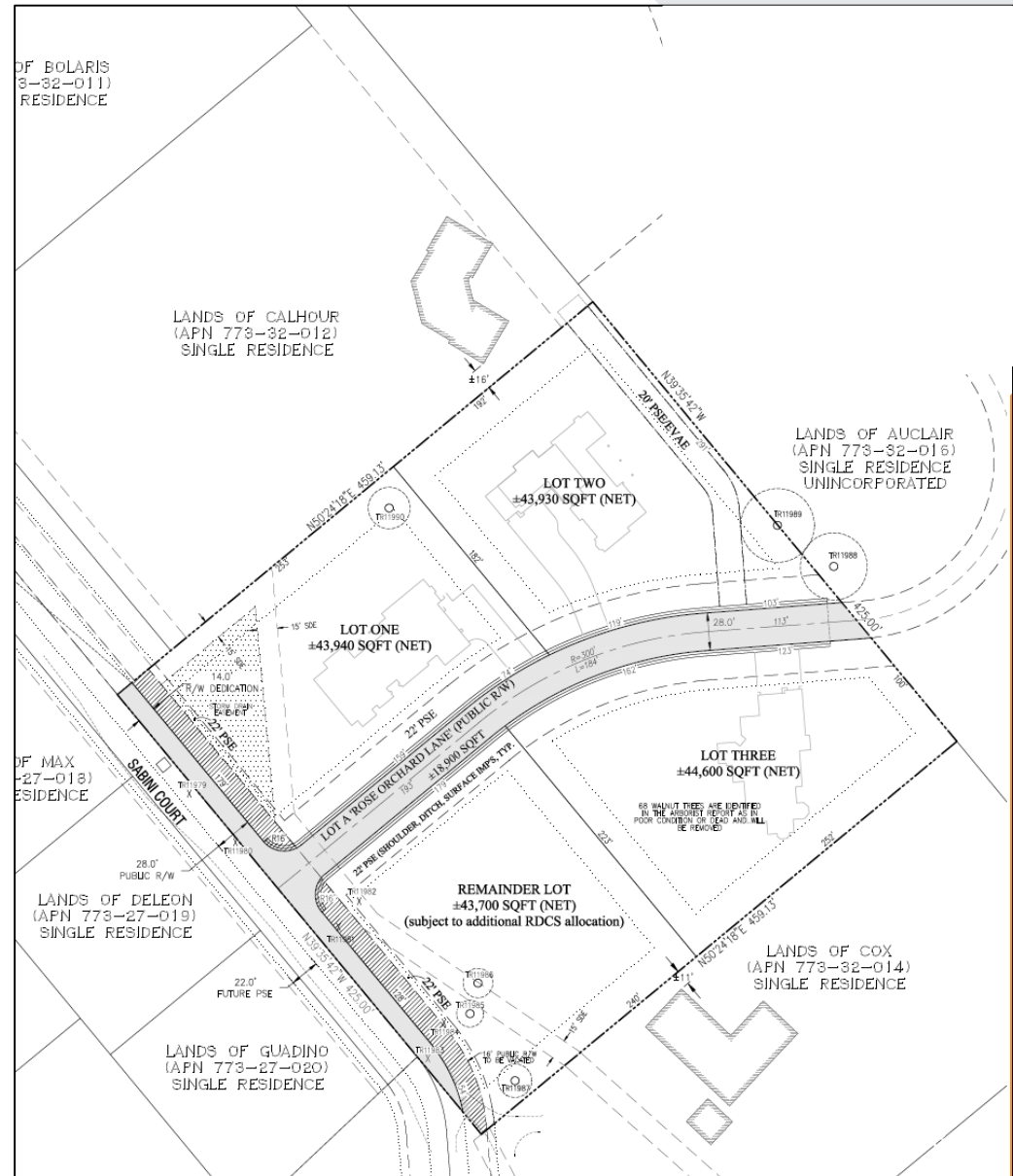
2. Zoning

- June 2018 – Comprehensive zoning update
- Re-designated the project site from Residential Estate 40,000 acre lots to Residential Estate minimum 1 acre lots
- Consistency with General Plan

Project Proposal



- Four 1-acre+ lots
- Remainder Lot to compete in next RDACS
- EVA



Project Consistency



1. General Plan

Policy CNF-2.1 – Orderly Development

Policy CNF-2.3 – Quality of Life

Policy CNF-3.1 – RDCS purpose

Policy CNF-8.7 – Design Sensitivity

Policy CNF-11.5 – Outside Connections

2. Zoning

RE-1 Site Standards	Requirement	Proposed	Consistency
Lot Area	1 acre	43,600 minimum lots	Yes
Lot width	100 feet	199 feet	Yes
Lot Depth	100 feet	220 feet	Yes

CEQA / Community Engagement



CEQA

- Initial Study
- Categorically Exempt per Class
3 exemptions and Section 15303

Notice for Hearing - Public notification including site signage, newspaper notice, and direct mail to property owners within 300 feet of the project site.

Recommendation



1. Open and Close Public Hearing
2. Adopt Ordinance recommending approval of the Development Agreement

Thank You





Housing Program Ordinance Item 21



HOUSING ORDINANCE

1. ADD CHAPTER 14.08 “IN-LIEU HOUSING FEE”
2. ADD CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” (BMR)
3. INCORPORATE A BMR OWNERSHIP PROGRAM PARTICIPATION GUIDE
4. INCORPORATE A BMR OWNERSHIP PROGRAM APPLICATION GUIDE
5. INCORPORATE BMR PROGRAM DEVELOPMENT STANDARDS
6. REPEAL CHAPTERS 15.22 “AFFORDABLE HOUSING FEE”
7. REPEAL 15.23 “BELOW MARKET RATE PROGRAM”

IN-LIEU HOUSING FEES



- **\$19.70** per square foot (ownership projects outside of downtown) where there is a 15% Inclusionary Housing Requirement (IHO)
- **\$13.20** per square foot (ownership projects in the downtown) where there is a 10% IHO
- **\$29.00** per square foot (rental projects outside of downtown) where there is a 15% IHO
- **\$14.50** per square foot (rental projects in the downtown) where there is a 10% IHO

Example Calculation of \$19.70 Proposed In-Lieu Housing Fee

- Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$19.70 \times 56 \text{ units} \times 2,000 \text{ square feet}$ = \$2,206,400, or \$39,400 per unit.

BMR PROGRAM PARTICIPATION GUIDE



- Program participation guidelines
- Resale price determination
- **Sale proceeds and owner's minimum return on down payment**
- Agreement compliance at the point of sale or refinance
- **Ownership and estate planning**
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements
- Transfers
- Vendors

OWNERSHIP AND ESTATE PLANNING



Effective on January 1, 2016 California Assembly Bill 139 enacted California Probate Code § 5600, et. Seq., which permits an individual to transfer real property upon death using a revocable transfer on death (TOD) deed. The law sunsets 2021 unless extended by California legislature.

An **exhibit (Revocable Transfer on Death Deed)** will be added to the Resale Restriction Agreement that will use this form to designate a beneficiary. It must be recorded within 60 days of notarized signature.

As is the case now, Owner Due Proceeds are owed to the Estate. This TOD would give the Inheriting Owner an opportunity to qualify for the program and have a chance to retain the home after providing eligibility and executing a new 45-year restriction agreement.

BMR MINIMUM RETURN

- **Challenge:** BMR homeowners may not reap much benefit at the time of sale if they are to use the calculation in their agreement, using an increase based on the consumer price index (CPI) or the area median income (AMI)
- **Why?** The Madrone Development and others built by South County Housing provided a significant amount of down payment and closing cost assistance to fill the gap between the maximum purchase money mortgage loan (first mortgage) and the sale price. The new homebuyer bought at a market rate price
- Received substantial downpayment from various entities, Multi layered financing, deferred interest, plus personal down payment sources, all of which often served as the gap

MINIMUM RETURN ON DOWN PAYMENT



- Recommendation to permit the BMR homeowner to receive their initial out of pocket down payment plus an annual return based on the number of years that they occupied the unit
- **Example:** If an Owner made a down payment contribution of \$20,000 to purchase a BMR home that they want to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a \$14,000 ($\$2,000 \times 7$ years) return on their initial down payment for a total of \$34,000.

BMR PROGRAM APPLICATION GUIDE



- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation and Exception Requests

BMR DEVELOPMENT STANDARDS

- Designed to guide the implementation and construction of the BMR units and guidance for the inclusion of materials and amenities within each unit
- Intended to apply to projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project
- Standards would not typically apply to publicly financed 100 percent affordable housing projects

BMR DEVELOPMENT STANDARDS (Continued...)



- A provision has been added to provide the **flexibility** to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project results in a greater number of affordable units and/or broadens affordability levels to help the City achieve Regional Housing Needs Allocation (RHNA) Goals
- **Example:** A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits and other sources to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's RHNA goals
- The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council)

REORGANIZING MUNICIPAL CHAPTERS

- Repeal Chapter 15.22 “Affordable Housing Fee” (to be replaced by New Chapter 14.08 New “In-Lieu Housing Fee”)
- Repeal Chapter 15.23 “Below Market Rate Program” (to be replaced by New Chapter 14.12 Below Market Rate Program)

SUMMARY

- **ADD CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO ESTABLISH NEW HOUSING IN-LIEU FEES**
- **ADD CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” (BMR)**
- **INCORPORATE A BMR OWNERSHIP PROGRAM PARTICIPATION GUIDE**
- **INCORPORATE A BMR OWNERSHIP PROGRAM APPLICATION GUIDE**
- **INCORPORATE BMR PROGRAM DEVELOPMENT STANDARDS**
- **REPEAL CHAPTERS 15.22 “AFFORDABLE HOUSING FEE”**
- **REPEAL 15.23 “BELOW MARKET RATE PROGRAM”**

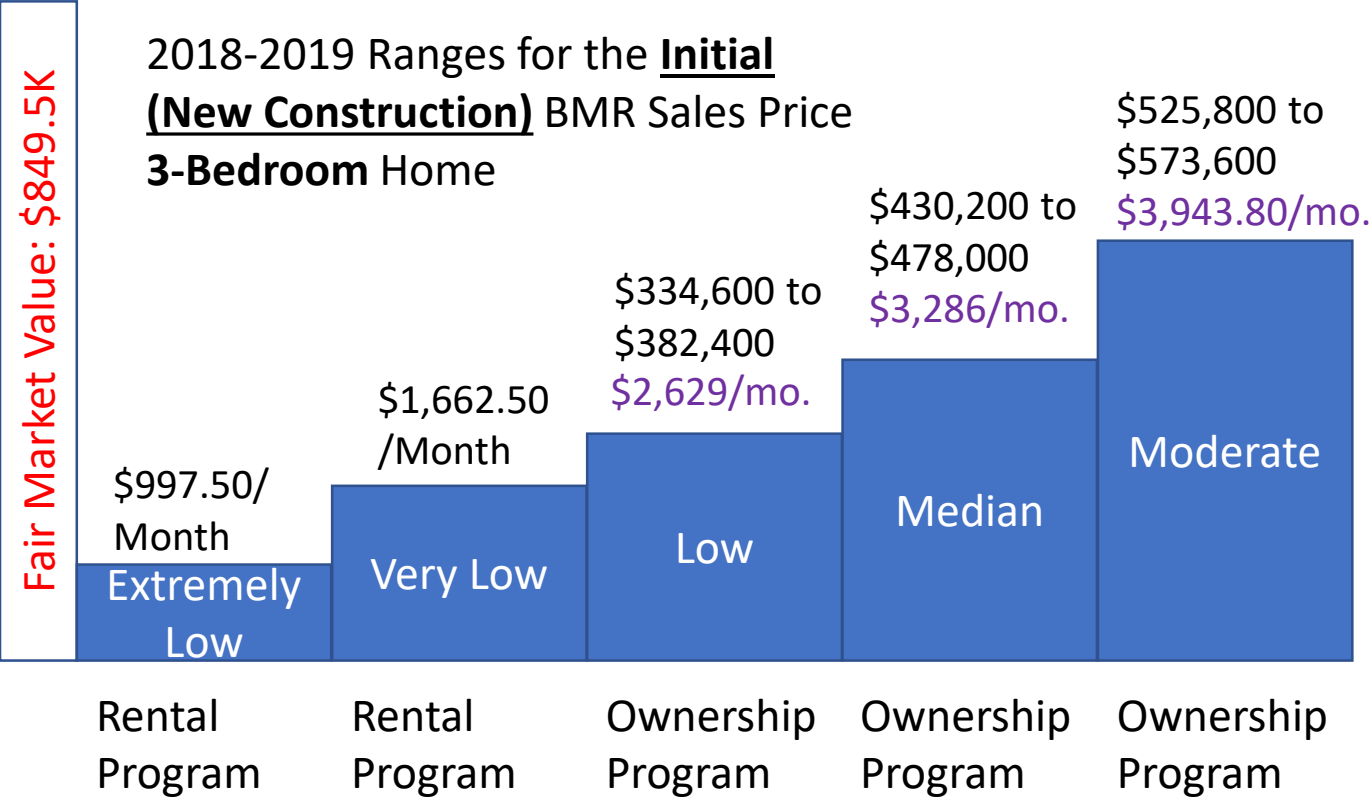
NEXT STEPS

RETURN TO COUNCIL:

**ADOPT A BMR OWNERSHIP
PROGRAM PARTICIPATION GUIDE**

**ADOPT A BMR OWNERSHIP
PROGRAM APPLICATION GUIDE**

Pricing Overview: 3-Bedroom



Santa Clara County Income Category 2018	*4-Person Household
Moderate	150,250
Median	125,200
Low	94,450
Very Low	66,500
Extremely Low	39,900

*The State sets the standard of bedroom count + 1 to match Household Size to Affordable Unit Pricing

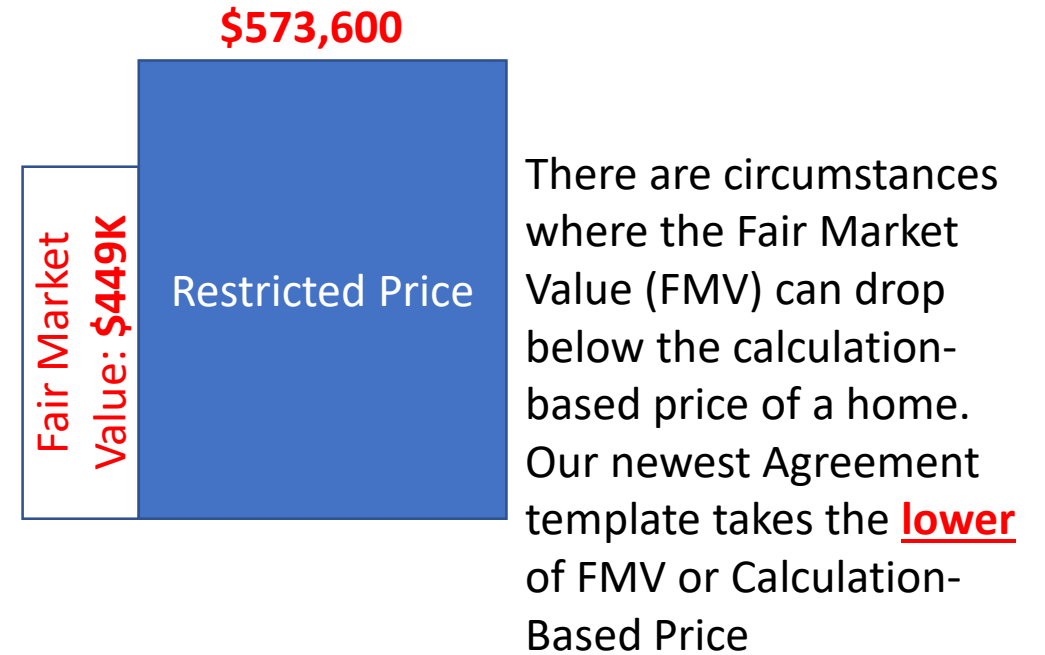
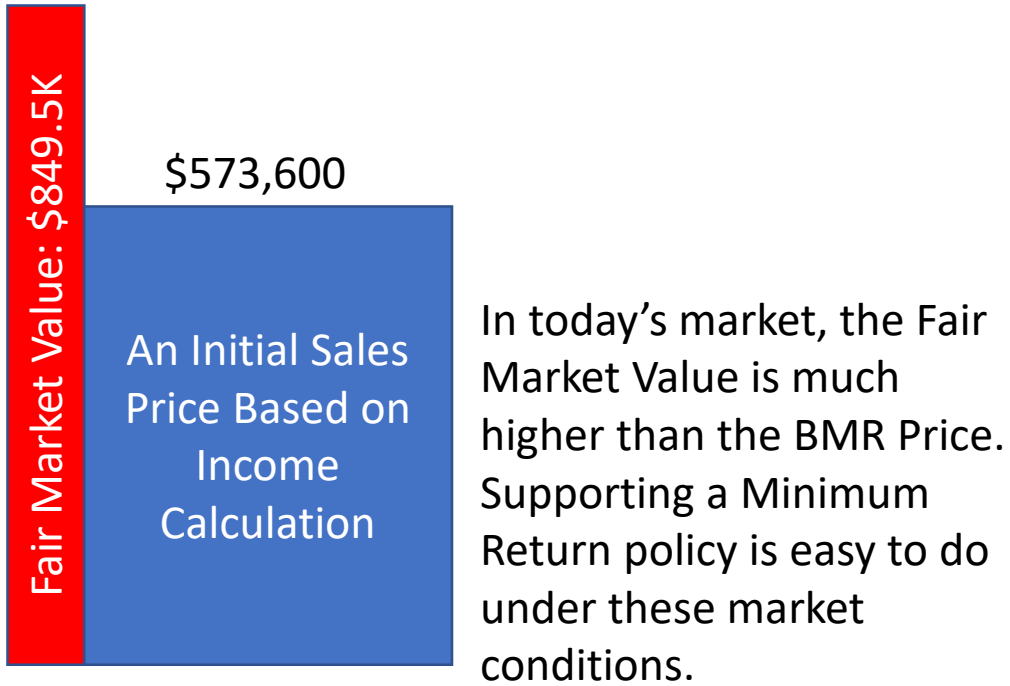
In August 2018, out of 50 Morgan Hill 3-Bedrooms Listed, the following statistics were found:

- Median Price = \$849,500
- Average Price = \$946,489.84
- Lowest Priced Property = \$425,000
- Highest Price Property = \$2,300,000
- **94% of the Listings were over \$700,000**
- 58% of the Listings were over \$800,000
- 38% of the Listings were over \$900,000

Initial Sale Prices are based on an Affordability Calculation (30% to 35% of Household Income) based on the Applicable County Income Category as reported by the State of California each year.

Maximum Restricted Resale Prices are typically based on indexes. These include:

- Consumer Price Index
- Area Median Income
- **OR Fair Market Value (whichever is lower)**



Area Median Income (AMI) for Santa Clara County

Year	Median Income	Change \$	Change%	Notes
2018	125,200	11,900	10.5%	
2017	113,300	6,200	5.8%	
2016	107,100	800		
2015	106,300	800		
2003 - 2014	At or Below 105,500	103,500 (2010) 103,600 (2011)		

A. AMI-Based Resale Price Movement in Incomes

The Homeowners who purchased with a Resale Calculation that is based on the increase in County Median Incomes are the homeowners most in need of the policy change that allows for a minimum return.

2018 Resale Price: \$474,700 \$74,700 Gain

2017 Resale Price: \$429,600 \$29,600 Gain

2016 Resale Price: \$406,100 \$6,100 Gain

2003-2014 Resale Price: \$400,000 \$0 Gain

2003-2014 Purchase Price: \$400,000

San Francisco Metro Consumer Price Index (CPI) or Cost of Living

Year	Index	Change \$	Change%	Notes
2018	337.98	13.6	4.2%	
2017	324.38	15.07	4.9%	
2016	309.31	16.53	5.6%	
2015	292.78	15.27	5.5%	
2003 - 2014	Increase from 222.20 to 277.51	24.89% Increase		

2018 Resale Price: \$608,425 \$208,425 Gain

2017 Resale Price: \$583,942 \$183,942 Gain

2016 Resale Price: \$556,814 \$156,814 Gain

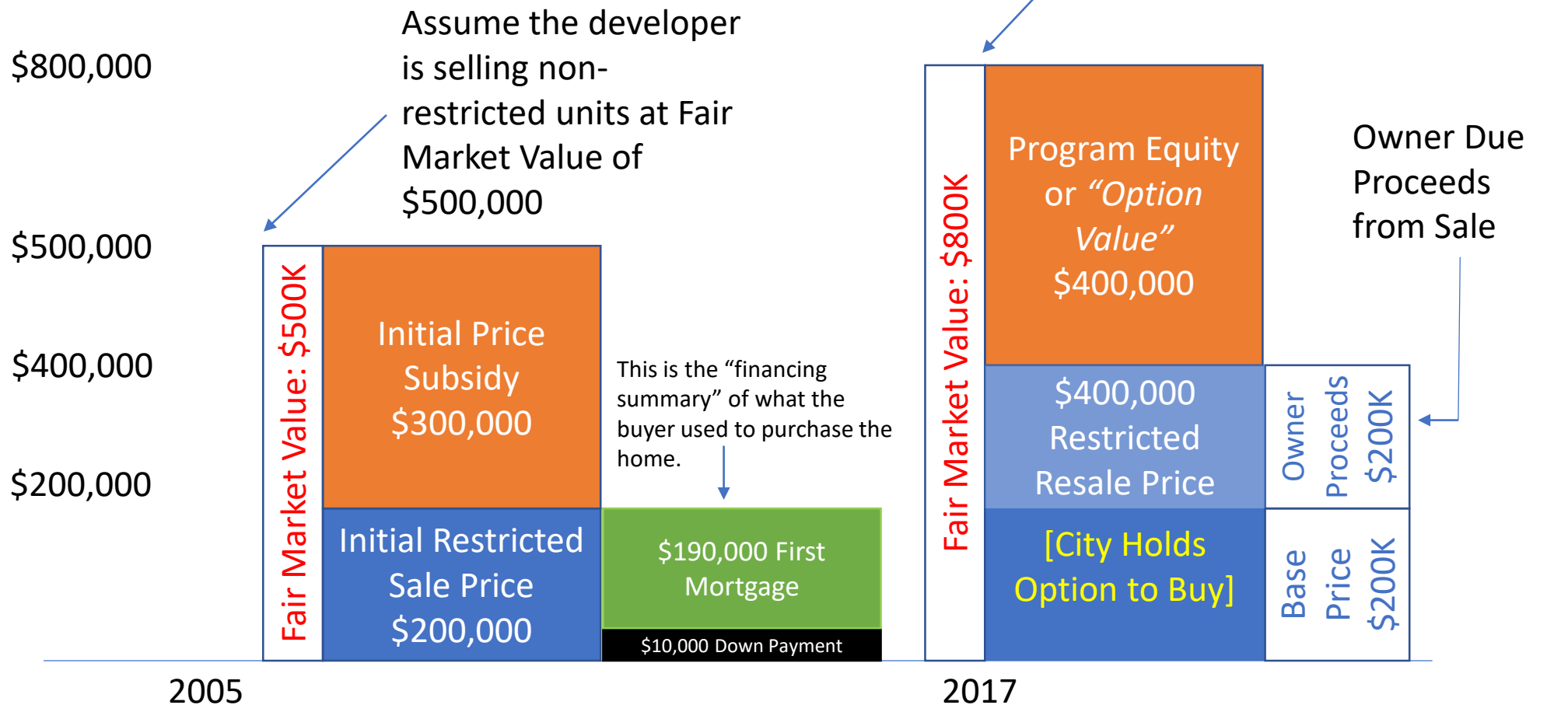
2003-2014 Resale Price: \$515,600 \$115,600 Gain

2003-2014 Purchase Price: \$400,000

B. CPI-Based Resale Price Movement in Cost of Living

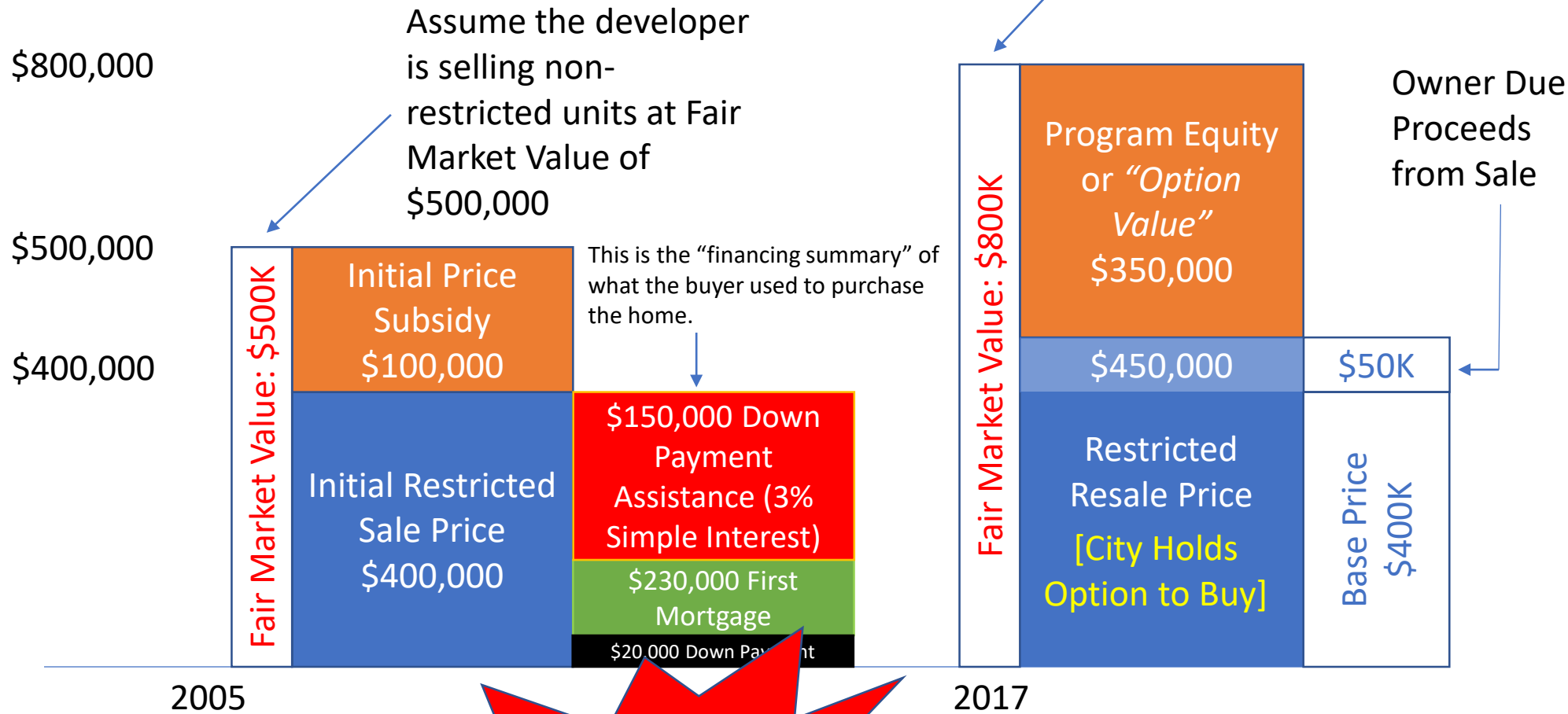
The Homeowners who purchased with a Resale Calculation that is based on Consumer Price Index (CPI) or “Cost of Living” typically have enough built up “equity” or Owner Due Proceeds to pay off the down payment assistance. This assumes they hold onto the home long enough to benefit from the index movements.

Scenario 1: Buyer puts down \$10,000 and didn't use down payment assistance



City Holds **Option to Buy** this BMR at the Restricted Resale Price of **\$400,000** even though the Fair Market Value is **\$800,000** (Option Value = \$400,000)

Scenario 2: Buyer puts down \$20,000 and uses \$150,000 in Down Payment Assistance

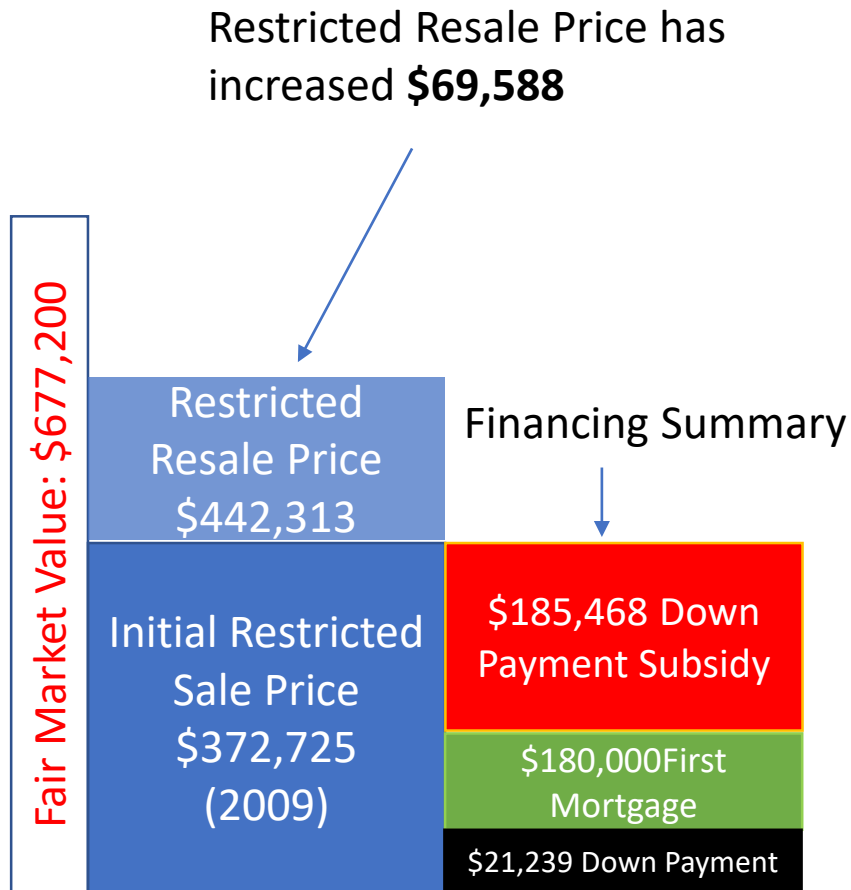


City Holds **Option to Buy** this BMR at the Restricted Resale Price of \$450,000 even though the Fair Market Value is \$800,000 (Option Value = \$350,000)

\$150,000 in Down Payment Assistance

This down payment subsidy is accruing **\$4,500** per year and after 12 years totals **\$54,000**

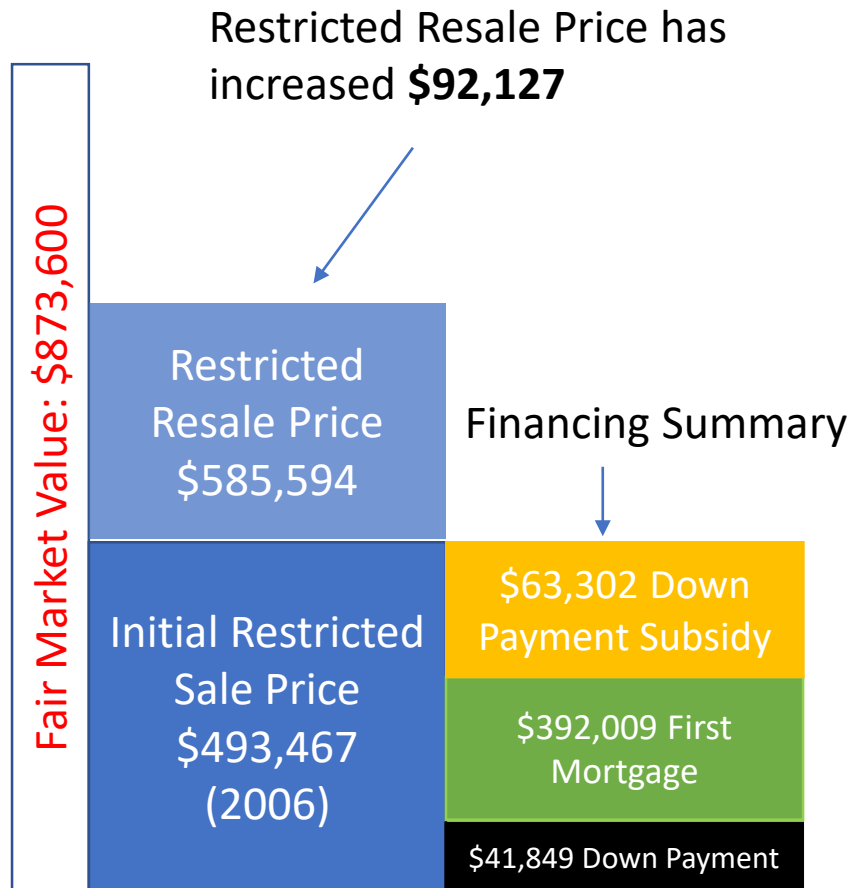
This scenario puts the Owner **\$4,000** in the red.



Subsidy	Annual Interest
1. \$70,000 RDA	\$2,100
2. \$30,000 BEGIN	\$900
3. \$40,000 Santa Clara County HOME	\$1,200
4. \$27,800 South County CalHOME	\$834
5. \$11,168 CAIHFA ChDAP	\$377.59
6. \$6,500 Housing Trust SV	\$211.25
\$185,468	\$5,622.84 / year

Owner has accrued at least **\$50,605.56 in interest payments**

AMI-BASED RESALE PRICE WITH \$186,468 IN DOWN PAYMENT ASSISTANCE



Subsidy	Annual Interest
1. \$27,000 South County Housing	\$1,080
2. \$15,000 CalHFA Purchase Assistance	\$1,050
3. \$14,802 CalHFA ChDA	\$444.06
4. \$6,500 Housing Trust SV	\$0
\$63,302	\$2,574.06/ year

CPI-BASED RESALE PRICE WITH \$63,302 IN DOWN PAYMENT ASSISTANCE

Owner has accrued at least **\$30,888.72** in interest payments

VIALE EXAMPLE

RECAP NOTE: CPI-BASED RESALE PRICES HAVE HISTORICALLY PUT OWNERS IN A BETTER POSITION TO PAY OFF ACCRUED INTEREST

Item # 21
AGENDA DATE: 10/17/18
SUPPLEMENT # 1

From: [Anna Salvador-Rodriguez](#)
To: [Angie Gonzalez](#); [Steve Tate](#); [Rich Constantine](#); [Caitlin Jachimowicz](#); [Rene Spring](#); [Larry Carr](#)
Cc: [Rebecca Garcia](#)
Subject: Re: October 17, 2018 City Council Meeting Agenda Item 21 - Inclusionary Housing In-Lieu Fees
Date: Monday, October 15, 2018 4:20:09 PM
Attachments: [SV@Home_10.17.18_Inlieufees.pdf](#)
[SV@Home_Inclusionary Best Practices_final.pdf](#)

Honorable Mayor Tate and Members of the City Council.

Attached please find our comments for your consideration as you explore in-lieu fee updates to your Inclusionary Housing Ordinance this evening.

Thank you for this opportunity.

Anna Salvador-Rodriguez
Planning Associate
anna@siliconvalleyathome.org
(530)715-8934
She/Her/Hers

From: Anna Salvador-Rodriguez
Sent: Wednesday, September 26, 2018 12:07:31 PM
To: Angie Gonzalez; steve.tate@morganhill.ca.gov; rich.constantine@morganhill.ca.gov; caitlin.jachimowicz@morganhill.ca.gov; rene.spring@morganhill.ca.gov; larry.carr@morganhill.ca.gov
Cc: Rebecca Garcia
Subject: Re: September 26, 2018 City Council Meeting Agenda Item 7 - Inclusionary Housing In-Lieu Fees

Honorable Mayor Tate and Members of the City Council.

Attached please find our comments for your consideration as you explore in-lieu fee updates to your Inclusionary Housing Ordinance this evening.

Thank you for this opportunity.

Anna Salvador-Rodriguez
Planning Associate
anna@siliconvalleyathome.org
(530)715-8934
She/Her/Hers

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Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

October 15, 2018

Honorable Mayor Tate and Members of the City Council
Morgan Hill City Hall
17575 Peak Ave.
Morgan Hill, CA 95037

Dear Mayor Tate, Mayor Pro Tempore Constantine, and Councilmembers Carr, Jachimowicz, Robinett, and Spring:

RE: Item 21: In-lieu Housing Fee

SV@Home works to increase housing opportunities in Santa Clara County for people who live on our streets to those who work for our leading employers. Our membership represents a broad range of interests, from leading employers who drive the Bay Area economy, to labor and service organizations, to local government agencies, to nonprofit and for-profit developers who provide housing and services to those most in need.

On behalf of our members, we write today to thank the City for moving forward with an Inclusionary Housing Ordinance (IHO) that increases affordable housing opportunities for Morgan Hill residents. The City of Morgan Hill has already made great progress towards the development of affordable homes, with one out of every eight homes in the City with long-term affordable deed restrictions.

To guide cities in the development of IHO ordinances, we have prepared the attached set of best practices that ensure that inclusionary housing requirements are feasible for developers, while also supporting established affordable housing goals. These best practices recognize that not all developments are the same, and that by offering alternative compliance measures it creates flexibility for developers and the City to respond in ways that can lead to more overall affordability.

One alternative compliance measure is an in-lieu fee option. The recommended fees are comparable to fees established by neighboring jurisdictions, and **we are supportive of the staff's recommended fee levels.**

Thank you for the opportunity to provide our input.

Sincerely,



Pilar Lorenzana
Deputy Director

Attachment: SV@Home Inclusionary Housing Ordinance Best Practices



Inclusionary Housing in Santa Clara County:

Aligning Local Policies toward a Countywide Affordable Housing Strategy (July 2018)

Inclusionary Housing: An Introduction

Inclusionary housing policies require or encourage developers to set aside a certain percentage of housing units in newly constructed or rehabilitated projects for low- and moderate-income residents. By creating mixed-income developments, people from different socio-economic backgrounds are given the opportunity to access the same services and amenities, furthering equity and inclusion, and addressing federal fair housing obligations.

For a number of years, inclusionary housing was only legal for for-sale housing in California due to the [Palmer Sixth Street Properties v Los Angeles](#) court case. This changed effective January 1, 2018 when new law created by AB 1505 went into effect. AB 1505 expressly supersedes the *Palmer* decision by authorizing the legislative body of any city or county to adopt ordinances requiring that, as a condition of developing rental housing units, the development include a certain percentage of rental units affordable to moderate- income, lower-income, very low-income, or extremely low-income households.

In February 2016, the US Supreme Court declined to review a challenge brought by the California Building Industry Association, which questioned the validity of local inclusionary ordinances for for-sale housing. This decision removed any questions over the ability for local government to adopt and implement inclusionary ordinances for for-sale housing.

Legal and Legislative Requirements

AB 1505 authorizes communities to adopt rental inclusionary requirements by *ordinance*. An ordinance should be adopted to implement inclusionary requirements contained in general plans, housing elements, or other policy documents.

Existing rental inclusionary ordinances that were not amended after *Palmer* can be implemented after January 1, 2018 as long as they include provisions for alternative means of compliance.

No nexus study is required to justify a rental inclusionary requirement. In the 2015 California Supreme Court decision *California Building Industry Ass'n v. City of San Jose (CBIA)*, it determined that inclusionary requirements were "land use provisions similar to rent and price controls and met constitutional requirements so long as not 'confiscatory' and designed to further the public health, safety, and welfare."¹

If a rental inclusionary ordinance was adopted prior to September 15, 2017, no economic feasibility study is required to justify a rental inclusionary requirement, regardless of the required set-aside percentage. If the ordinance was adopted or amended after September 15, 2017 to require affordable rental housing, a feasibility study would not be required if the set-aside percentage required is 15 percent or less. However, if the ordinance requires a higher inclusionary requirement, or if affordability

¹ Goldfarb and Lipman

restrictions are deeper (targeting extremely low- income or very low-income households), a jurisdiction may choose to prepare a feasibility study.

The State Department of Housing and Community Development has the authority to require that an economic feasibility study be provided for any inclusionary ordinance that was adopted after September 15, 2017 if the ordinance requires that more than 15% of the homes be affordable, but only in two circumstances: (1) if the jurisdiction has failed to meet at least 75% of its RHNA need in the above moderate income category for five or more years, or (2) if the jurisdiction has not submitted its annual housing element report for two consecutive years. If HCD should find that the study is insufficient, the jurisdiction would only be able to require 15% affordability until it could prove through an economic feasibility study that additional affordability was feasible.

CASA-- the Committee to House the Bay Area-- is currently considering potential inclusionary housing requirements for the 9-County Bay Area. Recommendations from CASA are not expected until late 2018 or early 2019.

SV@Home's Recommendations:

Local jurisdictions must make many choices when designing an inclusionary housing ordinance. As these choices are made, it is important to ensure that the inclusionary requirements are both feasible for developers and support achievement of affordable housing goals. To the extent that all 16 Santa Clara County jurisdictions adopt similar requirements, it will provide more certainty to the development community working in the South Bay.

SV@Home encourages all Santa Clara County jurisdictions to consider SV@Home's recommendations as a way to align local policy goals with a broader countywide inclusionary housing strategy.

Criterion	Recommendation	Rationale
Set-Aside Percentage	Adopt a minimum 15% onsite inclusionary housing onsite requirement for both for-sale and rental housing. If an Alternative Compliance Option is selected (see below) then this percentage should be increased to a minimum of 20%	Creating a consistent 15% requirement across the county provides predictability for developers as well as a level playing field for cities. The cities of Campbell, Cupertino, Palo Alto, Santa Clara, and San Jose have set 15% affordability as their inclusionary requirement. The recommended set-aside percentage is increased to 20% to incentivize the development of integrated on-site affordable units.
Project Size Threshold	Apply the inclusionary requirements to projects of ten or more units. Do not apply to ADUs. For projects that are smaller than ten units, require that developers pay a fee if the units exceed 1,200 square feet. The fee can increase for larger units.	It is important to offer "missing middle" opportunities, and requiring inclusionary percentages for smaller developments can discourage developers from pursuing small infill development like row houses, stacked flats, duplexes and fourplexes which tend to be more naturally affordable, and therefore affordable to teachers, nurses, construction workers, and others. At the same time, it is recognized that some developments that are small are offered at luxury prices and not naturally affordable. Santa Cruz and San Mateo Counties have

Criterion	Recommendation	Rationale
		adopted inclusionary ordinances that tier fees according to unit size. No fees should apply to ADUs, a building type that should be encouraged with fewer fees, not new and additional fees.
Income Restrictions—Rental	Average 80% of Area Median Income (AMI)	This allows a developer to provide units for a variety of income levels.
Income Restrictions—Owner	Average 120% of Area Median Income (AMI)	This allows a developer to provide units for a variety of income levels.
Term of Affordability -- Rental	Place affordability restrictions on rental homes for a minimum of 55 years	This ensures that the homes are available for an extended period, and is consistent with other State and federal affordable housing programs.
Term of Affordability -- Owner	Place affordability restrictions on for sale homes for a minimum of 45 years	This ensures that the homes are available for an extended period, and is consistent with other State and federal affordable housing programs. (Note: these restrictions can be removed upon an equity share sale)
Resale Restrictions—Owner	Implement an equity share provision that allows the original buyer of an affordable unit to sell the unit at market rate and share in the equity appreciation	This allows homeowners to acquire equity, making it possible for them to purchase a new home when they need to move. It also allows the local agency to re-invest its share in a new first-time homebuyer family who can purchase a new home anywhere in the jurisdiction.
Home Amenities	Affordable homes are indistinguishable from market rate homes and are integrated into the development	This is a best practice that ensures that lower- and moderate-income households have access to the same amenities as market-rate households.
Alternative Compliance Options	Provide a variety of alternative options for compliance: - Build Onsite - Offsite construction - Credit trading/transfer - Housing Preservation credits - In lieu fee - Land dedication - Acquisition/Rehabilitation - Combination	Recognizes that not all developments are the same, and provides both the developer and the City with flexibility to respond, particularly when a different option would result in more affordability. Additionally, in some circumstances, payment of an in-lieu fee or another compliance option may be preferable, as in the case of a multi-million dollar home subdivision. According to AB 1505, all rental inclusionary ordinances must include alternative means of compliance, however jurisdictions have broad discretion over the alternative means provided.

Criterion	Recommendation	Rationale
Incentives	Provide a robust suite of incentives to developers that should include: - Density bonus - Reduction in parking spaces - Changes to setbacks, height requirements, and other zoning variances - Expedited review - Fee or tax exemptions - Financial support	Provides developers the opportunity to achieve cost savings that can offset the cost of providing the affordable units.
Timeframe and Grandfathering	While an ordinance should go into effect in 30 days, provide an adequate timeframe for the market to adjust when adopting new inclusionary requirements. Our recommendation is to grandfather those projects that Establish requirements that ensure that any project that is grandfathered continues to move forward through the development process.	This is a best practice that recognizes that the development process is long, and that many developers have invested time and resources into projects that are already in the development pipeline. Requiring that the developments that receive grandfather status meet key requirements for progress ensures that those requesting an exemption are verifiably in the development process.
Incentives	Adopt incentives that offset the cost to the developer of providing the affordable units. This can include reduced parking, reduction in fees, reduced setbacks, increased height, and fast track permitting.	Recognizes that there is a cost to providing the inclusionary units.

Item # 21

AGENDA DATE: 10/17/18
SUPPLEMENT # 2

From: Jeff Bernstein <jeffbernstein23@gmail.com>

Date: October 17, 2018 at 12:43:46 PM PDT

To: steve.tate@morganhill.ca.gov,
larry.carr@morganhill.ca.gov, caitlin.jachimowicz@morganhill.ca.gov, rich.constantine@morganhill.ca.gov,
rene.spring@morganhill.ca.gov

Cc: rebecca.garcia@morganhill.ca.gov, Julius Nyanda <julius@nyandaconsulting.com>

Subject: Re: BMR Housing Concerns at Madrone Plaza

Hello,

I am glad the City held a workshop to discuss some of the issues and potential solutions for the BMR contracts, specifically contracts for BMR homeowners who live at Madrone Plaza. I do not want to come across as ungrateful, as I will be the first to acknowledge the benefits of living in this community and having an affordable monthly mortgage payment. However, I would like to further explain why I feel the Council should adopt the proposed "Minimum Return on Down Payment" policy as well as consider using Consumer Price Index (CPI) instead of Area Median Income (AMI) levels when determining the restricted resale price of a BMR home.

As the City Manager said during the workshop, if the City of Morgan Hill wants those who will benefit most from the BMR program to occupy BMR homes, then there must be an incentive for current BMR homeowners to sell and move on. As I explained in my email in May, as a single, 24-year old teacher, living in a home I owned at an affordable price was a dream come true. Nine years, a wife, and two kids later, the home no longer meets my needs. I would like to sell my house and purchase a non-BMR home; however, I am somewhat stuck.

With real estate prices as high as they are in this area I do not have the ability to sell my BMR home and buy another home in the area unless I receive some return on the investment I have made in my current home. I did not buy a BMR home to get rich, but I did anticipate (based on the [example](#) written in the contract and the [video](#) on the HouseKeys website) seeing a reasonable return when I would eventually sell my house.

My hope/belief is that there are many other current BMR homeowners who find themselves in situations similar to mine — due to hard work, additional education, and changes in life circumstances, they no longer NEED to be in the BMR program. However, due to the negative return they will see when they go to sell their home, they cannot afford to move. Please make it worth our while to exit the program in such a way that keeps the home affordable for a new BMR homeowner, while also allowing us to move on without needing additional assistance in our next house. I hope the City shares my belief that the goal of BMR homeownership should be for a limited time -- to allow the participant to benefit from the program and then move on when that benefit is no longer needed -- not stay in the BMR program forever.

As I mentioned earlier, I would like the City to consider using CPI instead of AMI in the calculation to determine the resale price of a BMR home. I am proposing this for two reasons: 1) AMI does not [correlate](#) strongly with the housing market. AMI has stayed relatively flat, while median home prices have more than doubled in the past nine years. CPI has a much stronger correlation. 2) Using current AMI levels will result in a negative return on investment for BMR homeowners, while current CPI numbers will allow for a modest return on investment. In order

for current BMR homeowners to exit the BMR program and compete in the general (non-BMR) housing market, there needs to be an incentive to exit the program.

Additionally, the BMR contract and information available regarding resale value of a BMR home is misleading at best. My understanding when I purchased the home in 2009 was that I would see a ROE similar to [Exhibit H](#) in the contract I signed. My intention was to buy this house as a starter house, live in it for five or so years, sell it, and buy a non-BMR home in the area. I figured I would see about a 20% increase in the price of the home, which, coupled with the amount of money I would save by living in a BMR, would eventually allow me to buy a non-BMR home.

I am hoping to make it to the City Council meeting this evening so that I can speak on this issue; however, I have a work obligation, so I may not make it in time. I would appreciate it if you would look at this [spreadsheet](#) that I created to compare my BMR home (18434 Ruby) with a non-BMR home (18548 Poppy Jasper) in the same community (Madrone Plaza). Please note that the two homes were nearly identical in terms of price per square foot when both homes were purchased in 2009, and that there is now a \$122 difference. Also note the Return on Investment for each home. I am unclear of the City's intentions with the BMR program if current BMR homeowners will lose money when they sell their homes. I thought I would be able to exit the program with enough money for a downpayment on a different house in the area; however, that now seems impossible given that I will see a negative return on my home, while comparable homes in the area have doubled in price.



Respectfully,
Jeff Bernstein

On May 15, 2018, 8:50 AM -0700, Jeff Bernstein <jeffbernstein23@gmail.com>, wrote:

Hi Rebecca,

I moved to Morgan Hill in 2009, when I was a teacher at Sobrato HS. Because I was single and did not make much money, I qualified for a BMR house at Madrone Plaza. I am now married, with two children, and work for another school district as an administrator. My family and I would like to move into a larger house, but are unable to do so because the formula that is used to determine the resale value of our current home only allows us to sell it for just over \$400,000 (I bought it for \$373,000 in 2009). Because I received down payment assistance when I purchased the home, if I had to sell it for \$400,000, I would still owe a little over \$15,000 (see attachment) to pay off all the liens on my house — it doesn't make sense to me how I could've purchased a home at the bottom of the market and have that home appreciate so little when real estate has gone up so much. I have friends who moved out of Madrone Plaza in December and are still paying their mortgage at Madrone Plaza because new BMR-qualified homeowners have not yet been found. I am very concerned about the efficacy of Morgan Hill's BMR program and how it is run — it does not seem to be meeting the needs of BMR homeowners looking to transition out of the BMR program, nor does it seem to be operating very efficiently with regards to turning over properties so that others can experience owning a BMR home. I have worked with the folks at House Keys for the past two years to try to get some answers, but not much progress has been made. I am hoping that the City of Morgan Hill will take a serious look at the BMR program and implement some changes that will benefit all parties. I would like to discuss this issue further — please let me know how best to do that.

Thank you,
Jeff

From: gdiacoby@aol.com <gdiacoby@aol.com>

Sent: Tuesday, October 16, 2018 7:22:35 PM

To: Steve Tate; Rene Spring; Caitlin Jachimowicz; Rich Constantine; Larry Carr

Cc: Anthony Eulo; Jennifer Carman; Leslie Little; Donald Larkin

Subject: City Council agenda October 17 Item 22 - Giving up on baseball and balance

Hello Mayor Tate and Councilmembers

This email concerns Item 22 on the October 17 meeting agenda. At that meeting I will request you direct the staff to continue your past/current policies on the ballfield property and not move forward with any changes to the long establish UGB at that site. There are a number of omissions in the staff report; also a number of errors in fact or on assumptions. I will be attending the Council meeting and understand comment time limitations. For that reason, please consider the below summary of key topics and supporting attachments.

I did receive a "courtesy call" from Assistant City Manager Leslie Little on October 2, a day before she departed for her month vacation. I quickly prepared/sent email/attachments concerning the proposed actions, including some of the items below. In her call, it was my general impression that the contemplated changes were related to City efforts to win favor with the LAFCo staff/Commission ahead of the pending Catholic High school hearing. I received no response to the items so am uncertain if they were passed along to other staff members.

Concerns:

Adopted City Policy Encouraging Synergy between Recreation Uses and Tourism/Economic Development

The contemplated action would be inconsistent with 10-years of City of Morgan Hill policy setting concerning the link between recreation and economic development/City revenue generation. Much of that policy settling has been reaffirmed within the past year by all or most of the current City Councilmembers. The policies are contained in State-mandated planning requirements contained in the General Plan; City Operating and CIP budgets, and a 10-year history of economic, public service and environmental studies/reports.

The documents (see attachments) include:

1. Bikeways, Trails, Parks and Recreation Master Plan – July 2017
2. 2017 Morgan Hill Economic Blueprint
3. Sports Market Business Strategy – May 2017
4. Morgan Hill 2035 General Plan
 - a. Policy ED-2.4- Fiscal Impact Analysis
 - b. Policy ED 3.3 - Use of City Funds to Increase Impact
 - c. Action ED 3.E- Return on Investment
 - d. Policy ED 4.1- Public Assets to Support Tourism

- e. Policy ED 4.3 - Sports Tourism
 - f. Policy ED 4.9 - Overnight Accommodation
 - g. Policy ED 4.10 - Regional Freeway Visibility and Access
 - h. Action ED 4.C - Cross Promotion
 - i. Policy HC 3.2- Parkland Standard
 - j. Policy HC 3.4 -New Facilities
 - k. Policy HC 3.13 - Sports Fields
5. City Operating and CIP Budgets over past decade - regarding ballfields and hotel tax revenues - which have increased 56% since the 2007 significant changes at the Outdoor Sports Complex and the new Aquatic Center. The hotel tax growth rate can be compared to the 33% growth in combined general fund revenues.
6. Original Studies and Policy Setting
- a. SEQ Market Study - December 2006 – Defined an approach to expanding on the recreation and economic success of the City’s emerging regional sports/leisure strategy
 - b. Economic Assessment of Sports, Recreation & Leisure – February 2008
 - c. First City Council actions regarding an integrated approach of agriculture preservation and sport/recreation - February 20, 2008

Inconsistent with the City’s Selection Process and Purchase of the Ballfields

In 2012 the City initiated a search for the long contemplated baseball fields (the ballfields were in the original sports complex plan – see attachment- 2004 Master Plan). The youth baseball programs (Pony, Spirit, Dub) had been earlier reassured that the City would continue to make baseball a recreation and budget priority.

The attached November 25, 2013 City memo describes the background of the initial City solicitation; selection of the property; and purchase negotiation. There is a clear City legislative history (Letter of Intent, Option to Purchase, Purchase Agreement and supporting documents/correspondence) regarding both the ballfields and rights of my financial partner and me to a 3.5-acre Remainder Site. The attached diagram, which is one of a number designs, clearly defined a Remainder Site 3.4 acre parcel which was to have “economic development on the northern remainder parcel” and was “strongly desired” (attached Staff report).

The City purchase price was based of just 22-acres of the 25+ acre site. It would have been legally inappropriate to include/imply development specific use rights for that Remainder Site in the Purchase Agreement – per State laws, such Council approvals could only come later per the normal application/public reviews. To offset those regulatory limits, the Agreement provided that my partner and I with a 15-year period in which to exercise our rights. Such a long period thereby enabled subsequent review and approval actions.

The Remainder Site was and had been located within the City/County established Urban Growth Boundary (UGB) since 1994. Attached is a diagram indicating that UGB line and the definition and

background of the established Urban Growth Boundary. LAFCo policy was and is to recognize Urban Growth Boundaries. Therefore, my partner and I had reasonable expectation for an eventual commercial development use that was consistent with the City's recreation/economic development strategy.

An action to vacate the UGB on the ballfield and Remainder Site would wipe out any of the above described reasonable use of the remainder site contemplated in the sale history. The possible alternative uses described in the Staff Memo, such as a recharge pond, reinforces the lack of reasonable uses of the Remainder Site. As indicated in the Memo, a UGB change would "reduce property values" of the site. Therefore, the City elimination of the UGB on the remainder site would be using its' regulatory powers to damage the rights provided under the **Sale** Agreement. That is a serious matter. The Staff Memo comment concerning these rights "would need to be addressed" is an understatement.

Another concern is the apparent lack of any discussion about the elimination of the ballfields with the youth baseball organizations. Has any effort been made to contact the youth baseball organizations about such a possible action? Following our site being selected and purchased, I met with the current leadership of the Pony, Spirit and Dub organizations. While excited, they remained skeptical since actual construction of the ballfields was years in the future. We discussed how there might be interim steps to establish partial playing conditions. Last year the City Council initiated such early efforts via the cricket advocates who were willing to invest in early stage improvements. What is the status and consequences?

Lastly, the Council should understand that our 2012 solicitation offer suggested to side-stepped any LAFCo or regulatory issues via a land exchange (see attached). Our offer was to exchange our entire 25+acre for some downtown City-controlled property. That was our focus during the initial negotiation meetings in 2012-2013. Soon it became clear from your staff/consultant that the exchange approach had no support. In your upcoming Wednesday discussion, please recognize who during this process was best trying to balance conflicting community goals.

Possible Alternative Uses of the Baseball Field Site

In the call from Leslie and in my follow-on email, I questioned how staff was going to deal with the fact that the baseball fields were purchased with Park Land Purchase funds (Quimby Act Govt Code Section 66477). Leslie said Staff would be dealing with the issue but provided no specifics. The Quimby Act has multiple sections aimed at ensuring the park purchase/development fees are not diverted to some other purpose. The use of agriculture easements funds, to reimburse the Park Purchase Fund, is a possibility but a \$5.28 million repayment would mean that other anticipated agriculture easement purchases would be in jeopardy.

The October 17 Staff Memo offers alternative use solutions that are too improbable and speculative:

1. **Shift the City ballfield focus to the Catholic High School project.** Has this approach been discussed with the High School proponents? While creative, it is not clear how to realistically shift 20-acres of baseball fields on to the 40-acre High School project.
2. **Place agriculture easements on the site and recoup Quimby replacement funds from the land resale to the subsequent farmer.** The Staff report has highlighted already why this

alternative is impractical. Based on current easement discussions, the residual land value of an easement property to a farmer – for pure farming use – is about \$15,000 per acre. That means the easement cost for replacing the Quimby funds is \$223,000 per acre. That is at least twice the going rate for easement property. As a consequence, the City would be foregoing two acres of new easements for each one acre of Quimby refund.

3. **Sell that land to the Water District for a “Stormwater infiltration basin”.** Over the past year I have met several times with high level District staff on aquifer recharge ideas and help on a private land sale to the District for an aquifer recharge improvement. Based on those discussions, I doubt an infiltration pond is remotely possible for the following reasons:

- a. The District’s recent land purchase was around \$120,000/acre based on appraisal. A \$238,000 per acre site would likely have little appeal to the District.
- b. The District’s recharge need, due to problems with the San Pedro ponds, must be located close to Cochrane Boulevard since the aquifer flow gradient is north to south (e.g. water does not flow upstream even in an aquifer). A recharge site in that location is critical to the City for its Main and Diana Street wells. That said, District staff indicated last year that recharge is not a priority given the current aquifer recharge improvements underway to benefit the Madrone canal (replacement pipes along Peet and Half Roads). Based on a phone call I had with the City Engineer about 1.5 year ago, the City will still need some recharge replacement solution to the San Pedro Ponds since the City wells experienced some pumping/delivery challenges during the past 3-year drought. But, as indicated, a recharge basin on Tennant Avenue at the freeway will not serve that purpose.
- c. The City’s 2017 Storm Drainage Master Plan does not propose any stormwater collection pipes anywhere near the baseball field property. There are three logical reasons: a) there is relatively little water running off nearby properties during rainy periods since they are undeveloped (do not have impervious surfaces); b) State policies concerning water quality require on-site retention; and c) there is sufficient stormwater capacity in the Madrone canal adjacent to the ballfield site.

Since hopeful.

Gordon Jacoby



Bikeways, Trails, Parks and Recreation Master Plan

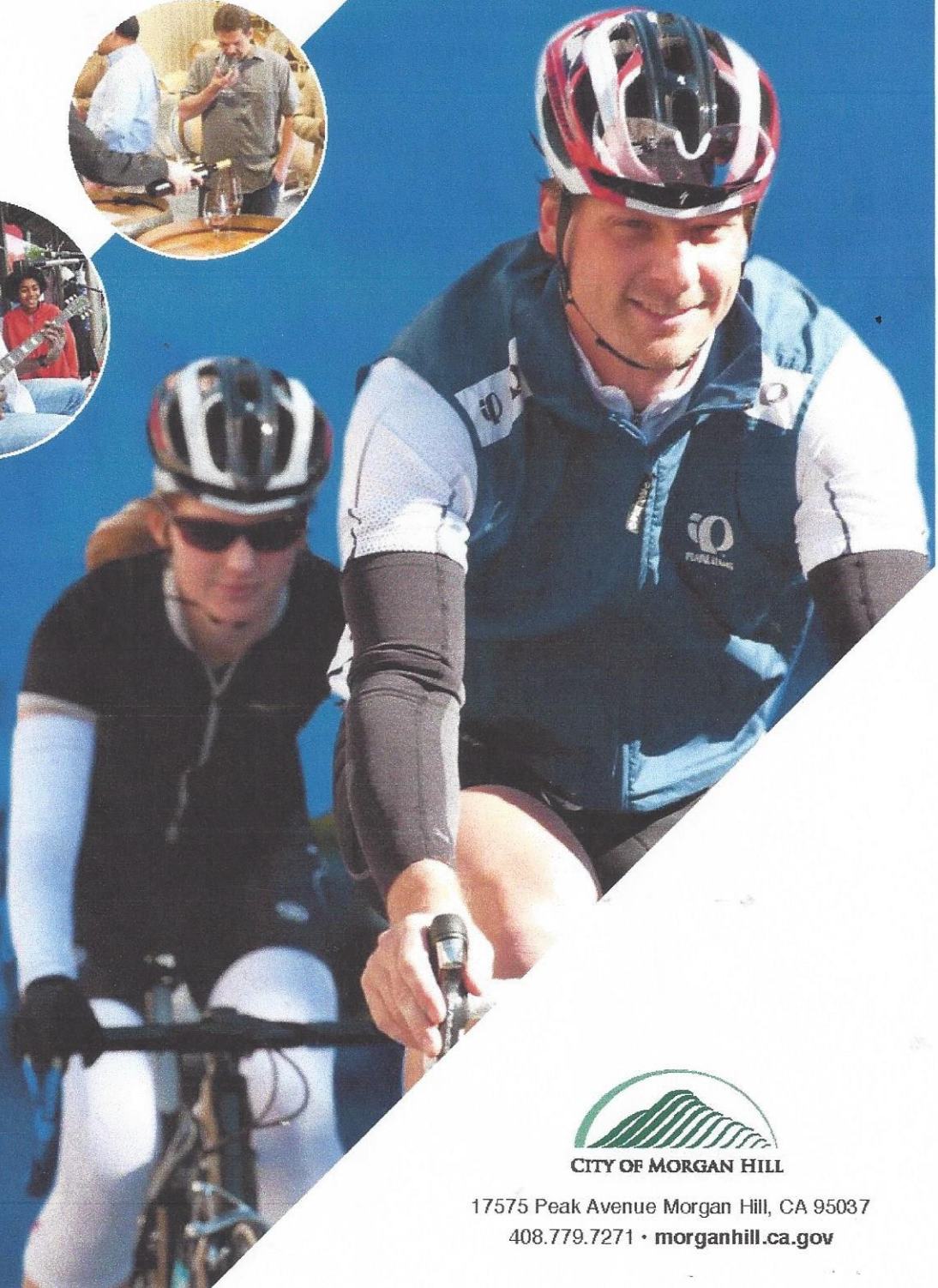
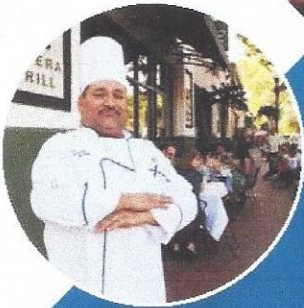
July 2017



Table 5-4: Recommended Recreation Facility Priority Projects

Project Descriptions	Planning-Level Capital Cost	Operating Cost Estimate	Funding Source	Time Frame	Project Reference
Increase Parking: Aquatic Center and Outdoor Sports Center	\$2,500,000	Moderate	301, 360	0-5 years	R-K1
Centennial Recreation Center Expansion	\$2,000,000	Positive	360	0-5 years	R-A1
Villa Mira Monte Phase 1 Parking and Landscape Improvements	\$2,000,000	Break Even	360, 301	0-5 years	R-E1.a
Outdoor Sports Center Improvements: Phase 1: Sidewalk, lights, irrigation, and restrooms, turf replacement	\$2,000,000	Positive	301, 302, 360	0-5 years	R-B1.a
Sand Volleyball Complex	\$50,000 Feasibility Analysis \$1,000,000 Construction	Break Even	301, 360	0-10 years	R-D1
Villa Mira Monte Phase 2 New Buildings and Further Site Improvements	\$3,000,000	Break Even	360, 301	10+ years	R-E1.b
Expand Preschool at CCC	\$500,000	Positive	360	0-5 years	R-J1
Baseball /Softball Complex: Develop complex in the SE Quadrant	\$16,000,000 (Natural Grass Fields)	Break Even	301, 360	5-10 years	R-C1
Install Solar Panels at Recreation Facilities	\$2,000,000	Positive	OT, 301, 360, 010	0-10 years	R-K1

2017 Morgan Hill **ECONOMIC BLUEPRINT**



CITY OF MORGAN HILL

17575 Peak Avenue Morgan Hill, CA 95037

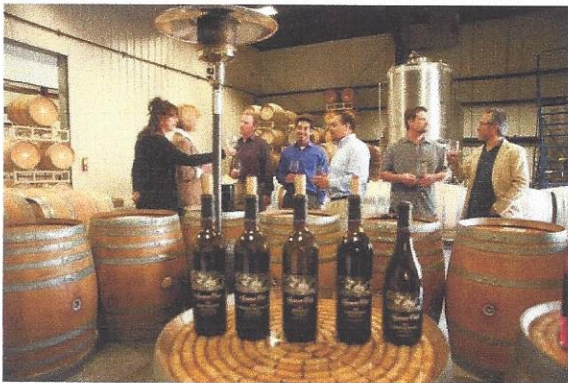
408.779.7271 • morganhill.ca.gov



TOURISM

Grow leisure, agriculture, wine country & recreation tourism

The City of Morgan Hill is ideally situated in South Silicon Valley, welcomes local, national, and international visitors to a range of recreation and dining amenities. With 19 local parks, a variety of recreation facilities, wineries and proximity to the Pacific Coast, Morgan Hill offers visitors many places to relax, dine, and have fun.



The City of Morgan Hill has invested in its Aquatics Center, Outdoor Sports Center, and Centennial Recreation Center, making them premier destinations for both residents and visitors. The facilities, along with the local festivals and events, draw nearly 1 million visitors annually. According to the 2017 Morgan Hill Sports Market Business Strategy, **a visitor that spends \$1.00 in South County recreation activities such as at the aquatics center, generates \$1.80 in economic impact.**

To support the continued growth of tourism in Morgan Hill, the City must continue to support leisure and recreation destinations and also ensure the availability of high-quality lodging to accommodate visitors. A hotel study commissioned by the City of Morgan Hill and produced by Hotel Appraisers and Advisors in 2015 noted that many of the City's existing hotels could benefit from reinvestment, and that there is significant market demand for hotel rooms above and beyond the existing 900 rooms already located in the City.

How does Morgan Hill grow Leisure, Agriculture and Recreation Tourism through enhanced facility utilization while strengthening promotions and marketing partnerships?

❖ **ENHANCE FACILITY UTILIZATION AND GROW SPORTS/RECREATION FACILITIES**

According to the 2017 Morgan Hill Sports Business Strategy prepared by Johnson Consulting, Morgan Hill has the ability to enhance and leverage existing facilities in order to attract more events. To remain competitive, the City should **Upgrade the Outdoor Sports Center & Aquatics Center (Infrastructure & Amenities) (Action #23)** and **Develop a Financing Plan to Construct and Operate New Sports/Recreation Facilities (Action #24)**, such as Sand Volleyball, In-door Facilities and Baseball/Softball Fields.

❖ **SUPPORT LODGING**

The General Plan and the Zoning Code are the main tools the City has to regulate land development and support tourism by providing streamlined processes and clear rules for development of lodging facilities such as hotels and bed and breakfast facilities. The City should **Ensure General Plan and Zoning Code Address Bed &**

Breakfasts, Air B&B and Hotel Development (Action #25) to provide clear guidance regarding the rules that apply to short-term room or home rentals through Airbnb or other platforms.

Much of the existing City hotel inventory is approaching the end of its economic life cycle. This means that aging hotels need to consider reinvesting or transitioning these facilities to other uses. In Morgan Hill, some of these hotels have a large percentage of over 30-day stays or in other words, function as defacto housing. This raises concerns for safety, State Building Code compliance, and local General Plan and Zoning conformance. The City should **Develop Plan to Help Upgrade or Transition Aging Hotel Facilities (Action #26)**.

Finally, to support the vision of making Morgan Hill and South Silicon Valley a tourism destination, diversity among lodging amenities is needed. The addition of the Granada Boutique Hotel Downtown in 2018 is a big win for Morgan Hill and helps cement this vision. To promote this type of investment, the City should **Identify Pre-Zoned Lodging Sites (Action #27)**.

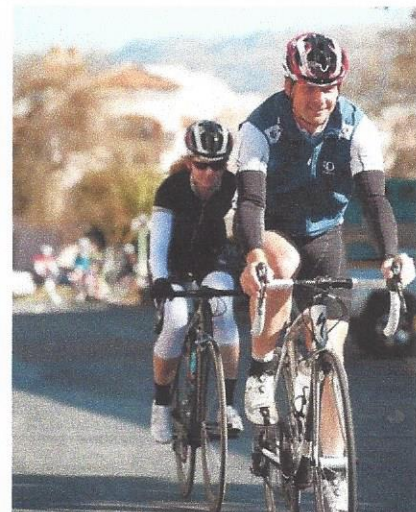
❖ LEVERAGE RESOURCES THROUGH CROSS-PROMOTION AND PARTNERSHIPS

Many communities have successfully branded, marketed, and promoted their communities as tourism destinations through the collaboration of hotels, hospitality, and other tourism-related businesses. Morgan Hill should **Work with Hotels to Develop a Tourism Based Improvement District (TBID) to help Finance Capital Improvements to Sports Recreation Facilities and to Promote and Market the Region (Action #28)**. This will allow for the City and hotels to develop an ongoing financial mechanism to promote and brand the area and make vital capital upgrades to existing or contribute to development of new recreational facilities. Additionally, the City should **Collaborate with Regional Partners to Enhance Branding, Marketing**

and Promotions or Regional Assets (Action #29).

❖ SUPPORT A TOURISM ENVIRONMENT

The City can advance the tourism goals and the retail attraction goals by aligning these two efforts and **Target Retail Attraction Towards Sport Recreation, Entertainment, Boutique and Food Retailers (Action #30)**. Downtown Morgan Hill is a thriving and growing business district with a distinct character. The community has been able to attract unprecedented investment in Downtown, making it a gem within Silicon Valley. Downtown Morgan Hill is a key component to making South County a tourism destination. The City should **Continue to Create a Lively Downtown with Entertainment Offerings (Action #31)**.





Sports Market Business Strategy

SUBMITTED TO
City of Morgan Hill

SUBMITTED BY
Johnson Consulting

DATE
May 24, 2017

Final Report



**JOHNSON
CONSULTING**

Experts in Convention, Hospitality,
Sport and Real Estate Consulting.

Table 2-8

Aquatics Center and Outdoor Sports Center Economic and Fiscal Impact			
Economic Impact (\$000)*	Aquatics Center	Outdoor Sports Center	Combined
Direct Spending	\$3,897	\$6,557	\$10,454
Indirect Spending	\$1,754	\$2,951	\$4,704
Induced Spending	\$1,391	\$2,341	\$3,733
Total Spending	\$7,042	\$11,849	\$18,891
Increased Earnings	\$2,163	\$3,640	\$5,803
Employment (FTE Jobs)	49	83	132
Fiscal Impact (\$000)*	Aquatics Center	Outdoor Sports Center	Combined
Sales Tax **	\$330	\$522	\$852
Transient Occupancy Tax	\$23	\$42	\$66
Total Tax Revenue	\$353	\$564	\$917

*Figures are rounded to the nearest thousand

** Total sales tax is 8.75%. City of Morgan Hill receives 1% of gross sales, or \$97,000.

Source: Johnson Consulting

Events held at both facilities are estimated to have generated \$18.9 million in total spending, \$5.8 million in increased earnings, 132 FTE jobs, and \$917,000 in tax revenues, annually. Morgan Hill would receive \$97,000 of the sales tax revenues, \$60,000 of which is through visitor impacts.

RECOMMENDATIONS

Johnson Consulting's recommendations and strategies are presented in three steps that will, through a sustained strategy, contribute to the overall strengthening of the sports tourism marketing and activities in Morgan Hill. The recommendations will also impact local residents through improved facilities and attracting more visitor dollars to the City. The recommendations are detailed below.

STEP ONE – Create Tourism/Destination Management Organization (DMO)

The City of Morgan Hill is well-positioned to grow its tourism marketing efforts to transform into a destination, but Morgan Hill cannot yet compete with more established tournament venues nationally, as these facilities typically benefit from a unified marketing effort from local tourism stakeholders. Hotels, restaurants, entertainment and recreation venues will all collaborate with sports complexes to create travel packages for event owners and participants. Often, this effort is led by a Destination Management Organization (DMO) such as a Convention and Visitors Bureau (CVB) and/or regional sports commission. Morgan Hill lacks a cohesive effort from the tourism resources in town, including hotels, and should benefit

participation is strong at the youth level, but there is a shortage of local fields in both sports, particularly for practice. The inventory of local fields includes those at Britton School, Burnett School and El Toro School. We met with representatives of both sports who have resorted to hosting practices on the properties of local residents, essentially in their backyards. Adding new fields to the Morgan Hill market would allow for an inventory of practice fields and quality game fields for local games and tournaments. Additionally, if new fields are built with Field Turf they can be lined for other sports such as soccer, rugby, or lacrosse to allow for multipurpose use like Twin Creeks Sports Complex in Sunnyvale. This could allow for additional fields to be used in conjunction with the OSC for larger tournaments.

A new facility in Morgan Hill should consider some or all of the following components:

- Four baseball/softball fields with lights (wheel configuration)
- Field Turf surface with outlines for soccer/lacrosse fields
- Concession stand with two points of sale
- Temporary fencing to accommodate different field dimensions
- Restrooms
- Batting cages/ throwing tunnels

The cost of such a facility will depend on a number of factors, including building materials, field dimensions and amenities. As such, a price estimate cannot be provided at this time. Further investigation into the viability of such a complex should be conducted and should include a cost estimate.

4. PARKING & POTENTIAL ADJACENT REAL ESTATE DEVELOPMENT

There will have to be parking considerations depending on the location of these new facilities, especially if any of them are located at the OSC/AC site. With parking already a challenge at the site, adding any additional facilities or events will require expanded parking inventory.

The City of Morgan Hill may also want to consider non-sports facility development in some strategic locations near the existing athletic facilities. There could be areas of opportunity for other new real estate uses as the City looks to grow its sports facilities and attract more visitors. For example, additional hotels, gas stations, restaurants and specialty retail could be ways to capture additional visitor dollars. Any new real estate development should be preceded by further studies as the scope of this study did not consider other real estate uses.

Project: Parks Land Purchase

Project No.: 110097

Project Location: City-wide

Category: Park Facilities



DESCRIPTION: Purchase of land for future parks as identified in the Parks, Facilities and Recreation Programming Master Plan and the General Plan. The City is in the process of acquiring property for future development of a 23 acre parcel suitable for a softball and baseball field complex at the corner of Tennant and Condit. Purchase of additional park space adjacent to City facilities on Condit Road is planned to meet future and existing recreation needs. Acquisition of a neighborhood park space is planned adjacent to school district property.

JUSTIFICATION: Acquiring property for new parks helps ensure an adequate parks inventory in the future and is a required element of the Parks Master Plan.

RESPONSIBLE DEPARTMENTS: Community Services

CIP FY 2015-16

Also: FY 11-12
FY 12-13
FY 13-14



CITY COUNCIL STAFF REPORT

MEETING DATE: February 20, 2008

Agenda Item # 17

Prepared By:

Community
Development
Director

Submitted By:

City Manager

STATUS REPORT ON SOUTHEAST QUADRANT AND AGRICULTURAL MITIGATION POLICY PLANNING EFFORTS:

(1) EXPLORATION OF SPORTS/RECREATION AND PUBLIC FACILITY SOUTHEAST QUADRANT (SEQ) LAND USES, INCLUDING GENERAL ECONOMIC ASSESSMENT OF SPORTS-RECREATION-LEISURE USES; (2) AGRICULTURAL MITIGATION POLICIES & ALTERNATE PRESERVATION AREAS; (3) ALTERNATE LOCATIONS FOR URBAN LIMIT LINE IN SEQ

RECOMMENDED ACTIONS: Receive status report and any public comments, and direct staff to proceed with the work program as previously directed by the Council.

EXECUTIVE SUMMARY: At its meeting of December 19, 2007, the City Council approved a set of recommendations which outlined "next steps" for the planning efforts related to the SEQ, and requested that a status report be scheduled for this February 20th meeting, at which time the report regarding potential economic benefits of sports-recreation-leisure uses in the SEQ, would also be available. Status of efforts:

Work Products. Work products have been developed for review and discussion:

- Draft "Sports-Recreation-Leisure" (SRL) General Plan Land Use Designation & Zoning District
- Preliminary Analysis of Potential Economic Benefits of SRL Zone in the Southeast Quadrant
- Agricultural Mitigation Working Paper, including possible Local Modification of LESA Model
- Diagrams showing range of alternate scenarios for locations of SEQ Urban Limit Line (ULL), SRL General Plan and Zoning District in SEQ, and alternate Agricultural Mitigation/Preservation Areas

Town of San Martin. As directed, staff has met with LAFCO staff and San Martin town proponents to better understand the proposed Town city limits, urban service area location, and agricultural policies. It is staff's understanding that LAFCO will soon be forwarding a letter to the City of Morgan Hill formally requesting a city position regarding these matters. Staff will prepare additional analysis and schedule the matter for City Council consideration, likely for April 30th when the City Council again considers SEQ and Agricultural matters.

Private Applications Filed. As authorized by City Council policy and direction, four General Plan Amendment (GPA), Urban Service Area Amendment (USA), rezoning and annexation applications were filed by private property owners in the Southeast Quadrant: (1) Private high school for up to 1,600 students, over 40 acres at the northeast corner of Tennant/Murphy; (2) Sports-retail and restaurant totaling 43,000 sf on parcel immediately south of Aquatics Center; (3) Sports uses along freeway on lands east of freeway; and (4) Sports uses south of Tennant on about 80 acres.

Stakeholder Workshop and Next Steps for SEQ SRL-AG-ULL Process. A Stakeholder Workshop was held on February 7, 2008, broadly noticed to SEQ property owners, developers, environmentalists, agricultural interests, and other interested persons/agencies. Over 80 people attended and considered a presentation by staff regarding possible "Sports/Recreation/Leisure" (SRL) designation and uses, alternate Agricultural Mitigation Policies and Preservation Areas, and alternate locations for an SEQ Urban Limit Line. Participants asked questions and provided input, and a questionnaire was also distributed as a method of obtaining more detailed input. A full range of input has been received. All but one commenter so far seem to support pursuit of the sports-recreation-leisure concept. Most support some level of agricultural preservation within the SEQ, although certain property owners do not believe that is viable.

Draft work products have been distributed to the City Council and are available for public review on the city's website and at the City Hall. These are scheduled to be considered at a Planning Commission Workshop on March 25, 2008. Recommendations regarding these matters are to be considered by the Council at a special meeting on April 30th, at which time the Council would provide direction regarding the project description for the SEQ General Plan land use amendment and zoning, as well as Agricultural Mitigation Policies and the SEQ ULL, for evaluation in an EIR.

FISCAL / RESOURCE IMPACT: Process is using existing staff and budget resources. Staff will need to return to the Council for a budget allocation from the city's General Plan Update fund to pay for EIR.



2004 Master Plan

Morgan Hill Outdoor Sports Center
City of Morgan Hill, California

Bellinger Foster Steinmetz
Landscape Architecture
January 17, 2007



Memorandum

Community Services Department

Date: November 25, 2013

To: Steve Rymer, City Manager
Chris Ghione, Community Services Director

From: Anthony Eulo, Program Administrator

Subject: Due Diligence Activities on Ball Field Property

In 2012, the City issued a Competitive Solicitation of Future Park Property for the purchase of property suitable for constructing a ball field development. The Solicitation indicated that submitted properties should be a minimum of 20 acres, be able to accommodate a variety of field sizes, and be able to be delivered to the City without restrictions. Exhibit A is the full competitive solicitation and a map depicting the locations of the proposals the City received in response.

After considering the nine proposals received, the City determined that the property adjacent to the northbound Tennant offramp was best suited to meet the City's identified needs. This property has adequate size, has a shape that is conducive to ball field development, and is located near the City's other recreational destinations on Condit Road. This parcel also is ideally suited to eventually include a private development along Tennant that could serve the ball field users.

The City executed a Letter of Intent (LOI) with the owners of the selected ball field property on August 2, 2013. As authorized by the City Council, this agreement opened up a due diligence period during which the City would conduct its major evaluations of the property, complete preliminary planning for the site, and develop a purchase or option to purchase agreement for the site. Exhibit B is the executed LOI.

As noted in the LOI, purchasing the selected property will need to be coordinated with the City's Citywide Agriculture Preservation Program and Southeast Quadrant (SEQ) Land Use Plan Draft Environmental Impact Report. While the selected property will be included in the draft report with a programmed recreational use, additional environmental analysis considering the specific ball field project will need to be completed before the City finalizes any purchase of the property. The Option Period specified in the LOI indicates that the Option will expire 40 days after the completion of the CEQA process for the ball field project.

The LOI envisions that the City would execute an option to purchase agreement following the end of the due diligence period and would make a \$50,000 option payment that would be nonrefundable unless there is an uncured default of the seller.

This memo summarizes the City's findings to date and describes several alternatives for Council consideration.

Site Environmental Contamination Evaluation

The City contracted with an experienced environmental analysis firm to conduct Phase 1 and Phase 2 evaluations of the parcels. While a Phase 1 evaluation focuses on the known prior uses of the land and their related potential to cause contamination, a Phase 2 study focuses on the analysis of actual soil samples.

The Phase 1 research noted the existence of a barn-like structure that was potentially the location of pesticide mixing and spillage. The barn is considered a *Recognized Environmental Condition* because of the relatively high potential for chemical spills and leaks.

The Phase 2 evaluations were conducted in accordance with the California's *Interim Guidance for Sampling Agricultural Properties* (2008), which was designed to address agricultural transition to school sites and residential land use. The site-specific sampling included the collection of thirty-six (36) samples from across the site which were composited into nine (9), 4-point samples. The certified laboratory results showed non-detectable to limited detections of the persistent pesticide compounds with the exception of some slightly elevated levels of the persistent pesticides of *Dieldrin* and *Toxaphene*. Specifically, the lab results showed:

- Consistent, low-level detections of the organochlorine pesticide *Dieldrin*, at concentrations that did not exceed the human health and safety threshold (i.e., the *California Human Health Action Level, CHHSL*) concentration but did exceed the leachable threshold established in the Water Board's *Environmental Screening Level (ESL)*.
- A single, elevated detection of the persistent pesticide *Toxaphene* that was similarly below the human health and safety threshold but above the *Environmental Screening Level (ESL)*.

While the compounds detected were below the threshold established to protect human health and safety, they were above the level at which the City may be ordered to clean up the site in order to protect water quality. With this in mind, the following additional work is recommended for the site.

1. Collect four discrete samples from "worst case" locations and test those areas for solubility potential in order to assess the likelihood of groundwater contamination resulting from contaminants in the soil.
2. Confirm that there are no impacts resulting from potential historical storage and mixing practices at the old barn by taking and testing four additional samples.
3. Confirm that there is no leachability threat with the overseeing regulatory agency by obtaining a *no further action* letter from the Central Coast Regional Water Quality Control Board.

The City's Competitive Solicitation specified that the property can be delivered free of hazardous materials or conditions. It is anticipated that the discovery of any hazardous materials requiring remediation in order to meet this criteria will be the subject of additional negotiations with the property owner. While it is not possible to definitively state what the outcome of those negotiations would be without understanding the extent and cost of any needed remediation, these negotiations would occur prior to any action taken by the City to enter into an agreement to purchase the property.

Preliminary Site Planning

In order to evaluate how a potential ball field development would fit on the site, the City contracted with Verde Design to develop and present fully developed preliminary plans for the site. In order to maximize the economic development value the City received from the planned development, Verde was instructed to plan a facility designed to support tournament play.

Verde presented three optional designs for the site which are presented as Exhibit C. All three designs have the following features in common:

- Total of six fields (four fields with 300' fences suitable for softball and youth baseball and two fields with 360' fences suitable for softball, youth baseball, and teen baseball)
- Remainder parcel reserved for economic development on the north portion of the site
- Minimum of 454 parking stalls (75 stalls per field)
- Supporting features included (lights, drinking fountains, batting cages, etc.)
- Require over 23 acres of the site

The site planning process identified several issues/questions with the site design and potential development that should be addressed before proceeding with site acquisition.

* **Size of Remainder Parcel** - Since the potential for economic development on the northern remainder parcel is strongly desired, it is essential that the size of the remainder parcel be adequate to support the development. While six acres was originally envisioned to remain after the ball field development, the preliminary designs leave only 2.9 - 3.4 acres remaining. The seller has indicated that a minimum of 3.5 acres is needed to realistically ensure that economic development can occur. The size of the remainder parcel is directly linked to the number of required parking spaces.

Amount of Parking Required - The preliminary designs include 75 parking spaces per field which is consistent with the recommended requirements for tournament play. The property landowner proposes that the City construct only 50 spaces per field, which is more consistent with local play, and arrange for overflow parking at other nearby locations. While the reduction in onsite parking would reduce the City's land acquisition and development costs and increase the size of the remainder parcel, having adequate onsite parking is important to support the use of the facility. Both the Outdoor Sports Center and Aquatics Center currently rely on offsite overflow parking for large events with mixed results. Staff recommends that the City follow the designers recommendation to plan for 75 spaces per field.

Development Costs - Verde provided estimates on site development costs for all three alternatives that range from \$21 - \$21.8 million. These estimates include site acquisition, permits, design and inspection, hard construction, contingency, and agricultural mitigation. The estimates do not include substantial costs for offsite improvements (traffic signals, road widening, extending utilities, etc.) which may be required but are currently unknown.

For reference purposes, the Park Impact Fund had a balance of approximately \$8 million at the end of the Fiscal Year 12/13 and annual fee revenues are approximately \$1.2 million at current fee rates. In addition to the ball field development, other planned uses of Park Impact Funds include improvements to Community Park, the construction of the El Toro Trail, and extensions to the West Little Llagas Creek Trail.

It is beneficial to have these estimates at this time in order for the City to consider the likelihood of eventual site development. It is possible that some value engineering could occur to reduce project costs, but this work is unlikely to reduce the costs substantially and the City's experience with value engineering is that it sometimes results in projects that must ultimately be improved at a later date to restore what was removed.

While bringing in a project partner that may help construct the facility is certainly a possibility, it is unknown how much assistance would be provided by such a partner and the terms that would accompany the partnership. If a local, nonprofit partner is desired, it is unlikely that a substantial capital contribution would be possible.



City of Morgan Hill

Legislation Text

File #: 15-427, Version: 3

CITY COUNCIL STAFF REPORT **MEETING DATE: JULY 15, 2015**

PREPARED BY: Anthony Eulo, Program Administrator/Community Services
APPROVED BY: City Manager

PURCHASE OF BALLFIELD PROPERTY

RECOMMENDATION(S)

Adopt resolution approving the following actions:

1. Re-appropriating \$5,283,601 of Park Impact Funds (Fund 301) from FY 14/15 to FY 15/16; and
2. Authorizing the City Manager to execute all documents, agreements and payments relating to the purchase of the Ballfield Property.

COUNCIL PRIORITIES, GOALS & STRATEGIES:

Ongoing Priorities

Supporting youth

2015 Focus Areas

Stimulate Economic Development
Southeast Quadrant

REPORT NARRATIVE:

The City has been working on the development of a ballfield site for over a decade. While the original design for City's Outdoor Sports Center project envisioned a facility shared between soccer fields and diamonds, the final design for that project did not accommodate the diamonds. The interest in building a ballfield facility remained, however, and the City issued a Competitive Solicitation of Future Park Property for the purchase of property suitable for ballfields in 2012. As a result of that process, the City had selected three adjoining parcels of land directly southeast of the Highway 101 interchange at Tennant Avenue.

Since 2013, the City and the property owner have negotiated and finalized an agreement to purchase the land. All of the conditions precedent to the sale of the property to City as set forth in a prior letter of intent between the parties have been met, and the City is now poised to exercise its option to purchase the property (the previously signed Option to Purchase Agreement is attached for convenient reference). Notably, the site cleanup has been finalized, and the City's analysis to comply with the California Environmental Quality Act also has been completed.

The final purchase price of \$5,283,601 plus closing costs is based on the purchase of 22.2 acres of the 25.8 acre site at \$238,000 per acre and the purchase of the remaining 3.6 acres of the site for \$1. As previously envisioned and memorialized in the Option Agreement, it is anticipated that the City will sell the remainder parcel back to the land owner for \$1 in the future for a commercial development.

The terms, provisions and conditions of the Option to Purchase Agreement that pertained to the actual sale of the property to City, while not binding, were discussed and negotiated by City and the Property Owner to a fairly detailed level. The terms originally envisioned and negotiated by the parties have not significantly changed and the project, as originally envisioned, also has not changed. For this reason, it is proposed that the City Council delegate authority to the City Manager to further negotiate, as needed, execute and subsequently administer a purchase and sale agreement substantially as described in the Option to Purchase Agreement that all of the parties previously agreed to and executed, as well as the authority to execute necessary or related documents and take other actions needed to consummate the sale.

COMMUNITY ENGAGEMENT: Collaborate

Interest in developing a local ballfield facility was initiated by the community over a decade ago. The ultimate development of the ballfield site will involve collaboration with a long list of community groups including youth baseball, youth softball, adult softball, local hotels and businesses, regional sports leagues, and entities interested in operating the ballfields.

ALTERNATIVE ACTIONS:

1. The Council could decide to exercise the option and direct staff to return with the purchase and sale agreement as soon as possible.
2. The Council could choose to delay action or to determine that the City is no longer interested in purchasing this site. The City's \$50,000 option payment would be forfeited if the City declines to finalize the purchase.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has taken several prior actions leading up to the planned purchase of the site including the original selection of the site in 2012, the authorization to enter into a Letter of Intent on August 2, 2013, and the approval of the Option to Purchase Agreement on July 2, 2014.

FISCAL AND RESOURCE IMPACT:

The total purchase price for the acquisition of the site is \$5,283,601 plus closing costs. Once the land purchase is finalized, property tax payments of approximately \$55,000 annually will be paid by the capital project fund until such time that the City constructs and operates a new sports center or the property is annexed into the City. Conducting these negotiations and proceeding with the evaluations is an activity included in the Community Services Department work program.

It was anticipated that this project would be completed before the end of FY 14/15, however, it will not be completed until FY 15/16. As a result, it is necessary to re-appropriate Park Impact Funds (Fund 301) for the project from FY 14/15 to FY 15/16.

CEQA (California Environmental Quality Act):

Project, Description of CEQA requirements

The development of this project was included at the program level in the Environmental Impact Report (EIR) developed for the Southeast Quadrant (that EIR is available for review on City's website). Subsequent to the EIR's adoption, an addendum to the EIR to review and analyze the specific ballfield project was prepared once it was determined that no additional environmental impacts would be created, and the Addendum was filed with the Community Development Department of the City (and is also available for review on the City's web site).

LINKS/ATTACHMENTS:

Resolution

July 2, 2014 Staff Report and Memo

Signed Option Agreement

Letter from Santa Clara County Documenting Site Cleanup

HIGHWAY 101 NORTHBOUND

TENNANT AVE

HIGHWAY 101 OFFRAMP

3.4 ACRES

23.1 ACRES

FISHER AVE



October 2, 2013



Preliminary Design - Concept A
Tennant Avenue Ballfield Improvements
Morgan Hill, CA

LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
SPORT PLANNING & DESIGN
2455 Twp Avenue, Ste. 200
Sunnyvale, CA 95059
Tel: 408.963.7200
Fax: 408.963.7200
www.verdedesign.com



City of Morgan Hill

2020 General Plan

- Retail Commercial
- General Commercial* (See Action CD-9.3)
- Non-Retail Commercial
- Mixed Use
- Industrial
- Office Industrial
- Campus Industrial
- Public Facilities
- Park (general location where needed)
- School (general location where needed)
- Sub-Regional Commercial Site (See Action CD-10.1)

Boundaries

- Parcels
- City Limit
- Sphere of Influence
- Urban Growth Boundary
- Downtown Design Plan



*The General Commercial category, location and allowed uses were established by voter initiative and cannot be reduced without voter approval

smaller area than the existing City limits since it does not extend to the golf course, nor cover the entirety of some hillside parcels.

URBAN GROWTH BOUNDARY

In 1996, Morgan Hill and Santa Clara County jointly adopted a long-term Urban Growth Boundary (UGB) and associated policies. The UGB is encompassed within the Sphere of Influence (SOI) and is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur. It is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the City. The UGB also helps to ensure that urban services provided by the City to existing neighborhoods will not be reduced by service demands of new urban development at the City's fringe.

SPHERE OF INFLUENCE

The SOI is a boundary that identifies land that the City may annex in the future, and for which urban services, if available, could be provided. Under State law, the SOI is established by the Santa Clara County Local Agency Formation Commission (LAFCO) with input from the City, and its purpose is to identify areas where future urban development can be best accommodated in an orderly and efficient manner. The current SOI is approximately 31 square miles in size.

EXISTING LAND USE PATTERN

Morgan Hill is largely comprised of single-family residential neighborhoods. In addition, multi-family residential uses, such as condominiums and apartments, are dispersed primarily in the area west of Butterfield Boulevard between Cochrane Road and south of Watsonville Road, and east along Monterey Road. Retail, dining, and service uses are located along major transportation corridors throughout the City, including in Morgan Hill's Downtown. There are also two main employment centers: the business parks north and south of Cochrane Road, and the light industrial area west of 101 between Dunne and Tennant Avenues.

Gordon Jacoby & Associates

April 20, 2012

Steve Rymer
Community Services Director
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Mr. Rymer:

We would like to submit 20 acres of our 26.39-acre property for consideration under your Competitive Solicitation of Future Park Property concerning baseball/softball fields. We believe our property uniquely satisfies all of your criteria. Our suggested purchase/transfer approach offers the City a creative and flexible opportunity to move forward on three important City priorities: 1) purchase/development of baseball facilities, 2) development of a gateway property to the Southeast Quadrant Plan, and 3) practical solution for moving forward with the Downtown development plans.

Our proposal is to exchange all or portions of our property for one of two possible City-owned properties in Downtown. Our property is located at the Highway 101 exit at Tennant Avenue (see below). The possible City-owned transfer properties are generally known as Site A or Site D.

Our proposal, if accepted, would lead to our entering into a period of exclusive negotiation with the City on the particulars of the transfer/development of our property for either of the two Downtown parcels. Such negotiation for a Downtown transfer parcel would require our provision of preliminary development plans and having discussions on the full range of community objectives and financial considerations that have been enumerated previously for the Downtown parcels including: 1) type and quantity of commercial or residential uses, 2) design features, 3) project and community parking, 4) other project /community improvements, 5) additional financial commitments by both parties needed to complete a successful project, and 6) our financial and development capacity to deliver a successful project.

The benefits of a transfer, as distinct for a sale, is that it provides the City with an unique opportunity to leverage its current recreation development fund in one of two possible directions: 1) to preserve recreation facility funds so they can be used immediately for the construction of the ballfields or 2) to enable the City to re-direct those funds, as a result of the transfer, for use in making Downtown improvements such as parking facilities.

We are fully aware that there are possible legal/title questions regarding the Downtown parcels, which were previously purchased by the City's RDA. Furthermore, we understand that matters concerning the use of RDA funds are the subject of on-going legal and political discussion. We are prepared to have such topics included as part of the exclusive negotiation. We do not believe that the delay caused by such open-ended questions would harm the City's primary effort of this Solicitation.

The below information responds to the requested information listed as "Sales Proposal" in the Solicitation:

6114 LaSalle Avenue #348
Oakland, Ca 94611
510-339-6367 ■ (fax) 510-339-1951
gdjacoby@aol.com

Land Owners:

NMSBPCLDHB, a California limited partnership

Agent with contact information:

Gordon D. Jacoby
Gordon Jacoby & Associates
6114 La Salle Avenue, #348
Oakland, CA 94611
510-330-6367
gdjacoby@aol.com

Letter of Intent:

This letter provides the substance of our intent to enter into a negotiation in good faith for the transfer of our property for one of two properties currently owned by the City of Morgan Hill and generally known as Site A and Site D. Our response is limited to such a transfer. It is not our intent to sell our property.

APNS

817-14-4
817-14-5
817-14-9

Asking Price:

For purpose of this Solicitation, the asking/transfer value is \$250,000 per acre or \$5,000,000. Under a transfer agreement, the entirety of the 26.39 acres, if desired for the transfer, would be \$6,598,000.

Description

It is our desire to transfer 20 of our 26-acre property. The remaining six acres would be used for commercial/retail uses that would support both the recreational uses near the property as well as a gateway/ roadside market project that features local agriculture products.

The property is located immediately adjacent to the southeast exit of Highway 101 at Tennant Avenue (see attached map). Access to the property could be designed to complement the current Tennant Avenue/Condit Road intersection. The property is across Tennant Avenue from the Ramada Inn and is convenient to out-of-town visitors to the ballfields. It is within walking distance of the City Aquatic Center and Sports Complex. The site has great visibility from Highway 101 for both Morgan Hill residents and visitors from out of the area. Following recent City improvements to the Tennant Avenue overpass, the roadway has sufficient capacity to readily serve the site.

Portions of the property are within the City Urban Growth Boundary. We have a 300+-foot deep water well on the property that provides an ample source of water supply for irrigation of agriculture on the property. Such a water source could provide for the irrigation needs of the ballfields. Additional, there is a City-owned water supply line adjacent to the property on Tennant Avenue. There is a City sewer line on Condit Road within 200-400 feet of the site and the recent overpass improvements have been designed to anticipate an extension of the sewer line that links the east and west side of Tennant Avenue.

Existing Zoning

The parcel is currently under the jurisdiction of the County of Santa Clara. Its current zoning is A-20. That County zoning enables ballfields, provided that are used primarily by local residents.

The site has been included in the planning for the Southeast Quadrant and under that plan would be zoned for Sports/Recreation/Leisure. The EIR for the SEQ is analyzing a combined recreation/ballfield and retail project for the site. The SEQ plan requires completion of the EIR and review of the proposed General Plan/Zoning changes, annexation and Urban Limit Line boundary changes by the Planning Commission and City Council. The Santa Clara County LAFCo must approve the annexation. Such approvals are contemplated to occur within the next 12-18 months.

Disclosures

The property is currently leased on a year-to year basis to George Chiala Farms. That lease can be terminated with notice. There are not other limitations on the property, other than those disclosed in the attached Preliminary title report.

Closing

Thank you for consideration of our proposal. We realize that it proposes a different approach. We have made a similar proposal in the past (May 14, 2009 letter). I believe it was rejected because the City desired to have an open competition for the Downtown parcels. My firm was a part of a development team that ranked highly for consideration to develop one of the Downtown parcels. The selected developer was unsuccessful for undisclosed reasons but they likely involved the lack of a clear commitment to some value for the Downtown property.

This proposal offers a different approach. It provide the City - and its residents and ballfield enthusiasts --with a triple benefit: 1) a prime location for their ballfields, 2) a leveraged benefit for the use of the City's recreation facility fund and 3) and a means of moving forward on one of the Downtown development sites.

Sincerely,

Gordon D. Jacoby



Morgan Hill City Council Meeting – October 17, 2018

Magical Bridge Agreement Amendment and Project Update

Agenda Item: 23



Magical Bridge Morgan Hill



Recommendations

- Amend Initial Agreement
- Design Consultant Agreement
- Playground Redesign

Magical Bridge Morgan Hill



Construction Climate

- Costs are high (especially buildings)
- No foreseeable cooling in bidding climate
- Waiting on projects may not result in cost savings

Design Consultants

- Options for future value engineering
- Including redesign in initial scope will increase costs significantly

Magical Bridge Morgan Hill

Project Began in 2015



Magical Bridge Morgan Hill



Project Funding

- \$1.2M Fundraising Goal has not been met
- Significant Grant Funding Obtained
- Loss of grant funding will begin June 2019
- \$4.2M available for construction

Magical Bridge Morgan Hill



Playground Redesign Priorities

- Keeping existing amenities in current playground, footprint of site will change
- Better utilization of existing topography
- Review value of each component
- Plan for future additions

Magical Bridge Morgan Hill



- Agreement amendment removes \$150K in milestone payments to Magical Bridge.
- New \$150K Design Consultant Agreement with Magical Bridge for final design and construction documents. Includes subcontracting with prior design firm Verde Design and other design subconsultants.

Magical Bridge Morgan Hill



Recommendations

- Amend Initial Agreement
- Design Consultant Agreement
- Playground Redesign

Alternative Actions (Not Recommended)

- Move forward without Magical Bridge
- Provide alternate direction to staff.

Extra Slides for Q&A

Cost Estimates



Project Expense Estimates

Design/Fundraising Costs	Costs	
Concept Designs (Already Complete)	\$ 100,000	Paid
Fundraising/Marketing/Design Input	\$ 200,000	Paid
Design/Construction Docs/Construction Support	\$ 150,000	
Subtotal	\$ 450,000	
Project Costs		
Playground Construction	\$ 4,200,000	
Parking Lot Improvements	\$ 250,000	
Other City Costs	\$ 115,000	
Project Implementation (CIP Admin)	\$ 300,000	
Subtotal	\$ 4,865,000	
Total Project Budget	\$ 5,315,000	

Funding Sources



Estimated Funding	
State Grants	\$ 220,000
County Park Grant	\$ 150,000
Fundraising with Community Foundation	\$ 70,000
Park Impact Fund*	\$ 2,630,000
County Playground Grant	\$ 2,000,000
Magical Bridge Fundraising	\$ 300,000
Project Total Funding	\$ 5,370,000

Item # 23

AGENDA DATE: 10/17/18
SUPPLEMENT # 1

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: Magical Bridge Playground Vote
Date: Tuesday, October 16, 2018 7:12:11 AM

Supplement.

From: Tanaya Rose <booklovr13@gmail.com>
Sent: Monday, October 15, 2018 9:34 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; City Manager <CityManager@morganhill.ca.gov>; Steve Tate <Steve.Tate@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Caitlin Jachimowicz <Caitlin.Jachimowicz@Morgan-Hill.ca.gov>
Subject: Magical Bridge Playground Vote

I have been a supporter of building an inclusive playground in Morgan Hill, via the Magical Bridge Playground Foundation, for many years. I was thrilled when the City of Morgan Hill agreed to fund \$2 million towards the program and was doubly thrilled when the County Board of Supervisors matched those funds. Private fundraising for our playground has been very difficult, but we are determined to get our park built.

I saw in the Morgan Hill Times that we reached the 80% funding threshold after a generous donation by the Chialas family and I've heard the Council will soon be voting on a resolution to amend the contract to \$4.2 million, so we can break ground next spring. Please approve this change to the contract! It's time to get this amazing project moving and your vote to approve amending the contract is the only way to make this happen.

Thank you for your consideration,

Tanaya Rose
15 year MH resident

Item # 23

AGENDA DATE: 10/17/18
SUPPLEMENT # 2

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: FW: support amendment of Magical Bridge Contract with City of Morgan Hill
Date: Tuesday, October 16, 2018 7:58:00 PM

supplement

Michelle Bigelow, MMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Debbie Hernandez <jakeh01@gmail.com>
Sent: Tuesday, October 16, 2018 5:09 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: support amendment of Magical Bridge Contract with City of Morgan Hill

Hello Michelle,
Please read the following or pass on to the City Council;

I am founding member and volunteer for the Morgan Hill Inclusive Playground now know as the Magical Bridge Playground. I am also a mother of four children, two of which are special needs. My children are named Alejandra (27), Fernanda (23) , Andrés (17) and Elena (14). I joined the group in March of 2015 to help my family, specifically Andrés and Fernanda play in a safe and experience a welcoming environment. The playground will be a focal point for our community where neuro typical and special needs children and adults can play and have fun in an environment designed to accommodate all no matter their abilities!

Please strongly consider amending the contract with Magical Bridge to bring the playground to a reality !

In His grip,

Debbie
(408) 887 3796

October 17, 2018

Item # 23
AGENDA DATE: 10/17/18
SUPPLEMENT # 3

Re: Support Magical Bridge Playground Contract Amendment

Dear Ms. Bigelow:

I am writing because I have heard that this is going to be an item at the Morgan Hill City Council meeting this evening.

Timing is important. For months and months I have heard that this playground is going to be built. People see the "Kindness is Magical" sign on my truck and wonder when it's coming. I'm not able to tell them. To a person outside the process, it seems stuck! Is it losing momentum?

I understand that there are new economies that can be gained by the power of the Magical Bridge Foundation buying and contracting so many new parks. Let's take advantage of those.

The Morgan Hill grant will be gained by breaking ground by June of next year. There is a lot of preparation required. We need to start in earnest NOW.

We cannot hold out for more donors when we have discovered we have all we need right now. If more donations come in, I'm sure they will also be put to use.

We have full confidence that the City of Morgan Hill, local volunteers and the Magical Bridge Foundation will be able to build a playground that everyone in the area will be proud of. But in order to make it happen, we have to start now!

Please amend the contract for the playground to reflect the \$4.2 million amount and let's get started TODAY!

Thank you.

Sincerely

Andrea Goldsmith
408 Cascades Court
Morgan Hill, CA

Michelle Bigelow
Morgan Hill City Hall
October 17, 2018

Item # 23
AGENDA DATE: 10/17/18
SUPPLEMENT # 4

Letter for the City Council members for tonight's meeting

Re: Item 23 Magical Bridge Playground Changes

I recommend an affirmative vote on the City staff proposal to amend the agreement between the Magical Bridge Foundation and the City to build our playground.

I have been a volunteer on many Magical Bridge Playground activities and began as a participant in the meetings to make an inclusive playground before the City and the Magical Bridge Foundation made a plan to work together. After much consideration, I supported the original agreement and was thrilled to see additional progress. Now, I wholeheartedly approve the changes so that we can move forward with a great playground and take advantage of the momentum we will have by taking this step. I feel confident that the new amount of money in this recommendation will be enough to make a beautiful playground. It is wonderful that the Magical Bridge Foundation will work with us to make sure our plans can come true at this new cost, and as soon as possible.

It is good that community input remains a part of the continuing effort and I urge that the original committee be convened to review and discuss the options, as we are the most conversant in the details and have had many discussions with interested individuals during our work so far on the plan. Speaking for a family with a special needs young adult, and after discussing this with many of her friends' families I can say there is no time to waste.

Thank you for your consideration.
Kristy Sermersheim

Item # 23

AGENDA DATE: 10/17/18
SUPPLEMENT # 5

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: FW: Note of support for Magical Bridge Park/Foundation
Date: Wednesday, October 17, 2018 4:33:23 PM

supplement

Michelle Bigelow, MMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Katie Khera <katie.khera@gmail.com>
Sent: Wednesday, October 17, 2018 4:31 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Cc: Steve Tate <Steve.Tate@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Caitlin Jachimowicz <Caitlin.Jachimowicz@Morgan-Hill.ca.gov>
Subject: Note of support for Magical Bridge Park/Foundation

Hi Michelle,

Can you please include my below note of support for the Magical Bridge Foundation Contract Amendment as a supplement to the agenda item #23 for tonight's meeting?

CC: Council Members

Thanks!
Katie

10/17/2018

To Morgan Hill City Council,

I'm writing in support of amending the current contract between the City of Morgan Hill and Magical Bridge Foundation to the \$4.2M as requested by the Magical Bridge Foundation, and recommended by city staff. A timely completion of this contract amendment is critical in order to move the project forward, immediately begin working on the final designs, and then break ground by the dates specified in order to preserve the All-Inclusive Playground Grant of \$2M.

Magical Bridge is clearing the way to complete essentially the same playground, including the exact same equipment and zones in the current contract, by negotiating

lower prices on the construction, equipment and design fees. Essentially the \$4.2M already raised, along with the modified pricing structure, will provide the same playground as described in the original schematics.

Morgan Hill's Magical Bridge Park will be in on the ground level of a phenomenal organization that is focused on promoting so many things I prize in my community. As the Magical Bridge name continues to grow, the visibility and recognition of our park will be nothing but a benefit for Morgan Hill.

I strongly believe in the Magical Bridge organization and mission, and look forward to the day our Magical Bridge Park is completed and a centerpiece of inclusivity in Morgan Hill.

Thank you for your time and consideration.

Katie Khera
Library, Culture & Arts Commissioner



LIBRARY EXPANSION PROJECT UPDATE Item 24



LIBRARY EXPANSION UPDATE



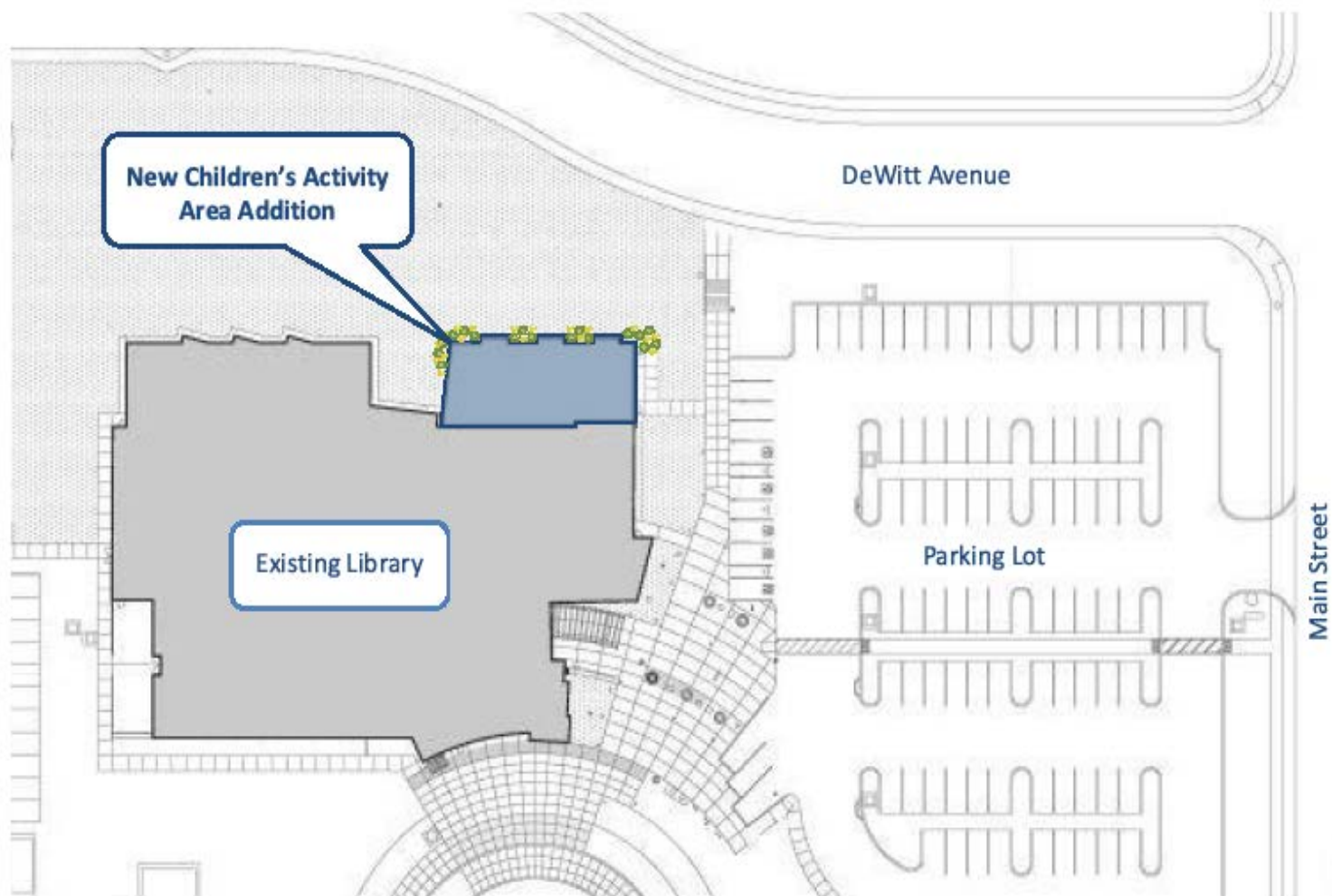
Recommendation:

- Approve the Updated Conceptual Design for the Library Expansion Project

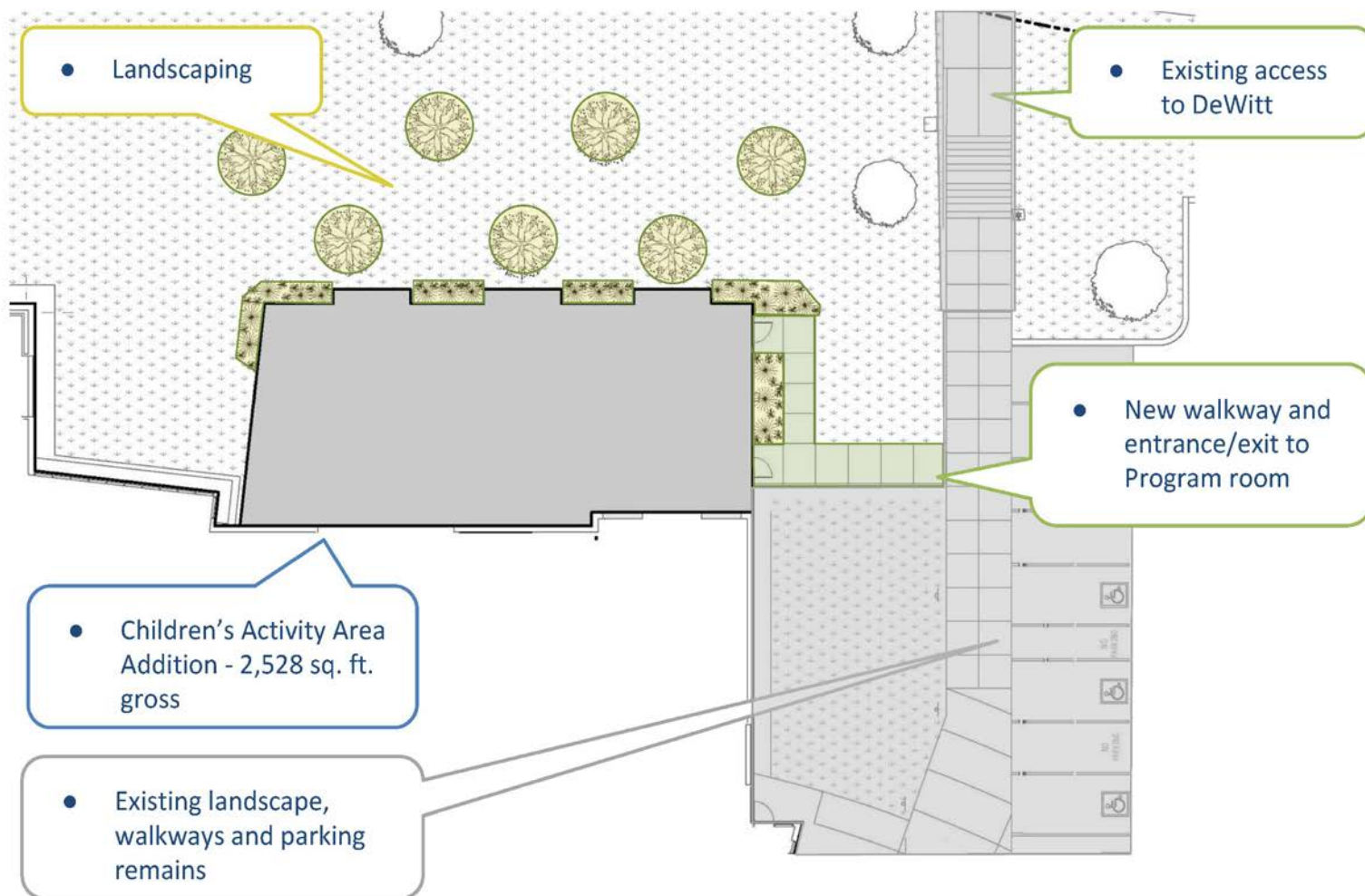
LIBRARY EXPANSION UPDATE



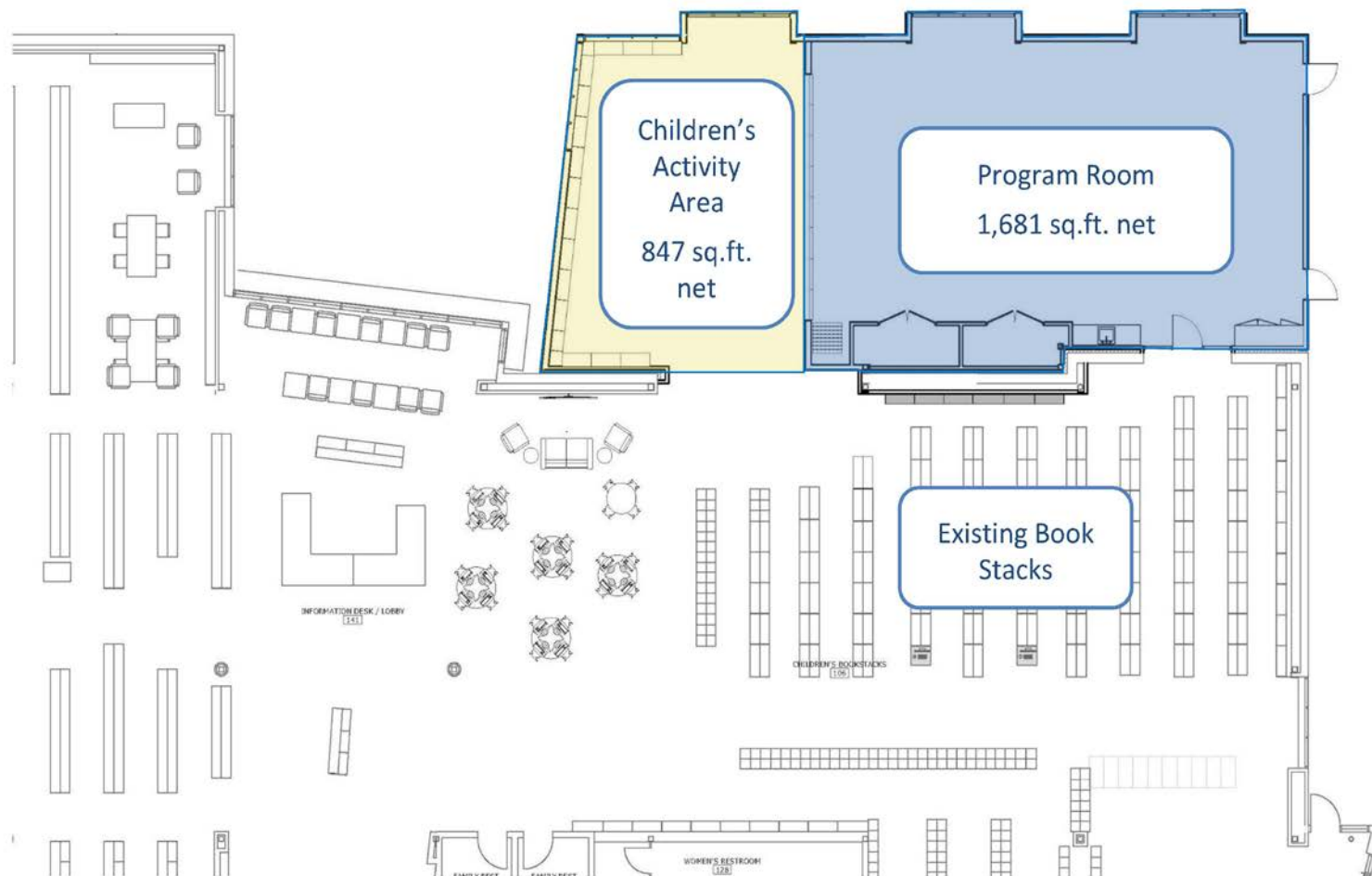
- Project Bid Opening Held on July 17, 2018.
- Low Bidder was 3.6 Million Dollars Over Project Budget.
- Scope Reduction and Value Engineering



CHILDREN'S ADDITION
Site Plan



SITE DESIGN - CHILDREN'S ADDITION



CHILDREN'S ADDITION DESIGN

Note: Sq.Ft. is measured from outside face of walls

LIBRARY STAFF SUPPORT



- The new space will provide a larger, more flexible room for the 800+ free programs offered to children, teens, and adults each year.
- It meets demand for additional meeting space for the public and community groups.
- Friends of the library will be able to expand their store and work areas.

The library fully supports this new design which creates an experiential space where children and families can engage in learning, literacy, and play.

LIBRARY EXPANSION UPDATE



Alternative Action:

- Hold Off on Project Until Construction Climate Cools.

Alternative Action Not recommended:

- Library Staff will Make Use of Expanded Space Immediately.
- Future Cost Reductions are Uncertain.



CENTENNIAL RECREATION CENTER UPDATE Item 25



CENTENNIAL RECREATION CENTER EXPANSION

Recommendation:

Direct Staff to Proceed with the
Completion of the Project Documents and
Bidding of Project

CENTENNIAL RECREATION CENTER EXPANSION



Policy Consideration:

Proceed with Bidding the Project or
Should the Project be Delayed?

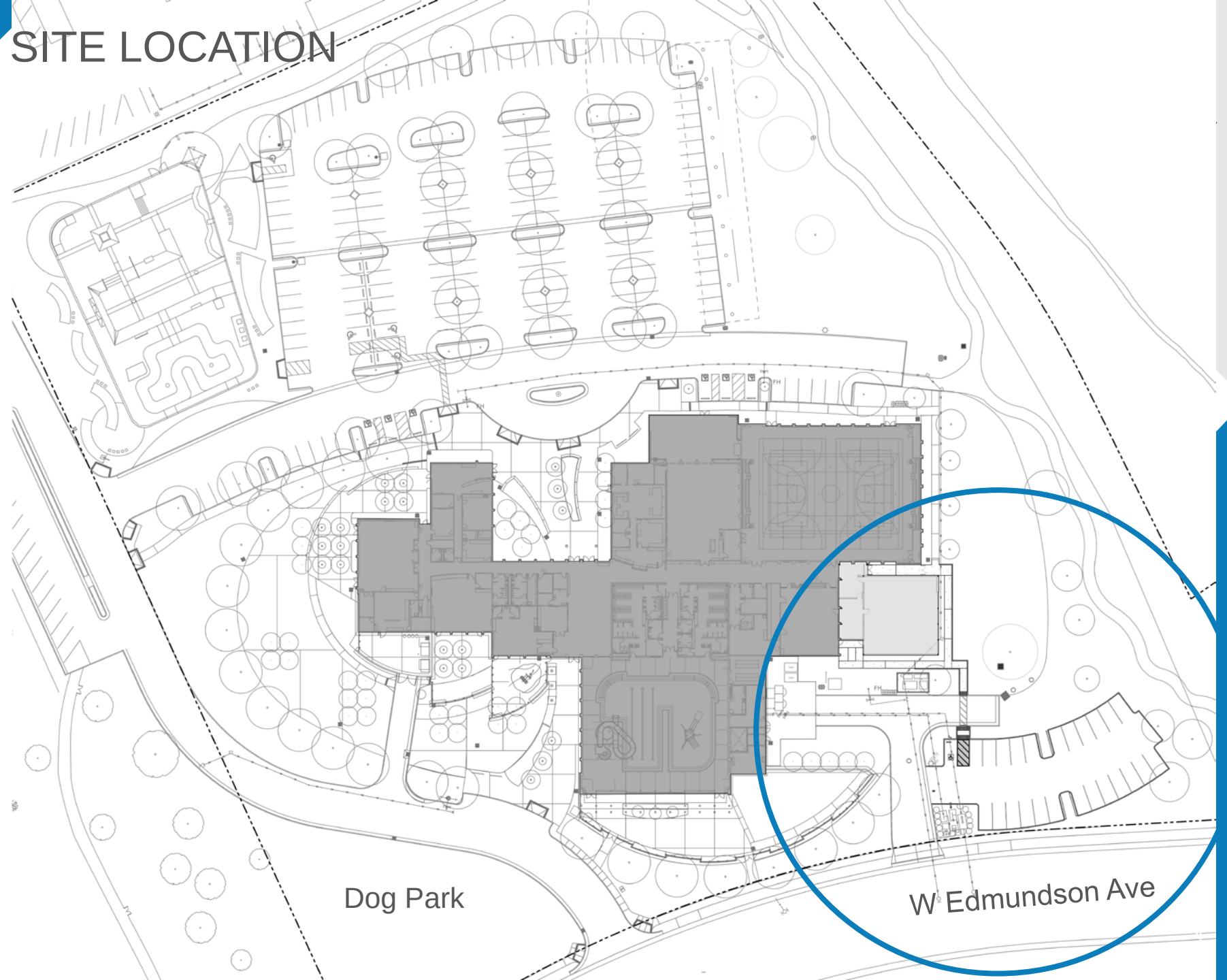
Would City Council Consider Delaying
other Projects in the Bikeways, Trails, and
Parks and Recreation Masterplan to
Construct this Project?

CENTENNIAL RECREATION CENTER EXPANSION

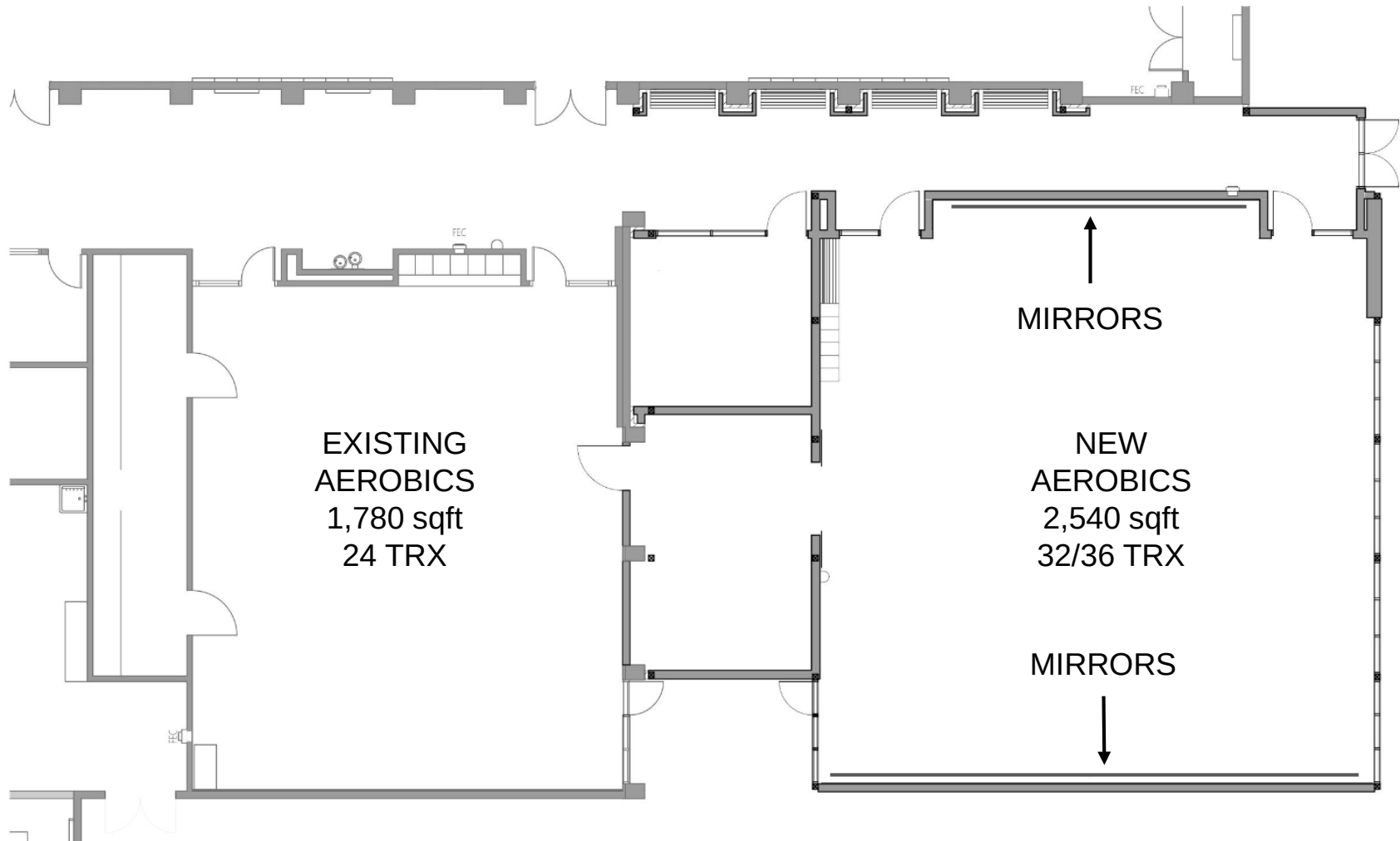
Project Progress:

Project is Currently Near Design
Completion and Ready to Submit for
Building Department Review.

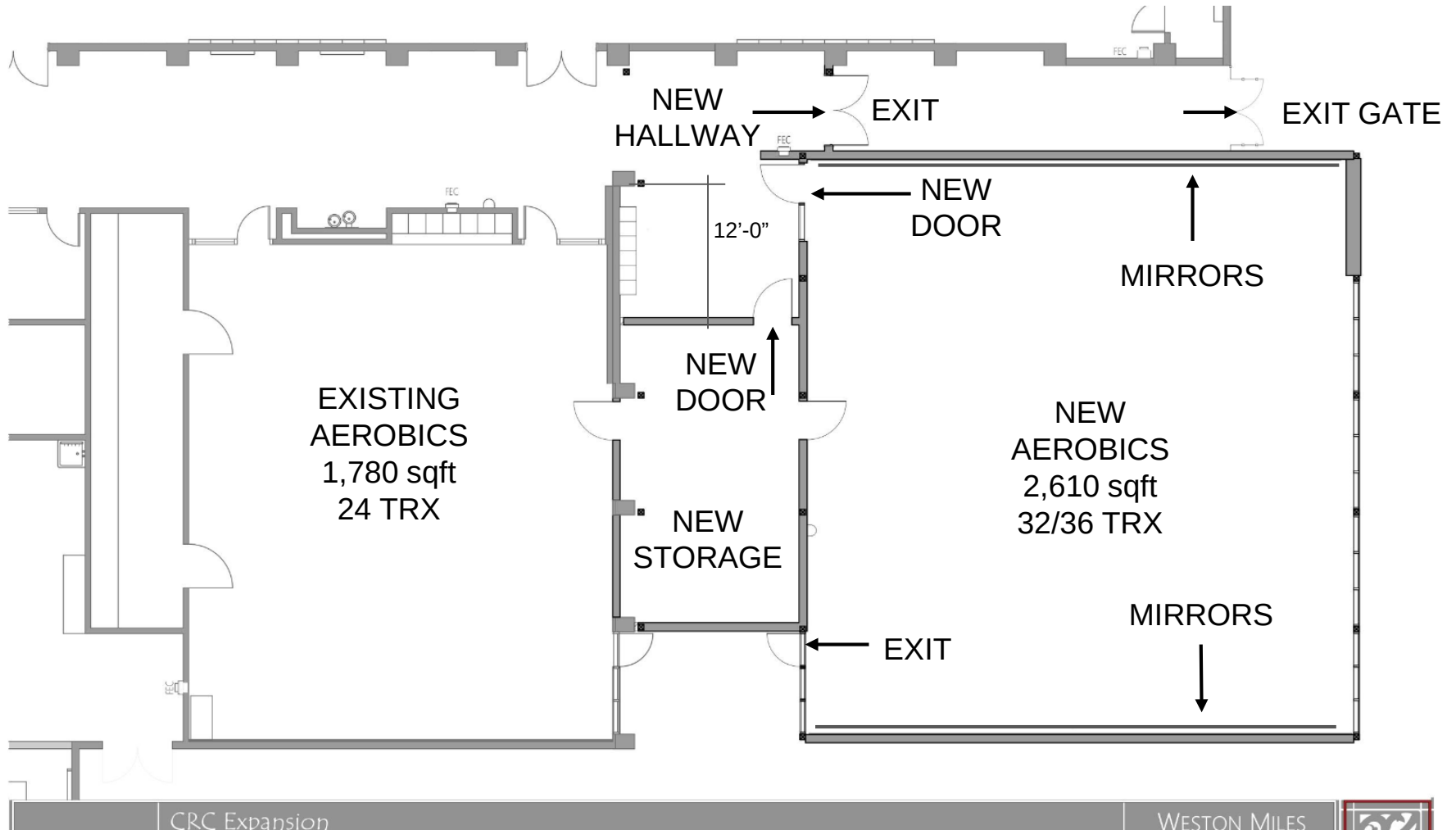
SITE LOCATION



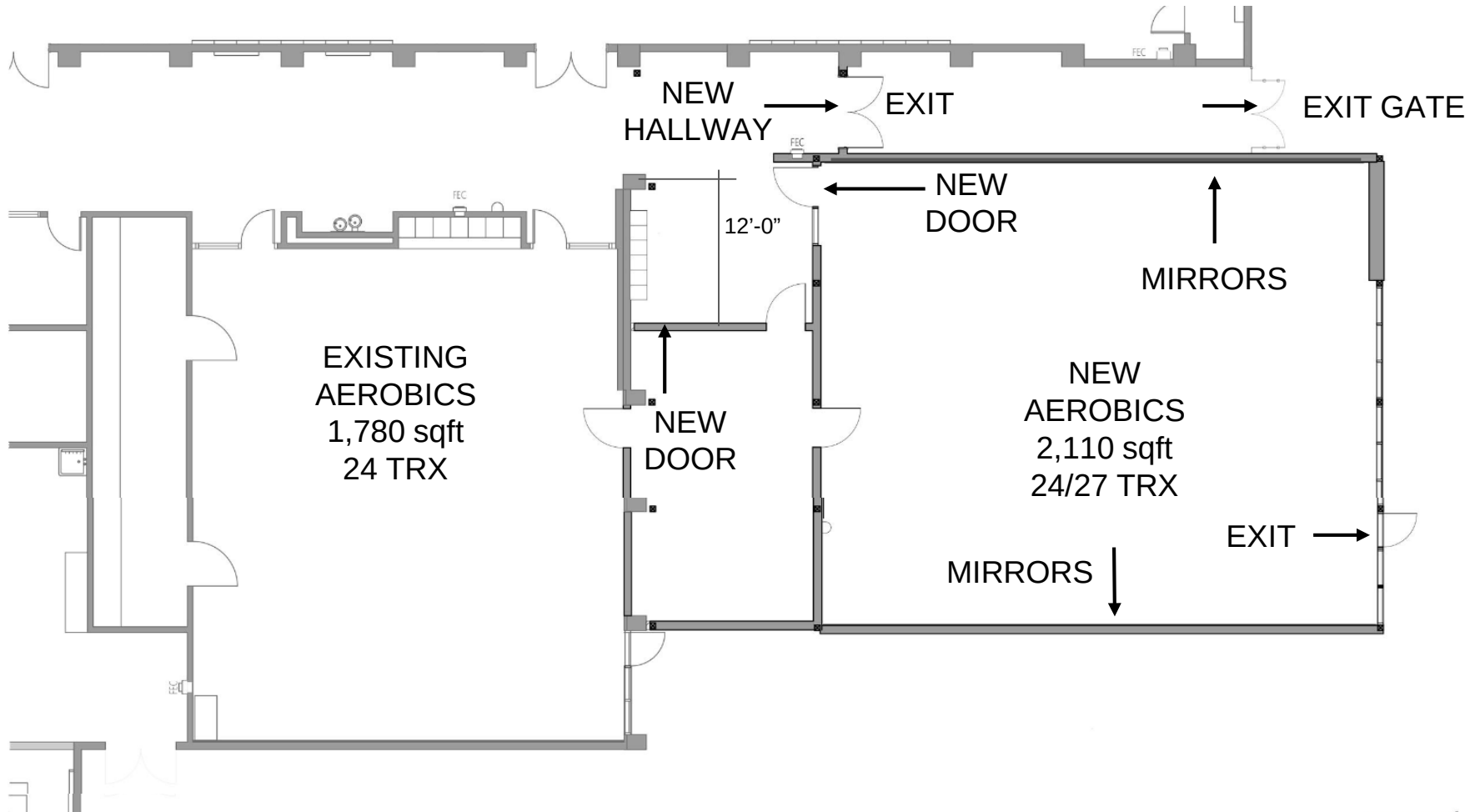
Original Floor Plan - 4,020 sqft



Option #1 Floor Plan - 3,640 sqft



Option #2: Floor Plan - 3,140 sqft



CRC Expansion

WESTON MILES

WESTON MILES
ARCHITECTS



CENTENNIAL RECREATION CENTER EXPANSION

Current Cost Estimates:

Budget - \$1.8 Million

Option 1 - \$2.4 Million

Option 2 - \$2.2 Million
(Square Footage Difference May Bid as a
Deductive Alternative)

CENTENNIAL RECREATION CENTER EXPANSION

Recommendation:

Direct Staff to Proceed with the
Completion of the Project Documents and
Bidding of Project

- No Feasible Means to Value Engineer.
- Council May Choose to Fund at a Higher Level or Delay the Project.

CENTENNIAL RECREATION CENTER EXPANSION

Alternate Actions:

Hold off on Bidding the Project Until
Construction Climate Cools.



Special - Regular Meeting Agenda
City Council

Steve Tate - Mayor
Rich Constantine - Mayor Pro Tem
Larry Carr - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, October 17, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The Public Hearing regarding GPA2018-0001/ZA2018-0001/EA2018-0001: East Dunne - Ross, that was publicly noticed for consideration by the City Council at this meeting has been continued at the request of the applicant to date uncertain.

SPECIAL/REGULAR MEETING

(5:30 P.M. Closed Session/ 6:00 P.M. Workshop/ 7:00 P.M. Regular Meeting)

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a closed session and a Joint City Council/Planning Commission Workshop.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

WORKSHOP

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

Recommendation:

1. Receive a presentation from Lisa Wise Consulting (LWC) and Metrovation Brokerage on the Monterey Corridor Block-Level Master Plan,
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor, and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Constantine

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming October 20, 2018 as Arbor Day
Anthony Eulo, Program Administrator, Community Services Department

RECOGNITIONS

125th Birthday of the Morgan Hill United Methodist Church
Pastor Patrick Davis

PRESENTATIONS

Legislative Update
Assembly Member Anna Caballero

Anderson Dam Presentation
Board Member John Varela, Santa Clara Valley Water District

YAC PRESENTATION ASSET # 4 - CARING NEIGHBORHOOD, ASSET # 21 ACHIEVEMENT MOTIVATION, AND ASSET # 31- HEALTHY LIFESTYLE

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. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS – LODEN PLACE - TRACT NO. 10197

Recommendation:

1. Accept the Subdivision Public Improvements for Loden Place – Tract No. 10197;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

2. APPROVE IMPROVEMENT AGREEMENT WITH GUNTER LOFTS, LLC

Recommendation:

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

3. APPROVE FIRST AMENDMENT TO BRIGHTVIEW LANDSCAPE SERVICES, INC. AGREEMENT FOR LANDSCAPE SERVICES

Recommendation:

Approve the first amendment to the maintenance service agreement with Brightview Landscape Services, Inc. for additional services totaling \$1,200, for total contract amount of \$262,752.

4. APPROVE THIRD AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

Recommendation:

Approve the third amendment to the maintenance service agreement with West Coast Arborist, Inc. for additional services totaling \$110,000, for total contract amount of \$865,000.

5. AUTHORIZE CITY MANAGER TO APPROVE CHANGE ORDER FOR 2018 INFLOW AND INFILTRATION PROJECT

Recommendation:

Authorize the City Manager to execute a change order of up to \$170,000 with Pacific Underground Construction, Inc. for the 2018 Inflow and Infiltration Project, for a total project cost of up to \$931,035.

6. ADOPT THE 2018 STORM DRAINAGE SYSTEM MASTER PLAN

Recommendation:

Adopt the 2018 Storm Drainage System Master Plan.

7. ADOPT RESOLUTION ADOPTING THE FINAL RELOCATION IMPACT STATEMENT AND LAST RESORT HOUSING PLAN FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Adopt resolution for the following actions:

1. Adopt the Final Relocation Impact Statement and Last Resort Housing Plan for the Hale Avenue Extension Project; and
2. Authorize expenditure of an amount not to exceed \$98,000 for relocation assistance, from the Traffic Impact Fund (309).

8. ADOPT REVISED RESOLUTION OF NECESSITY REPLACING RESOLUTION 18-071

Recommendation:

Adopt revised resolution of necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Pacific Gas and Electric Company for the Hale Avenue Extension Project, and rescinding resolution 18-071.

9. JULY 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

10. ACCEPT RESIGNATION OF PARKS AND RECREATION COMMISSIONER

Recommendation:

1. Accept LaRene Green's resignation from the Parks and Recreation Commission effective immediately; and
2. Direct the City Clerk to continue recruitment efforts to fill an unexpired term ending April 1, 2022, on the Parks and Recreation Commission.

11. AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES

Recommendation:

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

12. ADOPT ORDINANCE APPROVING A ZONING AMENDMENT ZA2018-0004 TO AMEND THE ZONING ON HALF OF THE 0.29 ACRE PORTION OF DEPOT STREET LOCATED AT THE END OF DEPOT STREET AND EAST DUNNE AVENUE INTERSECTION, ADJACENT TO 17020 DEPOT STREET (APN 726-13-049)

Recommendation:

Waive the reading, adopt Ordinance No. 2282, 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.

13. ADOPT ORDINANCE AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) TO TITLE 5 (BUSINESS LICENSES GENERALLY) TO CLARIFY BUSINESS LICENSE REQUIREMENT AND REVOCATIONS FOR MASSAGE ESTABLISHMENTS AND SERVICES

Recommendation:

Waive the reading, adopt Ordinance No. 2283, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

14. ADOPT ORDINANCE AMENDING SECTION 2.08.040 (“POWERS AND DUTIES”) OF CHAPTER 2.08 (“CITY MANAGER”) OF TITLE 2 (“ADMINISTRATION AND PERSONNEL”) OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY THE POWERS AND DUTIES OF THE CITY MANAGER

Recommendation:

Waive the reading, adopt Ordinance No. 2284, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

15. ADOPT ORDINANCE AMENDING CHAPTER 3.04 (“PURCHASING”) OF TITLE 3 (“REVENUE AND FINANCE”) OF THE MORGAN HILL MUNICIPAL CODE TO MODIFY PROVISIONS GOVERNING THE PURCHASE OF GOODS AND SERVICES

Recommendation:

Waive the reading, adopt Ordinance No. 2285, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

16. APPROVE THE SEPTEMBER 26, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

17. APPROVE THE OCTOBER 3, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

18. ECONOMIC DEVELOPMENT WEBSITE AND MARKETING CAMPAIGN UPDATE

Recommendation:

Receive economic development website and marketing campaign update, and provide feedback.

Estimated Time: 15 Minutes

PUBLIC HEARING

19. APPROVE DA2017-0008, EA2017-0016: LLAGAS - STROLATA - DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 773-32-013 LOCATED AT THE NORTHEAST END OF SABINI COURT

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the ordinance;
3. Introduce an ordinance approving the Development Agreement; and
4. Authorize the City Manager to execute and administer the Development Agreement.

Estimated Time: 5 Minutes

20. APPROVE DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DRIVE AND MONTEREY ROAD

Recommendation:

1. Open/close the public hearing;
2. Waive first and second reading of Development Agreement Ordinance;
3. Introduce Development Agreement Ordinance; and
4. Authorize the City Manager to execute and administer the Development Agreement.

Estimated Time: 15 Minutes

21. ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
 - A. Adds Chapter 14.08 to institute a Housing in-lieu fee of \$19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, \$13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, \$29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and \$14.50 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
 - B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Program Application Guide;
 - C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
 - D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

Estimated Time: 20 Minutes

OTHER BUSINESS

22. UPDATE ON AGRICULTURAL PRESERVATION STRATEGY AND POTENTIAL RELATED LAND USE CONSIDERATIONS

Recommendation:

1. Accept report on the City's Conservation Strategy; and
2. Provide policy direction to staff.

Estimated Time: 20 Minutes

23. AMEND AGREEMENT WITH MAGICAL BRIDGE FOUNDATION AND RECEIVE PROJECT UPDATE

Recommendation:

1. Receive update on Magical Bridge Morgan Hill Inclusive Playground Project;
2. Authorize the City Manager to execute and administer an amendment to the Consultant Services and Design Agreement with the Magical Bridge Foundation; and
3. Authorize the City Manager to execute and administer a Service Agreement for Design Professionals with the Magical Bridge Foundation.

Estimated Time: 20 Minutes

24. APPROVE UPDATED CONCEPTUAL DESIGN FOR LIBRARY EXPANSION PROJECT

Recommendation:

Approve the updated Conceptual Design for the Library Expansion Project.

Estimated Time: 10 Minutes

25. APPROVE UPDATE TO THE CENTENNIAL RECREATION CENTER EXPANSION PROJECT

Recommendation:

Direct staff to proceed with the completion of the project documents and bidding of the project.

Estimated Time: 10 Minutes

26. APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH EVERGREEN DEVCO, INC. FOR 20.43 ACRES LOCATED ON THE EASTERLY SIDE OF BUTTERFIELD BOULEVARD BETWEEN COCHRANE ROAD AND JARVIS DRIVE IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-32-021 AND 726-25-035.

Recommendation:

1. Approve an Impact Fee Freeze Agreement with Evergreen Devco, Inc. for the development of a 195,500 square foot retail center located at the corner of Butterfield Boulevard and Cochrane Road; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

Estimated Time: 15 Minutes

27. APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH BRIDGE GROUP INVESTMENTS FOR INDUSTRIAL DEVELOPMENT ON 7.9 ACRES LOCATED ON JARVIS DRIVE IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-30-013.

Recommendation:

1. Approve an Impact Fee Freeze Agreement with Bridge Group Investments, LLC. for the development of a 503,000 square foot corporate office/warehouse facility located on Jarvis Drive; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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



Sustainable Morgan Hill Vision

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

CITY COUNCIL ONGOING PRIORITIES

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

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

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



Economic Development and Telecommunications

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



Financial Stewardship

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



Infrastructure

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



Regional Initiatives

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



Anderson Dam Seismic Retrofit Project Update

Morgan Hill City Council | October 17, 2018

Agenda

- ▶ **Project Status**
- ▶ **Project Components**
- ▶ **Project Schedule**
- ▶ **Anderson Reservoir Winter Operations**

Anderson Dam Existing Configuration

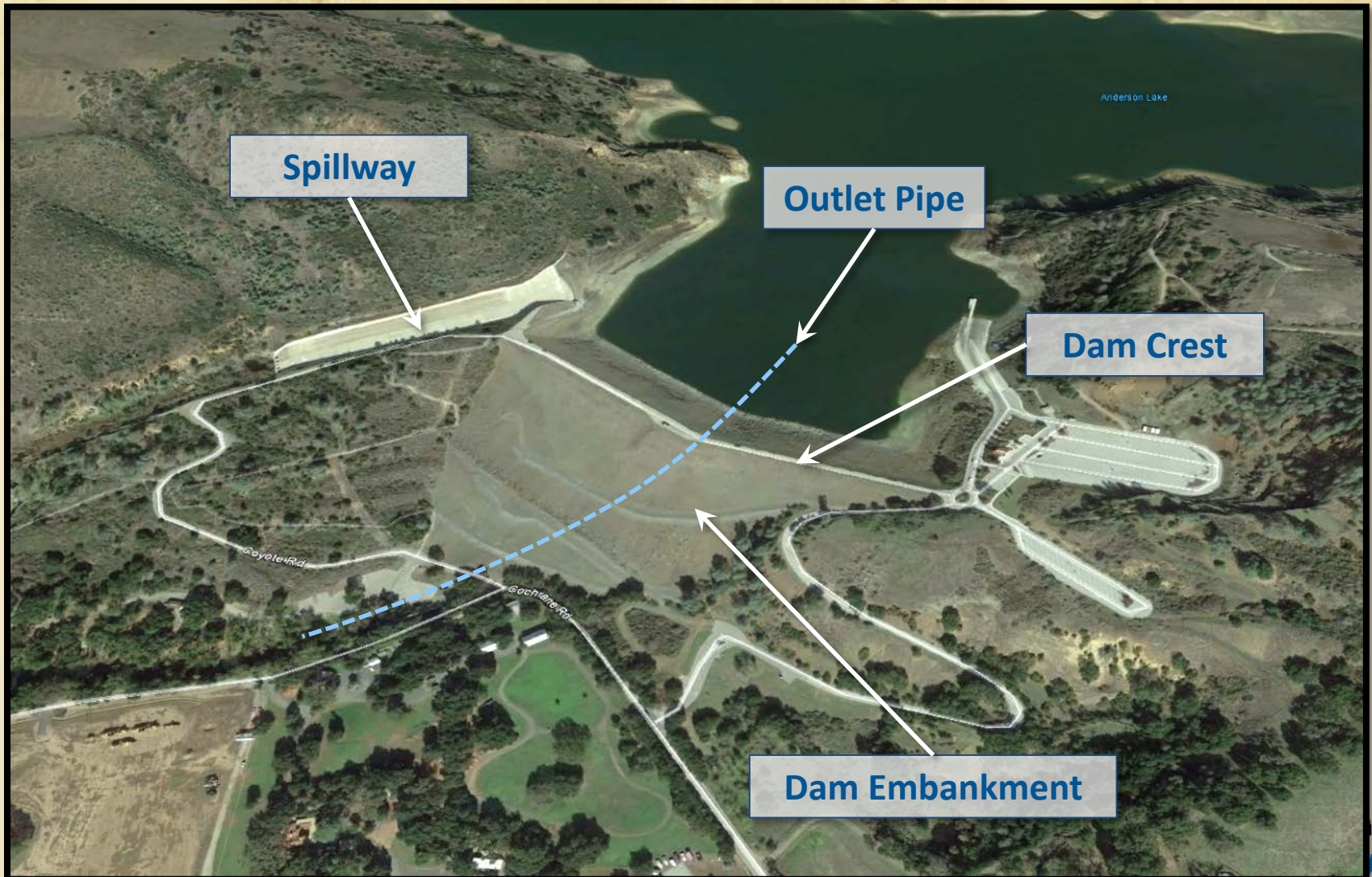


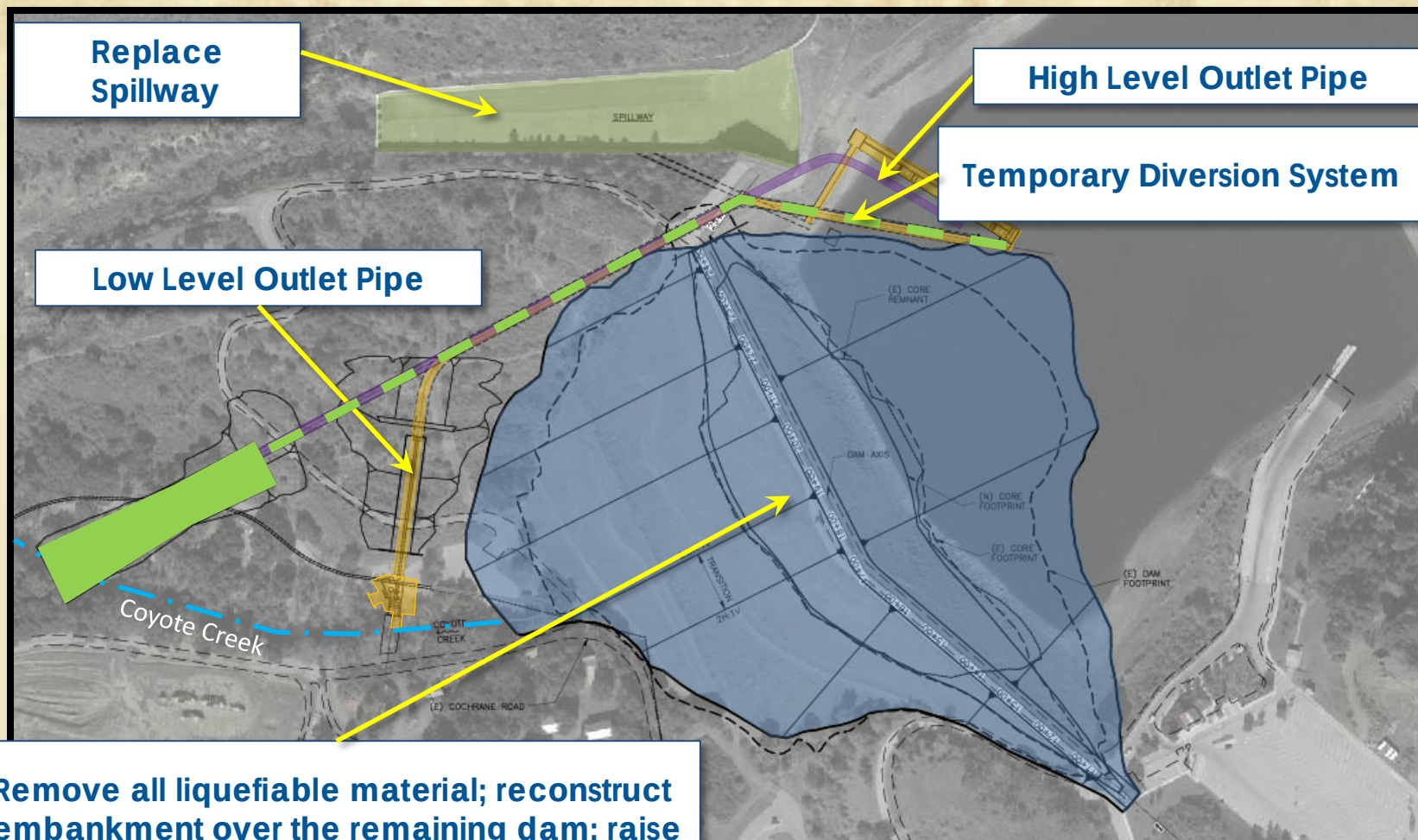
Image Source: Google Earth



Project Status

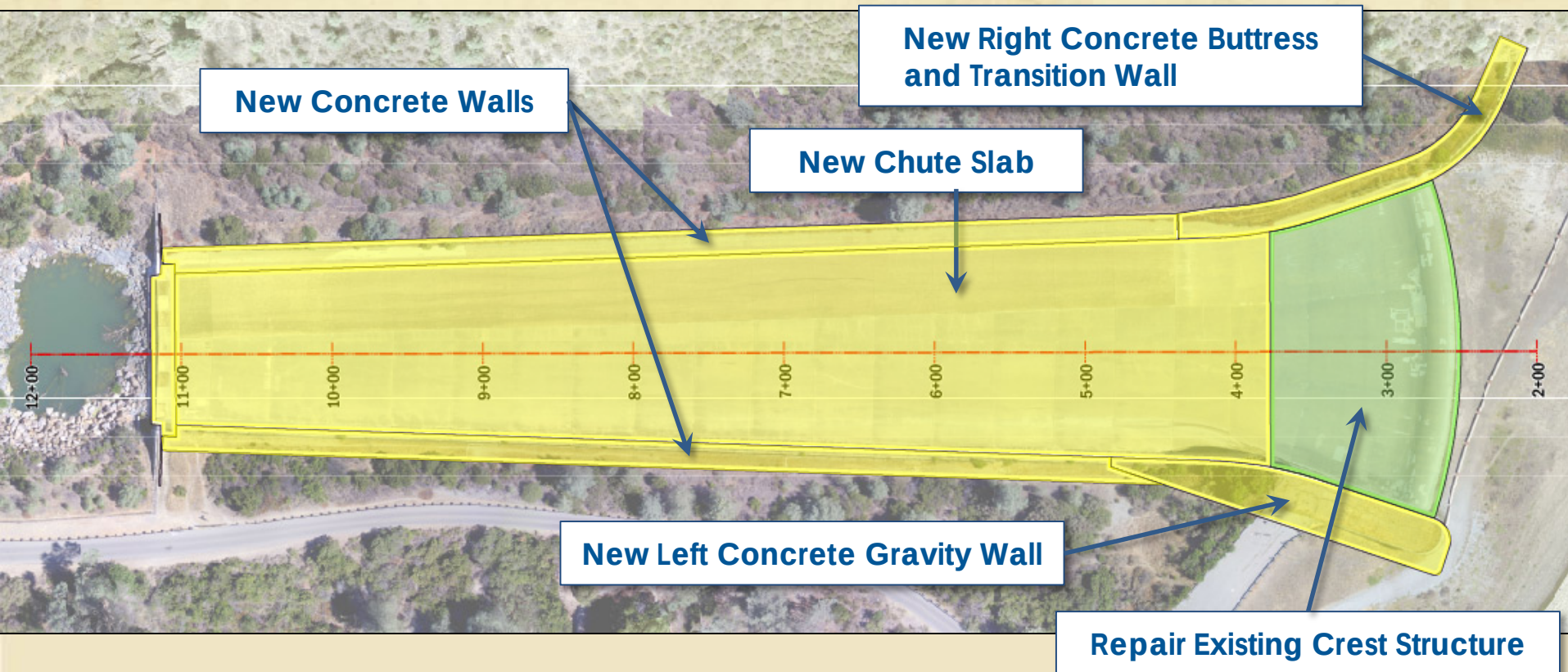
- ▶ **60% Design review completed**
- ▶ **Geotechnical investigations for spillway replacement**
- ▶ **Cultural subsurface investigations**
- ▶ **Preparation of environmental and permit documents**
- ▶ **Full court press on permitting process**

Project Components – FERC/DSOD Requirements

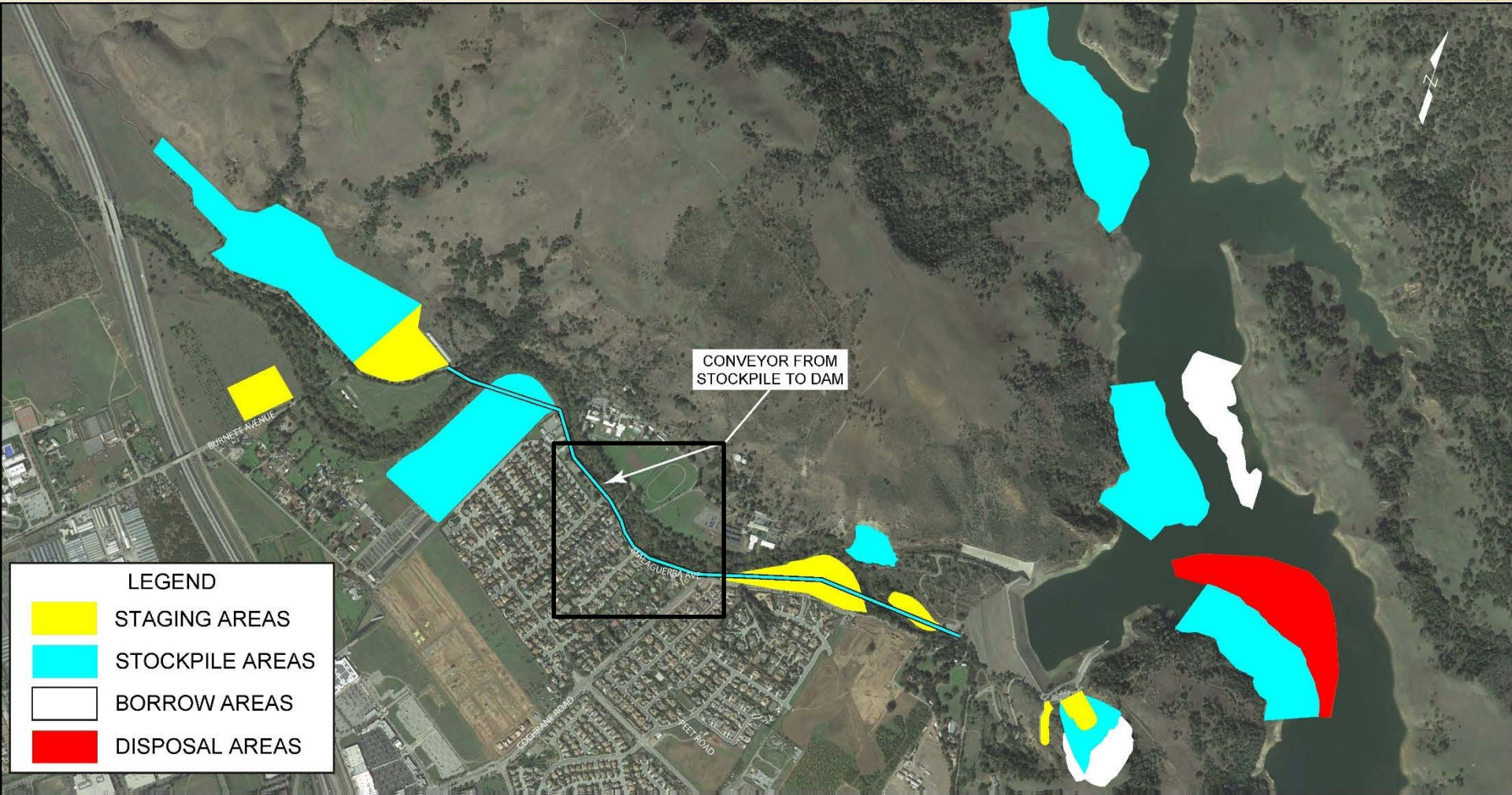


Spillway Replacement

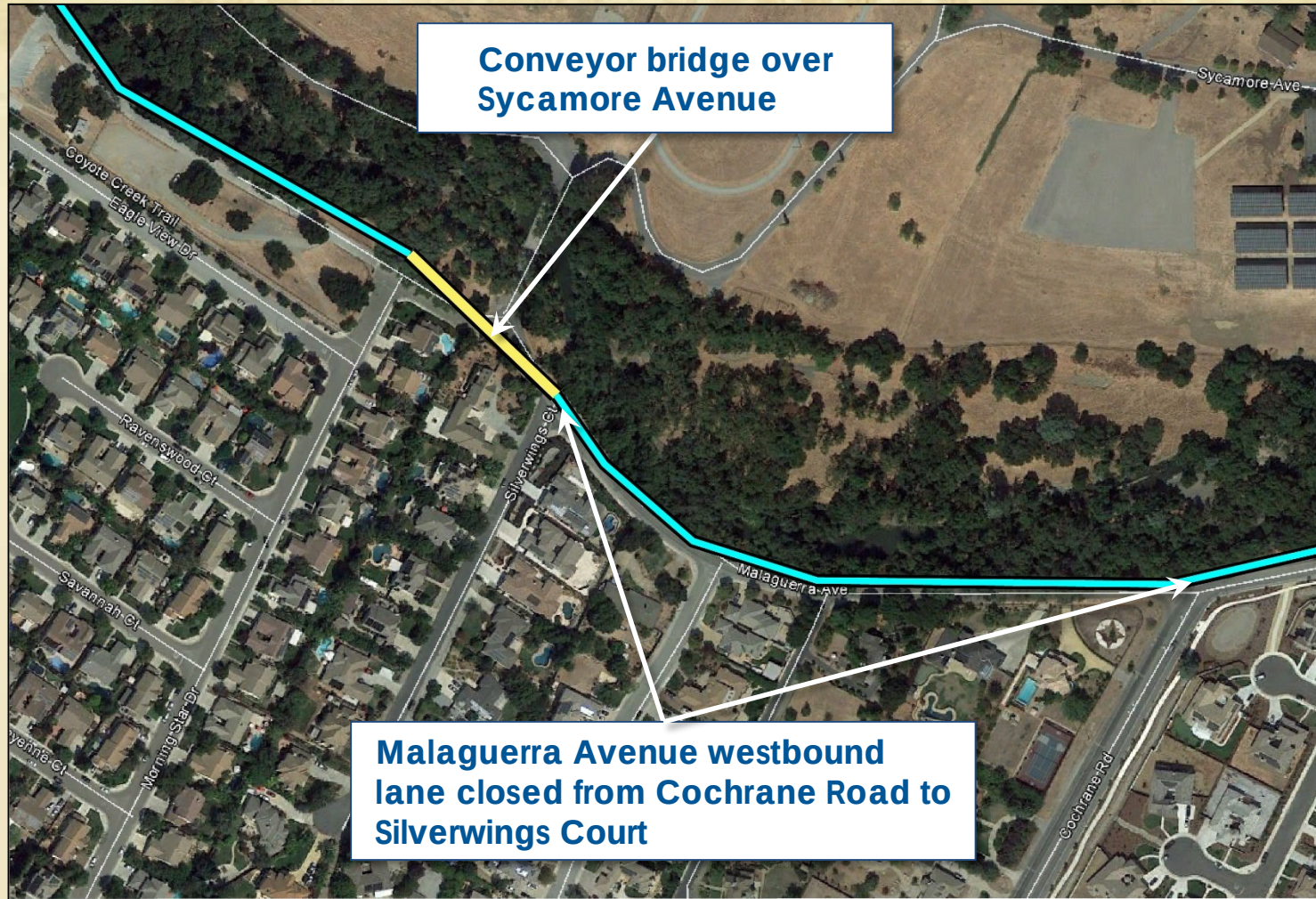
Spillway replacement to meet current design standards:



Staging, Temporary Stockpile, Borrow, and Disposal Areas



Conveyor Impacts to Malaguerra Avenue



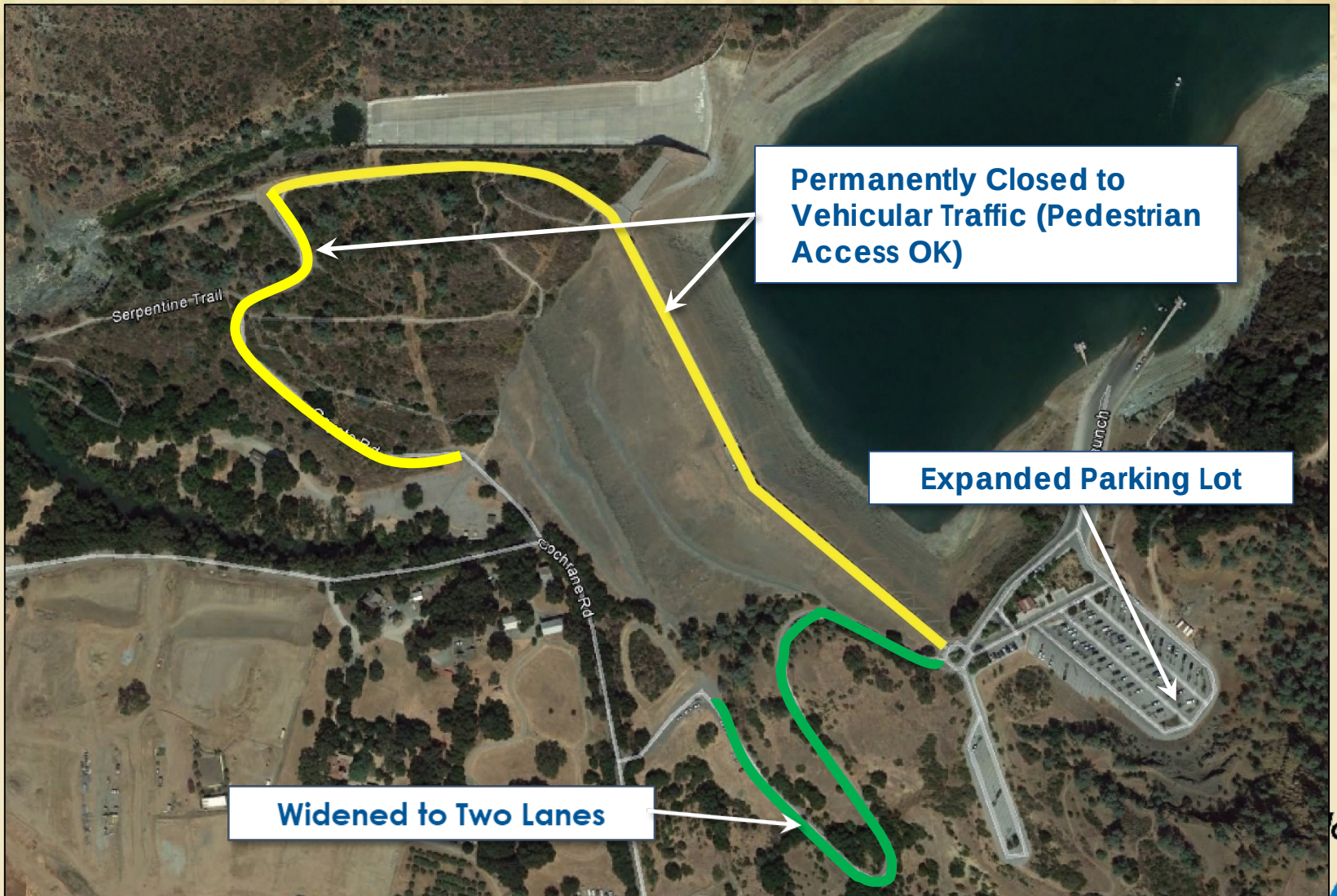
Typical Conveyor



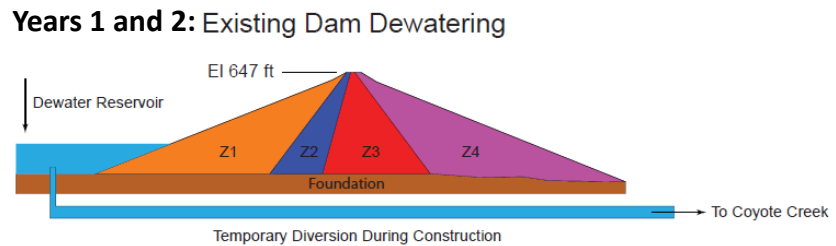
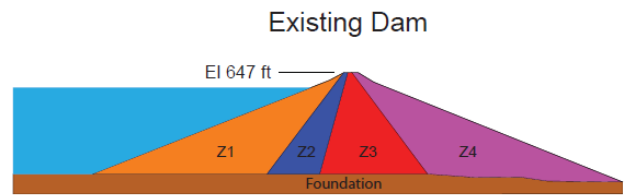
Cochrane Road Closure During Construction



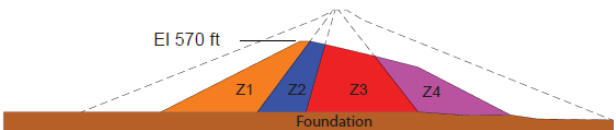
Post-Construction Roads and Parking



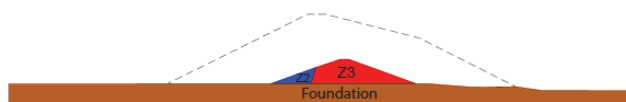
Anderson Dam Embankment Construction Sequence



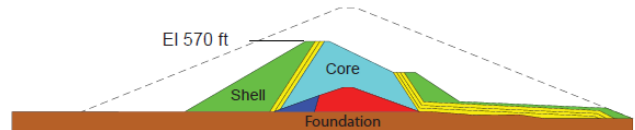
Year 3: April - October
Stage 1 Excavation



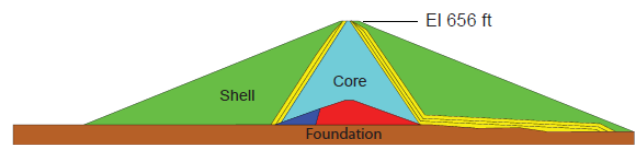
Year 4: April - June
Stage 2 Excavation



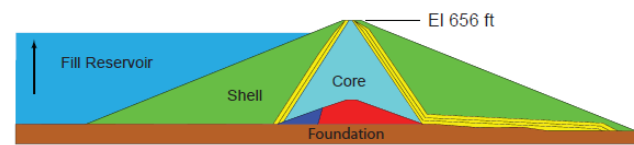
Year 4: July - October
Stage 2 Fill



Year 5: April - October
Stage 3 Fill

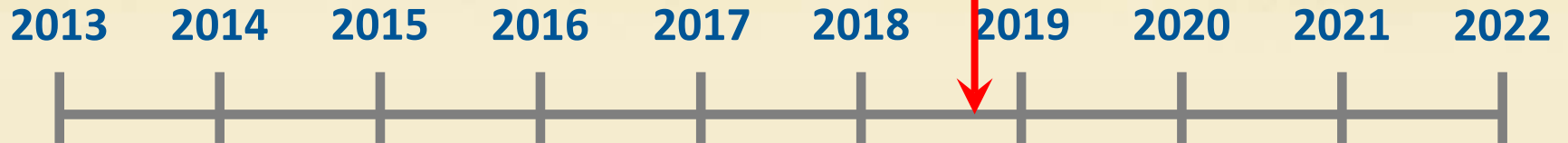


Final Configuration



Project Schedule

We are here



NEPA / CEQA / Permitting

Design

30% Design

60% Design

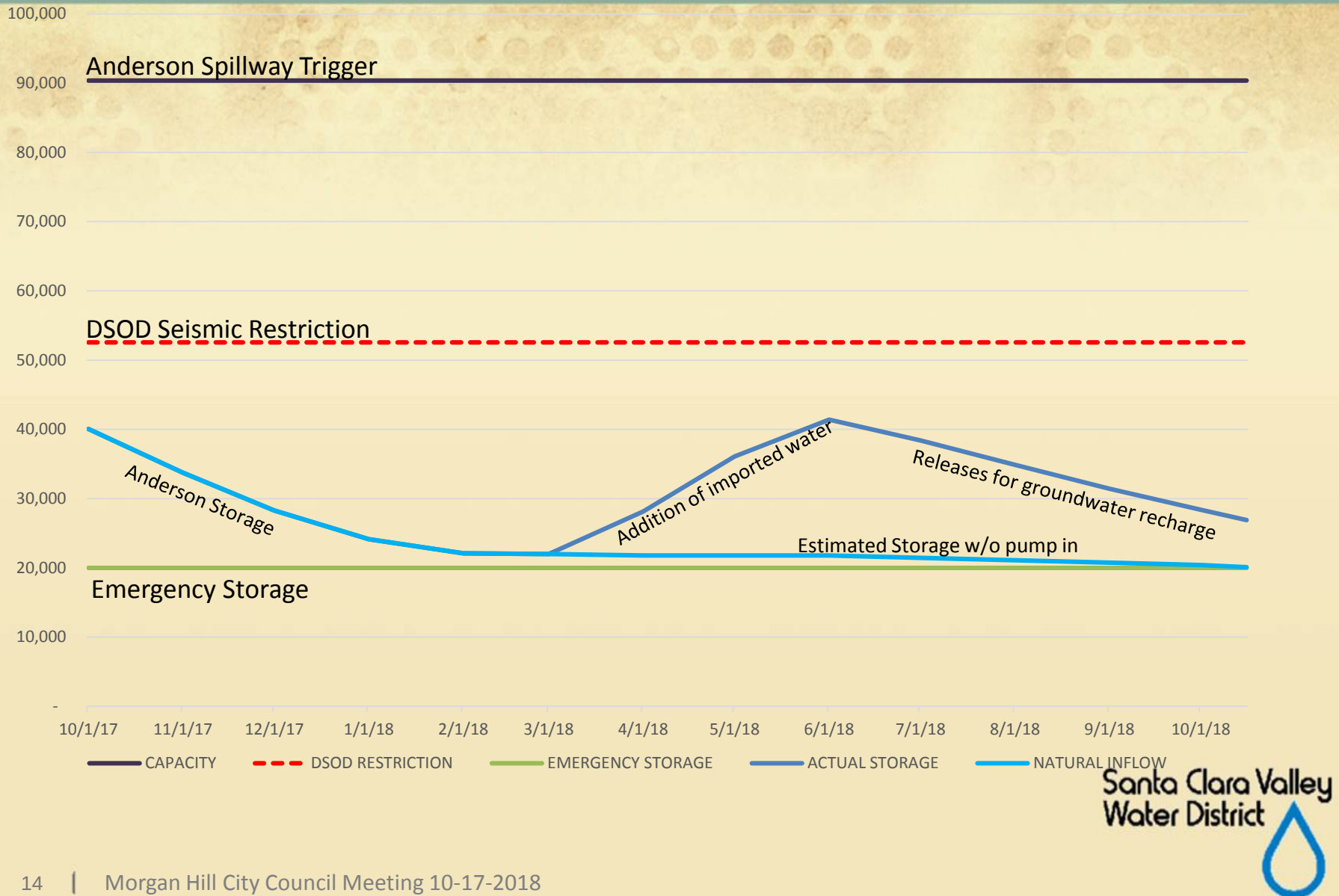
90% Design

*Construction → 2025

*Start of construction dependent on permit acquisition.



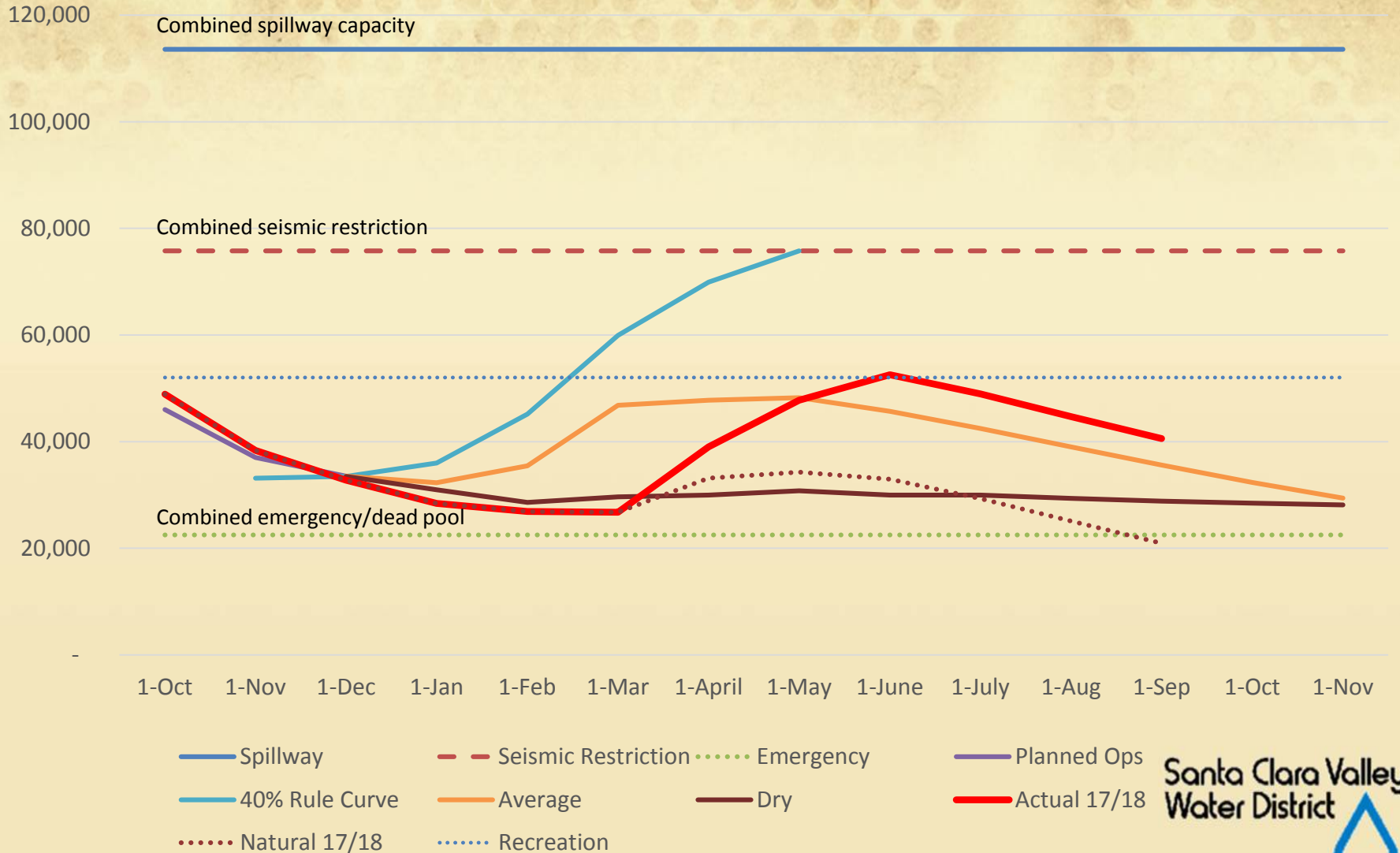
Actual Anderson Reservoir Storage October 2017 to October 2018





Actual Reservoir Operations 2017-18

Combined Anderson & Coyote Storage



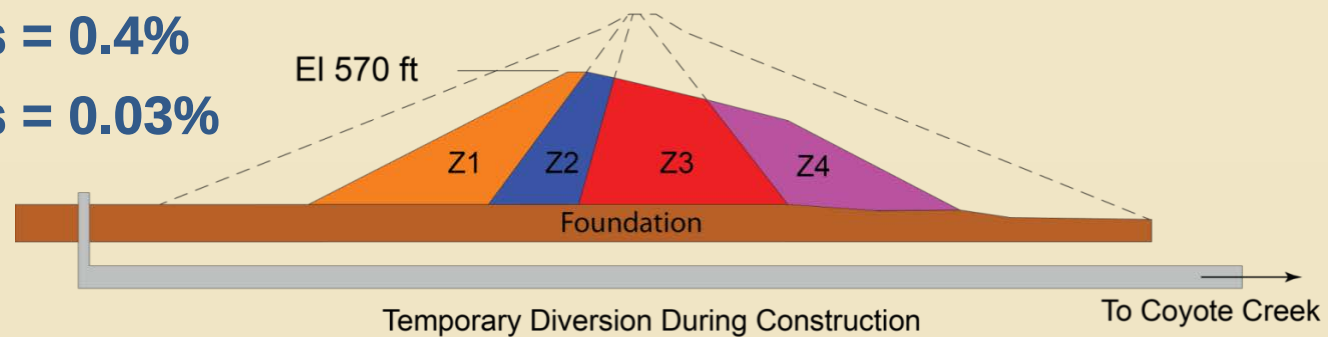
Downstream Releases when Anderson is Dewatered

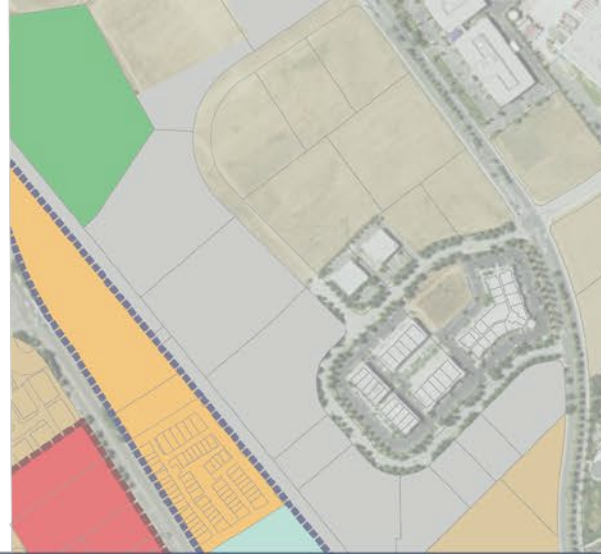
► Key Objectives:

- Operate flow diversion pipe to minimize risk to interim dam
- Minimize downstream flood risk.

► Based on 100,000 simulations, annual risk of diversion releases greater than:

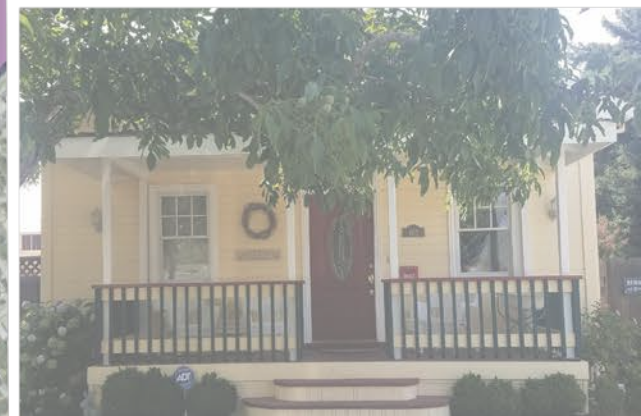
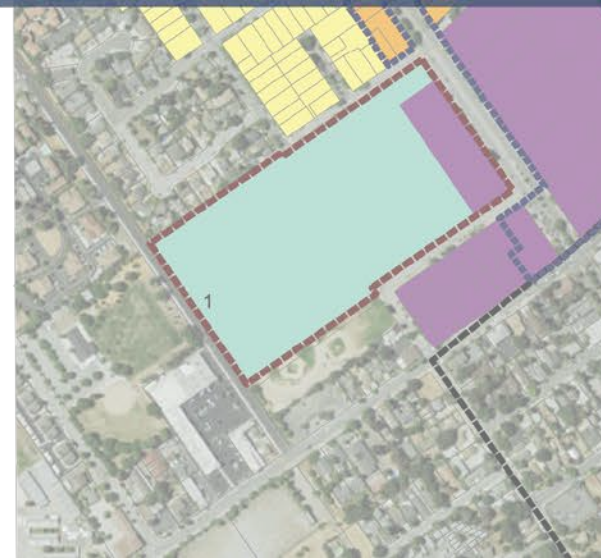
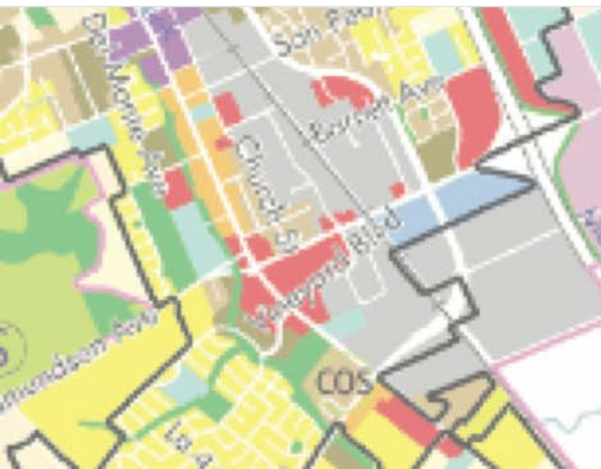
- ❖ 500 cfs = 30%
- ❖ 1,000 cfs = 2%
- ❖ 2,000 cfs = 0.4%
- ❖ 5,000 cfs = 0.03%





CITY OF MORGAN HILL

Monterey Corridor Block Level Master Plan - Public Workshop
October 17, 2018



Agenda

Overview & Background

Commercial Analysis

Draft Frontage Standards

Questions & Comments

Overview & Background

Introductions

City of Morgan Hill

John Baty, Principal Planner

Lisa Wise Consulting, Inc.

Lisa Wise, AICP, President

Jen Daugherty, AICP, Senior
Associate

Spencer Johnson, CNU-A, Associate

Metrovation Brokerage and Consulting

Christine Firstenberg, Principal

Background

General Plan Update (2016)

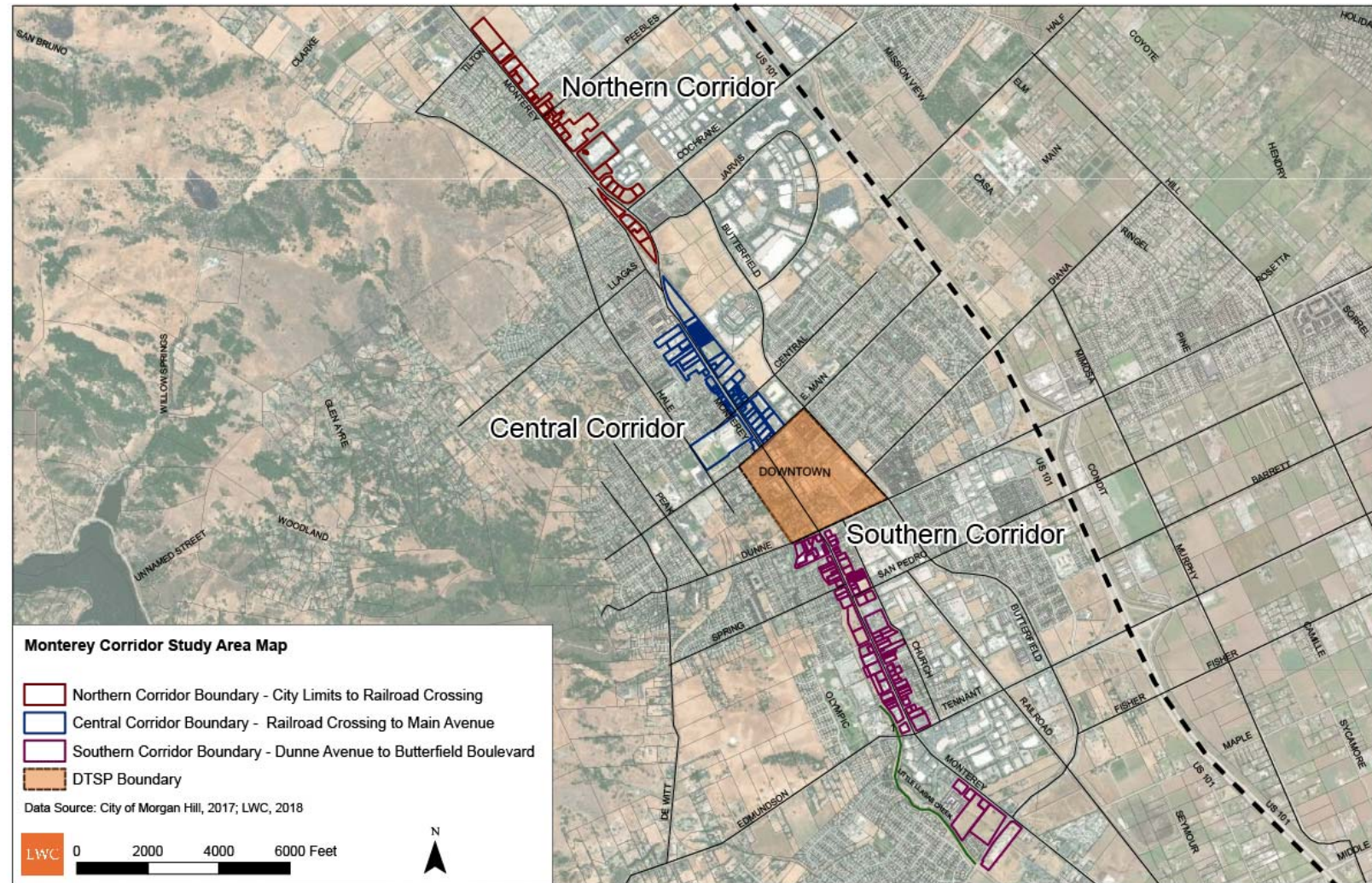
- Mixed Use Flex Land Use
- Monterey Corridor- Vibrant, walkable mixed-use

Zoning Code Update (2018)

- Mixed Use Flex (MU-F) Zone

Land Use and Market Analysis (2017-2018)

- Land Use Inventory
- Market Analysis
- Recommendations



Land Use and Market Analysis

Key Findings

- Retail
 - Current retail market stable, but...
- Office
 - Cool/stable office market
- Residential
 - Residential is most highly favored

Commercial Capacity

- 600,000 – 1.5 million sf of physical capacity
- 215,000 sf theoretical commercial market demand*
- * Based on a relatively stable future market



Land Use and Market Analysis

Conclusions

- Zone for fluctuating market conditions
- Strategically locate commercial
 - Additional analysis for retail viability and siting
- Standards for revitalization
 - Building frontage standards
 - High-quality public space
- Allow “Missing Middle” housing
- Streamline projects supporting mixed-use



Council Recommendation

BLOCK LEVEL MASTER PLAN (SHORT-TERM)

- City-led effort with developer/property owner buy-in
- Work towards long-term goal of a specific plan and form-based code
- Supplemental standards
 - Well-designed buildings (frontage standards)
 - Connectivity
 - Preserve retail-viable parcels

SPECIFIC PLAN (LONG-TERM)

- Develop vision, goals, policies, and implementation measures
- Include a form-based code
- CEQA clearance for future projects
- Community buy-in

Note: Limitations of RDCS applies to development in the Mixed Use Flex designation

Block Level Master Plan



Commercial Analysis



BROKERAGE & CONSULTING

Block Level Master Plan for Monterey Rd. Morgan Hill, CA

Christine Firstenberg

Lic # 00973135

Retail Real Estate Resources, Principal

Metrovation Brokerage

Lic # 01780115

925-381-8666

christine@cfirstenberg.com

Executive Summary

As we read newspaper articles describing our current era as the age of the “Retail Apocalypse”, many cities are struggling with how to plan for retail in the future. Will it look like it does now with anchor and shop tenants, will it look more like industrial space with delivery cars in front, or will it exist at all?

In California, most cities receive a percentage of their general funds from sales taxes that occur within their city limits. With recent national legislation, online sales will start to generate sales tax to the cities where the person who paid for the items lives. Exactly how those sales taxes will be allocated is not completely known, but we understand that retail sales leakage numbers will show change.

While brick and mortar store locations will continue to diminish in total square footage, we will continue to see new online retail ventures expand and will continue to need retail for its experiential contribution to our lives. It is the only real estate category that can create a “sense of place” and community for a City.

Retail is one of the three categories within the industry categorization of commercial real estate. While all types of commercial (retail, office and industrial) real estate uses can contribute to the overall economic engines of a community, retail is the only category that we think of when desiring a “sense of place” in our communities. Much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial footprint.

We have seen cities in California, and other states, that believe “if you build it, they will come” when it comes to retail spaces. We have all seen the many examples of residential buildings where retail spaces were required on the ground floor by city zoning, and in many cases those spaces never get leased.

Because long term vacant spaces (vacant for years) can cause blight in communities, we want to be careful about requiring retail where it is not necessarily appropriate.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

How to determine which parcels of land should require retail or any of the commercial categories, and which parcels of land should not, is a question the City of Morgan Hill staff has pondered. Morgan Hill's staff are light years ahead of many other cities in that they not only asked the question, they assigned the task to be determined.

Retail thrives when there is an intensity of activity – either car or pedestrian. But that hive of activity must exist prior to the retail space being activated otherwise the retail can fail. Building retail spaces in clearly residential and or quiet, non-active areas, and assuming the space will get leased is like wishing on a star. Many planners believe you should create retail spaces to activate the streets, but that thinking is backwards. Because it isn't the retail spaces that activate the streets, it is what is in the retail spaces themselves. It is the retailer/small businesses. The retail/ small businesses that make their living off the sales volumes done out of retail spaces are important to the activity in a neighborhood or district. But if there is no neighborhood or district activity before the retailer opens, often a retailer's sales fall flat.

That is the challenge in determining where to locate for a retailer and building a retail base in a city...*how do you create the activity before a retailer opens if we depend upon a retailer to create the activity?*

That is why we use retail criteria to help retailers review the data from which to make a location decision. It is strongly suggested that all retailers use basic retail criteria to determine if a space or an area will ultimately be sustainable. And from a City's perspective, retail criteria needs to be met for retail spaces to get leased.

RETAIL CRITERIA:

Retail businesses do better at intersections (corners) - not mid-block- because at intersections, there are two roads converging with double the traffic (whether pedestrian or car) of a mid block location.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

Retail typically requires **access**, an ability to have all turns, meaning you can get in and out of the property using left turns, not just right turns.

Retail needs to be seen by the customers, therefore **signage** is important, both storefront signage and any additional blade, or monument signs.

Retail needs to be **convenient**, so a customer can easily fit a visit to the retail store into their busy lives.

And finally, retail needs **parking**, yes parking, unless of course you have a tremendous pedestrian count like in downtown San Francisco.

This is the retail criteria used when we looked at intersections in Morgan Hill.

APPLICATION FOR MORGAN HILL:

As mentioned earlier, much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial (commercial) footprint also.

As we analyzed the corners and intersections along Monterey Rd. we used the more liberal “commercial” categorization, with which to consider the viability and sustainability of the corner. This category can include an office tenant like a building contractor, or a mortgage office, a realtor or travel agency, a CPA firm or lawyers office. Many typical office tenants like a more prominent corner location that provides signage.

Commercial categorization also includes industrial.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

Industrial tenancies, often more service oriented, are more common in today's world as many start up retailers and businesses need the additional size for delivery preparation to compete with the fast paced delivery requirements retail customers currently demand. More traditional industrial tenants include auto parts, medical facilities, dental clinics and veterinarian shops.

Therefore a suggestion of commercial only zoning would allow all of the sub-categories of commercial listed earlier.

While some of the zoning along the Monterey Rd. corridor allows for "Mixed Use-Flex" we strongly suggest the City consider this zoning allow a horizontal mixture of uses versus only a vertical mixture of uses on the parcel.

Vertical mixed use has become a challenge to build in the Bay Area over the last few years due to the massive increase in construction costs. While vertical mixed use is often considered a quick way to densify an area, it can often have unintended consequences many of which can result in a parcel not being developed for many, many years, -- missing an economic cycle it otherwise would have enjoyed.

Lastly, in the retail real estate industry, we never say never, as retail is fluid and does not depends on a business owners decision on where to locate, but on the sales produced at a location.

Customers are what create the final success of a location for a retail business. And, as the saying goes, *"The customer is always right"*.

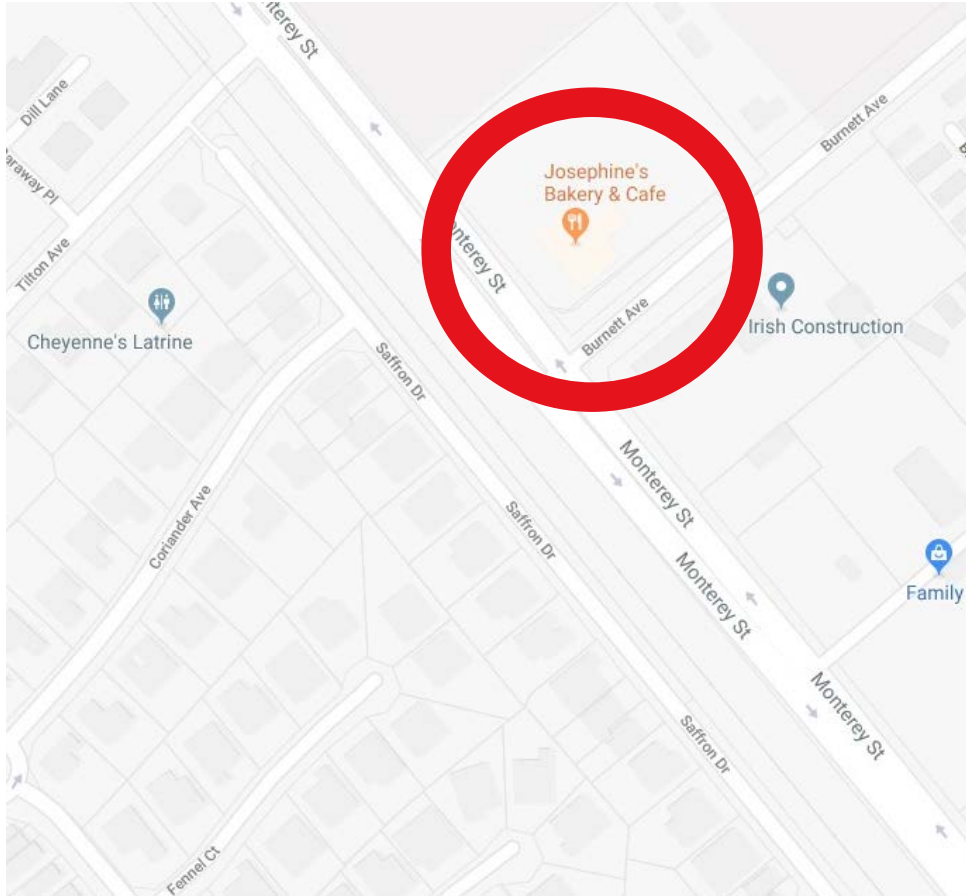
METR@VATION

BROKERAGE & CONSULTING

Block 1 –

City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.



Burnett Ave. has a strong east/west presence making it a logical candidate to create a commercial and retail presence at the intersection with Monterey Rd. However, due to the rail line running north/south along the western edge of Monterey Road, the residential community west of the rail line will be blocked and despite Burnett Ave.'s future extension across Monterey Rd. connecting it to Tilton, the synergy to that corner is lost. There is no reason to add development restrictions on a site that will never have a 360-degree potential. Therefore, we do not support a requirement for commercial zoning on this corner.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METROVATION

BROKERAGE & CONSULTING

Block 1 –

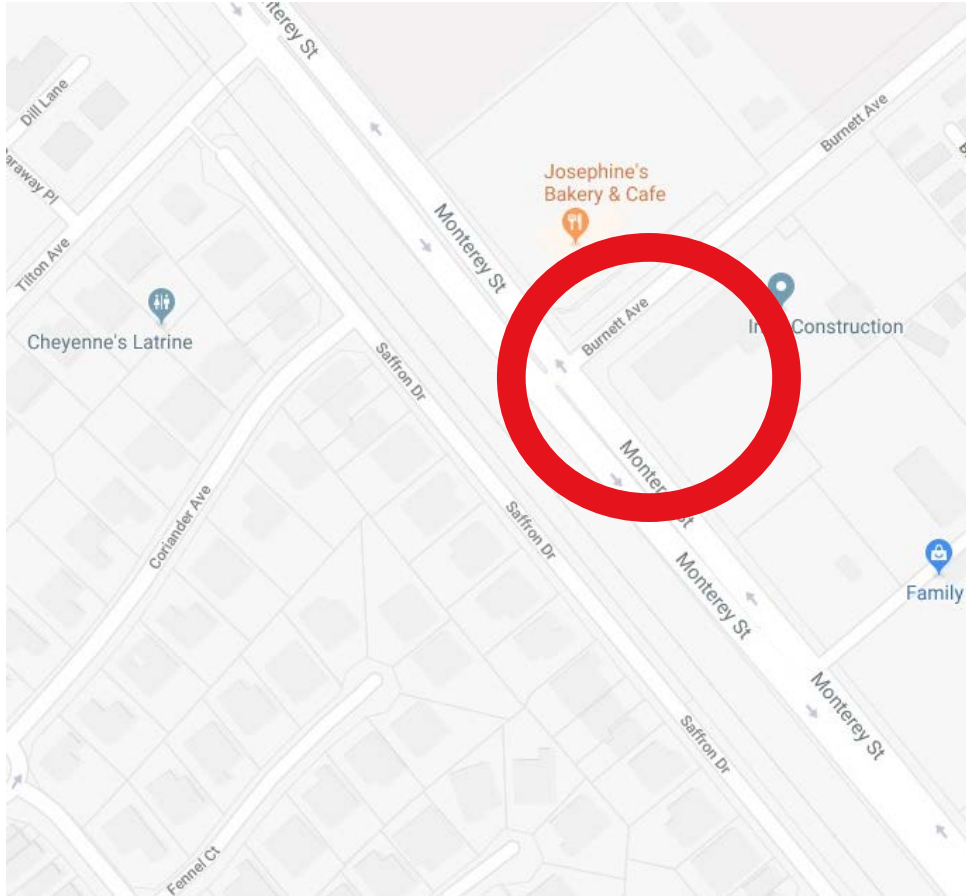
City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.



Block 2 –

Burnett Ave. to Peebles Ave.
SE Corner Burnett Ave. & Monterey Rd.



Block 2's Northern Site is located at the terminus of Burnett Ave. at Monterey Rd. and is currently partially occupied by Irish Construction. The location of the rail line will prevent the possibility of generating any connectivity to uses or residential across the street. Block 2, site 1, will never achieve the kind of synergy that a commercial zoning requirement is looking to accomplish. Therefore, we do not recommend a requirement for commercial here. Instead, allow market forces to dictate the development of the site.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METR@VATION

BROKERAGE & CONSULTING

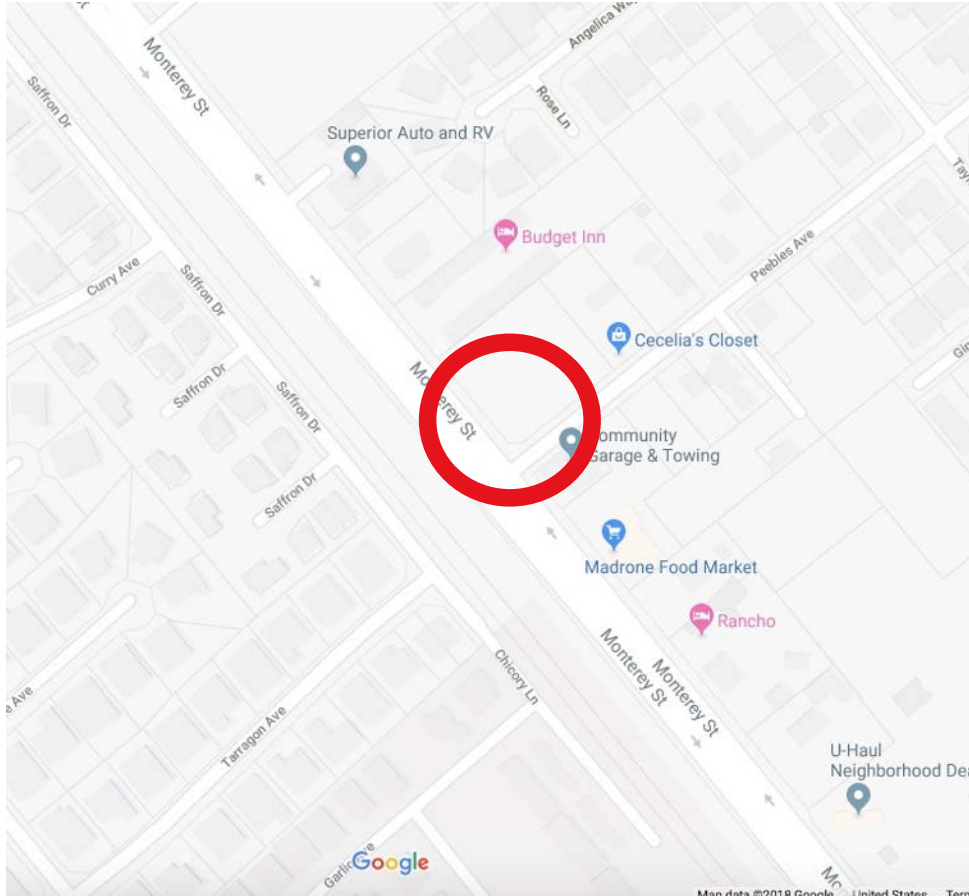
Block 2 –

Burnett Ave. to Peebles Ave.
SE Corner Burnett Ave. & Monterey Rd.



Block 2 –

Burnett Ave. to Peebles Ave.
NE Corner Peebles Ave. & Monterey Rd.



Block 2's Southern Site has similar challenges as the Northern Site although it has single-family homes located directly behind the parcel creating a possible opportunity. Nearly all of the residential traffic patterns use Peebles Ave. as a main thoroughfare. Morning commuters in this neighborhood will use Peebles to drive out to Monterey Rd, go south on Monterey Rd, to Cochrane to get to the freeway.

Often, a small, (3000 sf building) multi-tenant retail building, works well at this type of corner due to the commercially restricted access of the surrounding residential neighborhood.



Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

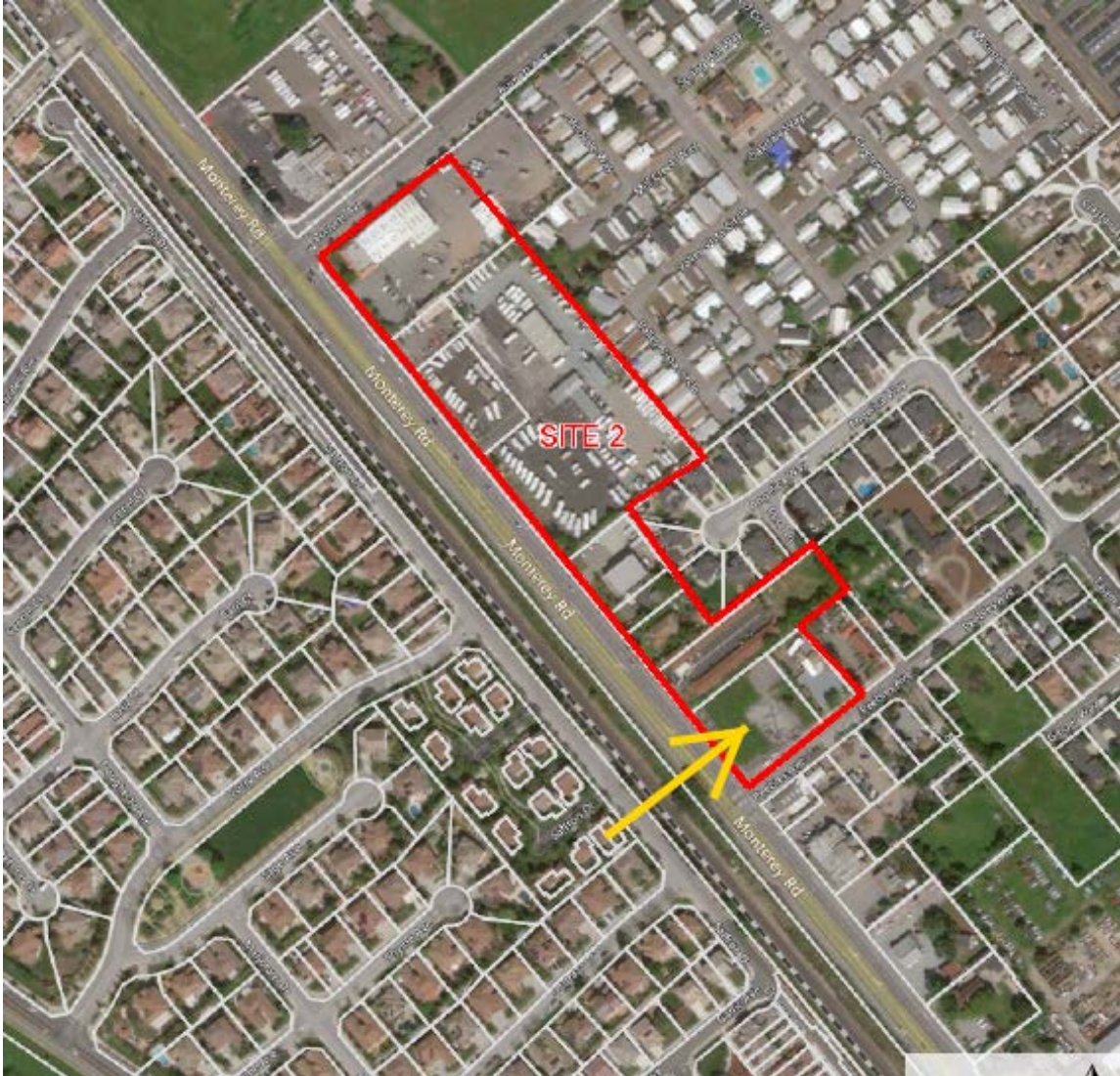
METR@VATION

BROKERAGE & CONSULTING

Block 2 –

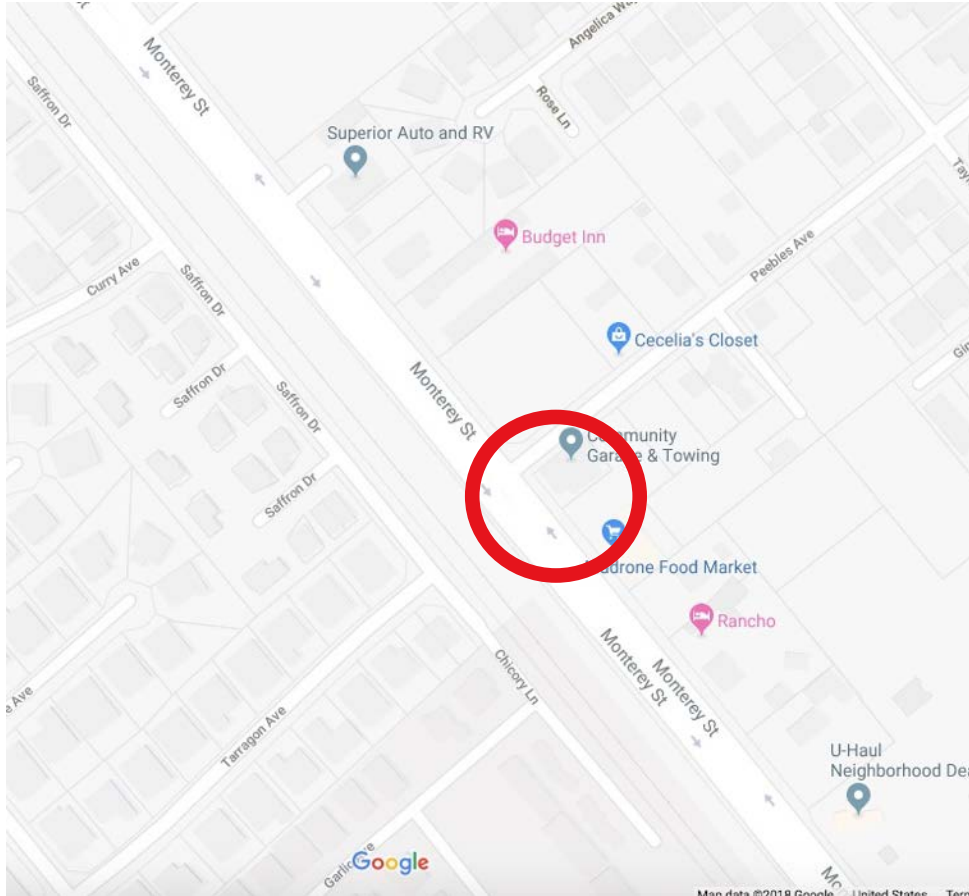
Burnett Ave. to Peebles Ave.

NE Corner Peebles Ave. & Monterey Rd.



Block 3 –

Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.



The SE corner is the “coming home” commercial corner. Thus, this site will not draw as high of interest as the NE site due to the proven consistency of a “*going to work*” commercial corner driving higher sales volumes than a “coming home” corner.

In addition, this parcel (the SE corner) is a relatively small parcel with only 7000 sq. ft. which would only allow a development of 1750 square feet of commercial space to be built (using retail parking codes). Even if this commercial square footage were at the bottom of a larger mixed-use project, the lack of retail immediately surrounding the site will make leasing a challenge. Therefore, we do not recommend requiring commercial on this site.



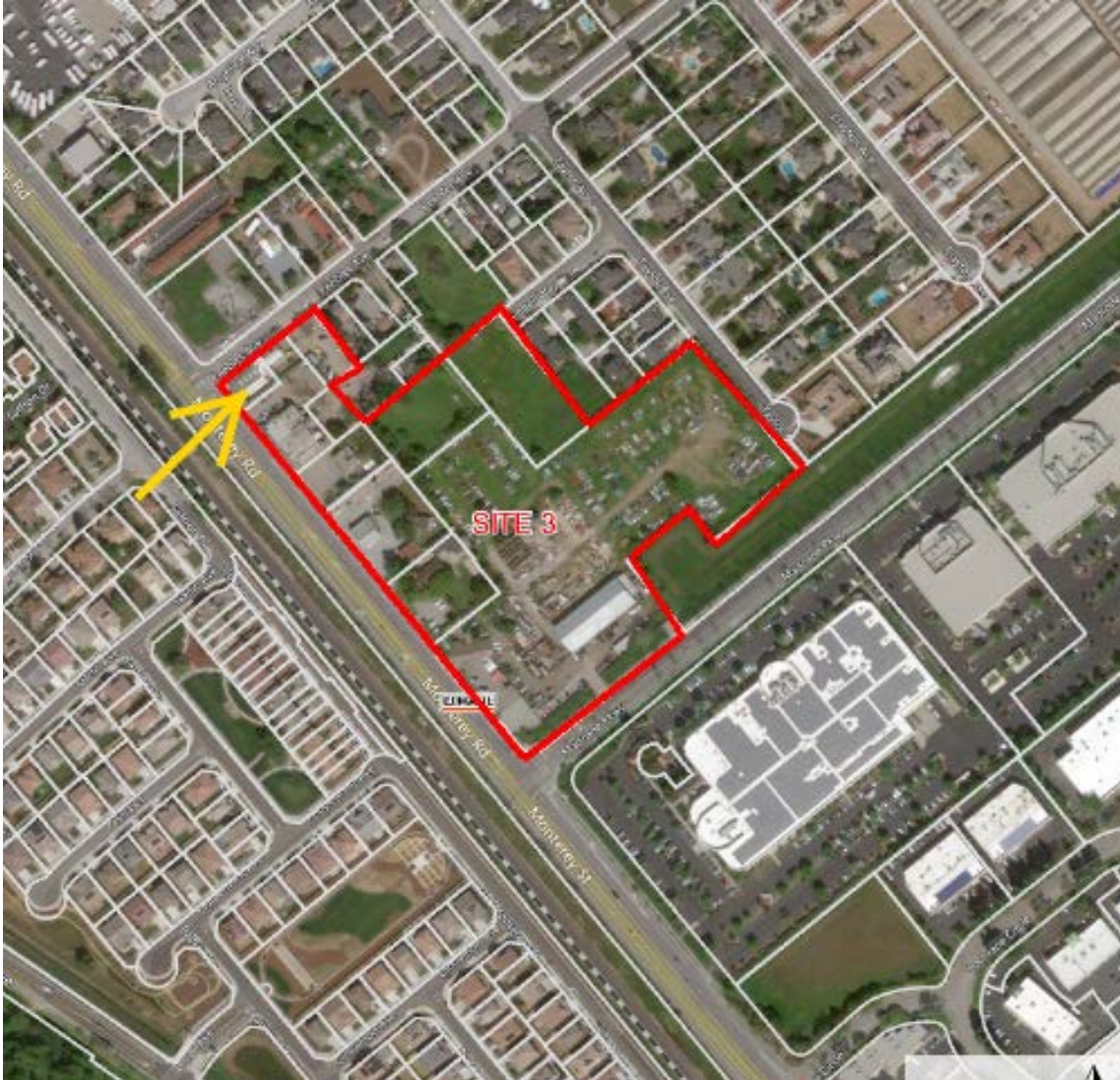
Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METR@VATION

BROKERAGE & CONSULTING

Block 3 –

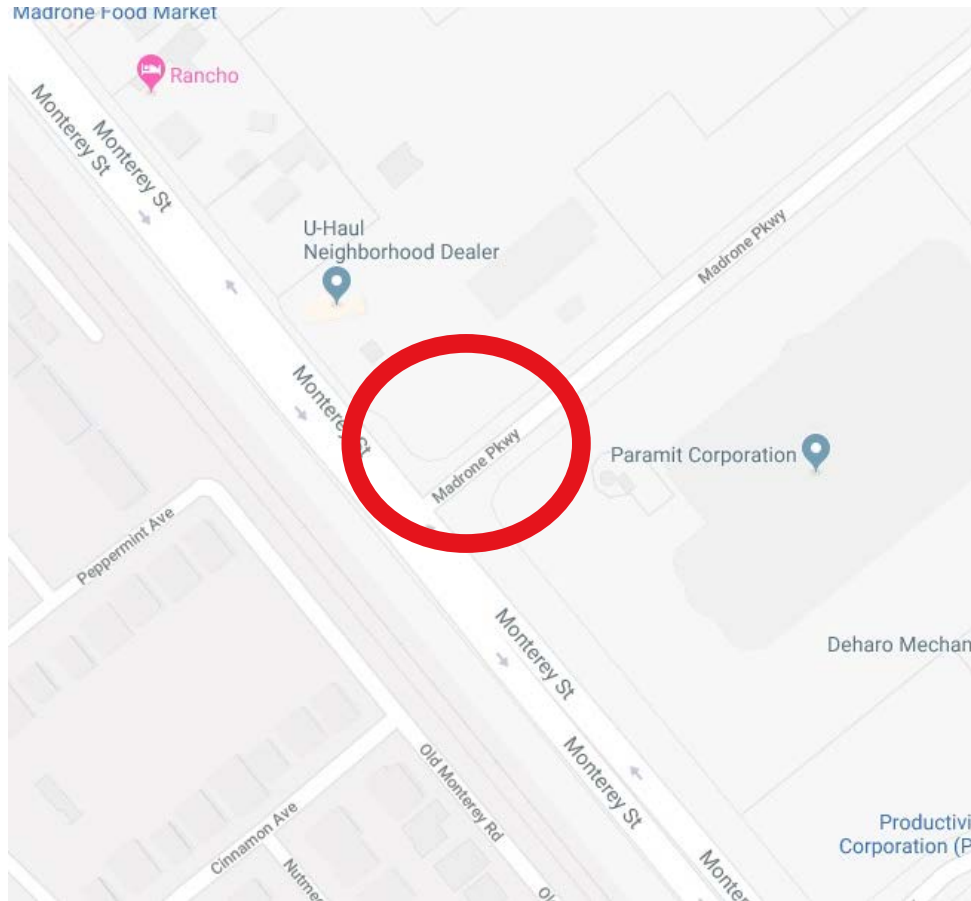
Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.



Block 3 –

Peebles Ave. to Madrone Pkwy.

NE Corner Madrone Pkwy. & Monterey Rd.



The NE corner of Madrone Pkwy. and Monterey Rd. is across the street (Madrone) from a new industrial and office development. This industrial and office park project creates opportunity for the NE corner – the proximity of businesses and the size of the NE parcel (7.53 acres) allows for a substantial, and sustainable, development to occur here.

We suggest the City require commercial development on this corner. Also, to promote the most effective traffic flow, we also suggest that no median be built that would prevent a left turn from Madrone Pkwy. on to Monterey Road.



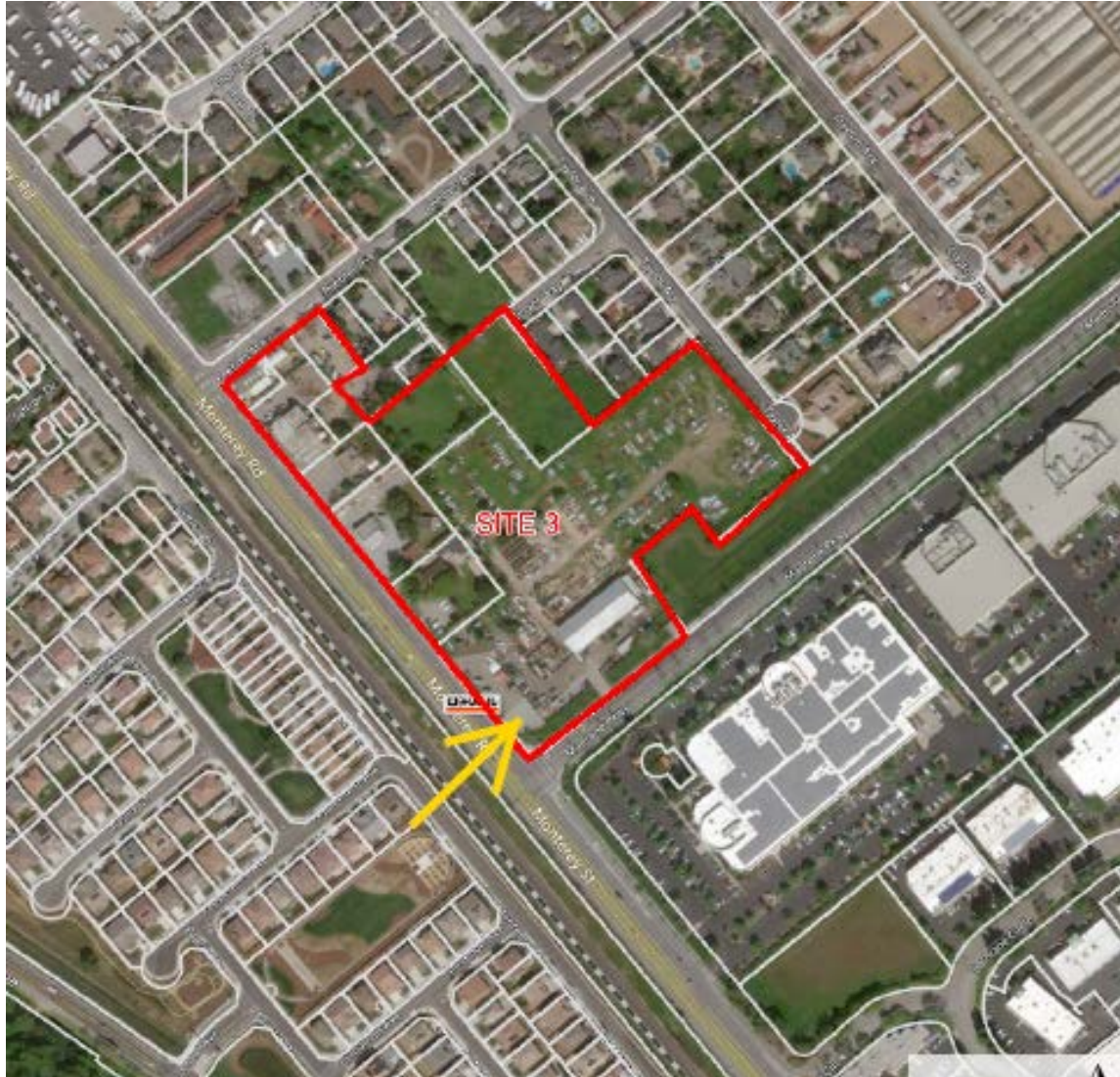
Conclusion: Commercial is sustainable and would benefit from proximity to the industrial park, therefore we suggest it be required.

METR@VATION

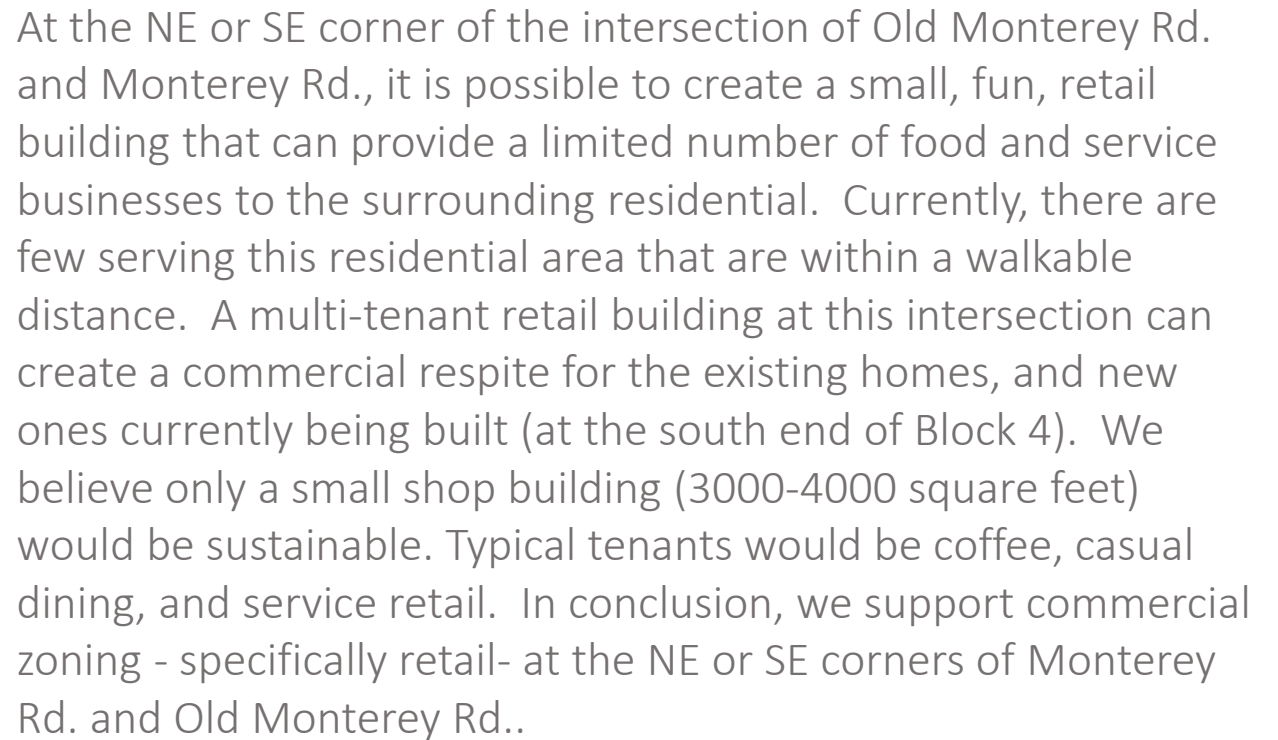
BROKERAGE & CONSULTING

Block 3 —

Peebles Ave. to Madrone Pkwy.
NE Corner Madrone Pkwy. & Monterey Rd.



Railroad Overcrossings to Morgan Hill Community Adult School NE & SE Corners Old Monterey Rd. (Extension) & Monterey Rd.



METR©VATION

BROKERAGE & CONSULTING

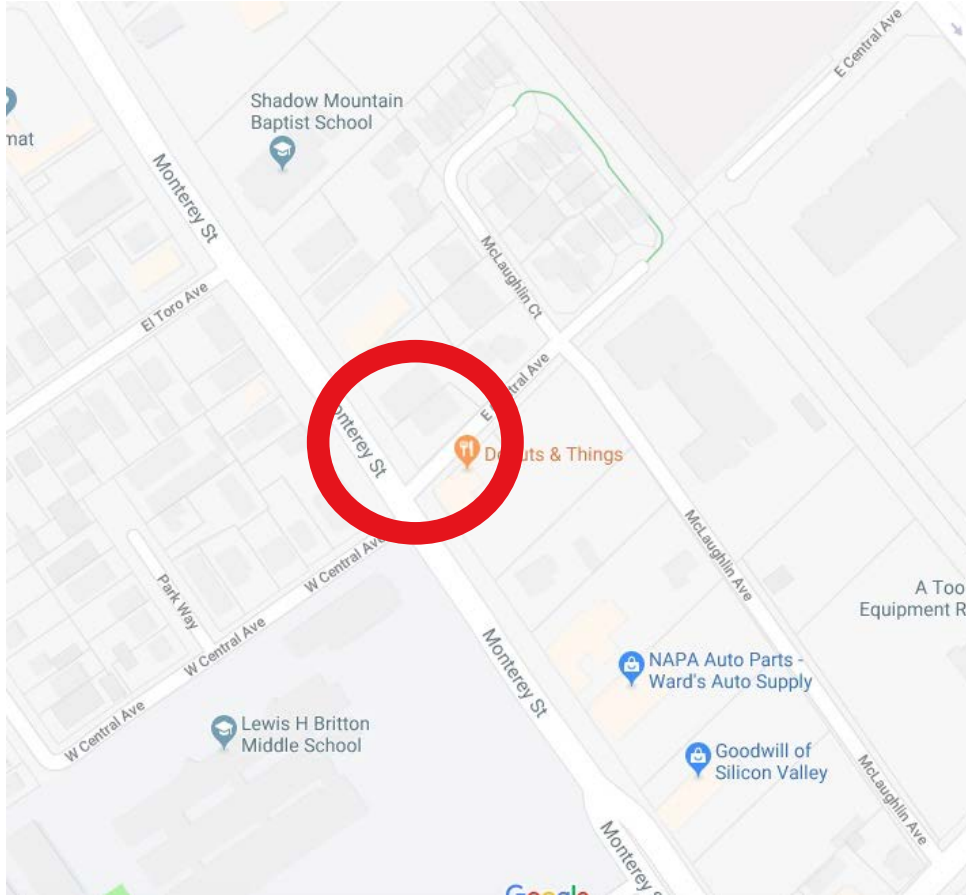
Block 4 —

Railroad Overcrossings to Morgan Hill Community Adult School
NE & SE Corner Old Monterey Rd. (Extension) & Monterey Rd.



Block 5 –

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



The entire east side of Block 5 has only two single-family residential units - other uses currently are multi-family or commercial. While it is difficult to change the zoning for a single family residential unit, we felt that commercial zoning was appropriate for the NEC of East Central and Monterey Rd., conditioned upon language being inserted into the Zoning Document that will allow the non-conforming use, additional leeway on structural repairs and modifications so that the zoning document does not cause financial issues (loans or refinance) or undue distress due to its non-conforming status.

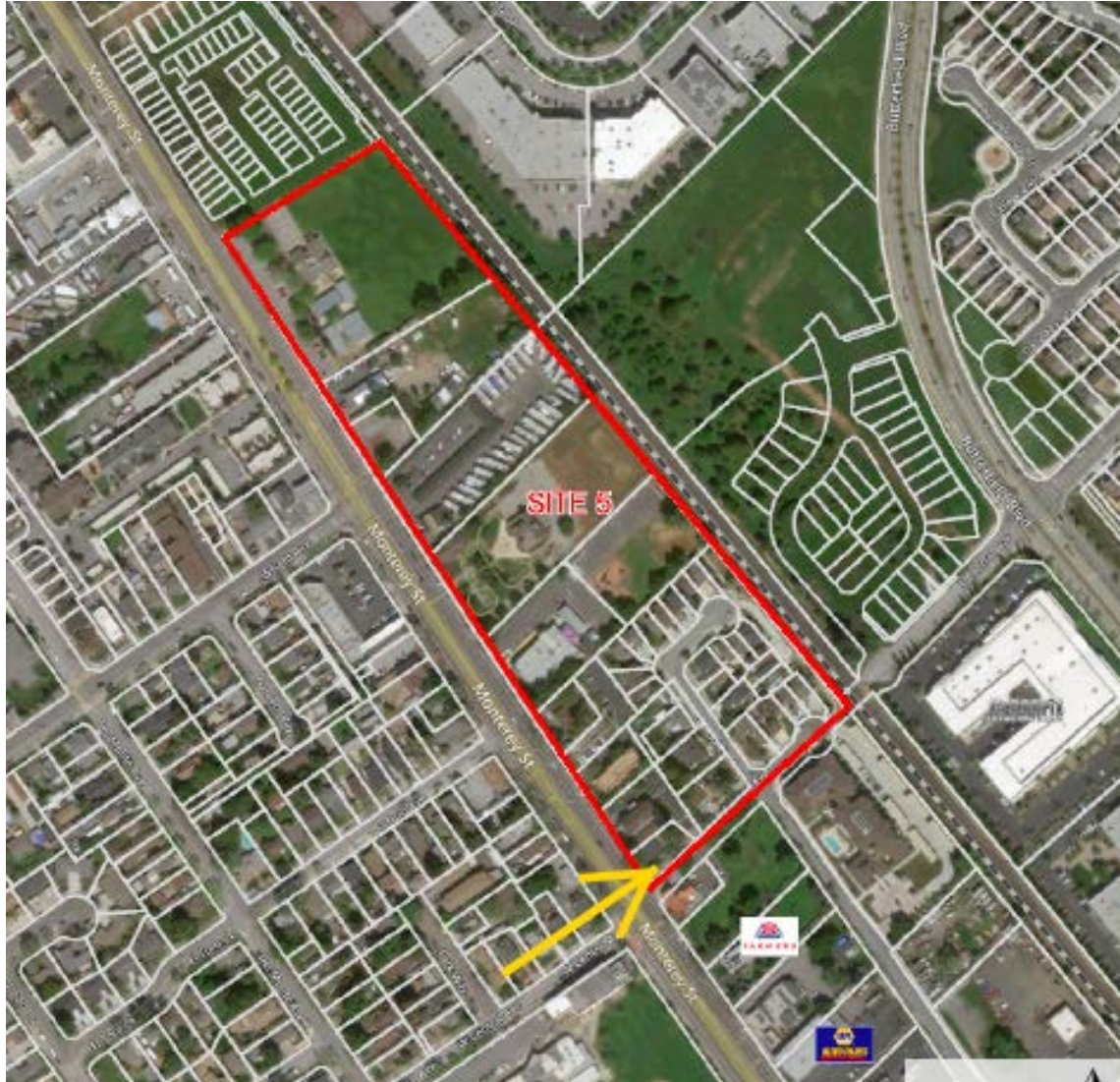
○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METR@VATION

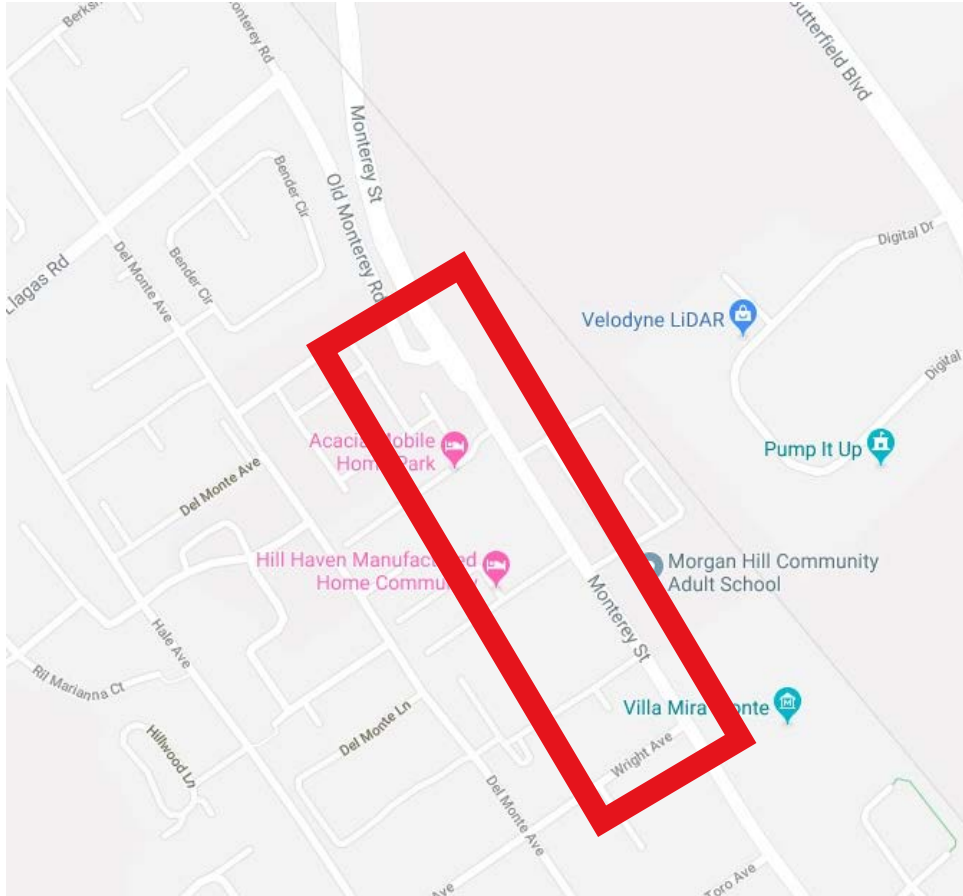
BROKERAGE & CONSULTING

Block 5 —

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



Block 6 – Old Monterey Rd. to Wright Ave.



There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

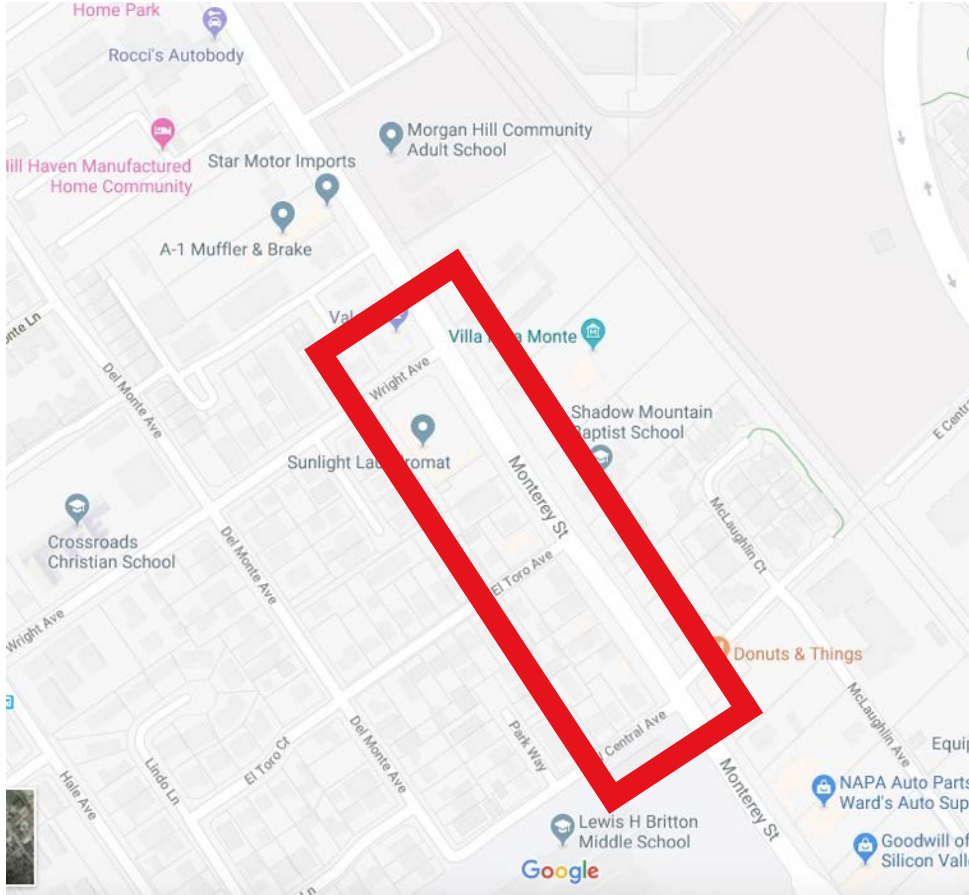
METR©VATION

BROKERAGE & CONSULTING

Block 6 – Old Monterey Rd. to Wright Ave.



Block 7 – Wright Ave. to W. Central Ave.

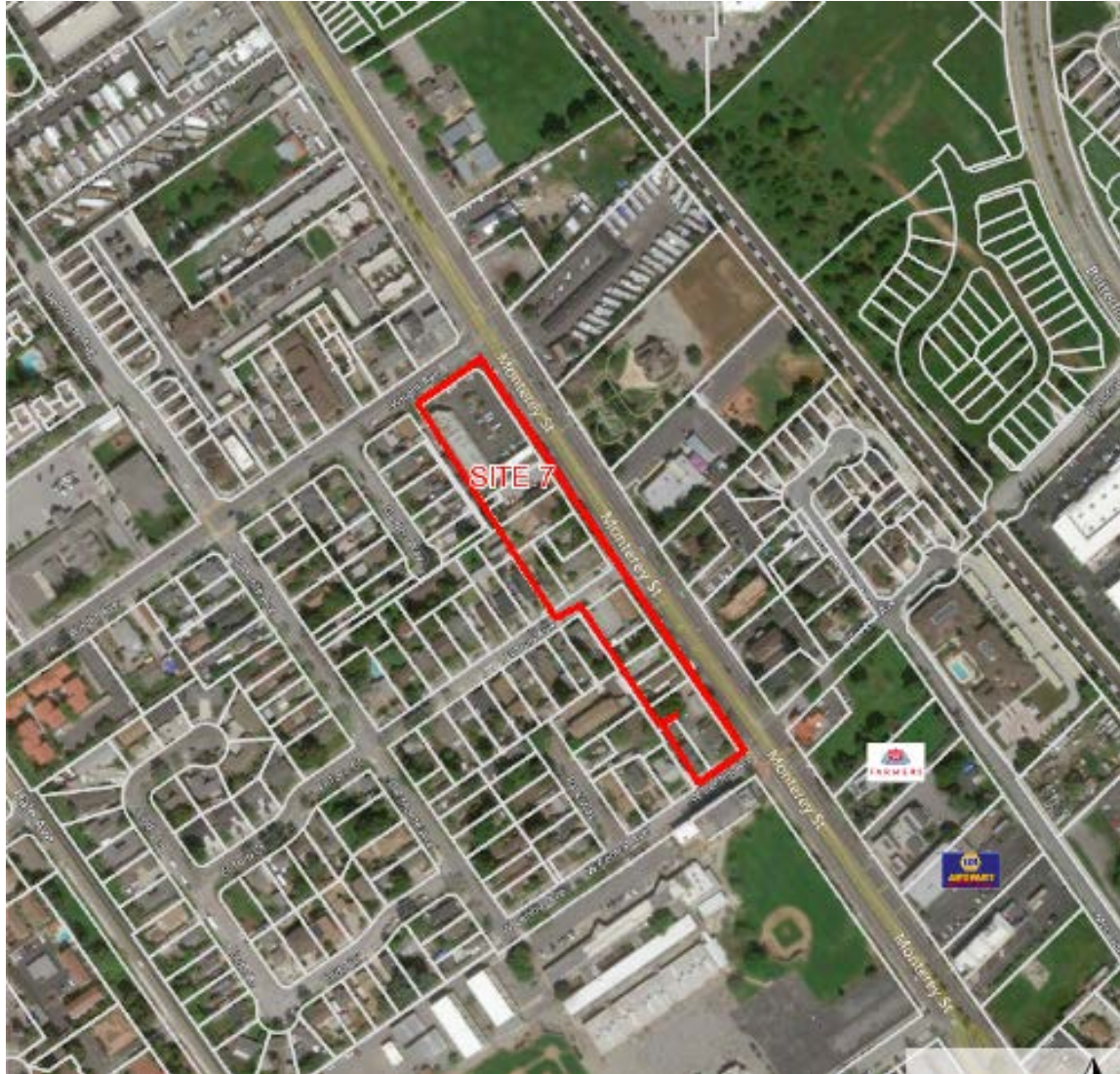


There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

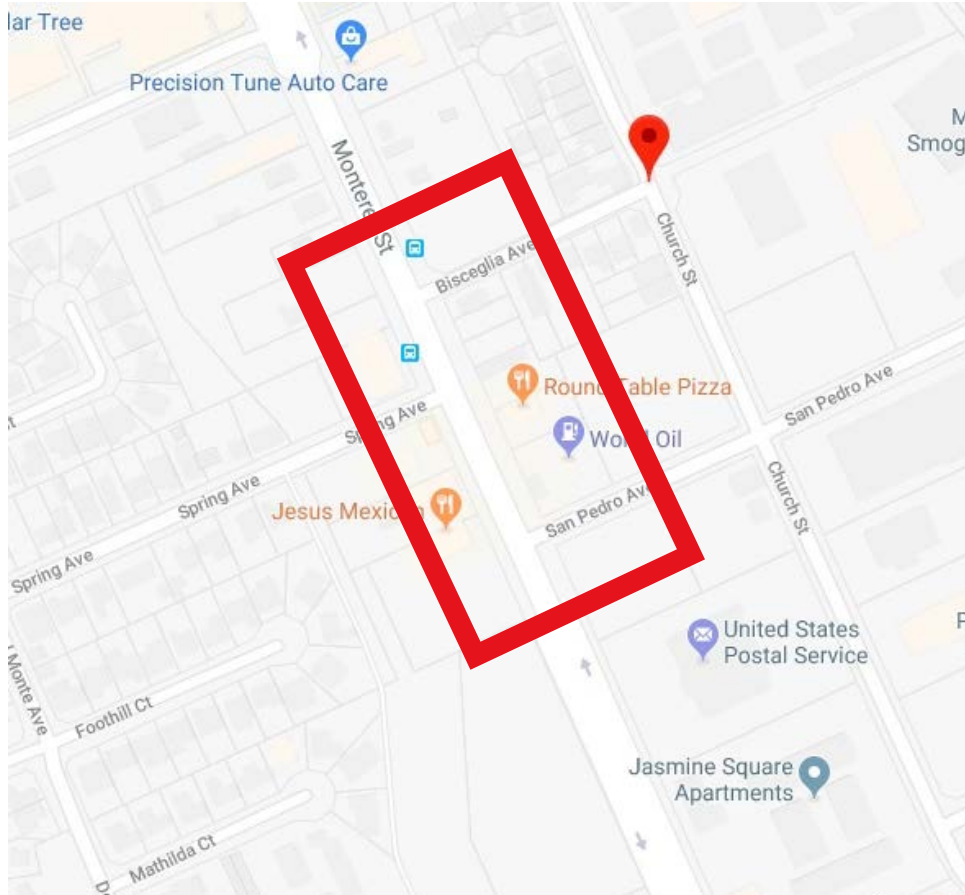
METR@VATION

BROKERAGE & CONSULTING

Block 7 – Wright Ave. to W. Central Ave.



Block 8 – Bisceglia Ave. to San Pedro Ave.

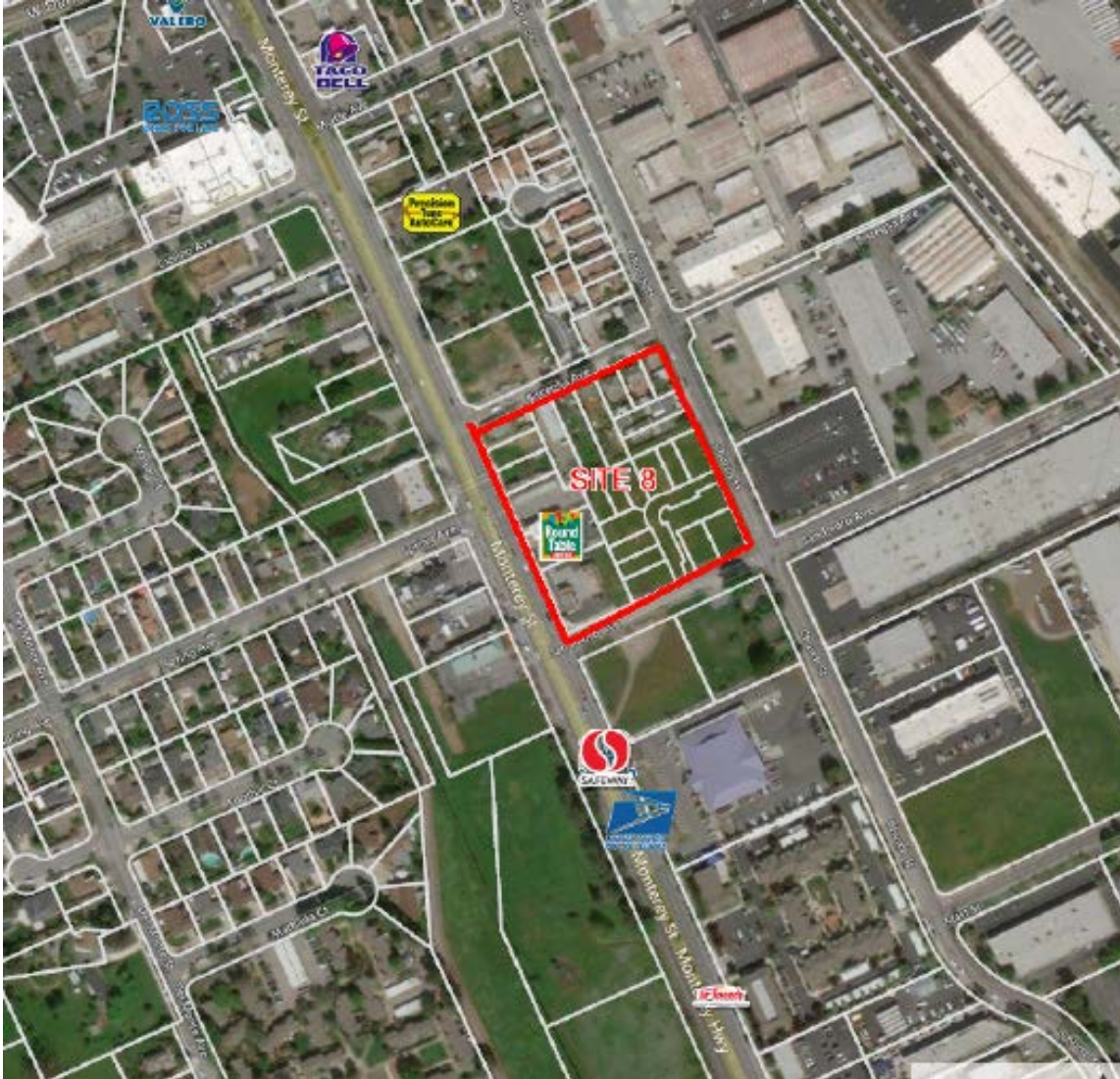


There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METR@VATION

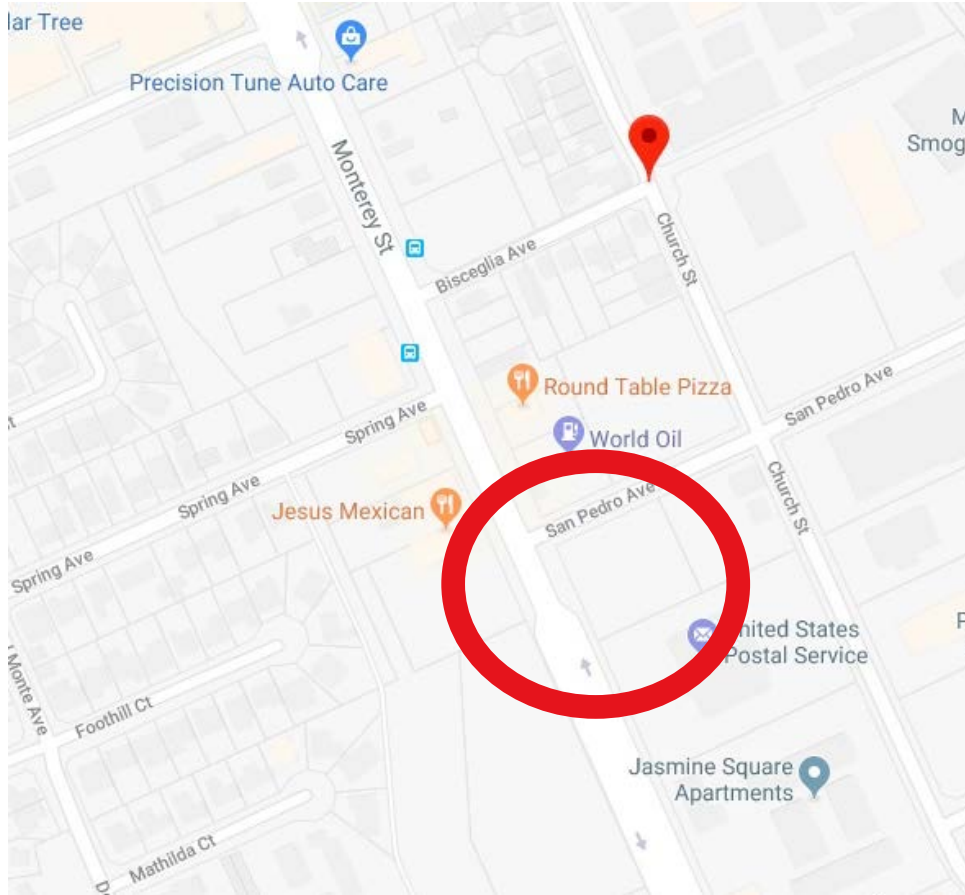
BROKERAGE & CONSULTING

Block 8 – Bisceglia Ave. to San Pedro Ave.



Block 9 –

San Pedro Ave. to Barrett Ave.
SE Corner San Pedro Ave. & Monterey Rd.



This area of south Morgan Hill already features a sustained commercial flavor and has the land available to accommodate additional commercial development. The vacant lot located on the SE corner of San Pedro Ave. and Monterey Rd. should be allowed to have commercial/retail development.

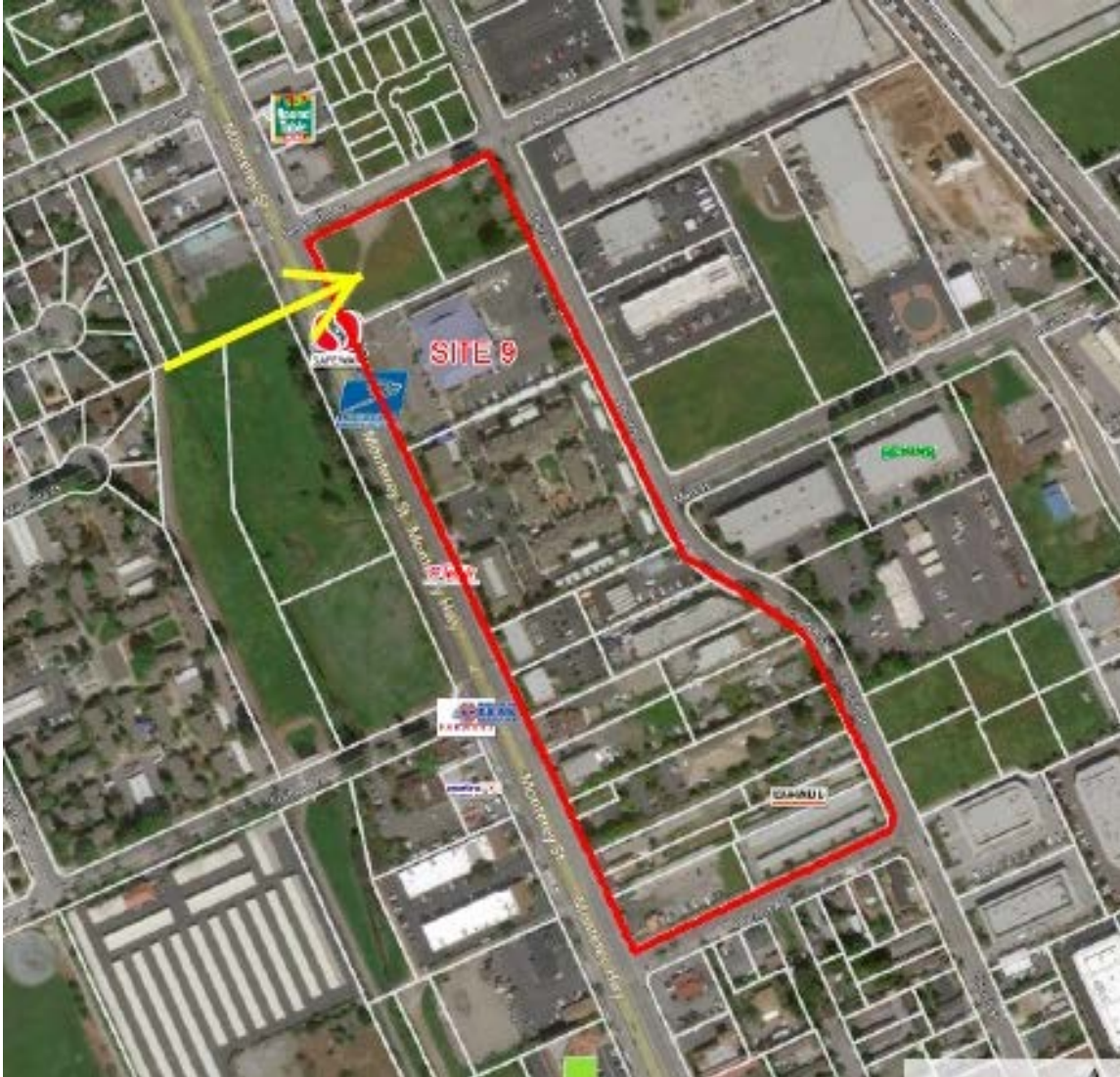
○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METR@VATION

BROKERAGE & CONSULTING

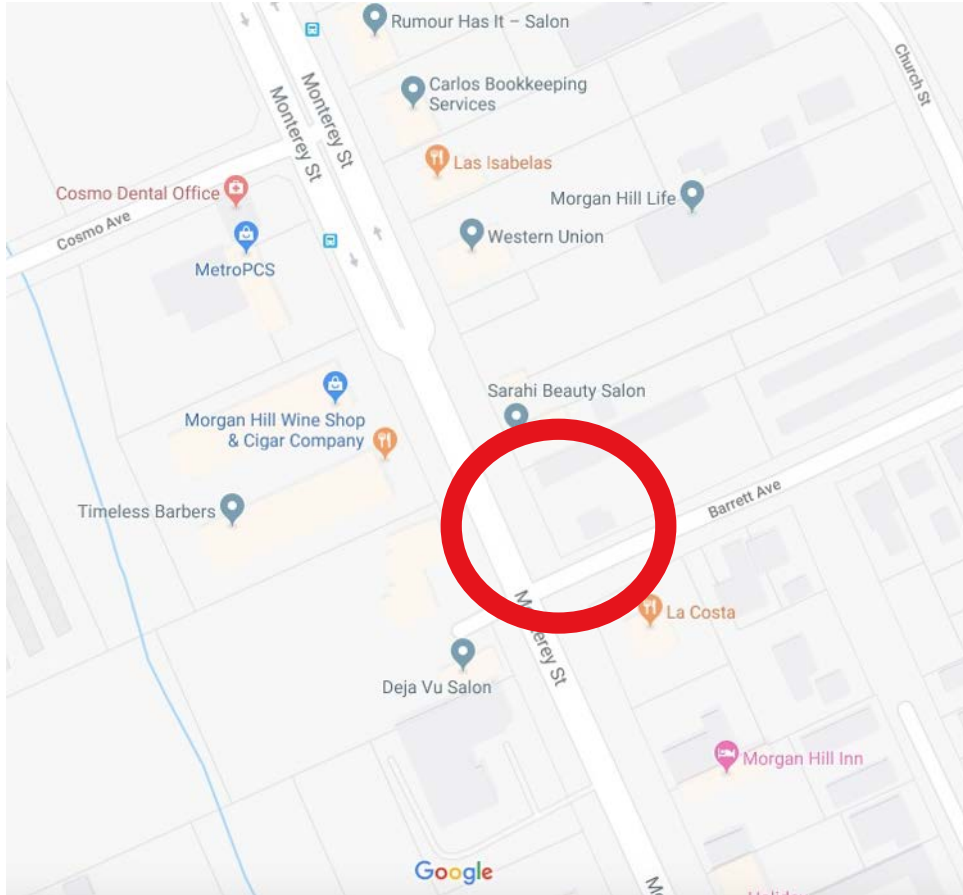
Block 9 —

San Pedro Ave. to Barrett Ave.
SE Corner San Pedro Ave. & Monterey Rd.



Block 9 –

San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.



The motel located at the NE corner of Barrett Ave. and Monterey Rd. appears to have significant deferred maintenance. While this property may provide affordable housing options for some citizens of Morgan Hill, it likely has areas not to code and detracts from the curb appeal of the block. Because it is under one ownership, along with the adjacent parcel to the north, it has increased opportunity for re-development. Therefore we suggest commercial for this parcel in any overlay zoning document.

○ Conclusion: Commercial is viable and likely, therefore should be zoned as such. We suggest commercial only at this corner.

METR@VATION

BROKERAGE & CONSULTING

Block 9 —

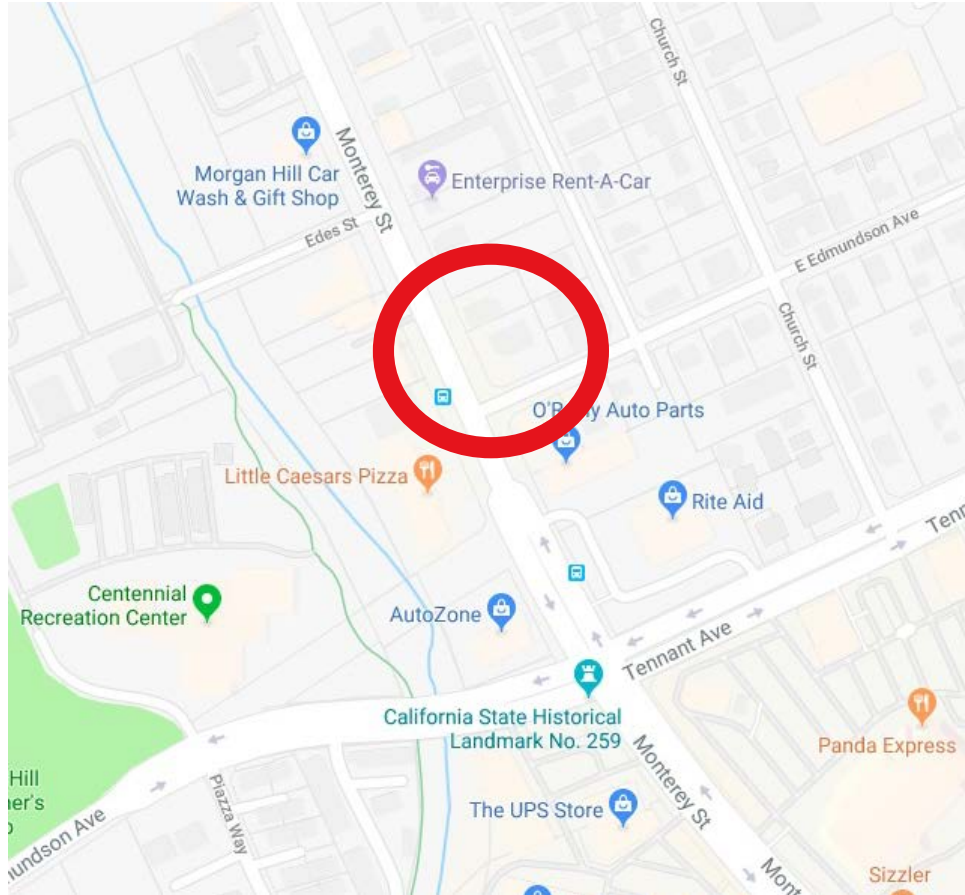
San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.



Block 10 –

Barrett Ave. to E. Edmundson Ave.

NE Corner E. Edmundson Ave. & Monterey Rd.



The NE corner of E. Edmundson Ave. and Monterey Rd. is an underutilized parcel currently occupied by an animal hospital. This area of Morgan Hill has a strong sense of commercial along Monterey Rd. The intersection is only a block away from the major intersection of Tennant and Monterey Rd. and has commercial uses adjacent on two sides and across the street. Intensifying the parcel is feasible and will make the best use of the property.

This does not necessarily mean changing the use. It is possible other veterinary hospital consortiums are looking to develop larger facilities that attract customers from a greater distance. A commercial use, as such, would be an upgrade from the current building and parcel condition. Therefore, we recommend requiring commercial on this parcel in the zoning document.



Conclusion: Commercial is viable at this corner. We suggest zoning commercial only for this parcel.

METROVATION

BROKERAGE & CONSULTING

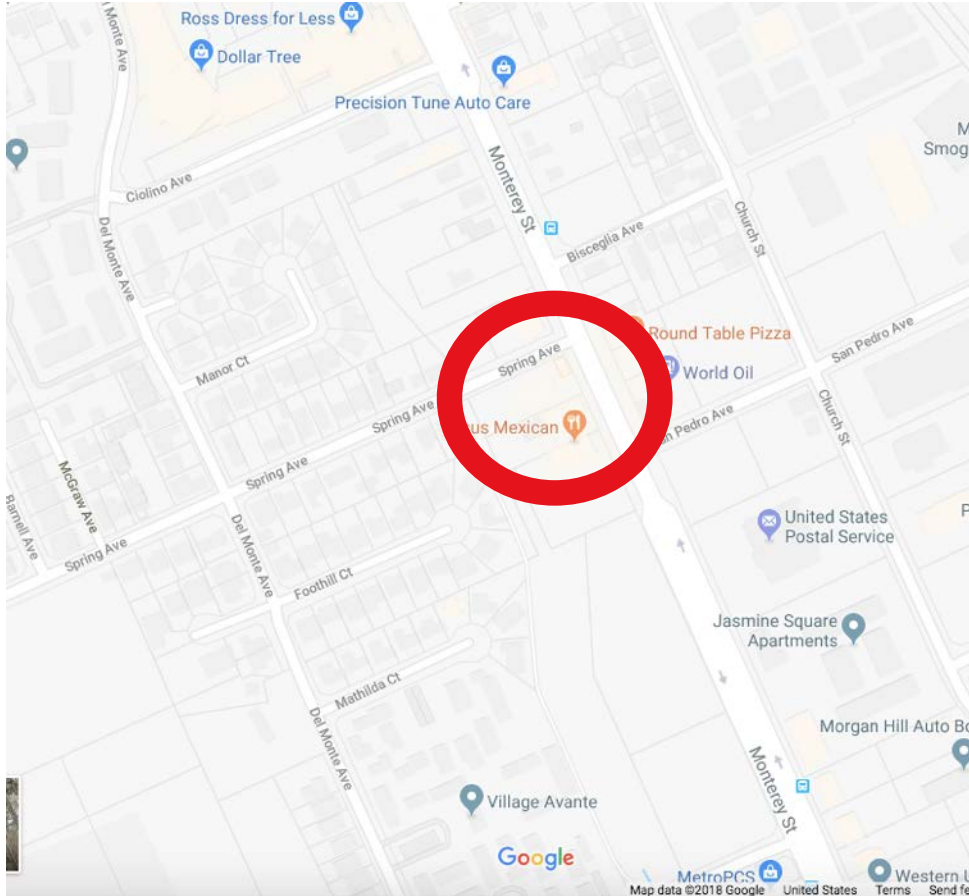
Block 10 –

Barrett Ave. to E. Edmundson Ave.
NE Corner E. Edmundson & Monterey Rd.



Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



The hard corner at Spring Ave. and Monterey Rd. (SWC) can be looked at as an entrance to a potential new development along Block 11. Using an entrance from Spring St, and developing a block-long drive aisle, passengers would be able to access a variety of possible developments with buildings up on Monterey Rd, often, with parking conveniently located in the rear. A north/south drive aisle will serve to alleviate traffic from Monterey Rd., while still providing easy access to any potential new development.

Therefore, we recommend requiring commercial on the SW corner of Spring and Monterey.



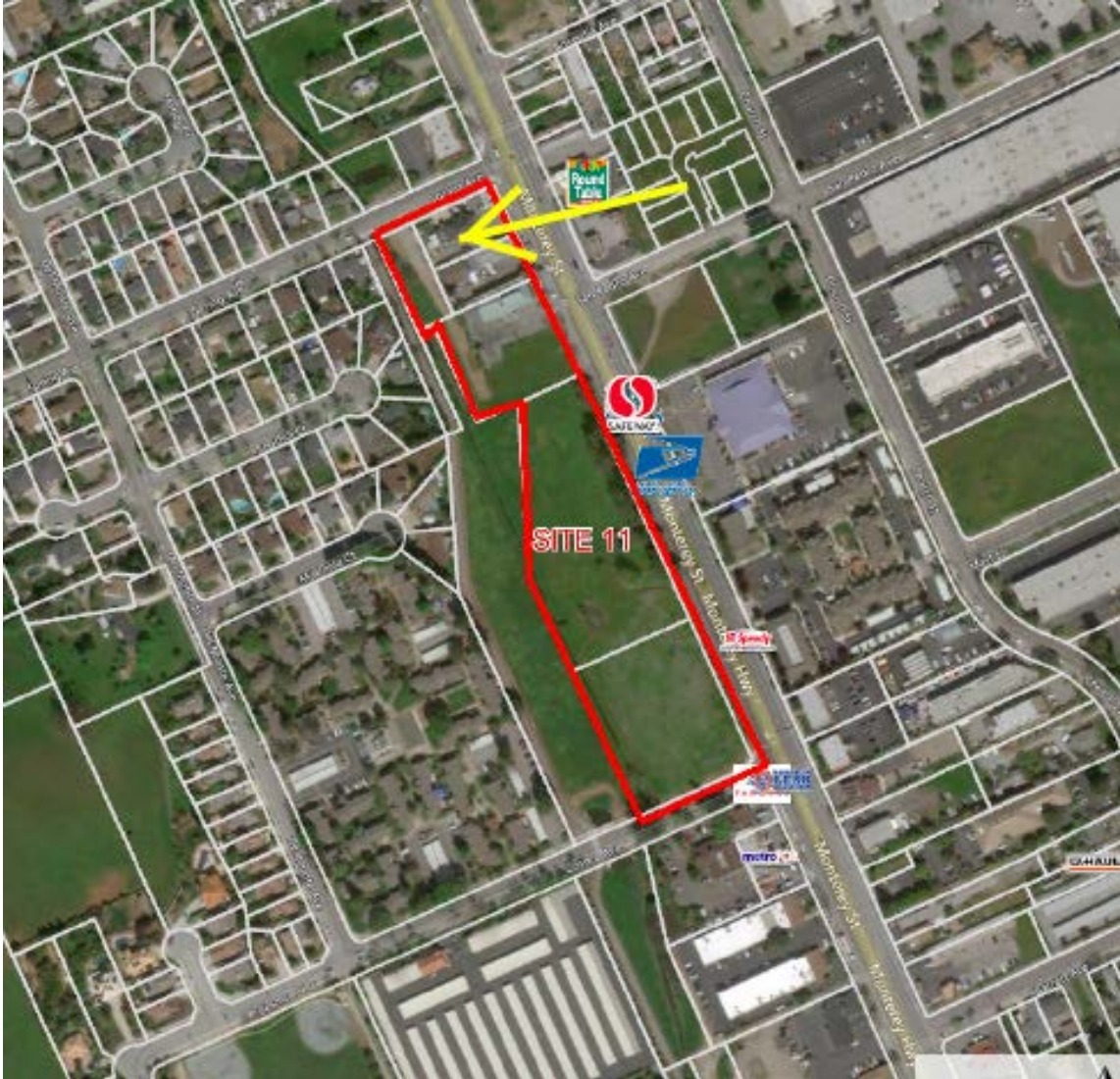
Conclusion: We suggest requiring commercial on the SW corner of Spring and Monterey.

METROVATION

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



Block 11 –

South of Downtown – Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Similar to our comments above, the entire Block 11 is ripe for new development with the corners focused on local-serving commercial uses. We strongly advocate for preserving the corners to accommodate this type of use.

Block 11 is mostly vacant and can accommodate new development. While the market will not support retail on the entire property, any new development will want to create density and keep the commercial feel to the area.

Therefore, we recommend requiring commercial on the NW corner of Cosmo Ave. and Monterey Rd.



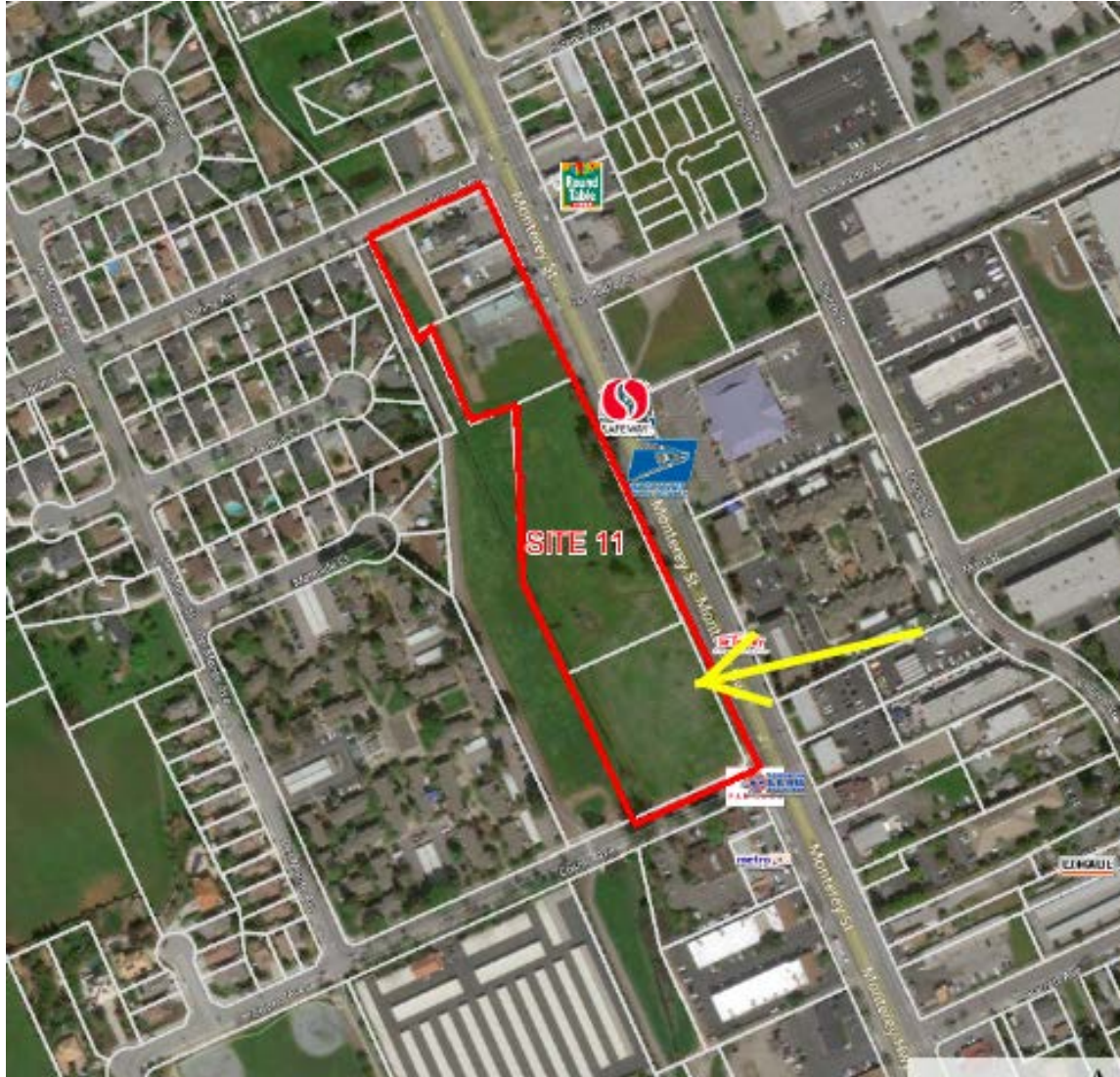
Conclusion: Commercial only zoning on the corner parcel is suggested.

METR@VATION

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.



Currently developed and leased to a variety of retail tenants, this corner will benefit from any development that occurs on the north side of Cosmo Ave.

We recommend requiring commercial on the SW corner Cosmo Ave. and Monterey Rd.



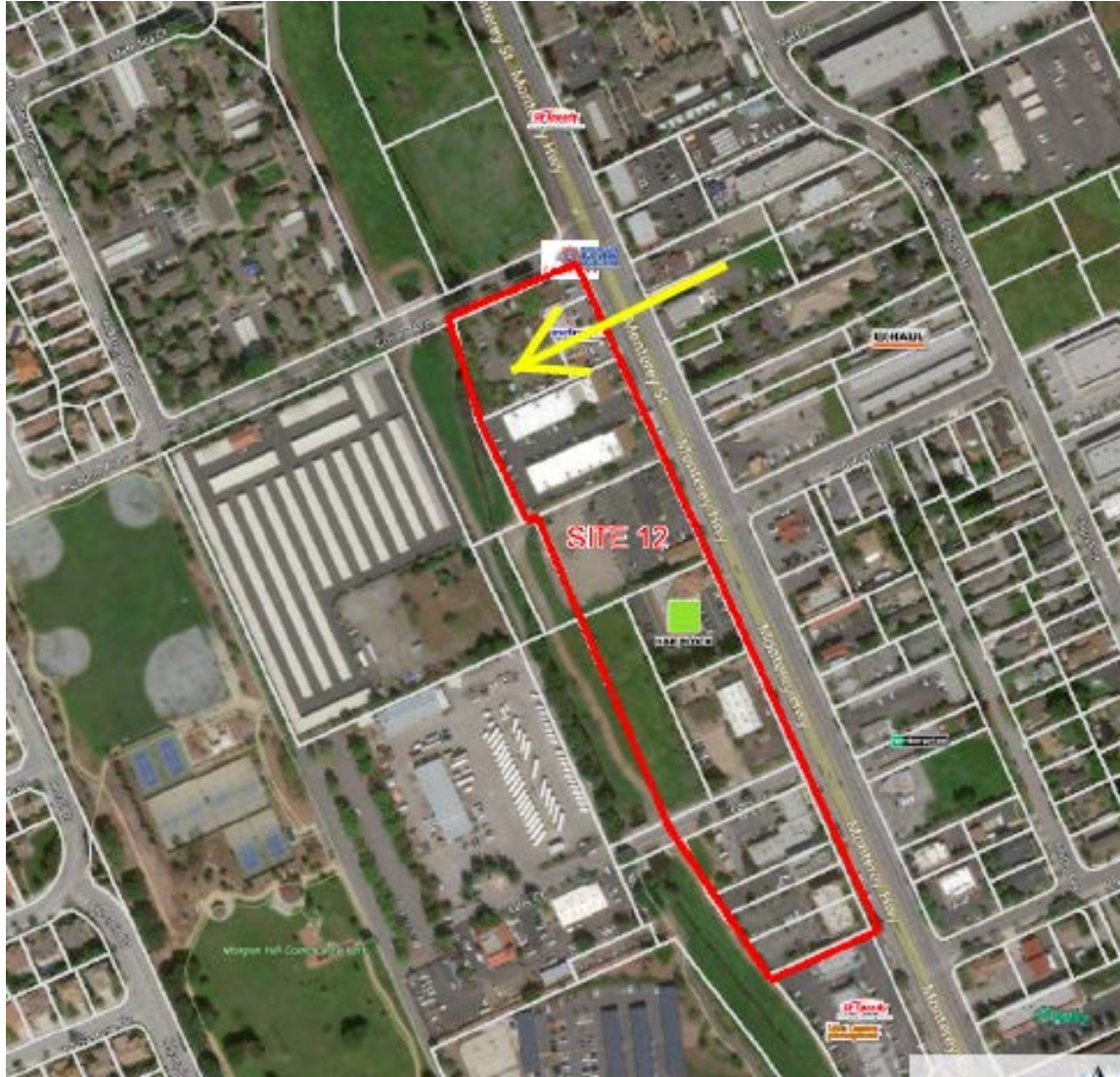
Conclusion: Commercial only zoning on the corner parcel is suggested.

METR@VATION

BROKERAGE & CONSULTING

Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.



Draft Frontage Standards

What are Frontage Standards?

Frontage Standards are specific requirements for building frontages, which enable a more desirable built environment



Porch



Shopfront



Front Yard

Frontage Types

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Frontage Type Application

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
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Forecourt	A	-	A	A
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Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Frontage Type Examples

5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. Standards.

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min.
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



Draft

4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.

b. Standards.

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	

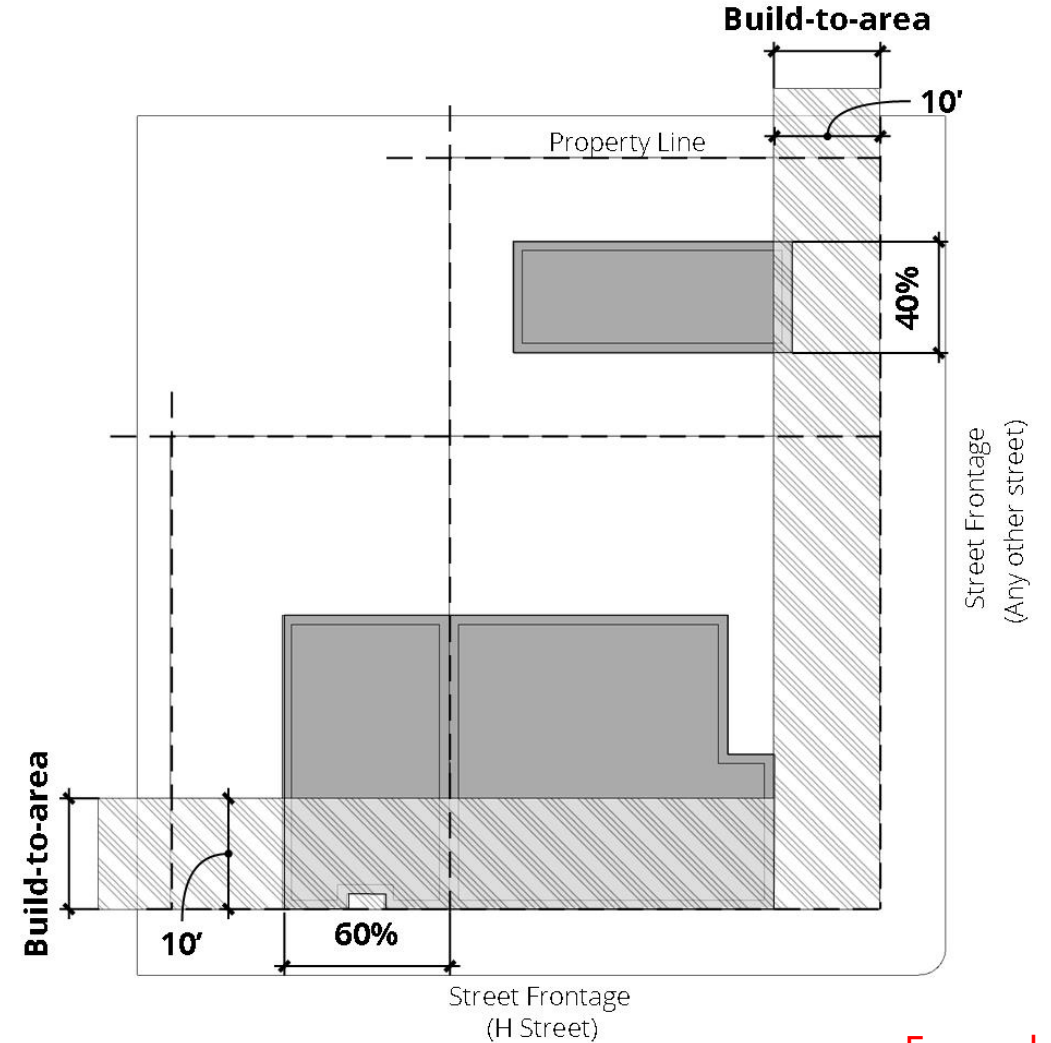


Draft

Supplemental Standards

Building Standards

- Maximum front setback
- 1st floor clear height for C Sub-Zone
- 1st floor building depth for C Sub-Zone
- Primary entrance oriented to the street
- Adaptive reuse

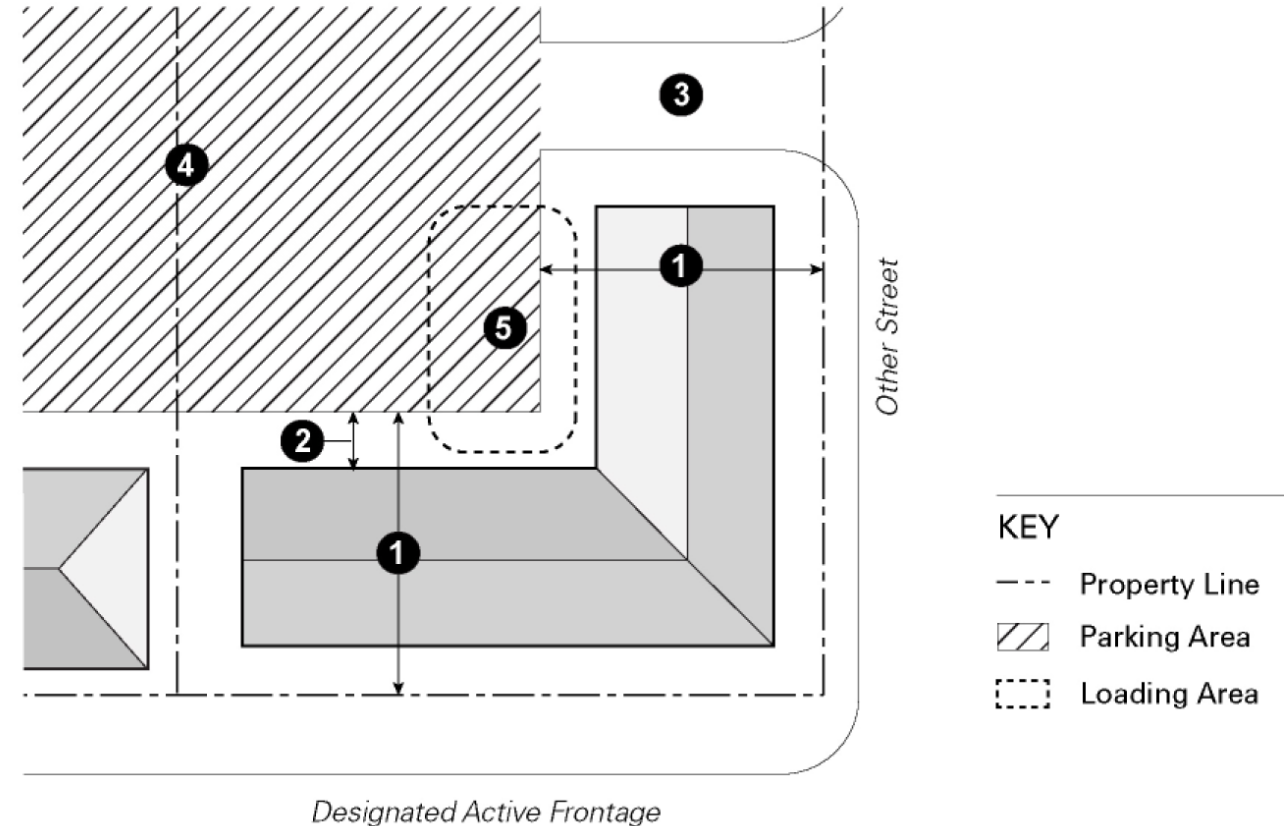


Example

Supplemental Standards

Connectivity/Site Standards

- Pedestrian and bicycle access/connection standards
- Maximum block length
- Parking behind buildings
- Open space/civic space requirement for large sites
- Street tree requirements



Example

Questions & Comments

John Baty, Principal Planner

Phone: (408) 310-4635

Email: John.Baty@morganhill.ca.gov

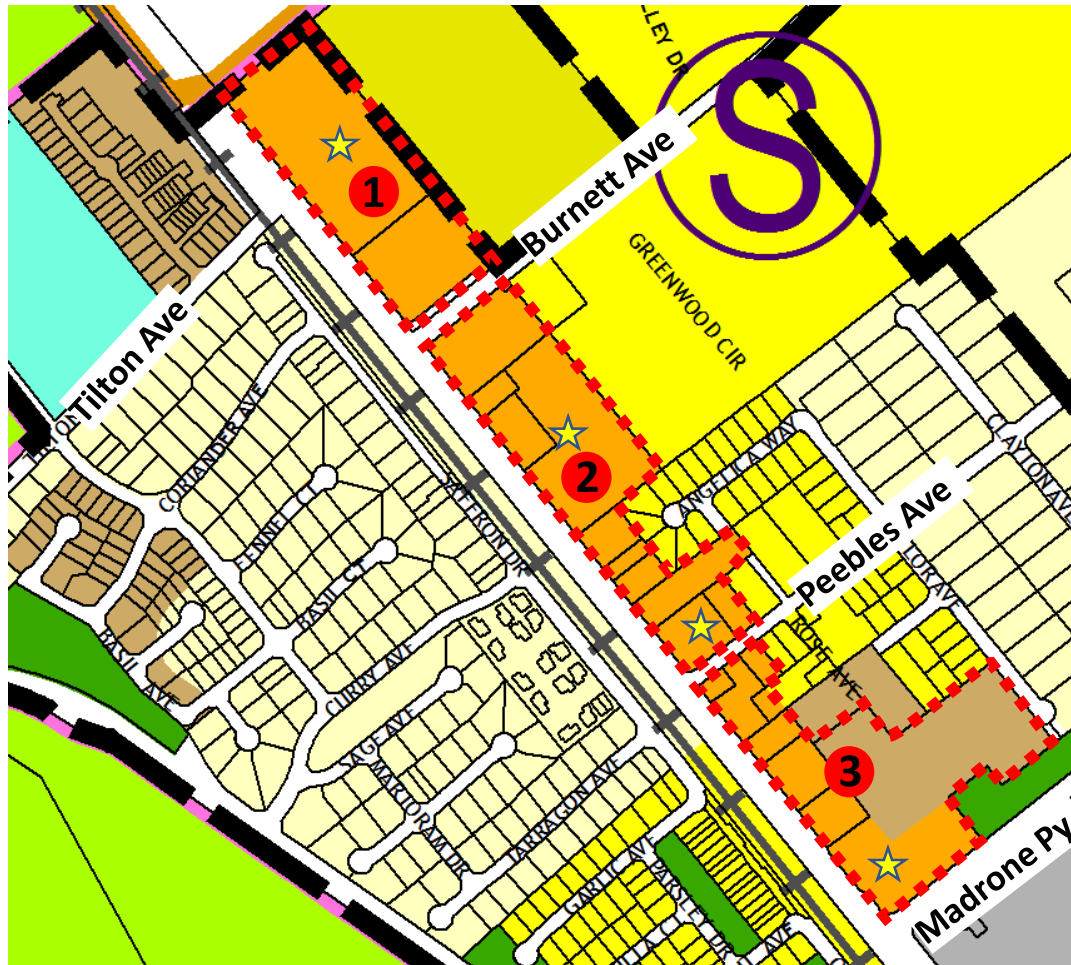
WORKSHOP

AGENDA DATE: 10/17/18

SUPPLEMENT # 1

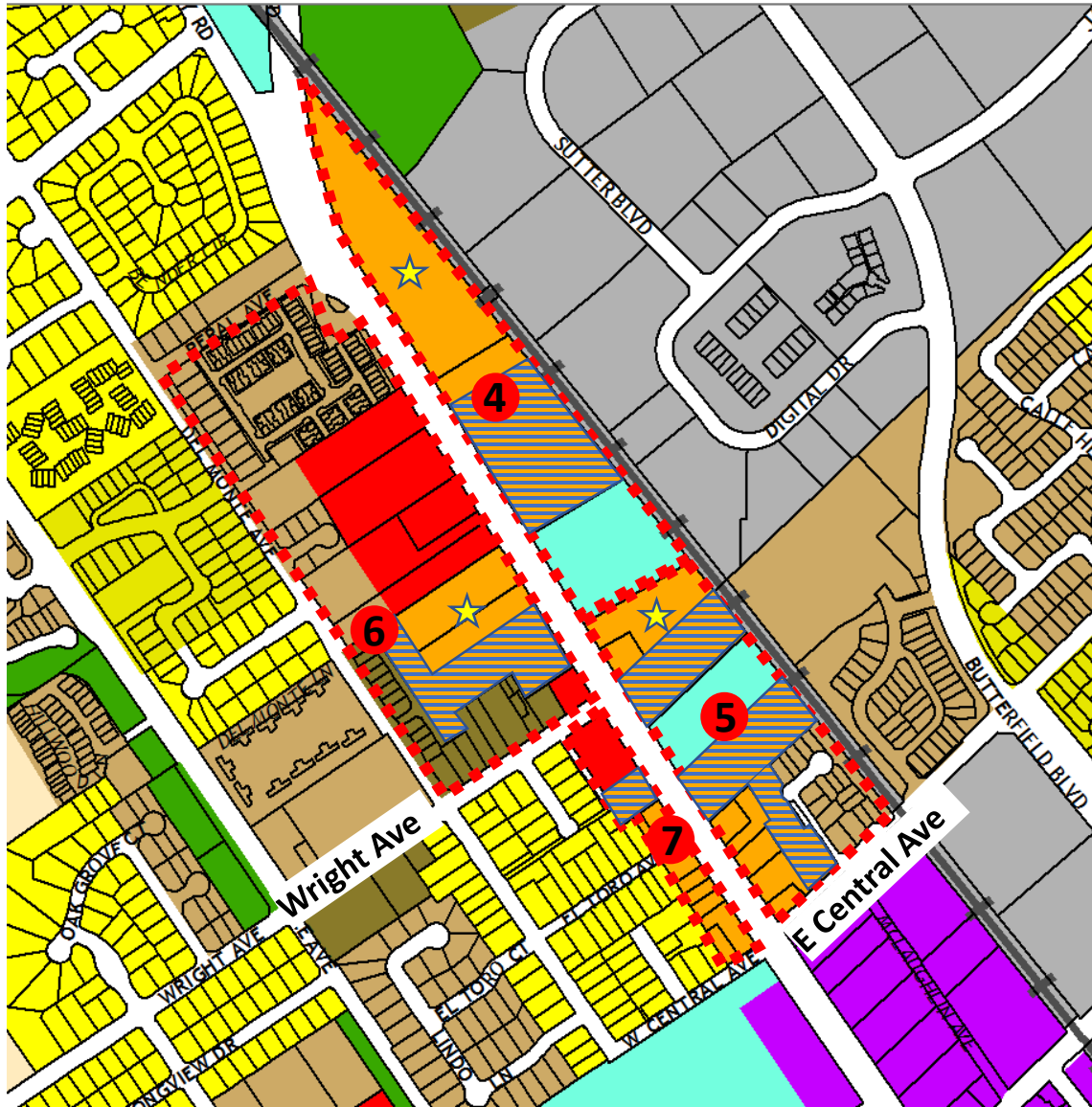
Monterey Corridor Block-Level Master Plan Blocks

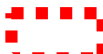
North: City Limits to Madrone Parkway



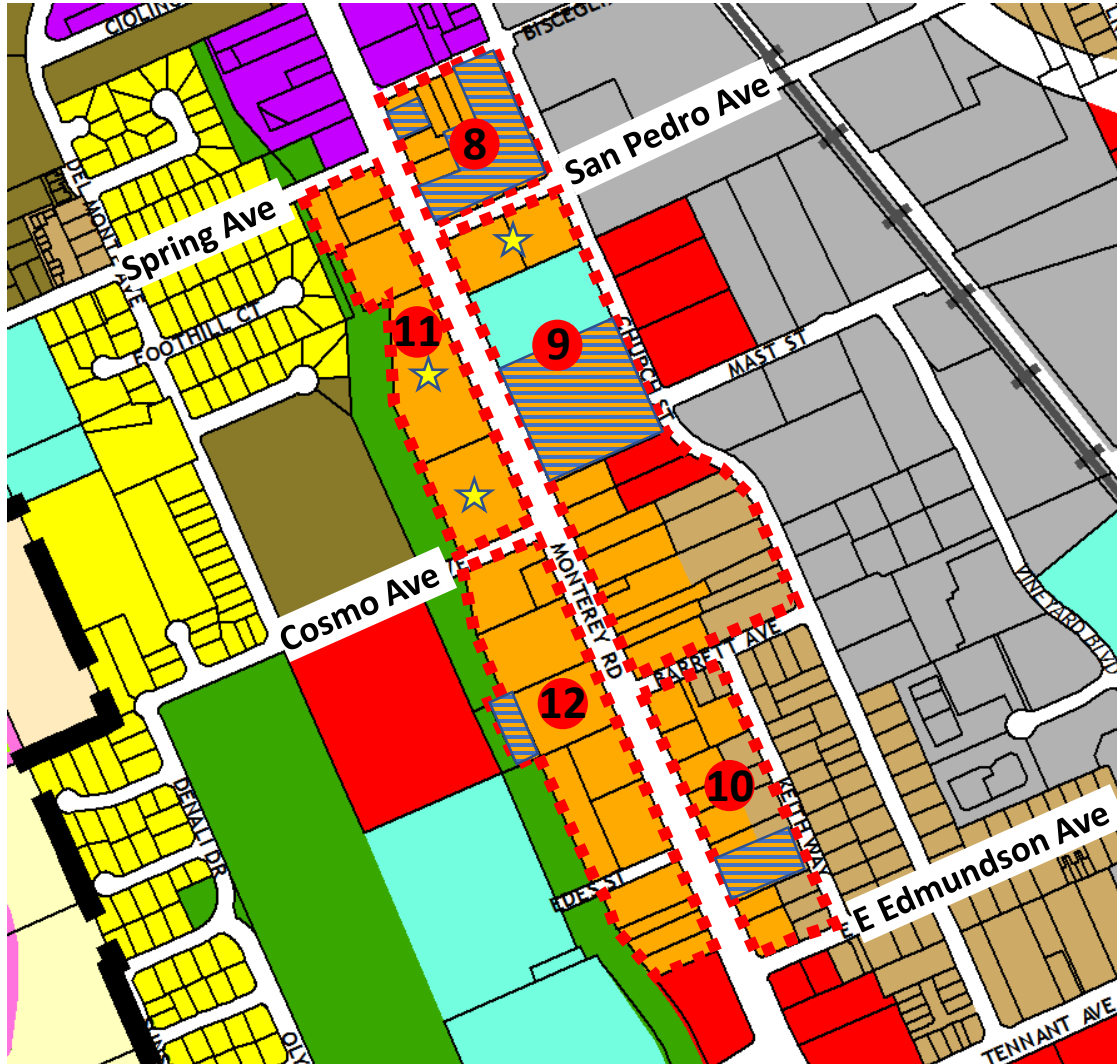
-  Mixed Use Flex Site  Block  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop  Vacant/Underutilized Opportunity Site

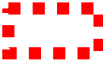
North of Downtown: RR Overcrossing to Central Avenue



-  Mixed Use Flex Site
-  Block
-  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
-  Vacant/Underutilized Opportunity Site

South of Downtown: Bisceglia Avenue to Edmundson Avenue



-  Mixed Use Flex Site  Block  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop  Vacant/Underutilized Opportunity Site

18.30.010 – XX Overlay Zone (Name TBD)

- A. Purpose of the XX Overlay Zone.** The XX overlay zone is intended to provide a vibrant and walkable urban environment with buildings of high visual quality that frame the street. The XX overlay zone serves as the block-level master plan for residential and mixed use developments in the Monterey Corridor consistent with the General Plan and Section 18.22.030.
- B. Applicability.** All new buildings and development in the XX overlay zone must comply with the standards and requirements in this Section.
- C. Conflict with Other Zoning Code Standards.** Where the XX overlay zone standards conflict with other standards in the Zoning Code, the XX overlay zone standards shall control.
- D. Sub-Zones.**
1. **Purpose and Intent.** Sub-zones of the XX overlay zone include specific standards depending on the appropriate neighborhood and corridor contexts of the area. The general intent of the sub-zones is to reinforce built form as described in the General Plan and create a pedestrian-friendly environment. The specific purpose of each sub-zone is described below.
 - a. **Neighborhood Sub-Zone.** The purpose of the Neighborhood (N) sub-zone is to reinforce and enable medium intensity residential form within a mixed use environment.
 - b. **Corridor Sub-Zone.** The purpose of the Corridor (C) sub-zone is to provide a thriving mix of uses with a focus on ground-level, active building frontages facing the right-of-way.
- E. Permitted Land Uses.** Placeholder TBD [do not allow residential uses in areas where commercial should be required per commercial analysis].
- F. Frontage Types Allowed.** Buildings must be designed with a frontage type(s) allowed in the sub-zone by Table XX.

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

G. Frontage Type Standards.

1. Forecourt.

- a. **Description.** The main façade of the building is at or near the right-of-way and a portion (usually the central portion) is set back, creating a courtyard space. The space could be used as an entry court or shared garden space for residential buildings, or as an additional shopping or restaurant seating area within retail and service use areas.
- b. **Standards.**

Size	
Width, Forecourt	20 ft. min.
Depth, Forecourt	20 ft. min.
Ratio, Width-to-Height of Forecourt	2:1 max.
Transparency, Ground Floor	70% min.
Transparency, Upper Floors	30% min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	



Credit: Google Earth

2. Front Yard.

- a. **Description.** The main façade of the building has a large landscaped area between the building and the right-of-way providing a separation from the street. The front yard is visually continuous with adjacent yards and supports a landscape in conjunction with other private frontages.

- b. **Standards.**

Size	
Width, Front Yard	12 ft. min.
Depth, Front Yard	10 ft. min.
Height, Fences or Walls ¹	3 ft. max.
Miscellaneous	
Must be used in conjunction with another allowed frontage type (e.g., porch).	
Must be landscaped up to the property line.	

¹ Fences or walls must comply with Chapter 18.52 (Fences and Walls).



3. Porch: Engaged.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The engaged porch has two adjacent sides attached to the building while the other two sides are open.
- b. **Standards.**

Size	
Width, Porch	50% min.; 80% max. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on two sides and have a roof.	



4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.
- b. **Standards.**

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. **Standards.**

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



6. Stoop.

- a. **Description.** The main façade of the building is near the right-of-way and the elevated stoop engages the sidewalk. The stoop must be elevated above the sidewalk to ensure privacy within the building. The entrance is usually an exterior stair and landing.
- b. **Standards.**

Size	
Width, Stoop	4 ft. min.; 8 ft. max.
Depth, Stoop	5 ft. min.; 8 ft. max.
Finish Level Above Sidewalk	2 ft. min.; 4 ft. max.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Stairs may be perpendicular or parallel to the building façade.	
Entry doors are encouraged to be covered or recessed.	
Gates are not allowed.	



7. Terrace.

- a. **Description.** The main façade of the building has an elevated terrace that projects outward and engages the sidewalk with frequent stairs. The terrace allows at-grade access to all ground floor uses due to natural grade constraints or by artificially elevating the terrace floor. The terrace acts as a buffer from the sidewalk and may be landscaped to provide additional privacy. Building activities are slightly separated from the adjacent sidewalk by the terrace finish level, and the depth of the terrace provides a buffer for outdoor seating, private yards, or any other appropriate uses.

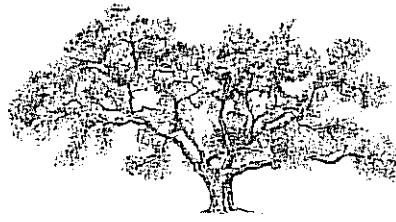
b. **Standards.**

Size	
Depth, Terrace	8 ft. min.
Length, Terrace	120 ft. max.
Finish Level Above Sidewalk	4 ft. max. ¹
Distance Between Stairs	25 ft. max.
Wall Setback From Right-of-Way	5 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	

¹ Finish level may be adjusted for base flood elevation considerations.



H. Supplemental Standards. Placeholder TBD [pedestrian and bicycle access/connectivity; maximum block length; maximum building setback; parking behind buildings; 1st floor clear height and building depth for C Sub-Zone; open space/civic spaces for large sites].



PACIFIC OAK PROPERTIES, INC.

WORKSHOP
AGENDA DATE: 10/17/18
SUPPLEMENT # 2

October 16, 2018

Morgan Hill City Council

Dear Mayor and Council Members:

I have reviewed the Monterey Corridor Block Level Master Plan.

I found the analysis to be well done and I agree with the conclusions reached for the various parcels along Monterey Road.

I do not believe that the City should force or require much more additional retail along the Monterey corridor. It is more important to keep existing commercial/retail centers strong and vibrant.

Providing land use flexibility along the corridor is a good thing, and this approach should serve the City well as properties along the corridor are developed or re-developed.

Thank you for your consideration.

Sincerely,



John P. Kent
President



August Developmental Asset #4

Caring Neighborhood

Young person experiences
caring neighbors.

How can YOUTH interact with their neighbors

Ways to interact

- o Be present within your neighborhood.
- o Interact with your neighbors when you see them.
- o Plan communal events such as celebrations or projects.

Benefits

- o Youth feeling safer
- o More role models





September

Developmental Asset #21

Achievement Motivation

Young person is motivated to do well in school.

Ways to motivate YOUTH

- o Consistently check grades.
- o Look for resources to help them in classes they aren't doing well in.
- o Communicate with teachers.
- o Be supportive of their successes and failures.





October

Developmental Asset #31

Healthy Lifestyles

Parents tell youth it is important to have good health habits and an understanding of healthy sexuality.

How to maintain a healthy lifestyle

- o Attempt be physically active for a majority of the week.
- o Try to eat more natural foods over processed foods.
- o Aim to drink water over sweetened beverages..
- o Give yourself time each day to reflect and relax.
- o Inform and guide youth about the changes in their bodies according to their age. Search or consult with a professional on how to talk to them about healthy sexuality.



**Out of these three assets, which one
do you consider the most
important?**

