



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Rich Constantine - Mayor Pro Tem

Larry Carr - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, December 5, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

(Deputy City Clerk Bigelow)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. DECLARE SURPLUS OF VEHICLES AND ONE PIECE OF EQUIPMENT FOR AUCTION

Recommendation:

1. Declare nine vehicles and one piece of equipment to be surplus; and
2. Authorize the purchasing officer to dispose of the vehicles and equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

2. ACCEPT MONTEREY ROAD SEWER VAULT COATING AT LLAGAS CREEK PROJECT

Recommendation:

1. Accept as complete, the Monterey Road Sewer Vault Coating at Llagas Creek Project, in the final amount of \$203,863;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

3. RESOLUTION APPROPRIATING FUNDS FOR A CUT-THROUGH TRAFFIC STUDY

Recommendation:

Adopt resolution to amend the Fiscal Year 2018-19 budget to appropriate \$26,000 from the General Fund to perform a Citywide cut-through traffic study.

4. APPROVE AGREEMENT ACCEPTING LAW ENFORCEMENT TOBACCO GRANT FROM THE COUNTY OF SANTA CLARA

Recommendation:

Adopt resolution authorizing the City Manager to execute an agreement with the County of Santa Clara to accept grant funds as a sub-recipient of the State of California Department of Justice Law Enforcement Tobacco Grant for total amount of \$63,731 over two fiscal years and amending the City's FY 2018-19 and FY 2019-20 adopted budget to appropriate expenditure of the grant funding of \$31,568 in FY 2018-19 and \$32,163 in FY 2019-20, in the General Fund (010).

5. APPROVE HEALTHIER KIDS FOUNDATION FUNDING MOU AND LICENSE AGREEMENT

Recommendation:

Authorize the City Manager to enter into and administer a memorandum of understanding, and a license agreement, with the Healthier Kids Foundation to provide funding in the amount of \$20,000 annually and usage of a City facility.

6. APPROVE MEMORANDUM OF UNDERSTANDING FOR SOUTH VALLEY CIVIC THEATER FUNDING

Recommendation:

Authorize the City Manager to enter into and administer a memorandum of understanding with South Valley Civic Theater for the purpose of providing funding of \$10,000 annually to support theater programming for low-income participants.

7. APPROVAL OF MEMORANDUM OF UNDERSTANDING (MOU) WITH THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), THE COMMUNITY SERVICE OFFICERS' ASSOCIATION (CSOA), POLICE OFFICERS' ASSOCIATION (POA) AND CORRESPONDING SALARY SCHEDULES AND APPROVAL OF THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULES

Recommendation:

1. Approve a Memorandum of Understanding (MOU) with AFSCME effective December 30, 2018 – December 31, 2021 and corresponding salary schedules;
2. Approve a MOU with CSOA effective December 30, 2018 - December 31, 2021 and corresponding salary schedules;
3. Approve a MOU with POA effective December 30, 2018 - December 31, 2021 and corresponding salary schedules;
4. Approve the Management, Professional, and Confidential Employees Resolution effective December 30, 2018 and corresponding salary schedules; and
5. Approve the Part-Time Temporary and Seasonal Employees Resolution effective December 30, 2018 and corresponding salary schedule.

8. APPROVE GEOGRAPHIC INFORMATION SYSTEM (GIS) SERVICES CONTRACT WITH GEOGRAPHIC TECHNOLOGIES GROUP

Recommendation:

1. Approve an agreement with Geographic Technologies Group for a not to exceed amount of \$59,000, for the GIS Services Project; and
2. Authorize City Manager to execute and administer the said agreement.

9. APPROVE FIRST AMENDMENT TO AGREEMENT WITH MEYERS NAVE FOR LABOR NEGOTIATION SERVICES

Recommendation:

1. Approve First Amendment to Agreement with Meyers Nave for an additional \$50,000 to provide labor negotiations services for a total not to exceed amount of \$100,000;
2. Authorize the City Manager to execute and administer the amended agreement; and
3. Adopt resolution amending the City's adopted Fiscal Year 2018-19 budget, to appropriate \$50,000 from the General Fund (010) for labor negotiations.

10. APPROVE FIRST AMENDMENT TO COMMUNITY CHRISTIAN LEASE AGREEMENT

Recommendation:

1. Approve First Amendment to the Lease Agreement with Community Christian for use of the El Toro Youth Center Building; and
2. Authorize the City Manager to execute and administer the First Amendment to the Lease Agreement.

11. APPROVE IMPACT FEE FREEZE AGREEMENT WITH TBI-MISSION WEST II, LLC FOR THE DEVELOPMENT OF A MANUFACTURING BUILDING IN THE MADRONE BUSINESS PARK, PARCEL IDENTIFIED AS APN 726-35-029

Recommendation:

1. Approve an Impact Fee Freeze Agreement for the development of a 31,100 manufacturing building on 2.4 acres on Madrone Parkway identified by Assessor Parcel Number 726-35-029; and
2. Authorize the City Manager to execute and administer the Impact Fee Freeze Agreement.

12. ADOPT RESOLUTION INITIATING 2019 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 6, 2019.

13. APPROVE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT ON FOUNTAIN OAKS RANCH

Recommendation:

1. Authorize the City Manager to negotiate and execute an agreement with Fountain Oaks Ranch, LLC for the purchase of an agricultural conservation easement for up to \$3.0 million on approximately 33 acres of land consisting of the entire historical parcels 155, 168, and 169 on APN 817-21-011 subject to the review and approval of the City Attorney; and
2. Authorize the City Manager to execute all additional forms and agreements relating to the preservation of the agricultural lands including the transfer of the agricultural conservation easement to another agency, land trust, or other qualified entity.

14. RECEIVE AND FILE THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Receive and file the report.

15. APPROVE FISCAL YEAR 2017-18 RECOMMENDED YEAR END BUDGET AMENDMENTS

Recommendation:

Adopt resolution amending the Fiscal Year 2017-18 adopted budget to appropriate a total of \$314,317, in various funds, as detailed in Exhibit A to the resolution.

16. ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2017-18

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

17. ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2018

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018.

18. CONTINUE RECRUITMENT EFFORTS TO FILL UP TO TWO VACANCIES ON THE PLANNING COMMISSION

Recommendation:

Direct the City Clerk to continue recruitment efforts to fill up to two unexpired terms ending June 1, 2021, on the Planning Commission.

19. ADOPT ORDINANCE AUTHORIZING THE CITY MANAGER TO APPOINT THE CITY CLERK

Recommendation:

Waive the reading, adopt Ordinance No. 2291, 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.

20. ADOPT ORDINANCE ADDING CHAPTER 5.68 TO TITLE 5 (BUSINESS LICENSES GENERALLY) OF THE MORGAN HILL MUNICIPAL CODE TO PROVIDE UNIFORM REGULATIONS APPLICABLE TO ALL FIREARM DEALERS IN THE CITY

Recommendation:

Waive the reading, adopt Ordinance No. 2292, 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.

21. ADOPT ORDINANCE APPROVING ZONING AMENDMENT ZA 2018-0006 CHANGING THE ZONING DESIGNATION OF AN APPROXIMATELY 16.28-ACRE SITE LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE (ASSESSOR PARCEL NUMBERS 728-30-003, -004) FROM R-2 3,500/PD PLANNED DEVELOPMENT DISTRICT TO RAL-3,500 RESIDENTIAL ATTACHED LOW DISTRICT

Recommendation:

Waive the reading, adopt Ordinance No. 2293, 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.

22. APPROVE THE NOVEMBER 28, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

23. EDEN HOUSING - APPROVE ASSIGNMENT, MODIFICATION, EXTENSION, ASSUMPTION, AND RE-SUBORDINATION OF EXISTING CITY LOANS AND GROUND LEASES FOR REHABILITATION OF APARTMENTS; SKEELS, VILLA CIOLINO, WILLOWS APARTMENTS AND DEPOT COMMONS

Recommendation:

1. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of \$162,331 and accrued interest of approximately \$68,339 for rehabilitation of 13-unit Skeels Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
2. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for rehabilitation of housing component of Skeels Affordable Housing Apartment Complex and potential subdivision of commercial space subject to the final review and approval of the City Manager;
3. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of \$2,375,000 and accrued interest of approximately \$1,783,111 for rehabilitation of 42-unit Villa Ciolino Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
4. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for 20-unit Willows Affordable Housing Apartment Complex subject to the final review and approval of the City Manager; and
5. Approve a letter of commitment to support EDEN's efforts to seek new Low Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation of projects.

Estimated Time: 15 Minutes

24. MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES FOLLOW-UP

Recommendation:

1. Receive follow-up information on Monterey Corridor Block-Level Master Plan Alternatives and Specific Plan preparation; and
2. Direct staff to proceed with Monterey Corridor Block-Level Master Plan process.

Estimated Time: 30 Minutes

25. SEPTEMBER 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 5 Minutes

26. ADOPT AN ANNUAL REGULATORY FEE FOR MASSAGE ESTABLISHMENTS WITHIN THE CITY

Recommendation:

Adopt resolution establishing an Annual Regulatory Fee for Massage Establishments.

Estimated Time: 5 Minutes

PUBLIC HEARING

**27. ADOPT RESOLUTION OF NECESSITY FOR THE ACQUISITION OF REAL PROPERTY
CONSISTING OF A PORTION OF APN NO. 767-03-936 FOR HALE AVENUE
EXTENSION PROJECT**

Recommendation:

1. Adopt resolution of necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Faridey Betpolice as identified in Exhibits A and B for the Hale Avenue Extension Project;
2. Authorize the City Attorney to file suit in eminent domain with respect to said property; and
3. Approve the expenditure of \$300,500 for said properties for deposit into the State Condemnation Deposit Fund.

Estimated Time: 10 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: December 5, 2018

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

DECLARE SURPLUS OF VEHICLES AND ONE PIECE OF EQUIPMENT FOR AUCTION

RECOMMENDATION(S)

1. Declare nine vehicles and one piece of equipment to be surplus; and
2. Authorize the purchasing officer to dispose of the vehicles and equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Staff has identified certain vehicles and equipment for surplus. These items are no longer of public use for City operations and have been replaced with new vehicles and equipment per the City's Equipment Replacement Schedule. The City's Municipal Code Section 3.04.400 requires the City Council to authorize the purchasing officer to dispose of any single item of property that exceeds \$2,500 in current market value which cannot be used by any department of the City.

The following is the list of vehicles exceeding \$2,500 in current market value:

	Vehicles/ Equipment	Year	Manufacturer	Model	Description	S/N or VIN	License #	
1	S99172	1999	Dodge	2500 HD 4x4	Pick Up Truck	3B7KF26Z4XM554352	1022468	Utilities
2	S98336	1998	Jacobsen	DTB-B- 187BT	Excavator Trailer	1J9DE2H27WF015514	952227	Utilities
3	S94333	1994	BobCat	331	Mini Excavator	511920281	N/A	Utilities
4	W00155	2000	Ford	F350	Utility Truck	1FDWX36S4YEE09600	1076467	Utilities
5	S05331	2005	Club Car	294 diesel	Club Car (ATV)	N/A	N/A	Utilities
6	W03140	2003	Ford	F450	Dump Truck	1FDXF46S93ED35659	1152560	Utilities
7	B00150	1999	Chevrolet	Lumina	Inspector Car	2G1WL52M8X9131846	1051282	Streets
8	H00134	2000	Dodge	Dakota	Pick Up Truck	1B7GL22X6YS708555	1065006	Building
9	D07324	2007	John Deer	1760T	Backhoe	N/A	N/A	Building

					1760T			
10	W01016	2001	Magnatek	QD150	Portable	RG6081T125462	N/A	Utilities

Staff plans to dispose of the vehicles and equipment through First Capital Auction to acquire the highest possible revenue from each sale.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommendation to declare vehicles and equipment as surplus for sale at auction.

ALTERNATIVE ACTIONS:

The Council could choose not to declare any or all of these items as surplus. Council could choose to donate, rent, or destroy any or all of the vehicles.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The revenue received from the surplus sales will be deposited into the Equipment Replacement Fund (790), for each of the corresponding divisions.

CEQA (California Environmental Quality Act):

Not a Project.

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



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

ACCEPT MONTEREY ROAD SEWER VAULT COATING AT LLAGAS CREEK PROJECT

RECOMMENDATION(S)

1. Accept as complete, the Monterey Road Sewer Vault Coating at Llagas Creek Project, in the final amount of \$203,863;
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.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

On May 2, 2018, City Council awarded a construction contract for the Monterey Road Sewer Vault Coating at Llagas Creek Project. The project scope consisted of repairing and coating the two underground concrete vault structures for the 30" sanitary sewer trunk concrete siphon crossing at Llagas Creek. The work required an aboveground temporary sewer bypass system of the 30" sewer trunk line operating continuously for four calendar days without any incidents. The repairs and protective coating will provide additional chemical corrosion resistance and improve the overall performance life of the concrete vault structures.

The project's contract was awarded to SoCal Pacific Construction dba National Coating and Lining Co. for \$198,500 and the project was authorized a 10% contingency of \$19,850. During construction, one contract change-order, totaling \$5,363, was authorized for additional safety equipment for the temporary bypass system along Monterey Road (Attachment No. 1).

Staff recommends accepting the project as the work was completed in accordance with the plans and specifications, authorizing the City Engineer to sign the Notice of Completion (Attachment No. 2), and directing City Clerk to file the said Notice with the County Recorder's office.

COMMUNITY ENGAGEMENT: Inform

Staff provided notifications and weekly project updates through the City's website.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per the California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On October 7, 2015, City Council awarded the Monterey Road Sewer Vault Coating at Llagas Creek Project to Ellison Environmental, Inc. dba Fluid Resource Management for \$31,775.
- On April 5, 2017, City Council terminated the contract with Ellison Environmental, Inc. dba Fluid Resource Management and approved staff to repackage and rebid the project at a later date.
- On May 2, 2018, City Council awarded a construction contract to SoCal Pacific Construction dba National Coating and Lining Co. for \$198,500.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Monterey Road Sewer Vault Coating at Llagas Creek Project is \$203,863. The project was awarded to SoCal Pacific Construction dba National Coating and Lining Co. for \$198,500 and the project was authorized a 10% construction contingency of \$19,850 (total of \$218,350). The entire \$198,500 base contract was spent with one contract change-order, totaling \$5,363, for a total cost of \$203,863. The balance of \$14,487 (\$218,350 - \$203,863) will be returned to Fund 643's fund balance. The project was funded by sewer bond proceeds.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Funding Closeout Statement Vault Coating 12-05-18
2. Notice of Completion Vault Coating 12-05-18
3. Project Location Map-2018_1127

CIP Contract Acceptance Funding Closeout Statement

Project:	Monterey Road: Sewer Vault Coating at Llagas Creek		
Project No:	302M15		
Date of Project Award:	2-May-18	Project Award Amount:	\$198,500
Funding Source:	f643	Contingency Authorized:	\$19,850
Date of Project Acceptance:	5-Dec-18	Total Authorized:	\$218,350
		Actual Base Contract Spent:	\$198,500

Change Orders				
	Description	Date	Council Approval Req'd? (Y/N)	
C.O. #1:	K-Rail barriers for the sewer bypass on Monterey Road.	29-Oct-18	N	\$5,363
			Total C.O.:	\$5,363

Additional Appropriations		
Source	Amount	Date
None		

		Total Construction Amount (Base Contract plus CO's):	\$203,863
Construction Fund Balance:	\$14,487		

Attachment: Funding Closeout Statement Vault Coating 12-05-18 (2075 : Accept Monterey Road: Sewer Vault Coating at Llagas Creek Project)

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 May 2, 2018, the City of Morgan Hill, a Municipal Corporation, entered to a contract with SoCal Pacific Construction Corp dba National Coating and Lining Co. for the Monterey Road: Sewer Vault Coating at Llagas Creek Project located along Monterey Road at the Little Llagas Creek overcrossing, approximately 1000' north of California Avenue in San Martin, CA.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is SoCal Pacific Construction Corp dba National Coating and Lining Co. located at 26713 Madison Avenue, Murrieta, CA 92562.
- 4) The surety is "U.S. Specialty Insurance Company".
- 5) The project was completed on October 29, 2018 and accepted by the City Council of the City of Morgan Hill on December 5, 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



Attachment: Project Location Map-2018_1127 (2075 : Accept Monterey Road: Sewer Vault Coating at Llagas Creek Project)



CITY OF MORGAN HILL
Public Works Department
Engineering and Utilities Division

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

MONTEREY ROAD SEWER VAULT COATING PROJECT

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





CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

RESOLUTION APPROPRIATING FUNDS FOR A CUT-THROUGH TRAFFIC STUDY

RECOMMENDATION(S)

Adopt resolution to amend the Fiscal Year 2018-19 budget to appropriate \$26,000 from the General Fund to perform a Citywide cut-through traffic study.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Economic Development and
Telecommunications
Infrastructure
Regional Initiatives

GUIDING DOCUMENTS

Vision Zero

POLICY CONSIDERATIONS:

Traffic congestion management is a highly discussed issue within the Morgan Hill community. A significant portion of this traffic is assumed to be from drivers commuting north from areas south of Morgan Hill. The City currently does not have detailed data on the percentage of cut-through drivers or the destination of these drivers. Collecting and studying this data may be a useful tool in planning for traffic congestion management in the future. The Council may want to consider the value of this data in relation to the \$26,000 cost.

REPORT NARRATIVE:

Staff recommends the City Council appropriate \$26,000 for a consultant to prepare a cut-through traffic study for the City of Morgan Hill. This study would evaluate traffic on all the City arterial streets, and some of the high use residential collector streets. The consultant hired will utilize commercially available data collected via GPS and cellular devices to conduct an evaluation and perform the study. The data is anonymous and will not result in the City obtaining personal information from any drivers.

The City will subsequently be able to use this data in numerous ways to support traffic congestion management, including traffic planning, capital improvement project prioritization, traffic signal management, and future operational budget recommendations.

COMMUNITY ENGAGEMENT: Inform

City staff will provide the results of the study at a future Council meeting and publish the results on the City website.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the funding for a cut-through traffic study and give City staff further direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has not previously conducted a cut-through traffic study.

FISCAL AND RESOURCE IMPACT:

If approved, the Council action would appropriate \$26,000 from the General Fund (010) Reserve to the Congestion Management Division (010.6110.42231) for Fiscal Year 2018-19.

CEQA (California Environmental Quality Act):

Not a Project, since the resulting activity from appropriating funding for a traffic study is an administrative program that will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.

LINKS/ATTACHMENTS:

1. Resolution for Budget Adjustment

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET TO APPROPRIATE \$26,000 FROM THE GENERAL FUND (010) FOR THE PURPOSE OF CONDUCTING A CUT- THROUGH TRAFFIC STUDY

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2018-19 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2018-19 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2018-19 Budget of City.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution for Budget Adjustment (2072 : Cut-Through Traffic Study Appropriation)

EXHIBIT A**AGENDA BUDGET SCORECARD**

FISCAL YEAR 2018-19

ADJUSTMENT #

018

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
6110	Congestion Management
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

12/05/18
Cut Through Traffic Study

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	268,495	463,071	(194,576)
RECOMMENDED ACTION	-	-	26,000	(26,000)
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,533,044</u>	<u>42,147,560</u>	<u>17,072,536</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Margarita Balagso, Police Analyst
APPROVED BY: City Manager

APPROVE AGREEMENT ACCEPTING LAW ENFORCEMENT TOBACCO GRANT FROM THE COUNTY OF SANTA CLARA

RECOMMENDATION(S)

Adopt resolution authorizing the City Manager to execute an agreement with the County of Santa Clara to accept grant funds as a sub-recipient of the State of California Department of Justice Law Enforcement Tobacco Grant for total amount of \$63,731 over two fiscal years and amending the City's FY 2018-19 and FY 2019-20 adopted budget to appropriate expenditure of the grant funding of \$31,568 in FY 2018-19 and \$32,163 in FY 2019-20, in the General Fund (010).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The County of Santa Clara (County) received a grant award from the California Department of Justice for the Proposition 56-Tobacco Law Enforcement Grant program. The intent of the grant is to reduce and prevent the sale of tobacco products to minors. These include cigarettes, vape pens, and electronic cigarettes using flavored tobacco products. The County has created a regional task force comprised of jurisdictions within the county, to conduct the activities of the grant.

The City of Morgan Hill Police Department is a sub-recipient of this grant and has been awarded a total of \$63,731. The grant term is 32-months, therefore grant revenues and expenditures will span multiple fiscal years. Funds will be used for officer over-time hours to conduct decoy operations.

As a sub-recipient, the Police Department will conduct the following activities:

- Conduct quarterly decoy operations to enforce tobacco sales to minors
- Participate as a member of the County's Regional Task Force

- Maintain an updated list of establishments within the city limits that sell tobacco products

This grant aligns and supports the city's on-going commitment to supporting youth as well as the *41 Developmental Assets* promoting healthy youth development. In recent years, the use of tobacco products by youth and teens has increased. During the 2017-18 academic year, Morgan Hill Unified School District reported 78 incidents of student smoking in both the middle and high schools. The flavored liquids found in vape pens are appealing to youth and many mistakenly view them as less or not dangerous. However, they all contain the same highly addictive nicotine found in cigarettes. This grant will enforce the sale of tobacco to minors citing retail outlets that sell to minors as well as persons who buy tobacco products with the intent to provide it to a minor.

To further its commitment for a tobacco free community, the city recently applied for, and received, a grant award from the County entitled the Healthy Cities – Tobacco Free Communities Program. This grant consists of in-kind services provided by the County and is also funded by Proposition 56. The goal of this grant is to update and revise policies and ordinances to reduce second hand smoke exposure in multi-unit housing and prevent youth access to flavored tobacco products. In addition, the Police Department recently applied for a new round of funding for another grant funded by Proposition 56. The request includes funding for a 3rd School Resource Officer, and outreach and education activities to both parents and students on the dangers of tobacco products. The Police Department is awaiting notification. Together, these grants will work to both complement and enhance *this* grant award by not only preventing sales to minors but also providing outreach and education activities, along with revised policies to create a healthier city.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the Police Department's grant award as a sub-recipient of the County's Tobacco Law Enforcement Grant.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This is a new grant award and there have been no previous actions taken on this item.

FISCAL AND RESOURCE IMPACT:

The total amount of this grant award is \$63,731. Notification was received after the conclusion of the budget process and therefore was not included in the FY 2018-20 budget process. Staff recommends amending the adopted FY 2018-20 budget to appropriate the full grant amount of \$63,731.

CEQA (California Environmental Quality Act):

Not a Project.

The grant entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. CA DOJ Morgan Hill Standard Service Agreement
2. Resolution

**COUNTY OF SANTA CLARA
SERVICE AGREEMENT****SECTION I: GENERAL INFORMATION**

Contractor Name: (As Displayed In SAP)	City of Morgan Hill		
Purchase Order Number:			
Agency/Department Name:	Public Health Department	Department Number:	0410
Brief Description of Services:	The City of Morgan Hill will focus on reducing youth access to tobacco products by conducting decoy operations three times a year and participating in a multi-agency and multi-jurisdiction task force		

Maximum Financial Obligation

The maximum amount payable to this Contractor under this agreement shall not exceed:	\$ 63,731.00
--	--------------

Term of Agreement

Start Date:	End Date: 06/30/2020
Note: When left blank, start date will be the date executed by Authorized County Representative	

For County Use Only

	Account Assignment	Plant Number	General Ledger (Expense Code)	Cost Center (Dept Code)	Amount	WBS (Capital Project Code)	Internal Order ("PCA" code - optional)
Line 1	H	0410	5255500	2919	31,568	FY 19	
Line 2	H	0410	5255500	2919	32,163	FY 20	
Line 3	Select						
Line 4	Select						
Line 5	Select						

**COUNTY OF SANTA CLARA
SERVICE AGREEMENT****SECTION II: PARTIES TO AGREEMENT**

Legal notices and invoices pertaining to this Agreement shall be sent to the appropriate contact person listed below, except as otherwise specifically provided for herein. Notices shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows. Notice shall be deemed effective on the date that the notice is personally delivered or, if mailed, three (3) days after deposit in the mail. Either party may designate a different person and/or address for the receipt of notices by sending written notice to the other party, which shall not require an amendment to this Agreement.

Contractor

Contractor Name (As Displayed In SAP):	City of Morgan Hill				
Contact Person:	Margarita Balagso				
Street Address *:	16200 Vineyard Boulevard				
City *:	Morgan Hill	State:	CA	Zip:	95037
Telephone number *:	408-776-7316				
Email Address *:	Margarita.Balagso@morganhill.ca.gov				
SCC Vendor Number: (As Assigned in SAP)	1002328				

* To be completed for Independent Contractors Only – DO NOT COMPLETE FOR DEPENDENT CONTRACTORS

County of Santa Clara

Agency/Department:	Public Health				
Program Manager/ Contract Monitor Name:	Nicole Coxé				
Street Address:	1400 Parkmoor Avenue, Suite 120B				
City:	San Jose	State:	CA	Zip:	95126
Telephone Number:	408-793-2745				
Fiscal Contact (Accounts Payable Contact):	Kathy Yu (408-793-2772)				
Contract Preparer:	Yulissa Chan				

Attachment: CA DOJ Morgan Hill Standard Service Agreement (2065 : Santa Clara County Tobacco Grant)



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

4.a

SECTION III: CONTRACT AUTHORIZATION

It is agreed between County and Contractor that Contractor will, for the compensation described in this Agreement, perform the work described in Section V in accordance with all terms and conditions of this Agreement including all exhibits and attachments. In addition, County and Contractor assert that the tax withholding status and benefit documentation (Section IV) accurately reflect the anticipated working relationship between County and Contractor. Further, Independent Contractors shall comply with the County's insurance and indemnification requirements. Contractor certifies that any applicable insurance waiver information (Section VII, B) is true and correct. This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

SIGNATURES

Contract is not valid until signed by Contractor, County Counsel and County's Authorized Representative.

County Agency/Department Manager:		Date:	
County Agency/Department Fiscal Officer:		Date:	
County Counsel Approval as to Form and Legality:		Date:	
(Signature required on <u>all</u> contracts before execution by Contractor and County Authorized Representative)			
Contractor:		Date	
County Authorized Representative:		Date:	
(Procurement Department; President, Board of Supervisors; or Delegated Authority)			
Office of the County Executive:		Date:	
(Signature required when Board approved contract by a delegation of authority)			
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.	Attest: Megan Doyle Clerk of the Board of Supervisors (Signature required when Board approved contract)	Date:	

Attachment: CA DOJ Morgan Hill Standard Service Agreement (2065 : Santa Clara County Tobacco Grant)



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

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SECTION IV: DETERMINATION OF RELATIONSHIP STATUS

Dependent/Independent status is an important relationship distinction. It determines the contractor's eligibility for Medicare and Social Security, Public Employees' Retirement System benefits, and other benefits and affects how the contractor files tax returns and the contractor's responsibility for various federal and state taxes.

Questionnaire to be Completed by Contracting Department to Determine Relationship Status of Contractor

Supervision: Will the County have the right to tell the contractor how to do the work, when to arrive or leave work, or when to take breaks? Do you have other employees performing similar work with a similar degree of supervision? **If the answer to any of these questions is YES, select YES from the dropdown.**

No

Training: Will the County instruct the contractor on how to do the job or pay for external training?

No

Incomplete Work: Will the Contractor be able to resign or terminate the contract without being held either financially or legally liable for unfinished work?

No

Place of Work/Tools: Will the County provide the Contractor with a place to work at a County location and tools to do the job, i.e. computers, telephones, etc?

No

Length of Relationship: When the Contractor is hired to complete ongoing departmental duties or functions— **answer YES**. When the contractor is hired to complete a specific project that was not the regular tasks performed by County employees before— **answer NO**.

No

Other Customers: Does the County prevent the Contractor from performing similar services for other customers, either due to the amount of work (full-time), or by contractual provision?

No

Designation as Business Entity: If the Contractor has a business license or business certificate, or is a corporation, nonprofit organization, or school district, select "No" from the dropdown. (This does not pertain to professional licenses or certificates such as a license for a physician or architect.)

No

Enter below the business license number and the city/entity where issued.

Bus Lic. #

Issued by:

Payment Schedule: Will payments be made either as an hourly wage or as weekly/monthly salary? If payment is by commission or based on project milestones or deliverables, answer "NO" to this question. Be sure this answer matches the contract payment schedule in Section V.

No

Support Services: Will County employees or other independent contractors provide assistance to this Contractor? Assistance is defined as clerical, technical or professional support.

No

If at least 5 of the above questions were answered "NO", Contractor is an **Independent Contractor**.



If 5 or more of the above questions were answered "YES", Contractor is a **Dependent Contractor**, where the relationship resembles that of employer/employee. Tax withholding is required and benefits are provided. Complete and attach the following forms: Employee's Withholding Allowance Certificate—Federal Form W-4, State Withholding, Form DE-4, Determining PERS Eligibility and PERS Member Action Request. Visit www.ceo for more information regarding Dependent Contractors. County insurance requirements do not apply to Dependent Contractors.



Contractor understands and agrees that the tax withholding and benefit status checked above is correct. Any changes to the contractor's tax withholding and benefit status require a new contract. Contractor is responsible for any penalties and liabilities assessed by any taxing authority, based on a change of tax withholding and benefit status.

Contractor's Initials:

Dept. Fiscal Officer's Signature:



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

SECTION V: CONTRACT SPECIFICS

A. SERVICE DESCRIPTION AND EXPECTED OUTCOME (SCOPE OF SERVICE)

Or ☒ See Attachment: A incorporated by this reference.

B. DELIVERABLES, MILESTONES, & TIMELINE FOR PERFORMANCE

Or ☒ See Attachment: A incorporated by this reference.

Attachment: CA DOJ Morgan Hill Standard Service Agreement (2065 : Santa Clara County Tobacco Grant)



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

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C. PERFORMANCE STANDARDS

Or ☒ See Attachment: A incorporated by this reference.

D. PAYMENT SCHEDULE

Notes:

- All reimbursements for travel shall comply with the current County Travel Policy
- Dependent contractors are not permitted to work in excess of 40 hours per week

Is contractor a Community Based Organization (CBO)?

Yes

☐

No

☒

Or ☒ See Attachment: B incorporated by this reference.

Attachment: CA DOJ Morgan Hill Standard Service Agreement (2065 : Santa Clara County Tobacco Grant)



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

4.a

SECTION VI: STANDARD PROVISIONS

Changes to the terms and conditions in this section require approval of County Council

A. ENTIRE AGREEMENT

This Agreement and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

B. AMENDMENTS

This agreement may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. GOVERNING LAW, VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

Attachment: CA DOJ Morgan Hill Standard Service Agreement (2065 : Santa Clara County Tobacco Grant)



COUNTY OF SANTA CLARA SERVICE AGREEMENT

F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

H. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

(1) Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) Definitions: For purposes of this Subsection H, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Contractor violated an applicable wage and hour law or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification: Contractor shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Contractor's Employees and Job Applicants.

(9) Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
- (iii) Offer Contractor an opportunity to cure the breach.

(10) Subcontractors: Contractor shall impose all of the requirements set forth in this Subsection H on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

I. TERMINATION



Standard Termination Language

The County may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

– OR –



Alternate Termination Language Attached As Exhibit
(Requires County Counsel Approval)

, incorporated by this reference.

J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

K. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

L. FOOD AND BEVERAGE STANDARDS

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (*e.g.*, soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

M. CONTRACTING PRINCIPLES

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

N. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

O. THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

P. INTELLECTUAL PROPERTY RIGHTS:



COUNTY OF SANTA CLARA SERVICE AGREEMENT

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County. Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

Q. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

R. OWNERSHIP RIGHTS TO MATERIALS / RESTRICTIONS ON USE

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.

S. COUNTY DATA

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data. Contractor shall not, without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement. Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement. Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Contractor's sole expense (if applicable). Contractor shall not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

T. PAYMENT TERM [NOT APPLICABLE TO COMMUNITY BASED ORGANIZATIONS – describe payment terms for CBO's in Section V. PAYMENT SCHEDULE]

The parties agree that the payment term shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

- | | |
|-------------------------------------|---|
| ☐ | 2.25% 10 Net 45 (provides 35 days of cash acceleration) |
| ☐ | 2.00% 15 Net 45 (provides 30 days of cash acceleration) |
| ☐ | 1.75% 20 Net 45 (provides 25 days of cash acceleration) |
| ☐ | 1.33% 25 Net 45 (provides 20 days of cash acceleration) |
| ☐ | 1.00% 30 Net 45 (provides 15 days of cash acceleration) |
| ☒ | Net 45 (full payment) |

Note: Payment term will default to "Net 45 (full payment)", if no other term was selected.

Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

U. CONTRACT EXECUTION

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

V. LIVING WAGE (If Applicable)

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- Suspend, modify, or terminate the Direct Services Contract.
- Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

SECTION VII: INSURANCE / INDEMNIFICATION

Independent Contractors shall comply with the County's insurance and indemnification requirements as indicated below. These requirements do not apply to Dependent Contractors.

A. TYPE OF INSURANCE LANGUAGE

- | | |
|-------------------------------------|---|
| ☒ | The following standard insurance and indemnification language is attached and incorporated into this agreement: |
|-------------------------------------|---|



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

4.a

Insurance Exhibit Name : Exhibit B-2A: Standard Service Contracts Between \$50,001 and \$100,000

☐

Modification or Waiver Attached if Appropriate

B. DETERMINATION OF INSURANCE REQUIREMENTS AND WAIVER DECLARATION

Workers Compensation:

Does the contractor have employees?

If "YES", then, WORKER'S COMPENSATION/EMPLOYER'S LIABILITY INSURANCE IS REQUIRED.

Yes

Owned Auto Insurance:

Will the contractor use any owned autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?

If "YES", then INSURANCE FOR OWNED AUTOS IS REQUIRED.

Yes

Hired Auto Insurance:

Will the contractor use any hired autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?

If "YES", then INSURANCE FOR HIRED AUTOS IS REQUIRED.

No

Non-owned Auto Insurance:

Will the contractor be using any non-owned autos in the provision of direct services, such as transporting clients in non-owned autos or operating non-owned autos in performance of the work itself?

If "YES" then, INSURANCE FOR NON-OWNED AUTOS IS REQUIRED.

No

When "NO" is checked, this declaration will serve as a waiver for the specified type of insurance.

SECTION VIII: FEDERAL/STATE REQUIRED PROVISIONS

(Examples include Drug-free Workplace Activity, Health Insurance Portability and Accountability Act (HIPAA), Business Associate Language, etc)

☐

A. Federal Required Language Attached

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

Exhibit Name:

☐

B. State Required Language Attached

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

Exhibit Name:

The Exhibits named above are attached and incorporated by this reference.

SECTION IX: ADDITIONAL ATTACHED EXHIBIT(S)

Attachments and exhibits that conflict with County standard provisions or require risk assessment must be approved by County Counsel. Examples of attachments that require County Counsel approval are:



COUNTY OF SANTA CLARA
SERVICE AGREEMENT

- 1) Contractor’s terms and conditions that are different than, or add to the standard provisions language,
- 2) Any changes to the language in Section VI—Standard Provisions.

Exceptions to County Counsel review include attachments that further explain the Contract Specifics as outlined in Section V, and insurance exhibits.

	Exhibit Name(s)	

The Exhibits named above are attached and incorporated by this reference.

Attachment A: Scope of Work and Performance Standards

City of Morgan Hill Decoy Operations to Enforce Tobacco Sales Laws to Minors (Upon Execution – June 30, 2020)

A. Introduction

This scope of work centers on the following:

1. To reduce youth access to tobacco products by conducting decoy operations three times a year.
2. Participate in a multi-agency and multi-jurisdiction task force.

B. Reporting Requirements

1. Contractor will prepare a Quarterly Progress Report on their activities/progress and submit it to:

Kathy Yu, Health Care Program Analyst II
Chronic Disease & Injury Prevention (CDIP)
Santa Clara County Health Dept.
1400 Parkmoor Avenue, Suite 120B
San Jose, CA 95126
Email: katherine.yu@phd.sccgov.org

DUE: 8 days after the end of the calendar quarter (e.g., January – March report due by April 8)

2. Contractor can submit quarterly progress report with signed quarterly invoice via email.

C. Phases and Task Description

Objective #1	Objective: To conduct decoy operations three times a year to enforce tobacco sales to minors laws.			
Task #1	Task Description	Timeline	Responsible Staff	Key Deliverables
1.1	Request a list of tobacco retailers operating in the City of Morgan Hill. The list will be requested from California Department of Tax and Fee Administration prior to each decoy operation.	Every 4 months: By Nov. 2018 By Feb. 2019 By June 2019 By Oct. 2019 By Feb. 2020 By June 2020	Police Officer	1.1a List of licensed tobacco retailers received every four months.

1.2	Conduct decoy operations three times a year to enforce tobacco sales to minors laws. Operations will be conducted every four months for a duration of six hours in the City of Morgan Hill.	Every 4 months: By Nov. 2018 By Feb. 2019 By June 2019 By Oct. 2019 By Feb. 2020 By June 2020	Police Sergeant, Police Corporal, Police Officer	1.2a Results of the decoy operations reported using the Law Enforcement Survey received every four months. The surveys will be submitted to Kathy Yu (Public Health Department) within 14 days after each decoy operation.
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Objective #2	<u>Objective:</u> Participate in a multi-agency and multi-jurisdiction task force			
Task #1	Task Description	Timeline	Responsible Staff	Key Deliverables
2.1	Attend a minimum of at least two task force meetings and/or trainings.	By June 2020	Police Sergeant, Police Corporal	2.1a Attend task force meetings and/or trainings.

D. Performance Standards

Performance is expected to adhere to the following standards in addition to evaluations completed by the Evaluation contractor:

1. Quality - Deliverables and final products will be as described in the Scope of Work and will be of high quality.
2. Timeliness - Deliverables and final products will be completed as scheduled.
3. Achievement of Project Goals – Project will achieve its' goals as described in the Scope of Work.

Attachment B: Payment Schedule

City of Morgan Hill Decoy Operations to Enforce Tobacco Sales Laws to Minors (Upon Execution – June 30, 2020)

I. Invoice Guidelines

1. Contractor will prepare a Quarterly Invoice and submit it to:

Kathy Yu, Health Care Program Analyst II
Chronic Disease & Injury Prevention (CDIP), Santa Clara County Health Dept.
1400 Parkmoor Avenue, Suite 120B
San Jose, CA 95126
Email: katherine.yu@phd.sccgov.org

DUE: 8 days after the end of the calendar quarter (e.g., January – March invoice due by April 8).

- 1a. Invoice template will be provided after agreement is signed by both departments.
- 1b. Payment will be based on a cost reimbursement methodology.
2. Contractor can submit quarterly invoice with quarterly progress report via email.
3. Payment will be made according to the itemized budget below, attached hereto and incorporated herein by this reference.
4. Mileage will be paid according to County travel policy.

II. Itemized Budget

A. Personnel Services			
Salaries			
Classification/Positions	Computation	FY 2018-19	FY 2019-20
-	-	-	-

Payment Schedule: CA DOJ City of Morgan Hill
Page 1 of 4

	Subtotal	\$ -	\$ -
Overtime			
Classification/Positions	Computation	FY 2018-19	FY 2019-20
Police Sergeant	1FTE @1HRS OT for supervisory support per operation X 3 operations/year	\$ 2,379	\$ 2418
Police Corporal	2FTE @ 6HRS OT per operation X 3 operations/year	\$ 13,233	\$ 13,493
Police Officer	2FTE @ 6HRS per operation X 3 operations/year	\$12,295	\$ 12,535
	Subtotal	\$27,907	\$28,446
Benefits			
Classification/Positions	Computation	FY 2018-19	FY 2019-20
Police Sergeant - OT only benefits rate	Workers Comp @ 9.46% + Medicare 1.45% = 10.91%	\$ 260	\$ 263
Police Corporal - OT only benefits rate	Workers Comp @ 9.46% + Medicare 1.45% = 10.91%	\$ 1,444	\$ 1,472
Police Officer - OT only benefits rate	Workers Comp @ 9.46% + Medicare 1.45% = 10.91%	\$1,342	\$ 1,367
	Subtotal	\$3,046	\$3,102
	TOTAL PERSONAL SERVICES	\$30,953	\$31,548

B. Operating Expenses (e.g. supplies, signage, tobacco products, etc.)

Description	Computation	FY 2018-19	FY 2019-20
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Payment Schedule: CA DOJ City of Morgan Hill
Page 2 of 4

Tobacco products for undercover buys	Up \$333 per FY	\$333	\$333
	TOTAL	\$333	\$333

C. Equipment (tangible items with a per-unit cost of \$5,000 or more)

Description	Computation	FY 2018-19	FY 2019-20
-	-	-	-
	TOTAL	-	-

D. Travel Expenses/Registration Fees*

Description	Computation	FY 2018-19	FY 2019-20
-	-	-	-
	TOTAL	-	-

*For DQT-sponsored events only. Travel will only be reimbursed under the current state rates.

E. Other Expenses

Description	Computation	FY 2018-19	FY 2019-20
Mileage - local project travel expenses - store visits for decoy ops, compliance checks, dissemination of media campaign materials, task force meetings, trainings, etc.	\$0.535 per mile for approximately 325 miles per FY	\$282	\$282
	TOTAL	\$282	\$282

F. Administrative Costs*

Description	Computation	FY 2018-19	FY 2019-20
-	-	\$ -	\$-

Payment Schedule: CA DOJ City of Morgan Hill
Page 3 of 4

	TOTAL	\$-	\$-

Summary				
Budget Category	FY 2017-2018	FY 2018-2019	FY 2019-2020	Total
A. Personnel Services	\$ -	\$ 30,953	\$ 31,548	\$ 62,501
B. Operating Expenses	\$ -	\$ 333	\$ 333	\$ 666
C. Equipment	\$ -	\$ -	\$ -	\$ -
D. Travel/Registration	\$ -	\$ -	\$ -	\$ -
E. Other Expenses	\$ -	\$ 282	\$ 282	\$ 564
F. Administrative Costs	\$ -	\$ -	\$ -	\$ -
TOTAL COST	\$ -	\$ 31,568	\$ 32,163	\$ 63,731

EXHIBIT B-2A (Revised)

INSURANCE REQUIREMENTS FOR
STANDARD SERVICE CONTRACTS
BETWEEN \$50,001 AND \$100,000

Indemnity

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

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

EXHIBIT B-2A (Revised)

C. Notice of Cancellation

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

D. Insurance Required

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

Additional Insured Endorsement, which shall read:

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

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

EXHIBIT B-2A (Revised)

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

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$100,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

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

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$100,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

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

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT B-2A (Revised)

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

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

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN AGREEMENT WITH THE CALIFORNIA STATE DEPARTMENT OF JUSTICE AND APPROVING AMENDMENTS TO THE CITY'S FISCAL YEAR 2018-19 and 2019-20 ADOPTED BUDGETS TO APPROPRIATE \$63,731 FROM THE GENERAL FUND (010) FOR THE GRANT RELATED EXPENDITURES THEREFORE

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

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Agreement Accepting Law Enforcement Tobacco Grant from the County of Santa Clara" submitted for City Council consideration at its meeting of December 5, 2018 submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Years 2018-19 and 2019-20, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the Agreement with the County of Santa Clara substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “Agreement”) is hereby approved; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit B; provided, specifically, that the total amounts to be received in grant funds by City under the Agreement shall in no event exceed sixty seven thousand seven hundred and thirty one dollars (\$67,731);and
- c. That the City’s previously adopted Fiscal Years 2018-19 and 2019-20 Budgets, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City’s Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Years 2018-19 and 2019-20 Budgets of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 5th day of December 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on December 5, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (2065 : Santa Clara County Tobacco Grant)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

017

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
3210	Police-Patrol
41505	OVERTIME - SAFETY-SPECIAL PROJECTS

AGENDA DATE:

AGENDA ITEM TITLE:

12/05/18
Tobacco Grant

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	204,764	399,340	(194,576)
RECOMMENDED ACTION	-	63,731	63,731	-
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,533,044</u>	<u>42,121,560</u>	<u>17,098,536</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

APPROVE HEALTHIER KIDS FOUNDATION FUNDING MOU AND LICENSE AGREEMENT

RECOMMENDATION(S)

Authorize the City Manager to enter into and administer a memorandum of understanding, and a license agreement, with the Healthier Kids Foundation to provide funding in the amount of \$20,000 annually and usage of a City facility.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

On June 6, 2018, the City Council appropriated \$20,000 annually, within the Fiscal Year 2018-19 and 19-20 Budget, for the Healthier Kids Foundation (Foundation) to continue funding the Foundation's work providing outreach and services intended to provide healthcare for uninsured children. This agreement provides the City Manager the authority to provide this funding. The Foundation has provided this service in Morgan Hill since 2014.

The Foundation previously provided service in Morgan Hill from an office at the Friendly Inn Non-Profit Center. When the Friendly Inn transitioned to use by the Boys & Girls Club in early 2018, the Foundation began utilizing shared space at the Community and Cultural Center. The proposed license agreement would formalize this arrangement.

COMMUNITY ENGAGEMENT: Inform

This report serves to provide information on the Council action. Additionally, the Healthier Kids Foundation provides a report to the City Council each year that provides specific detail on the activities of the Foundation within Morgan Hill.

ALTERNATIVE ACTIONS:

The City Council could choose to not authorize the City Manager to execute and administer the memorandum of understanding and provide staff with additional direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has appropriated funding annually for the Healthier Kids Foundation since 2014. The Council received the Fiscal Year 2017-18 annual report from the Foundation on August 22, 2018.

FISCAL AND RESOURCE IMPACT:

Funding has been appropriated from the General Fund (010.1100.42413) in the adopted Fiscal Year 2018-19 and 2019-20 Budget.

CEQA

Not a Project.

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

LINKS/ATTACHMENTS:

1. Funding MOU - Healthier Kids
2. License Agreement - Healthier Kids

**MEMORANDUM OF UNDERSTANDING FOR FUNDING ASSISTANCE
BETWEEN THE CITY OF MORGAN HILL AND THE HEALTHIER KIDS FOUNDATION
FOR PROGRAMS AND SERVICES TO INCREASE ACCESS TO CHILDREN'S HEALTH
CARE IN MORGAN HILL**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into and becomes effective on _____ (Effective Date), by and between the City of Morgan Hill, a municipal corporation, ("City"), and the Healthier Kids Foundation, a California non-profit corporation ("Foundation") hereinafter referred to collectively as "Parties."

RECITALS

The following recitals are a substantive part of the MOU:

1. The City Council has made "Supporting Our Youth, Seniors and Entire Community" an ongoing City Council Priority.
2. The City and the Foundation desire to support continual improved access to Children's Health Services in the Morgan Hill Community.
3. The City has provided funding annually, since 2014, to the Foundation to provide services that increase access to children's healthcare for uninsured children and provide direct services of vision and dental screenings within Morgan Hill.

AGREEMENT

1. **City Authority.** This MOU is entered into pursuant to action of the Morgan Hill City Council on December 5, 2018 to provide financial support to the Foundation for the operation of outreach efforts and services to increase access to healthcare for uninsured children.
2. **Term of Agreement.** The term of the MOU shall be until June 30, 2020. The City Manager is authorized to extend this MOU for additional terms provided funding has been allocated by the City Council.
3. **Funding Assistance and Collaboration.** City and Foundation will work together, as described in this section.
 - 3.1. City shall commit to support the Foundation in providing services that increase access to children's healthcare for uninsured children and provide direct services of vision and dental screenings within Morgan Hill.
 - 3.2. City shall support the Foundation by providing \$20,000 annually to support Foundation Services within the City of Morgan Hill. Annual payments shall be made by December 15 each year the MOU remains in effect. The annual funding amount beyond the initial term described in paragraph 2 above shall be subject to the allocation, if any, provided by City Council.
 - 3.3. Foundation shall provide services specifically targeted at increasing access to children's health care for uninsured children in Morgan Hill. Foundation shall conduct vision and dental screenings within Morgan Hill.

- 3.4. Foundation shall provide an annual report to document the use of City funds and provide details on Foundation services provided to the Morgan Hill Community. Annual reports shall be submitted by July 31 and will be for the previous Fiscal Year (July-June). Reports shall include information on numbers of Morgan Hill residents receiving services and enrolled in health insurance.
 - 3.5. Foundation shall recognize the City as a partner in all communications and materials that are utilized for outreach within Morgan Hill.
 - 3.6. Foundation shall ensure that all information is kept confidential as required by State and Federal law, including but not limited to the Health Insurance Portability and Accountability Act.
4. **Termination**. City or Foundation shall have the right to terminate this MOU, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. If the MOU is terminated prior to the conclusion of the Fiscal Year, the Foundation shall be responsible for refunding a proportionate share of the annual payment from the City.
5. **Hold Harmless**. Foundation shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City, and its respective 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 services outlined in this MOU.
6. **Document Review and Audit**. The City shall have the right to examine, monitor and audit (hereinafter "review") all records, documents, conditions, and activities of the Foundation related to services under this MOU. City shall provide at least 15 days' notice of its intent to review the records, and the review shall take place at Foundation offices. City agrees to review the records only, unless said review is performed as part of audit as described below. Pursuant to Government Code Section 8546.7, because this MOU involves the expenditure of public funds in excess of \$10,000, the Parties to this MOU 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 MOU for a period of three years after final payment under the MOU.

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

For City: City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

For Foundation: Healthier Kids Foundation
4040 Moorpark Avenue, Suite 100
San Jose, CA 95117

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson
Print Name

Christina Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM

HEALTHIER KIDS FOUNDATION

City Attorney

By: Kathleen M. King

Donald A. Larkin
Print Name

Title: Chief Executive Officer
Print Name and Title of Signer
If Corporate: Chairman, President or
Vice President

Date: _____

Date: November 26, 2018

David T. Lee

By: David T. Lee

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

Date: November 26, 2018

Attachment: Funding MOU - Healthier Kids (2060 : Healthier Kids Foundation MOU & License Agreement)

Healthier Kids Foundation Classroom Use Agreement

This Agreement is made as of the date last signed below (the "Effective Date"), between the City of Morgan Hill, a municipal corporation, hereafter referred to as "City" and the Healthier Kids Foundation, Inc., a California nonprofit corporation, hereafter referred to as "Foundation". Collectively City and Foundation may be referred to individually as a "Party" and collectively as "Parties".

1. The City grants a license to the Foundation to use the property of the City hereafter described beginning on the Effective Date through June 30, 2020, upon the conditions, agreements and terms hereafter set forth. City Manager may extend the term for one additional two-year term upon finding that it is in the best interests of the City to do so.

2. Foundation is permitted to use space at the Morgan Hill Community and Cultural Center (CCC) located at 17000 Monterey Road, Morgan Hill, CA 95037 as follows:

- Foundation shall be assigned shared cubicle space at the CCC for one staff person to work out of during regular working hours.
- Foundation shall designate one (1) point of contact to coordinate with the Community Services Department on room reservations.
- Foundation is entitled to up to two (2) rentals per month in one of four meeting rooms suitable for up to 25 attendees.
- Each room reservation is subject to approval by City of Morgan Hill Event Coordinator. A Rental Contract will be issued for confirmed rental bookings. Foundation agrees to promptly repair at its sole cost and expense all damage to the room or the CCC caused by its use, and not to disrupt, adversely affect or interfere with other occupants of the CCC.
- Foundation is to follow all room rental terms and conditions as outlined in Rental Contract.
- Foundation is responsible to leave the room in its previous condition at the end of each rental. Removal of all items is required.
- Foundation will not sublet room rentals to other groups.
- Foundation will notify City of Morgan Hill Event Coordinator in writing requesting changes to rental days/times and/or cancellations of rental with at least 7 days advance notice.
- Rooms will be inspected following each use by on-site Building Coordinator to confirm compliance with this Agreement and the Rental Contract.
- Foundation accepts the CCC and its rooms in an "AS IS" condition and City makes no warranty or representation about the CCC or the rooms made available to it.

4. The premises shall be used to provide services that increase access to children's healthcare for uninsured children and provide direct services of vision and dental screenings within Morgan Hill and for no other purpose without the written consent of the City obtained in advance. The Foundation agrees to comply with all ordinances, statutes and rules and regulations applicable to the conduct or operation of its activities permitted to be conducted under this Agreement. Foundation shall not permit a breach of the peace or any unlawful act or omission by any person.

6. Insurance Requirements. Foundation ("User" for purposes of this Section 6 and Section 7 below) 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 User, including liability for damage or injury to the property or person (including death) of any User or invitee of User or any other person entering upon or using the Premises, or any structure thereon, or any part thereof, and arising from User's use and occupancy thereof, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. User further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to User, at any time as deemed necessary to protect the interests of City.

6.1. Insurance Types and Amounts.

6.1.1. Commercial General Liability (CGL). User shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five hundred thousand dollars (\$500,000.00) for property damage, or (ii) the maximum amount of such insurance available to User under User's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

6.2. Endorsements. User shall provide proof of the following endorsement to the General liability policy:

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

6.3. 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.

6.4. Certificates. User shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

City of Morgan Hill

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

7. User shall to the fullest extent permitted by law, indemnify, defend and hold harmless City and its elective or appointive officials, boards, officers, agents, volunteers, and employees from any and all claims, liabilities, expenses, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, 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 User, User's agents, officers, employees, subcontractors, or independent contractors hired by User. The only exception to User's responsibility to protect, defend, and hold harmless City, is due to the sole negligence or willful misconduct of City. This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The insurance policy limits do not act as a limitation upon the amount of indemnification to be provided by User.
8. The City shall have the privilege of inspecting the premises covered by this Agreement at all times.
9. This Agreement shall not be assigned in whole or in part nor may any right hereunder granted to Foundation be granted in turn to any person without the written consent of the City.
10. The City, through its City Manager, may terminate this Agreement with 30 days' written notice. The City may additionally terminate this Agreement and be relieved of any further performance if Foundation fails to perform any covenant herein contained at the time and in the manner provided. This right is cumulative to any other legal right or remedy.
11. The parties agree that the Foundation and agents and employees of licensee, in the performance of this Agreement, are acting in an independent capacity and not as officers or employees or agents of the City.
12. Notwithstanding anything herein contained to the contrary, this Agreement may be terminated, and the provisions of this Agreement may be altered, changed or amended, by mutual consent of the Parties.
13. Time is of the essence of each provision of this Agreement, and the provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties.
14. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement is valid unless made in writing and signed by the Parties, and that no oral understanding or agreements not incorporated and no alterations or variations of the terms unless made in writing between the parties is binding on any of the parties.
15. The waiver by either Party of a breach by the other Party of any agreement herein shall not be deemed to be a waiver by that Party of any covenant of this Agreement. Such waiver by either

Party shall not constitute a waiver of any future breach by the other Party of the same or other covenants of this Agreement.

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

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

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

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

For City: City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

For User: Healthier Kids Foundation
4040 Moorpark Ave., Suite 100
San Jose, CA 95117

Correspondence other than notices may be given by phone, regular mail, email or facsimile through the City of Morgan Hill Event Coordinator or his or her designee.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above-written.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date:

APPROVED AS TO FORM:

Healthier Kids Foundation, Inc.

City Attorney

By: *Kathleen M. King*

Donald A. Larkin

Name &
Title:

CEO

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: *November 26, 2018*

David T. Lee

By: *David T. Lee*

Name &

Title: *Director of Finance*

Print Name and Title of Signer.

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

Date: *November 26, 2018*



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

APPROVE MEMORANDUM OF UNDERSTANDING FOR SOUTH VALLEY CIVIC THEATER FUNDING

RECOMMENDATION(S)

Authorize the City Manager to enter into and administer a memorandum of understanding with South Valley Civic Theater for the purpose of providing funding of \$10,000 annually to support theater programming for low-income participants.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

On June 6, 2018, the City Council appropriated \$10,000 annually, within the Fiscal Year 2018-19 and 2019-20 Budget, for South Valley Civic Theater (SVCT), to support programming that is inclusive of low-income residents within Morgan Hill. This memorandum of understanding (MOU) provides the City Manager the authority to provide this funding.

South Valley Civic Theater is the “home company” for the Morgan Hill Community Playhouse and requested this support during the budget planning process. City staff has worked with volunteers from SVCT to prepare the MOU. It includes several provisions to help ensure SVCT utilizes the funding for the designated purpose and recognizes the City as a partner in this effort. Provisions include:

- SVCT Shall consult with the City on program offerings related to the use of City funds. SVCT shall commit to providing a minimum of the following activities annually: 1 free acting workshop, fee waiver scholarships or eliminated cast fees for 30 individuals, and ongoing outreach to low-income underserved youth to support increased participation in SVCT programs.
- SVCT shall apply for grants and collaborate with the City in grant applications as opportunities arise.

- SVCT shall identify and support the development of non-City funding sources to support participation in SVCT programs.
- SVCT shall provide an annual budget to clarify use of City funds provided for operations and a year-end reporting of expenses and revenues.
- SVCT shall provide a written report on program efforts annually, by July 31 of each year, to be reviewed by the Library, Culture and Arts Commission and the City Council.
- SVCT shall recognize the City as a partner in all related communications and onsite materials.

COMMUNITY ENGAGEMENT: Inform

The decision to provide this funding was made by the City Council during the budget planning process. This report serves the purpose of informing the community of the funding agreement. The Library, Culture and Arts Commission will be provided an update on this agreement at the December 4, 2018 Commission meeting.

ALTERNATIVE ACTIONS:

The City Council may elect to not approve the funding MOU for SVCT and provide staff with further direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council appropriated funding \$10,000 annually, in the Fiscal Year 2018-19 and 2019-20 Budget for the SVCT on June 6, 2018.

FISCAL AND RESOURCE IMPACT:

Funding has been appropriated from the General Fund (010.1100.42413), in the adopted Fiscal Year 2018-19 and 2019-20 Budget.

CEQA

Not a Project

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

LINKS/ATTACHMENTS:

1. SCVT Funding and Partnership MOU- 2018 Final

**MEMORANDUM OF UNDERSTANDING FOR FUNDING ASSISTANCE
BETWEEN THE CITY OF MORGAN HILL AND
SOUTH VALLEY CIVIC THEATER FOR THE PROVISION OF COMMUNITY THEATER
OPPORTUNITIES FOR LOW INCOME YOUTH AND ADULTS**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into and becomes effective on _____ (Effective Date), by and between the City of Morgan Hill, a municipal corporation, ("City"), and the South Valley Civic Theater, a California non-profit corporation ("SVCT") hereinafter referred to collectively as "Parties."

RECITALS

The following recitals are a substantive part of the MOU:

1. Supporting Our Youth, Seniors and Entire Community and Preserving Our Cultural Heritage is an ongoing City Council Priority.
2. The SVCT is the Home Company of the Morgan Hill Community Playhouse, a City facility, located at 17000 Monterey Road, Morgan Hill, CA 95037.
3. The City and the SVCT desire to support the participation of diverse members of our community in performing arts.
4. The City and the SVCT desire to support efforts to provide low income residents the ability to participate in SVCT programs free of charge or for reduced rates and that a collaborative effort will provide for the most efficient use of limited public funds for this purpose.

AGREEMENT

1. **City Authority.** This MOU is entered into pursuant to action of the Morgan Hill City Council on December 5, 2018 to provide financial support to the SVCT to support the provision of free and low cost theater programs for Morgan Hill residents.
2. **Term of Agreement.** The term of the MOU shall be until June 30, 2020. The City Manager is authorized to extend this agreement for five additional two year terms provided funding has been allocated by the City Council.
3. **Funding Assistance and Collaboration.** City and SVCT will work together, as described in this section, to support theater programming for the Morgan Hill Community.
 - 3.1. City shall market, promote, and advertise the SVCT Programs as a component of the City's Community Services system, including use of email blasts, the City's Recreation Activity Guide, and other communication means.
 - 3.2. City shall assign a staff liaison to support the coordination of SVCT programs into the marketing and promotions plan for the Community Services Department.
 - 3.3. City shall support the SVCT by providing \$10,000 annually to support SVCT programs. The annual funding amount beyond the initial term described in paragraph 2 above shall be subject to the allocation, if any, provided by City Council.
 - 3.4. SVCT Shall consult with the City on program offerings related to the use of City funds. SVCT

shall commit to providing a minimum of the following activities annually:

- 1 Free Acting Workshop
- Fee Waiver Scholarships or eliminated cast fees for 30 individuals
- Ongoing outreach to low-income underserved youth to support increased participation in SVCT programs

- 3.5. SVCT shall apply for grants and collaborate with the City in grant applications as opportunities arise.
- 3.6. SVCT shall identify and support the development of non-City funding sources to support participation in SVCT programs.
- 3.7. SVCT shall provide an annual budget to clarify use of City funds provided for operations and a year-end reporting of expenses and revenues.
- 3.8. SVCT shall provide a written report on program efforts annually, by July 31 of each year, to be reviewed by the Library, Culture and Arts Commission and the City Council.
- 3.9. SVCT shall recognize the City as a partner in all related communications and onsite materials.

4. **Termination.** City or SVCT shall have the right to terminate this MOU, without cause, by giving thirty (30) days' written notice or less under urgent circumstances.

5. **Hold Harmless.** SVCT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City, and its respective 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 access, participation or attendance in SVCT programs implemented under this MOU.

6. **Document Review.** SVCT will, upon reasonable advance written notice from City of not less than 30 days, make available for inspection to City, books and other documents relating to the Program.

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

For City: City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

For SVCT: South Valley Civic Theater
17860 Monterey Road
PO Box 1258
Morgan Hill, CA 95038

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson

Print Name

Christina Turner

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM

South Valley Civic Theater

City Attorney

By:

Donald A. Larkin

Print Name

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

Date: _____

By:

Title: _____

Print Name and Title of Signer.

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

Date: _____

Attachment: SCVT Funding and Partnership MOU- 2018 Final (2080 : South Valley Civic Theater Funding MOU)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Michelle Katsuyoshi, Human Resources Director
APPROVED BY: City Manager

APPROVAL OF MEMORANDUM OF UNDERSTANDING (MOU) WITH THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), THE COMMUNITY SERVICE OFFICERS' ASSOCIATION (CSOA), POLICE OFFICERS' ASSOCIATION (POA) AND CORRESPONDING SALARY SCHEDULES AND APPROVAL OF THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULES

RECOMMENDATION(S)

1. Approve a Memorandum of Understanding (MOU) with AFSCME effective December 30, 2018 – December 31, 2021 and corresponding salary schedules;
2. Approve a MOU with CSOA effective December 30, 2018 - December 31, 2021 and corresponding salary schedules;
3. Approve a MOU with POA effective December 30, 2018 - December 31, 2021 and corresponding salary schedules;
4. Approve the Management, Professional, and Confidential Employees Resolution effective December 30, 2018 and corresponding salary schedules; and
5. Approve the Part-Time Temporary and Seasonal Employees Resolution effective December 30, 2018 and corresponding salary schedule.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The City's negotiating team and the AFSCME, CSOA, and POA bargaining units have respectively reached agreements related to Memorandums of Understanding (MOUs) for an additional three-year contract period. The new terms for the MOUs are December 30, 2018 through December 31, 2021.

The AFSCME agreement was ratified by AFSCME members on Thursday, November 15, 2018, the CSOA agreement was ratified by CSOA members on November 26, 2018, and the POA agreement was ratified by POA members on November 29, 2018. All of

the agreements fall within the negotiating economic parameters given by the City Council. These parameters were based on the “Employee Compensation Guiding Principles” that were adopted by the City Council on May 17, 2017, which included seven guiding principles, including: (1) recruitment and retention, (2) fiscal sustainability, (3) compensation structure, (4) market-based compensation, (5) internal equity, (6) transparency and accountability, and (7) legal compliance.

The total compensation package offered to Association members is competitive with that of our twelve local comparator government employers in this region and provides incentive for employees to continue employment with the City of Morgan Hill. The compensation and benefits provided to our employees allow the City to continue to recruit and retain a quality workforce.

At the time of this staff report, the City and all three bargaining units were finalizing the agreement language. The final documents and salary schedules, will be made available as a supplement, prior to the City Council meeting of December 5th, 2018. All provisions included in the AFSCME CSOA, and POA MOUs, which affect wages, shall be implemented December 30, 2018.

AFSCME

A summary of the major components of the recommended AFSCME MOU is provided below:

- **Base Salary Increases**
 3.50% effective December 30, 2018
 3.25% effective the pay period including January 1, 2020
 3.25% effective the pay period including January 1, 2021
- **Safety Shoe Allowance:** The City will increase the safety shoe allowance from \$200 to \$250 per fiscal year to be used for the purchase of safety shoes, and any related accessories.
- **Standby Pay:** The City will increase the weekend standby from 3 hours to 4 hours, and weekday standby from 1.25 hours to 1.5 hours.
- **Health:** The City will contribute (monthly) to the City’s medical and dental plans as follows:

	2019	2020	2021
Employee + Family	\$1,900	\$1,976	\$2,055
Employee + 1	\$1,450	\$1,508	\$1,568
Employee Only	\$725	\$754	\$784
Health / Dental In-Lieu (waive)	\$250/\$40	\$250/\$40	\$250/\$40

City will implement a cafeteria plan on or before October 2019, consistent with the above contributions.

CSOA

A summary of the major components of the recommended CSOA MOU is provided below.

- **Base Salary Increases**
 - 3.50% effective December 30, 2018
 - 3.50% effective the pay period including January 1, 2020
 - 3.25% effective the pay period including January 1, 2021
- **Removal of Multi-Service Officer Classification:** As a result of a petition from the POA to represent the Multi-Service Officer classification, and upon the approval of the City Manager, effective September 19, 2018, the Multi-Service Officer classification was no longer part of the CSOA and became part of the POA.
- **Addition of Animal Services Officer Classification:** The Animal Services Control classification had been removed from the CSOA MOU after the position had been eliminated in the FY 2011-12 budget. The new Animal Services Officer classification has been added to the recommended CSOA MOU.
- **Bilingual Pay:** For employees hired on or after July 1, 2013, the bilingual monthly stipend will be increased from \$150 to \$200 per month.
- **Health:** City will contribute to the premiums of the City's medical, dental and vision health plans as follows:
 - A. For employees with family coverage, up to ninety percent (90%) of the Kaiser medical health plan plus the full cost of Delta Dental and VSP (Vision).
 - B. For employees with employee plus one coverage, up to ninety-six and one-half percent (96.5%) of the Kaiser medical health plan plus the full cost of Delta Dental and VSP.
 - C. For employees with employee only coverage, the City's contribution for Medical, Delta Dental and VSP shall be eight hundred dollars (\$800). Employees not using the entire benefit amount shall be entitled to use one hundred percent (100%) of the surplus amount for optional benefits or for participating in medical reimbursement or dependent care expense accounts. If employees do not use their one hundred percent (100%) surplus for optional benefits, it will be added to their salary as taxable income.
 - D. Employees who annually provide proof of alternative coverage may waive enrollment in City medical, dental and vision insurance programs and receive a taxable cash in lieu payment of \$715 a month. Amounts received as cash in lieu shall be included in the employee's overtime rate only so long as, and to the extent, required by law.
 - E. Effective December 31, 2021, the amounts the City is obligated to contribute shall be converted to the identical flat dollar amounts and the formulaic approach used to determine the City's contribution obligations in

2019, 2020 and 2021 shall be null and void and no longer in effect for subsequent plan years. Effective starting in December 2021, employees enrolled in the employee only category shall no longer be eligible to use any surplus amounts in excess of their premium amounts (if less than \$800). Any change to these flat dollar City contribution obligations in years after 2021 shall occur only via negotiated agreement of the City and CSOA.

- F. The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs A-E above.

POA

A summary of the major components of the recommended POA MOU is provided below.

- **Base Salary Increases for Sworn Personnel (Police Officer, Police Corporal, Police Sergeant)**
 - 4.00% effective December 30, 2018
 - 4.00% effective the pay period including January 1, 2020
 - 4.00% effective the pay period including January 1, 2021
- **Base Salary Increases for Non-Sworn Personnel (Multi-Service Officer)**
 - 3.50% effective December 30, 2018
 - 3.50% effective the pay period including January 1, 2020
 - 3.25% effective the pay period including January 1, 2021
- **Uniform Allowance:** Increase the uniform allowance for the Multi-Service Officer (MSO) classification from \$1,160 to \$1,400 per year to be consistent with sworn personnel.
- **Shift Supervisor Pay:** Increase pay from \$1.00 to \$2.50 per hour for Police Officers temporarily assigned to work as Shift Supervisors.
- **FTO (Field Training Officer) Pay:** Increase pay from \$1.50 to \$2.50 per hour for Police Officers serving as Field Training Officers for time spent training newly hired Police Officers.
- **Specialized Pay Assignments:** Increase pay to \$250 per pay period for Police Officer classification; \$275 per pay period for Police Corporal classification; and \$300 per pay period for Police Sergeant classification.
- **Retirement Contributions:** Effective December 30, 2018, for sworn employees within the CalPERS "Safety Classic" Retirement Plan, employee's contribution towards employer's share of pension cost will be capped at 6.12%. Total employee contribution shall be 15.12% (9% EE + 6.12% of the ER share).
- **Health:** The City will contribute (monthly) to the City's health plans up to the following monthly amounts:

	2019	2020	2021
Employee + Family	\$2,000	\$2,080	\$2,165
Employee + 1	\$1,600	\$1,665	\$1,730
Employee Only	\$800	\$830	\$865
Health-In-Lieu (waive)	\$610	\$610	\$610

City will implement a cafeteria plan on or before October 2019, consistent with the above contributions.

Management, Professional, and Confidential Employees Resolution and Corresponding Salary Schedules

Annually, the City Council considers revisions to the City's existing Management, Professional, and Confidential Employees Resolution based on a recommendation from the City Manager. All provisions included in this Resolution which affect wages and benefits shall be implemented beginning December 30, 2018. A summary of the components of the recommended Resolution is provided below:

- a. **Salary:** Employees covered by the Resolution are recommended to receive a 3.5% salary increase effective December 30, 2018, which is consistent with the salary increases for AFSCME and CSOA.
- b. **Retirement:** Effective December 30, 2018, for sworn employees within the CalPERS "Safety Classic" Retirement Plan, employee's contribution towards employer's share of pension cost will be capped at 6.12%. Total employee contribution shall be 15.12% (9% EE + 6.12% of the ER share).
- c. **Health Benefit:** The City will contribute to the City's medical and dental plans as follows:
 1. For employees with family coverage, up to \$1,900/month in 2019.
 2. For employees with employee plus one coverage, up to \$1,500 month in 2019.
 3. For employees with employee only coverage, up to \$800/month in 2019.
 4. Employees enrolling in City health but not using the maximum amount available from the City for their premium category (ee only, ee + 1, ee + family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City for their premium category shall have the difference deducted on a pre-tax basis from their paycheck.
 5. The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs 1-4 above.
 6. Health in-lieu is \$610 per month if an employee waives both medical and dental coverage.
 7. If an employee waives medical and elects dental coverage, the employee will receive \$610 health in lieu per month but will pay the appropriate

dental premium.

Part-Time Temporary and Seasonal Employees Salary Schedule

The Part-Time Temporary and Seasonal Salary Schedule has been updated to align with the increased minimum wage of \$12.00 per hour which takes effect January 1, 2019. Some positions show more significant increases in the pay scale than others to account for compaction issues related to the hierarchy of positions in a series (i.e. Lifeguard, Lifeguard – Lead). The new salary schedule is designed to support recruitment and retention of part-time teammates in the Recreation Division, within the existing budget.

Staff also recommends adding three new temporary and seasonal classifications, which are Per-Diem Dispatcher, Retired Annuitant, and Communications Technician.

The purpose of the Per-Diem Dispatcher is to provide flexibility and coverage for the dispatcher team on an as-needed basis. The hourly salary range will mirror the regular Public Safety Dispatcher classification, as recommended in the CSOA MOU, and illustrated below. Any future base salary increases that are provided to the regular Public Safety Dispatcher classification will also be provided to the Per-Diem Dispatcher classification.

Classification	Step A	Step B	Step C	Step D	Step E	Step F
Public Safety Dispatcher	\$38.63	\$40.56	\$42.59	\$44.72	\$46.96	\$49.30
Per-Diem Dispatcher	\$38.63	\$40.56	\$42.59	\$44.72	\$46.96	\$49.30

The Retired Annuitant classification is required under the California Public Employees Retirement System (CalPERS) to allow the City to have the ability to hire part-time employees who have previously retired from CalPERS and who wish to work part-time for a CalPERS employer, without applying for reinstatement from retirement. By adding the new classification of “Retired Annuitant”, the City can designate positions as Retired Annuitant positions, which must also meet certain CalPERS eligibility requirements. The requirements include, but are not limited to the following: 1) salary must be an hourly pay that falls within the regular salary schedule for that position, 2) position cannot be paid any other compensation or benefits in addition to the hourly pay rate, 3) without exception, a maximum of 960 hours can be worked within a fiscal year (July 1 to June 30), and 4) position cannot accrue service credit or any additional retirement rights or benefits.

The Retired Annuitant classification allows the City to supplement its workforce by hiring part-time employees as needed on a temporary basis with a specific scope of work.

Classification	Bottom Step Hourly	Top Step Hourly
Retired Annuitant	\$20.00	\$100.00

Lastly, the Communications Technician classification is recommended to provide support to the Communications and Engagement Manager. This classification will allow recruitment of temporary part-time staff with specific skills and experience as it relates to public communication, marketing and outreach.

Classification	Bottom Step Hourly	Top Step Hourly
Communications Technician	\$15.00	\$30.00

COMMUNITY ENGAGEMENT: Inform

The Human Resources Team will post the approved AFSCME, CSOA and POA MOUs and corresponding salary schedules, Management, Professional, and Confidential Employees Resolution and corresponding salary schedules, and the Part-Time Temporary and Seasonal Employees Resolution and corresponding salary schedule on the Human Resources website page as is the City's practice for all labor agreements and salary information.

ALTERNATIVE ACTIONS:

The City Council could decide to take any or all of the following alternate actions:

1. Not approve the AFSCME MOU and direct staff to continue with labor negotiations.
2. Not approve the CSOA MOU and direct staff to continue with labor negotiations.
3. Not approve the POA MOU and direct staff to continue with labor negotiations.
4. Not approve the Management, Professional, and Confidential Employees Resolution and continue operating under the current resolution.
5. Not approve the recommended Part-Time Temporary and Seasonal Employees Resolution and continue operating under the current resolution or Council could decide to choose select classification salary ranges to increase.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 3, 2015, the City Council approved a three and one-half year POA MOU from July 1, 2015 – December 31, 2018 and corresponding salary schedules.

On July 8, 2015, the City Council approved a three and one-half year CSOA MOU from July 1, 2015 – December 31, 2018 and corresponding salary schedules.

On September 16, 2015, the City Council approved a three and one-half year AFSCME MOU from July 1, 2015 – December 31, 2018 and corresponding salary schedules.

On December 20, 2017, the City Council approved the Part-Time Temporary and Seasonal Employees Resolution and corresponding salary schedule.

On June 6, 2018, the City Council approved the Management, Professional, and Confidential Employees Resolution and corresponding salary schedules.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of the three MOUs (AFSCME, CSOA, and POA), the Management Resolution, and the Part-Time Temporary and Seasonal Employees Resolution is within

the City Council's approved parameters. The net cost for the three-year term is estimated at \$518,000. Staff anticipates savings from vacancies, supplies and services will sufficiently cover the net cost through the term. Therefore, no budgetary appropriations are needed at this time.

Part-Time Temporary and Seasonal Employees Salary Schedule – There is no fiscal impact to increase the minimum part-time temporary and seasonal employees' salaries from the current California minimum wage rate of \$11.00 per hour to the California new minimum wage requirement of \$12.00 per hour effective January 1, 2019. The fiscal impact to increase salary ranges was known and included in the adopted biennial budget. Future salary increases would have a fiscal impact as select positions' salary increases fall within the new ranges.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

1. Recommended Pt-Time Temp. and Seasonal Employees Resolution
2. Recommended Mgmt-Conf Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING JOB CLASSIFICATIONS AND COMPESATION FOR PART-TIME TEMPORARY AND SEASON EMPLOYEES, THEREFORE

WHEREAS, the City Manager has presented to the City Council of the City of Morgan Hill a recommended set of job titles and salary ranges for Part-Time Temporary and Seasonal employees effective the pay period including January 1, 2019; and

WHEREAS, the update to the salary schedule regarding temporary and seasonal employees is necessary to remain in compliance with California law and for administrative and procedural clarity.

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

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

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

- a. That the salary schedule, as attached to this Resolution as **Exhibit A**, is hereby approved; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to adjust the salary schedule for part-time temporary and seasonal employees when necessary to comply with state and federal minimum wage laws; and
- c. That the Human Resources Division is hereby authorized and directed to maintain the current salary schedule for part-time temporary and seasonal employees as may be adjusted by the City Manager pursuant to this Resolution.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

CITY OF MORGAN HILL PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULE

Salaries effective the pay period including January 1, 2019

CLASSIFICATIONS	Bottom Step Hourly	Top Step Hourly
INTERNS		
High School/College Work Experience Student	\$12.00	\$25.00
POLICE DEPARTMENT		
Graffiti Abatement Worker	\$12.50	\$17.00
Level I Reserve Police Officer	Hourly rate for Step A Police Officer	
Level II Reserve Police Officer	90% of hourly rate for Step A Police Officer	
Police Officer Trainee	90% of monthly rate for Step A Police Officer	
Reserve Officer Trainee	\$15.00	\$15.00
TEMPORARY AND SEASONAL		
Building Coordinator	\$17.00	\$25.00
Clerical Assistant	\$15.00	\$20.00
Communications Technician	\$15.00	\$30.00
Deck Coordinator	\$20.00	\$25.00
Government Access Technician	\$20.00	\$30.00
Fire Plans Examiner/Inspector	\$35.50	\$45.00
Lifeguard	\$14.50	\$18.00
Lifeguard - Lead	\$18.00	\$20.00
Maintenance Worker Assistant	\$15.00	\$20.00
Per Diem Dispatcher	Hourly rate for Public Safety Dispatcher	
Recreation Instructor	\$15.75	\$52.50
Recreation Leader	\$13.00	\$16.00
Recreation Specialist	\$18.00	\$23.00
Retired Annuitant	\$20.00	\$100.00
Senior Recreation Leader	\$16.00	\$21.00

Special Projects Coordinator	\$18.00	\$50.00
Swim Instructor	\$14.00	\$21.00
Swim Instructor - Lead	\$18.00	\$23.00
Welcome Desk Assistant	\$14.00	\$18.00
Welcome Desk Coordinator	\$18.00	\$23.00

Other Part-Time Temporary or Seasonal positions may be tied to the Salary Schedule for the Bargaining Units which are not listed above. The above list only includes those part-time and temporary positions which are frequently used or are not contained on a bargaining unit salary schedule.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL INCREASING COMPENSATION FOR MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES (THIS RESOLUTION RESCINDS RESOLUTION NO. ~~17-042~~18-048)

WHEREAS, the City Manager has presented to the City Council of the City of Morgan Hill a recommended set of salary ranges and benefits for the Management, Professional, and Confidential employees; and

WHEREAS, the City Council of the City of Morgan Hill has reviewed said recommendations;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill as follows:

SECTION 1 - SALARY RANGES (~~Effective July 1, 2018~~)

- A. Effective ~~July 1, 2018~~December 30, 2018, base salaries for Groups 1-A, 1-B, 1-C, and 1-D will increase by ~~0.53.5~~5.3%.

See Salary Schedules ~~FY 2018-2019~~ attached as **Exhibit A**.

- B. Groups 1-A, 1-B, 1-C, and 1-D base salary ranges include the employee PERS contribution which is deducted from payroll (See SECTION 3, D~~-F~~-E.)

SECTION 2 - ESTABLISHMENT OF COMPENSATION AND JOB DESCRIPTIONS FOR GROUPS 1-A, 1-B, 1-C, and 1-D

- A. The City Manager will establish the monthly compensation for the classifications in Group 1-A. In order to attract high quality executive managers, foster job security within a professional climate, and provide the flexibility to remain competitive within the area job market, the City Manager has authority to enter into individual employment agreements with each executive manager; provided that the terms of the employment agreement do not exceed the total compensation permitted by this Resolution.

Employees listed in Group 1-A may receive a severance allowance as provided for in an individual employment agreement when they are separated in good standing from employment; provided that such separation is not for cause, or for reasons listed in Government Code 19572, or for any employee who voluntarily resigns from City service for personal reasons.

1. The City Manager shall establish an allowance amount, not to exceed three months' salary, which is determined to be in the best interest of the City.

2. This severance allowance is in addition to any unused vacation or administrative leave pay unused at the time of separation.
- B. Each Department Director will recommend to the City Manager the proposed monthly salary to be paid to each of the employees whose classification appears in Group 1-B, 1-C, and 1-D. Upon approval of the City Manager, the monthly salary will be set within the prescribed range for each classification. The City Manager has the authority to increase the monthly compensation for employees in Group 1-B, 1-C, and 1-D, by a maximum of 10% within the prescribed range each fiscal year based on each individual employee's performance.
 - C. For employees listed in Groups 1-A, 1-B, 1-C, and 1-D, the last 2.5% of the salary range has been designated as performance pay. Employees are eligible to have their base salary set in the last 2.5% of their respective range provided they have successfully passed a 12-month probation, progressed to the end of their salary range, and receive and maintain excellent performance as identified by their performance evaluation. The criteria for excellent performance evaluations are as follows: at least half of the rating factors must be scored at the "Exceeds Expectations" and no rating factor can be scored at the "Needs Improvement" level. The employee's direct supervisor and, if applicable, the Department Director must affirm on the annual performance evaluation that individuals meet the criteria. After such time, the recommendation for performance pay will be brought to the City Manager, or City Attorney, as appropriate, for approval.
 - D. Performance pay lasts for one year, and then expires. Performance pay can be established anew only if the employee's regularly scheduled annual performance evaluation continues to show no rating factor scored at "Needs Improvement" and more than half of the rating factors scored at "Exceeds Expectations."
 - E. The City will contribute to a City-sponsored IRS 457 deferred compensation program of the employee's choice (ICMA or MassMutual) according to the following schedule:
 1. 3% of base salary per pay period for employees who have been employed with the City for up to four years.
 2. 4% of base salary per pay period for employees who have been employed with the City from four to eight years.
 3. 5% of base salary per pay period for employees who have been employed with the City for over eight years.
 4. Alternately, employees may elect to have 3% of the employer contribution added directly to their salary. If the 3% to salary option is chosen, the employee's deferred compensation would be lowered by 3% and included in their salary wages earned. If electing to receive the 3% towards salary rather than towards deferred compensation, employees must submit their request in writing to Human Resources by the beginning of the first pay period for a new fiscal year, or as approved by the City Manager, which election shall endure until the beginning of the next fiscal year.

- F. When it is proposed by the Personnel Officer that a new classification be created or an existing classification be changed, the City Manager shall submit justification for approval of that action to the City Council and if that action is approved, the City Manager will have the authority to approve new and revised job descriptions.

SECTION 3 - CONTRIBUTIONS TO THE CalPERS RETIREMENT SYSTEM, GROUPS 1-A, 1-B, 1-C, and 1-D

- A. For "Classic Members" as defined by the Public Employees' Pension Reform Act of 2013 (PEPRA) and in the CalPERS retirement system:
1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive CalPERS retirement benefits under the 2.5% at age 55 plan.
 2. Safety (sworn) employees listed in Groups 1-A and 1-B, will receive CalPERS retirement benefits under the 3% at age 50 plan.
- B. For "New Members" as defined by PEPRA and in the CalPERS retirement system:
1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive CalPERS retirement benefits under the 2.0% at 62 plan.
 2. Safety (sworn) employees listed in Groups 1-A and 1-B will receive CalPERS retirement benefits under the 2.7% at age 57 plan.
- C. CalPERS defines a "New Member" as:
1. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who has no prior membership in any other California public retirement system.
 2. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who is not eligible for reciprocity with another California public retirement system.
 3. A member who established CalPERS membership prior to January 1, 2013, and who is hired by a different CalPERS employer after January 1, 2013, after a break in service of greater than six months.
 4. CalPERS refers to all members that do not fit the definition of a "new member" as a "classic member."
- D. Non-Safety (miscellaneous) employees: Beginning with CalPERS rates effective July 1, 2013, the City and Non-Safety (miscellaneous) -Management, Professional, and Confidential employees agreed to split ~~future~~future employer rate increases at a 50/50 ratio. This methodology will be used in subsequent years should CalPERS increase the Miscellaneous ~~and Safety~~ contribution rates.

E. Safety (sworn) PEPRAs employees: Beginning with CalPERS rates effective July 1, 2013, the City and Safety (sworn) PEPRAs Management, Professional, and Confidential employees agreed to split future employer rate increases at a 50/50 ratio. This methodology will be used in subsequent years should CalPERS increase the Miscellaneous contribution rates.

D.F. Safety (sworn) Classic employees: Beginning December 30, 2018, the City and Safety (sworn) Management, Professional, and Confidential employees agreed, in addition to employee CalPERS rate, the employee shall contribute 6.12% towards the employer's share of pension costs. (i.e. the total Safety (sworn) employee's contribution for Fiscal Year 2018-19 shall be 15.12%. (9.00% EE + 6.12% of the ER share).

SECTION 4 - HEALTH CARE CONTRIBUTIONS AND IRS 125 PLAN, GROUPS 1-A, 1-B, 1-C, and 1-D

~~A. Health Care Contributions are subject to the mandatory offset provisions described below:~~

- ~~1. For family health care allowance, the City will pay 90% of: the total cost of the lowest cost PEMHCA medical plan plus dental.~~
- ~~2. For employee plus one dependent, the City will pay 96.5% of: the total cost of the lowest cost PEMHCA medical plan plus dental.~~
- ~~3. For employee only health care allowance, the City will pay 100% of: the total cost of the lowest cost PEMHCA medical plan plus dental.~~
- ~~4. At the time when the lowest cost medical plan plus dental coverage exceeds the \$610 health care allowance, the City shall provide 100% of: the lowest cost medical health plan plus dental.~~
- ~~5. Health in lieu is \$610 per month if an employee waives both medical and dental coverage.~~
- ~~6. If an employee waives medical and elects dental coverage, the employee will receive \$610 health in lieu but will pay the appropriate dental premium.~~
- ~~7. Employees listed in Groups 1 A, 1 B, 1 C, and 1 D who do not use their full health allowance may use their surplus amount for optional benefits such as vision, long term care insurance, or for participating in medical reimbursement or dependent care expense accounts. If employees do not use their surplus for optional benefits, it will be added to their salary as taxable income.~~

A. The City will contribute to the City's medical and dental plans as follows:

1. For employees with family coverage, up to \$1,900/month in 2019.
2. For employees with employee plus one coverage, up to \$1,450.500/month in 2019.
3. For employees with employee only coverage, up to \$725800/month in 2019.
4. Employees enrolling in City health but not using the maximum amount available from the City for their premium category (ee only, ee + 1, ee + family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City

- for their premium category shall have the difference deducted on a pre-tax basis from their paycheck
5. Employees who waive medical coverage and annually provide proof of alternate medical coverage shall be entitled to a taxable health in lieu payment of six hundred ten dollars (\$610) per month.
 6. If an employee waives medical and elects dental coverage, the employee will receive the taxable health in lieu payment of six hundred ten dollars (\$610) per month but will pay the appropriate dental premium.
 7. The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs 1 - 6 above..

- B. The City will continue to provide coverage under the Concern Employee Assistance Program.
- C. The City will continue to offer an IRS Section 125 program.

SECTION 5 - GENERAL BENEFIT PROVISIONS, GROUPS 1-A, 1-B, 1-C, AND 1-D

The City will comply with the requirements of the City Personnel Rules and Regulations and the Fair Labor Standards Act governing the use of taking and reporting time off work for management employees.

A. Holidays

1. The City will grant the following paid holidays to employees listed in Groups 1-A, 1-B, 1-C, and 1-D:

New Year's Day
 Martin Luther King, Jr. Day
 President's Day
 Cesar Chavez Day
 Memorial Day
 Independence Day
 Labor Day
 Thanksgiving Day
 Day after Thanksgiving
 Christmas Eve
 Christmas Day

One-half (1/2) day holiday to be used during the furlough period or on the last workday before the holiday.

Two floating holidays (These two floating holidays must be used during the fiscal year).

2. Holidays are with eight hours of time off; employees on alternate work schedules must use additional leave balances to receive full pay on a holiday.
3. With the approval of the employee's supervisor, employees may "float" holidays to another

day within the same fiscal year provided they work on the holiday.

B. Sick Leave Accrual

1. Sick Leave credit for employees will be accumulated on the basis of eight hours of sick leave per month (96 hours per year).
2. The City will, at the end of each calendar year, pay each employee twenty-five percent of the unused sick leave earned that year unless the employee requests not to receive such a payment.
3. The balance of the unused sick leave will then be accumulated on an unlimited basis.
4. Upon retirement, 100% of the employee's unused sick leave balance will be credited to the employee's retirement eligibility. This amount would then be converted into time in service and added to the employee's retirement eligibility. (Reference - City contract with CalPERS, Section 20862.8)
5. Each employee may take 16 hours of personal leave time during the fiscal year which is charged against the current year's sick leave accrual.
6. The City Manager may negotiate establishing a leave "bank" with new employees at time of hire.

C. Vacation Leave Accrual

1. Each employee listed in Groups 1-A, 1-B, 1-C and 1-D will be credited vacation on the basis of 120 hours per year for the first five years of City service. After five years of service, vacation will be credited on the basis of 160 hours per year.
2. The maximum accumulation of vacation will be no more than that earned for two years.
3. Additional vacation accrual will not be provided until the employee's vacation balance drops below the maximum accrual limit as of June 30 in any given year.
4. The City Manager may negotiate vacation accrual rates and/or establish a leave "bank" with new employees at time of hire.

D. Administrative Leave, Groups 1-A, 1-B, and 1-C

1. Employees listed in Groups 1-A, 1-B, and 1-C receive and may use up to 72 hours of administrative leave with pay per fiscal year.
2. Administrative leave time for employees in Groups 1-A, 1-B, and 1-C will be available for one additional year if not used in the fiscal year that it was initially available. If, however, the administrative leave time that was carried over to the following fiscal year is not used during the second year, it will be lost at the end of the second fiscal year. In effect, the maximum amount of administrative leave time that may be available to an employee at any given time is 144 hours.

3. Effective July 1, 2016, new employees who are hired during any month other than July, will initially receive prorated administrative leave hours of six (6) hours per month depending on date of hire and the hours will be banked at time of hire (i.e. employees hired in the month of August would receive 66 hours of administrative leave because they will be working a total of eleven (11) months in the fiscal year). All regular, full-time employees will receive 72 hours of administrative leave each fiscal year following their hire date. Part-time employees have prorated benefits and their total administrative leave hours will be prorated based on their position allocation (i.e. .50 FTE or .75 FTE).

E. Leave Cash Out

Employees listed in Groups 1-A, 1-B, 1-C and 1-D may cash out up to 120 hours of accrued vacation, administrative leave, or a combination of the two, per calendar year. Employees must make an irrevocable election by December 1 of each year for the following calendar year stating their intent to cash out and the eligible number of hours. If Employees employees ~~must don't~~ request payment of the elected cash amount by November 1 of each year, Payroll will automatically cash out the amount designated by the employee on or after the pay period including November 1st.

F. Bereavement Leave

Management, Professional, and Confidential employees shall, per occurrence, be granted Bereavement Leave when a death occurs in the employee's or spouse's immediate family. For the purpose of this section, "immediate family" is defined as: father, mother, brother, sister, spouse, natural or legally adopted child, step-child, in-laws, grandparents, and grandchildren. Up to three (3) days of bereavement leave shall be granted when the death and service are within the State of California and up to five (5) days when the death or service is outside the State. Bereavement Leave usage shall not be charged against the employee's Sick Leave or Vacation Time. Employees may also use up to two (2) additional days of Sick Leave to supplement their allotted Bereavement Leave if other circumstances require absence during this time.

Requests for additional Bereavement Leave beyond the allotted three (3) or five (5) days, shall be subject to the approval of the employee's supervisor and deducted from the employee's other leave banks. Special circumstances beyond this definition may be considered on a case-by-case basis and must be approved by the City Manager. This leave will not affect the twenty-five percent cash out of sick leave for the same calendar year.

G. Professional Development

It shall be the philosophy of the City to encourage employees to attend classes, seminars, conferences, etc. which will enable the employee to develop professionally. Such attendance must be approved by the Department Director or the City Manager. The City may request employees who complete such a course to report or train other employees in the skills they have attained.

1. **Tuition Reimbursement Program**

Employees listed in Groups 1-A, 1-B, 1-C, and 1-D are eligible to receive tuition reimbursement of up to \$1,500 per fiscal year for the cost of books and tuition for classes or courses beneficial to the employee's career development. All classes must be

approved in advance by the Department Director or City Manager. Reimbursement will take place upon a successful completion or passing of the course.

2. Membership Dues

For employees listed in Groups 1-A and 1-B, the City shall provide a personal membership dues reimbursement of up to \$1,200 per fiscal year for costs associated with joining and participating in Morgan Hill community service organizations such as Rotary or Kiwanis. Reimbursement of membership dues for community service organizations requires the prior approval by the Department Director or the City Manager.

H. Life and Disability Insurance

The City shall pay the premiums for short-term disability, long-term disability, and life insurance plans.

1. Life insurance levels shall be as follows for the employees listed in Section 1:

Group 1-A	\$250,000
Group 1-B	\$150,000
Group 1-C	\$100,000
Group 1-D	\$100,000

This amount decreases when the employee reaches age 65, 70, and 75. The Life Insurance benefit will be paid to the employee's beneficiary upon the death of the employee as outlined in the program documents.

2. Short-term disability coverage for employees in Groups 1-A, 1-B, 1-C, and 1-D shall be at the maximum rate of \$1,384 per week based on 66 2/3% of the actual weekly salary after an eight-day elimination period.
3. Long-term disability coverage for employees in Groups 1-A, 1-B, 1-C and 1-D shall be at the maximum rate of \$6,000 per month based on 66 2/3% of the actual monthly salary after a 60-day elimination period.

I. Retirement Medical Plan

Upon retirement, employees listed in Groups 1-A, 1-B, 1-C, and 1-D may continue enrollment in the medical insurance plans provided by CalPERS without an interruption of coverage. Such enrollment will be contingent upon the employee meeting the requirements of the medical plans provided by CalPERS and paying the monthly premium to CalPERS at the employee's expense. It will be the employee's responsibility to make sure the insurance premium is paid to CalPERS before the due date. Failure to do so will result in the employee being terminated from their medical coverage.

J. Special Assignment Pay

Special Assignment Pay may be granted to employees who have assumed, for an extended period, significant additional responsibilities outside their current classification. The request for special assignment shall describe the assignment, justify why it is to be performed by the designated employee, and give a specific duration for completion of the assignment with a start and end date. Special assignment pay is up to 10% above the employee's normal pay rate. The special assignment and related compensation may be revoked at any time at the discretion of the Department Director, or the City Manager or designee. Special Assignment Pay will be

requested in advance by the Department Director and authorized by the City Manager or designee, and then processed by the Human Resources Division. Special Assignment Pay shall be discontinued on the date originally identified for completion of the assignment, unless an extension of specific duration is approved by the City Manager or designee prior to the end of the original assignment end date. This pay will not be considered additional compensation as defined by the California Public Employees' Retirement Systems (CalPERS).

K. Employee Uniform Allowance

Safety employees in Groups 1-A and 1-B will be eligible for the following uniform allowance:

Chief of Police and Police Captain:	\$1,400
Police Support Services Manager:	\$810

L. Work Schedule

The City Manager will establish the standard work schedule for employees listed in Groups 1-A, 1-B, 1-C, and 1-D. Based on the needs of the City, the City Manager may at his/her discretion, change the work schedules of employees at any time.

M. Auto Allowance

The City Manager may establish a monthly allowance for selected employees listed in Groups 1-A and 1-B who use their personal vehicles on City business. Based on the needs of the City, the City Manager may, at his/her discretion, change the auto allowance of employees at any time. The current monthly allowance range is \$225 - \$325.

N. Cell Phone Allowance

The City Manager may establish a monthly allowance for selected employees listed in Groups 1-A, 1-B, 1-C, and 1-D who use their personal cell phones on City business. Based on the needs of the City, the City Manager may, at his/her discretion, change the cell phone allowance of employees at any time. The current monthly allowance is established in Administrative Policy III019.

SECTION 6 - EFFECTIVE DATE

This resolution shall be effective December 5, 2018. Compensation shall be made available to only those employees covered by this section who are still employed as a Management, Professional, or Confidential employee with the City as of the effective date of this agreement. As of the effective date of this Resolution, Resolution No. 18-049 shall be superseded and rescinded.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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. , adopted by the City Council at the meeting held on December 5, 2018.

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

DATE: _____

 IRMA TORREZ, City Clerk

EXHIBIT A

CITY OF MORGAN HILL

MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP

FY 2018-19 SALARY SCHEDULE: 3% TO WAGES

Adopted: December 5, 2018

Effective: December 30, 2018

Job Classification	Bottom of Range Monthly	Top of Range Monthly	Performance Pay Monthly
Group 1-A: Executive Management			
Assistant City Manager for Administrative Services	\$13,942	\$17,873	\$18,320
Assistant City Manager for Development Services	\$13,942	\$17,873	\$18,320
Chief of Police	\$13,941	\$17,873	\$18,320
Public Services Director	\$13,941	\$17,873	\$18,320
Community Services Director	\$13,281	\$17,023	\$17,448
Development Services Director	\$13,281	\$17,023	\$17,448
Economic Development Director	\$13,281	\$17,023	\$17,448
Engineering and Utilities Director	\$13,281	\$17,023	\$17,448
Finance Director	\$13,281	\$17,023	\$17,448
Group 1-B: Middle Management			
Police Captain	\$11,687	\$14,981	\$15,356
Building Official	\$11,460	\$14,692	\$15,059
Deputy Director for Engineering	\$11,459	\$14,692	\$15,059
Deputy Director for Utilities Services	\$11,460	\$14,692	\$15,059
Housing Manager	\$11,460	\$14,692	\$15,059
Human Resources Director	\$11,459	\$14,692	\$15,059
Planning Manager	\$11,459	\$14,692	\$15,059
Program Administrator	\$11,460	\$14,692	\$15,059
Assistant City Attorney	\$10,131	\$12,965	\$13,289
Economic Development Manager	\$10,131	\$12,965	\$13,289
Senior Civil Engineer	\$10,131	\$12,965	\$13,289
Senior Project Manager	\$10,131	\$12,965	\$13,289
Budget Manager	\$9,368	\$12,020	\$12,321
Building Manager	\$9,368	\$12,020	\$12,321
Communications and Engagement Manager	\$9,368	\$12,020	\$12,321
Community Services Manager	\$9,368	\$12,020	\$12,321
Information Services Manager	\$9,368	\$12,020	\$12,321
Maintenance Manager	\$9,368	\$12,020	\$12,321
Police Support Services Manager	\$9,368	\$12,020	\$12,321
Recreation Manager	\$9,368	\$12,020	\$12,321
Supervising Civil Engineer	\$9,368	\$12,020	\$12,321
Utility Systems Manager	\$9,368	\$12,020	\$12,321
Accounting Manager	\$8,720	\$11,182	\$11,462
Financial and Policy Analyst	\$8,720	\$11,182	\$11,462
Senior Planner	\$8,720	\$11,182	\$11,462
Community Services Supervisor	\$7,900	\$9,834	\$10,080
Council Services and Records Manager	\$7,900	\$9,834	\$10,080
Deputy City Attorney	\$7,900	\$9,834	\$10,080
Economic Development Coordinator	\$7,900	\$9,834	\$10,080
Emergency Services Coordinator	\$7,900	\$9,834	\$10,080
GIS / Land Use Data Administrator	\$7,900	\$9,834	\$10,080
Maintenance Services Coordinator	\$7,900	\$9,834	\$10,080
Older Adult Services Supervisor	\$7,900	\$9,834	\$10,080
Programmer Analyst	\$7,900	\$9,834	\$10,080
Risk Management Analyst (.50 FTE)	\$3,766	\$4,821	\$4,941
Senior Human Resources Analyst	\$7,900	\$9,834	\$10,080
Group 1-C: Confidential Exempt			
Administrative Analyst	\$7,530	\$9,640	\$9,881
Paralegal	\$6,775	\$8,696	\$8,914
Group 1-D: Confidential Non-Exempt			
Accounting Technician	\$6,007	\$7,691	\$7,883
Human Resources Technician	\$6,007	\$7,691	\$7,883
Human Resources Assistant	\$4,704	\$6,004	\$6,154

CITY OF MORGAN HILL

MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP

FY 2018-19 SALARY SCHEDULE: 3% TO DEFERRED COMPENSATION

Adopted: December 5, 2018

Effective: December 30, 2018

Job Classification	Bottom of Range Monthly	Top of Range Monthly	Performance Pay Monthly
Group 1-A: Executive Management			
Assistant City Manager for Administrative Services	\$13,536	\$17,352	\$17,786
Assistant City Manager for Development Services	\$13,536	\$17,352	\$17,786
Chief of Police	\$13,536	\$17,352	\$17,786
Public Services Director	\$13,536	\$17,352	\$17,786
Community Services Director	\$12,894	\$16,527	\$16,940
Development Services Director	\$12,894	\$16,527	\$16,940
Economic Development Director	\$12,894	\$16,527	\$16,940
Engineering and Utilities Director	\$12,894	\$16,527	\$16,940
Finance Director	\$12,894	\$16,527	\$16,940
Group 1-B: Middle Management			
Police Captain	\$11,346	\$14,545	\$14,909
Building Official	\$11,126	\$14,264	\$14,620
Deputy Director for Engineering	\$11,126	\$14,264	\$14,620
Deputy Director for Utilities Services	\$11,126	\$14,264	\$14,620
Housing Manager	\$11,126	\$14,264	\$14,620
Human Resources Director	\$11,126	\$14,264	\$14,620
Planning Manager	\$11,126	\$14,264	\$14,620
Program Administrator	\$11,126	\$14,264	\$14,620
Assistant City Attorney	\$9,835	\$12,588	\$12,902
Economic Development Manager	\$9,835	\$12,588	\$12,902
Senior Civil Engineer	\$9,835	\$12,588	\$12,902
Senior Project Manager	\$9,835	\$12,588	\$12,902
Budget Manager	\$9,095	\$11,670	\$11,962
Building Manager	\$9,095	\$11,670	\$11,962
Communications and Engagement Manager	\$9,095	\$11,670	\$11,962
Community Services Manager	\$9,095	\$11,670	\$11,962
Information Services Manager	\$9,095	\$11,670	\$11,962
Maintenance Manager	\$9,096	\$11,670	\$11,962
Police Support Services Manager	\$9,095	\$11,670	\$11,962
Recreation Manager	\$9,095	\$11,670	\$11,962
Supervising Civil Engineer	\$9,095	\$11,670	\$11,962
Utility Systems Manager	\$9,095	\$11,670	\$11,962
Accounting Manager	\$8,465	\$10,857	\$11,128
Financial and Policy Analyst	\$8,465	\$10,857	\$11,128
Senior Planner	\$8,465	\$10,857	\$11,128
Community Services Supervisor	\$7,670	\$9,548	\$9,787
Council Services and Records Manager	\$7,670	\$9,548	\$9,787
Deputy City Attorney	\$7,670	\$9,548	\$9,787
Economic Development Coordinator	\$7,670	\$9,548	\$9,787
Emergency Services Coordinator	\$7,670	\$9,548	\$9,787
GIS / Land Use Data Administrator	\$7,670	\$9,548	\$9,787
Maintenance Services Coordinator	\$7,670	\$9,548	\$9,787
Older Adult Services Supervisor	\$7,670	\$9,548	\$9,787
Programmer Analyst	\$7,670	\$9,548	\$9,787
Risk Management Analyst (.50 FTE)	\$3,655	\$4,680	\$4,797
Senior Human Resources Analyst	\$7,670	\$9,548	\$9,787
Group 1-C: Confidential Exempt			
Administrative Analyst	\$7,310	\$9,359	\$9,593
Paralegal	\$6,577	\$8,443	\$8,654
Group 1-D: Confidential Non-Exempt			
Accounting Technician	\$5,832	\$7,467	\$7,654
Human Resources Technician	\$5,831	\$7,467	\$7,654
Human Resources Assistant	\$4,566	\$5,829	\$5,975



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Pam van der Leeden, GIS Manager
APPROVED BY: City Manager

APPROVE GEOGRAPHIC INFORMATION SYSTEM (GIS) SERVICES CONTRACT WITH GEOGRAPHIC TECHNOLOGIES GROUP

RECOMMENDATION(S)

1. Approve an agreement with Geographic Technologies Group for a not to exceed amount of \$59,000, for the GIS Services Project; and
2. Authorize City Manager to execute and administer the said agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

In 2016, the City conducted a review of Development Services via a consultant, Zucker Systems, to review and recommend improvements to functions, responsibilities, and processes. One of the recommendations was for the City to dedicate resources to maintain and enhance the existing Geographic Information System (GIS). Since, the City has successfully recruited for a GIS Administrator position to improve the City's existing GIS system.

To further build upon the recommendation, Staff has initiated a GIS Services Project to develop a GIS strategic plan to outline a road map that assesses existing GIS system infrastructure, and designs and implements an Enterprise GIS system. The goal of this project is to create the platform from which we can build out the City's GIS program with spatial data, maps, and applications. Currently, we are not able to fully support a City-wide Enterprise GIS system due to gaps in infrastructure and technology.

Staff is recommending that the City contract with a highly qualified consultant to design a 3 to 5-year GIS strategic plan, assess the existing GIS system infrastructure, and design and implement an Enterprise GIS system. The consultant would also configure and customize an internal web map for the City and will provide 2 years of support services.

Staff interviewed several consultants and were in unanimous agreement that Geographic Technologies Group (GTG) was the best candidate. GTG is highly qualified to do this specialized work and has the high level of experience, skill and capacity required by this project. This includes the ability to conduct a network suitability analysis using Esri's Capacity Planning Tool which other firms were not able to provide. GTG also demonstrated a superior ability to communicate complex technical information clearly and succinctly in their interview, something that Staff felt was essential to this project's success.

GTG is an award-winning firm that comes highly recommended in the industry, has an excellent reputation, and will be able to meet the City of Morgan Hill's GIS needs and requirements. The firm has done this type of work for many public agencies in the U.S., including the Cities of Sunnyvale, Berkeley and Chico, the Contra Costa Water District, and San Mateo County.

Per section 3.04.240 of the City's Municipal Code, staff believes that the bidding process is unlikely to result in a better qualified consultant at a lower price. For these reasons, staff recommends contracting with GTG for these consultant services.

The GIS Services project will begin January 2019.

COMMUNITY ENGAGEMENT: Inform.

This report serves to inform the community of the recommended GIS project.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

This project is a part of the GIS Administrator's workplan and the contract amount of \$59,000 is included in the current adopted Fiscal Year 2018-19 and 2019-20 biennial budget, therefore no additional appropriations are required at this time.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Geographic Technologies Group Agreement

CONSULTANT AGREEMENT Geographic Technologies Group

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Geographic Technologies Group a North Carolina corporation ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement, 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 the 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 August 31, 2021 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 GIS Services as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$59,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed FIFTY-NINE THOUSAND AND NO/100 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 the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, 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 C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/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:

Geographic Technologies Group
1202 Parkway Drive
Goldsboro, NC 27534

Address of CITY is as follows:

GIS 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.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
- 20.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

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

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

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

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

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

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

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

[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:

GEOGRAPHIC TECHNOLOGIES GROUP

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

 Curtis A. Hinton Jr.
 President
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 11/28/2018

By: _____

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

Date: 11/28/2018

A. SCOPE OF SERVICES

Geographic Technologies Group (GTG) will use a Three Phase/Seven Step methodology for an enterprise, sustainable, scalable and enduring GIS. GTG's GIS strategic planning methodology will guarantee the very best Enterprise GIS Strategic Plan for the City of Morgan Hill. It includes new and innovative ways to collect stakeholder data, interview City departments, evaluate GIS needs and priorities, benchmark the City's existing GIS activities, identify Best Business Practices, hold local government and GIS technology seminars, monitor improvements and successes, identify gaps and opportunities, and present the findings to stakeholders and elected officials as follows:



Task 1: Enterprise GIS Strategic Plan

Task 1 is the development of an enterprise GIS Strategic Plan for the City of Morgan Hill. The project methodology includes: **Phase I: GIS Needs Assessment - Steps 1-4**, **Phase II: System Design - Step 5**, and **Phase III: Final Strategic Assessment- Steps 6-7**.

Phase I: GIS Needs Assessment

- **STEP 1 – Online GIS Questionnaire** – GTG will plan, design and deploy an online GIS questionnaire to be completed by key stakeholders.
 - **Deliverable:** Online Questionnaire Results and Summary
- **STEP 2 – Kick-Off Meeting and Technology Seminar** – GTG will conduct a two hour GIS Strategic Plan Kick-Off Meeting/Presentation and a “GIS Local government Technology” Seminar.
 - **Deliverable:** Kick-off Presentation and GIS Technology Seminar

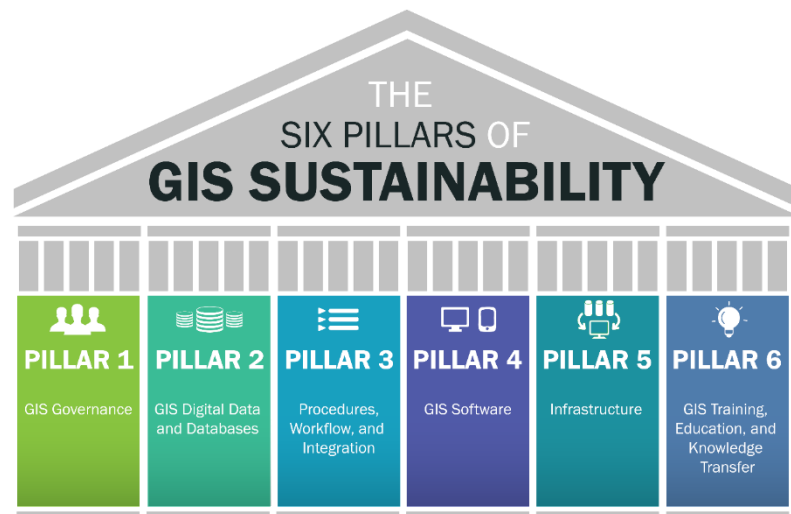
- **STEP 3 – Departmental Interviews, Benchmarking, SWOT Analysis, GAP Analysis, and Consensus Building** – GTG will conduct on-site stakeholder interviews (incorporating and updating needs analysis data acquired by the GIS Manager in 2017), GIS benchmarking, a SWOT analysis, a GAP analysis, and promote consensus building. The GTG team will meet with key representatives of each City department between 1 to 2 hours.
 - **Deliverable:** Departmental Interviews
 - **Deliverable:** SWOT Analysis
 - **Deliverable:** GAP Analysis
 - **Deliverable:** Benchmarking Analysis
- **STEP 4 – GIS Assessment Findings and Recommendations**– GTG will detail and document the existing GIS conditions within the City, and detail all of the geospatial needs and future recommendations.
 - **Deliverable:** GIS Assessment Documentation

Phase II: System Design

- **STEP 5 – Future System Design**– GTG will develop a system level design that will attempt to meet all of the needs of the organization in terms of performance, effectiveness, sustainability, and economics. GTG will use the following to describe the recommended future GIS design.

Six GIS Pillars of Sustainability

1. Governance
 2. Data and Databases
 3. Integration, Workflow, and Interoperability
 4. GIS Software
 5. IT Infrastructure
 6. Training, Education, and Knowledge Transfer
- **Deliverable:** A Future Enterprise GIS Solution as it relates to the Six Pillars of Sustainability.



Phase III: Final Assessment Report and Presentation

- **STEP 6 – Business Plan and ROI Analysis** – GTG will address the Return on Investment (ROI) and value proposition of all recommendations described in the GIS Strategic Plan.
 - **Deliverable:** ROI and Value Proposition Analysis
- **STEP 7 – Final Strategic Assessment (Plan of Action)** – GTG will develop a clear and concise GIS plan of action that will offer a step by step 3-5 year methodology for continued enterprise GIS implementation.
 - **Deliverable:** GIS Strategic Plan and Final Action Plan

Task 2: GIS Architecture Assessment and Enterprise Implementation

GTG will conduct an assessment of the City's IT infrastructure with the goal of implementing a reliable, secure, and enterprise GIS. The following steps include:

A. Existing System Evaluation

GTG will evaluate the readiness of the system infrastructure to support the planned enterprise GIS. This is a Network suitability analysis using Esri's Capacity Planning Tool (CPT). Tasks will include:

- Conduct on-site testing to establish peak network traffic, latency and bandwidth constraints between servers and GIS user locations in four City buildings and recommend any needed fixes, additions or upgrades to the system.
 - Questions to Answer
 - How many users can you support with your existing hardware?
 - What hardware needs to be purchased?
 - How many servers (cores) are needed?
 - What are the software licensing requirements?
 - What workflow loads should be used for existing applications?
 - What are the current workflow service times?
 - What is the capacity of the current system?

B. System Architecture Design

GTG will design an enterprise GIS architecture based upon the user and business needs already documented by the GIS Manager that will allow integration with each City department. Key tasks include:

- The design of a system that must be able to support: high availability servers, ArcGIS desktop users in four City buildings, centralized Enterprise data storage and editing, separate and secure GIS system for Police department (this might be solely ArcGIS Online), internal ArcGIS Online map viewed by 324 staff, public ArcGIS Online maps, mobile applications, field data collection on tablets, using Collector or Survey 123, emergency operations mapping and collaboration, and access points or integration with business applications.

Items to consider during the design:

- Workflow loads analysis
 - Technical architecture strategy (user locations, network connectivity, and data center server locations)
 - Network suitability analysis
 - GTG will create detailed specifications and cost for all needed hardware, software, and network purchases (the scope will be subject to city IT policies)
- System Implementation and Deployment
 - GTG will evaluate workflows, identify bottlenecks and implement fixes. Tasks include the implementation of all needed fixes and re-test infrastructure to ensure capacity goals are met. It will include system procurement authorization, based on the design budget and deployment timeline, and data acquisition and database deployment
 - GTG will deploy an enterprise system. GTG will test the solution for efficiency and effectiveness. GTG will train City staff on the system. Key tasks include:
 - Initial deployment and operational testing
 - Final system delivery, user training, and workflow migration
 - System maintenance operations (database compression, etc.)
- Deliverable: Plan, Design and implementation of the IT infrastructure to sustain an Enterprise GIS

Task 3: Configuration and Customization of Web Applications

The City of Morgan Hill uses an existing GIS centric MapGuide application to view important digital data layers. It is the intent of the City to replace MapGuide with an Esri based “web app” solution. GTG will use the Esri Web AppBuilder software to develop a browser solution with the intention that it will completely replace the City’s existing MapGuide application (note that GTG has not analyzed the existing application’s functionality, therefore the scope is subject to change). Where feasible, GTG will replace all custom features and functionality that exists within MapGuide, including template layout printing and notification functionality. New functionality will be added as time allows. This task includes 45 hours of a GIS programmer/ specialist’s time to develop the new web app solution.

- Deliverable: 45 GIS Programming/Specialist’s hours to develop a GIS Brower Solution that Replaces or Prototypes a new version of the City’s MapGuide solution

Task 4: On-going Support Services (2 Years)

GTG will offer the City of Morgan Hill a 2 year general GIS support services contract under a new initiative called GAP. GAP is a GIS Advantage Program that allows clients to use credit for any support service. GTG has key staff that specializes in all components of GIS implementation. The City of Morgan Hill will be assigned a GAP advisor to coordinate all requested services, including IT/GIS infrastructure, GIS planning, GIS application development, data conversion services and more.

B. PROJECT TEAM AND BUDGET

The City of Morgan Hill project team includes the following:



- David Holdstock



- Mike Chenevey



- Curt Hinton



- Matt McLamb



- Technical PM: Jason Marshall



- Jonathan Welker
- GIS Technician
- GIS Technician

Hourly Rates - Monitor and maintain through on-call support.

- GTG Principal - \$125/hr.
- CTO - \$120/hr.
- Development Director - \$120/hr.
- Senior Project Manager - \$105/hr.
- GIS Developer - \$95/hr.
- Senior GIS Analyst - \$85/hr.
- GIS Analyst - \$75/hr.
- GIS Technician – \$65/hr.

Scope of Services

Task 1: GIS Strategic Plan	\$20,000
Task 2: GIS Architecture Assessment and Enterprise Implementation	\$24,000
Task 3: Configuration and Customization of Web Applications	\$5,000
Task 4: Support Services	\$10,000
Total Fee	\$59,000

Attachment: Geographic Technologies Group Agreement (2084 : GIS Services Contract)

C. SCHEDULE OF PERFORMANCE

Task 1: GIS Strategic Plan	2 Months: Jan-Feb 2019
Task 2: GIS Architecture Assessment and Enterprise Implementation	1 Month: Feb-Mar 2019
Task 3: Configuration and Customization of Web Applications	50 hours: Jan – Mar 2019
Task 4: Support GAP Services (2 Years)	24 Months: 2019-2021



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Michelle Katsuyoshi, Human Resources Director
APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO AGREEMENT WITH MEYERS NAVE FOR LABOR NEGOTIATION SERVICES

RECOMMENDATION(S)

1. Approve First Amendment to Agreement with Meyers Nave for an additional \$50,000 to provide labor negotiations services for a total not to exceed amount of \$100,000;
2. Authorize the City Manager to execute and administer the amended agreement; and
3. Adopt resolution amending the City's adopted Fiscal Year 2018-19 budget, to appropriate \$50,000 from the General Fund (010) for labor negotiations.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The City has three recognized labor bargaining units. These units are represented by the American Federation of State, County, and Municipal Employees (AFSCME), Community Service Officers' Association (CSOA), and the Police Officers' Association (POA). In 2015, the last round of negotiations, the City contracted with an outside firm to participate in the negotiation process with all three unions, which resulted in a successful three and one-half years term. The current Memorandum of Understanding (MOU) for each of the unions will expire on December 31, 2018.

On June 20, 2018, the City Council approved a contract with Meyers Nave to provide additional expertise and support during negotiations. Services provided by the outside negotiators included: participating in meetings/conference calls; drafting proposals and counter proposals; drafting and revising Council handouts; and drafting the final MOUs to ensure all elements are in compliance with existing labor laws.

The current Meyers Nave contract is for an amount not to exceed \$50,000. The current round of negotiations extended over a longer period, requiring additional meetings with all three units, than Staff originally budgeted. Meyers Nave services are needed through full execution of the MOU documents. Staff recommends increasing the contract amount by \$50,000 to cover additional meetings and complete the negotiation services. This first amendment would revise the not to exceed amount to \$100,000.

COMMUNITY ENGAGEMENT: Inform

The City will post all MOUs on the City's website page as is the City's practice for all labor agreements.

ALTERNATIVE ACTIONS:

The Council could decide to increase the contract for a different amount or utilize City staff and resources to continue to support negotiations.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, City Council adopted the Recommended FY 2018-19 and 2019-20 Operating Budget, which included the services of an outside lead labor negotiator to participate and support negotiations.

On June 20, 2018, the Council approved the contract with Meyers Nave to provide labor negotiations services for an amount not to exceed \$50,000.

FISCAL AND RESOURCE IMPACT:

As indicated above, the cost of the initial Meyers Nave contract, in the amount not to exceed \$50,000, was included in the FY 2018-19 adopted budget. An additional appropriation of \$50,000 from the General Fund is being requested.

CEQA (California Environmental Quality Act):

Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except where the policies and procedures may result in a change to the physical environment).

LINKS/ATTACHMENTS:

1. Meyers Nave First Amendment to Agreement 12.05.2018
2. Budget Resolution

**FIRST AMENDMENT TO AGREEMENT
MEYERS NAVE, PC**

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 MEYERS NAVE, PC, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on _____, 2018.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2018, for consultant services for a maximum compensation of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.

[Signatures on Next Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

THE CITY OF MORGAN HILL

 City Clerk

Date: _____

 City Manager

Date: _____

APPROVED AS TO FORM:

MEYERS NAVE, PC

 City Attorney

Date: _____

 By:

Title: Gina Roccanova, Principal

Date: 11-28-18

 By:

Title: _____

Date: _____

126-09-18-084

EXHIBIT "1"**CONSULTANT AGREEMENT
MEYERS NAVE, PC**

THIS AGREEMENT is made this 14 day of JUNE, 2018, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and MEYERS NAVE, PC, a California professional corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on June 20, 2018.
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from June 21, 2018, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of the following: labor contract negotiations.
3. **Compliance with Outside Counsel Retention and Billing Policy.** CONSULTANT agrees that it will abide by the Outside Counsel Retention and Billing Policy attached hereto and incorporated herein as Exhibit "A."
4. **Compensation:** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** Compensation for all services, fees and expenses under this Agreement shall not exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00). Compensation shall be on an hourly billing rate, which rates are set forth in Exhibit "B," attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this agreement without prior written approval from the CITY. Services or work performed in excess of the total compensation set forth above shall be at no cost to CITY.
 - 4.2. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council

has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.

- 4.3. Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required, payment shall be based on hourly rates in Exhibit "B."
- 4.4. Records of Expenses. CONSULTANT shall keep accurate records of payroll, travel, and expenses. These records will be made available to CITY.
- 4.5. Termination. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

5. Insurance Requirements.

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

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

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

- 5.2. Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.
- 5.3. Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain a claims-made professional liability insurance in an amount of \$1,000,000 per claim.
- 5.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- 5.5. Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.
6. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
7. Non-Discrimination. CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
8. Independent Contractor. It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY. CONSULTANT shall be solely responsible for the performance of its employees, agents or subcontractors under this agreement.
9. Compliance with Law. CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
10. Ownership of Work Product. All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. Conflict of Interest and Reporting. CONSULTANT states that it does not represent clients with adverse interests to the CITY.
12. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process.

Address of CONSULTANT is as follows:

Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

Address of CITY is as follows:

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

13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
14. **Licenses, Permits and Fees.** CONSULTANT shall obtain all permits, and licenses as may be required by this Agreement.
15. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed, (2) it has the skills, knowledge and experience to perform this work competently and fulfill all professional and ethical obligation of attorneys at law in the State of California; and (3) it understands the difficulties, and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT without prior written consent of CITY.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
19. **Indemnification.** CONSULTANT agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether

any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

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

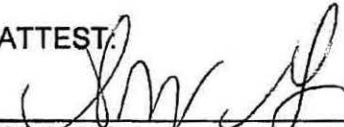
21. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

22. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

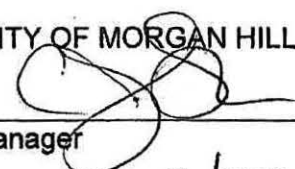
23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

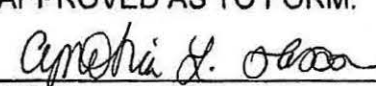
[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

ATTEST:

 Deputy City Clerk
 Date: 7/6/18

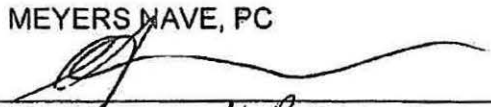
THE CITY OF MORGAN HILL


 City Manager
 Date: 6/23/18

APPROVED AS TO FORM:


 City Attorney
 Date: 6-22-18

MEYERS NAVE, PC


 By: GINA M. ROCANOVA
 Title: Attorney - Principal
 Date: 6/15/18

By: _____
 Title: _____
 Date: _____

**CITY OF MORGAN HILL
OUTSIDE COUNSEL BILLING AND RETENTION POLICY**

A. Retention

The role of retained counsel will be that of co-counsel with the retaining attorney. (City Attorney). All legal services provided will be pursuant to a written analysis (including strategy and budget) developed by retained counsel in cooperation with the retaining attorney, and approved by the retaining attorney before work on the specified project begins. Retained counsel will also:

1. Obtain authorization from the retaining attorney before beginning work on any pleading, discovery, motion, or other legal paper, and before securing the services of any expert;
2. Review the above with the retaining attorney prior to use;
3. Provide written status reports on the progress of the litigation to the retaining attorney on the progress of the project as necessary, logical, or requested, but no less frequently than every 60 days;
4. Provide summaries of each deposition taken to the retaining attorney;
5. Coordinate with the retaining attorney to use the legal and paralegal services of the City Attorney's office to keep costs down;
6. Maintain a complete file and provide a copy of all documents generated to the retaining attorney;
7. Make a continuous and diligent attempt to resolve any litigation at the lowest possible cost, with the least expensive professional effort consistent with quality legal representation. To this end, the City will be billed for the time of only one attorney at depositions, hearings, trial, and interoffice conferences. Services performed without prior approval of the retaining attorney are not authorized and may not be approved for payment.

From time to time the retaining attorney may direct a departure from the requirements listed above, or may disapprove certain efforts proposed by retained counsel, or may direct efforts with which retained counsel disagrees. The retaining attorney is responsible for these decisions and will consult with the client as appropriate about such matters.

B. Billing Requirements

Retained counsel's services must be itemized individually and billed monthly. Each monthly statement must include 1) the name and billing rate of each attorney and paralegal who worked on the matter; 2) the date each service was performed; 3) a brief description of each service performed; 4) the time spent by each attorney and paralegal on each service performed, to the nearest tenth of one hour; 5) itemized costs; and 6) subtotal of fees and costs billed for the month and total for the matter to date.

Retained counsel will be reimbursed customary costs. When authorized, telephone, photocopy, electronic research and expedited delivery charges may be billed at the actual net cost to retained counsel or a rate approved in advance by the retaining attorney. Charges for approved travel will be at coach rates and automobile mileage will be reimbursed at the City's current rate (reflects IRS).

Costs for the following items will not be reimbursed unless approved in advance by the retaining attorney:

- Electronic research (Lexis, Westlaw, etc.)
- Word processing and photocopying
- Secretarial time
- Secretarial and paralegal overtime
- Express mail and messenger delivery
- Travel time in excess of 3 hours per trip

Bills must be submitted to the attention of the retaining attorney, 17575 Peak Avenue, Morgan Hill, California, 95037, in the form discussed above.

C. Contract

Each retained counsel will be required to execute a consultant agreement in a form acceptable to the City.

Retained counsel may not bill in excess of the contracted amount without prior written approval from the City Attorney.

MEYERS NAVE
EXHIBIT "B" – HOURLY BILLINGS RATES

Gina Roccanova	\$425
Eddie Kreisberg	\$365
Jesse Lad	\$335
Yuki Cruse	\$290



APPROVED

MEYERNAV-01

ASURES

CE By Shadia Hrichi at 2:56 pm, Jun 20, 2018

DATE (MM/DD/YYYY)
06/20/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 Concord, CA - HUB International Insurance Services Inc. 2300 Clayton Rd. Concord, CA 94520		CONTACT NAME: PHONE (A/C, No, Ext): (925) 609-6500 FAX (A/C, No): (925) 609-6550 E-MAIL ADDRESS:	
INSURED Meyers Nave Riback Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Vigilant Insurance Company	
		INSURER B: Federal Insurance Company	
		INSURER C: Argonaut Insurance Company	
		INSURER D:	
		INSURER E:	
INSURER F:		NAIC #	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:	X	X	35904309	05/01/2018	05/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ Included
B	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			73557130	05/01/2018	05/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			79871939	05/01/2018	05/01/2019	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐ If yes, describe under DESCRIPTION OF OPERATIONS below		X	71726427	05/01/2018	05/01/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab			121 LPL 0000602-00	05/01/2018	05/01/2019	Deductible 100,000
C	Claims Made			121 LPL 0000602-00	05/01/2018	05/01/2019	Per Claim/Aggregate 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Legal services agreement done under contract.

City of Morgan Hill, its elected officials, officers, employees, agents and representatives, as additional insured including Primary wording applies to General Liability per attached 80022367-0507, Waiver of Subrogation applies per attached 80022362-0401. Waiver of Subrogation applies to Workers Compensation per attached WC990304-0708, all as required by written contract.

This certificate supersedes all others dated previously.

CERTIFICATE HOLDER

CANCELLATION

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Shadia Hrichi

CHUBB®**Liability Insurance****Endorsement**

Policy Period May 1, 2018 to May 1, 2019

Effective Date May 1, 2018

Policy Number 3590-43-09 WUC

Insured MEYERS NAVE RIBACK SILVER & WILSON A
PROFESSIONAL CORP

Name of Company VIGILANT INSURANCE COMPANY

Date Issued

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are insureds; but they are insureds only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an insured only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an insured;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an insured under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

CHUBB®

Liability Endorsement
(continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions**Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization**

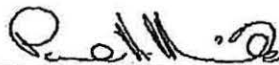
If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative





Liability Insurance

Endorsement

Policy Period May 1, 2018 to May 1, 2019
Effective Date May 1, 2018
Policy Number 3593-43-09 WUC
Insured MEYERS NAVE RIBACK SILVER & WILSON A
 PROFESSIONAL CORP.
Name of Company VIGILANT INSURANCE COMPANY
Date Issued

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Conditions, Transfer Or Waiver Of Rights Of Recovery Against Others, the following provision is added:

Conditions

Transfer Or Waiver Of Rights Of Recovery Against Others

However, we waive any right of recovery we may have against the designated person or organization shown below because of payments we make for injury or damage arising out of your ongoing operations or done under a contract with that person or organization and included in the products-completed operations hazard. This waiver applies to the designated person or organization.

Conditions

*Transfer Or Waiver Of
Rights Of Recovery
Against Others
(continued)*

Designated Person Or Organization

As required by written
contract/agreement.

All other terms and conditions remain unchanged.

Authorized Representative

P. M. Nave

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC 99 03 04 (Ed. 7-08)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT— CALIFORNIA

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on May 01, 2018 at 12:01 A. M. standard time, forms a part of
(DATE)

Policy No. 7172-64-27 of the FEDERAL INSURANCE COMPANY
(NAME OF INSURANCE COMPANY)

issued to MEYERS NAVE RIBACK SILVER AND WILSON
A PROFESSIONAL CORP.

Endorsement No. _____

Authorized Representative

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. The additional premium for the blanket waiver offered by this endorsement shall be 1.00 % of total California premium.

Schedule

Person or Organization

BLANKET WAIVER - ANY PERSON OR ORGANIZATION
FOR WHOM THE NAMED INSURED HAS AGREED BY
WRITTEN CONTRACT TO FURNISH THIS WAIVER

Job Description

ALL CALIFORNIA OPERATIONS

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2018-19 ADOPTED BUDGET TO APPROPRIATE \$50,000 FROM THE GENERAL FUND FOR LABOR NEGOTIATION SERVICES WITH MEYERS NAVE, THEREFORE

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

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve First Amendment To Agreement with Meyers Nave" submitted for City Council consideration at its meeting of December 5, 2018, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2018-19, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2018-19 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2018-19 Budget of the City.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Budget Resolution (2088 : Approval of First Amendment to Agreement Meyers Nave)

EXHIBIT A**AGENDA BUDGET SCORECARD**

FISCAL YEAR 2018-19

ADJUSTMENT #

020

FUND:

010

General Fund

DEPARTMENT:

2200

Human Resources

OBJECT:

42230

SPECIAL COUNSEL

AGENDA DATE:

12/05/18

AGENDA ITEM TITLE:

First Amendment with Meyers Nave for Labor Negotiations

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	324,750	572,571	(247,821)
RECOMMENDED ACTION	-	-	50,000	(50,000)
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,589,299</u>	<u>42,281,060</u>	<u>16,995,291</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

APPROVE FIRST AMENDMENT TO COMMUNITY CHRISTIAN LEASE AGREEMENT

RECOMMENDATION(S)

1. Approve First Amendment to the Lease Agreement with Community Christian for use of the El Toro Youth Center Building; and
2. Authorize the City Manager to execute and administer the First Amendment to the Lease Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

On February 7, 2018, the City Council authorized the lease of the El Toro Youth Center Building to Community Christian. As part of this lease, Community Christian was to provide space at the facility for the Alcoholics Anonymous and Narcotics Anonymous groups previously housed at the Friendly Inn. This lease agreement has worked successfully for the past eight (8) months and City staff believes the current arrangement will continue. On September 6, 2018, the City Council authorized City staff to explore the sale of the El Toro Youth Center Building (possibly to Community Christian) to fund the construction of a new non-profit center adjacent to the Community and Cultural Center.

During the eight-month period Community Christian has significantly renovated the building, which was in poor condition. Community Christian would like to continue the renovations, including major work to repair windows and window frames that have significant dry-rot damage. Community Christian is hesitant to make the repairs due to the short-term lease arrangement and the possibility that sale of the site to Community Christian may not be possible. The proposed amendment would allow for Community Christian to be repaid by the City for up to \$20,000 worth of rehabilitation work at the El Toro Youth Center Building should the City ask them to vacate in less than 10 years.

This agreement is viewed by City staff as a “win/win” scenario, in which the tenant is allowed to make significant repairs to a City facility, for the City, while ensuring their investment.

COMMUNITY ENGAGEMENT: Inform

This amendment was negotiated by City staff and the City’s tenant, Community Christian. This report serves to share the details of the amendment with the community.

ALTERNATIVE ACTIONS:

The City Council may choose to not approve the amendment and provide City staff with additional direction on use of the El Toro Youth Center.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 7, 2018, the City Council authorized the lease of the El Toro Youth Center Building to Community Christian.

On September 6, 2018, the City Council authorized City staff to explore the sale of the El Toro Youth Center Building (possibly to Community Christian) to fund the construction of a new non-profit center adjacent to the Community and Cultural Center.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact related to this action. Should the City request that Community Christian vacate the facility in the next ten years, an impact of up to \$20,000 to the General Fund is anticipated.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. First Amendment Community Christian - signed by CC
2. Exhibit B to First Amendment - Original Agreement

FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND COMMUNITY CHRISTIAN

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 FIRST BAPTIST CHURCH MORGAN HILL DOING BUSINESS AS COMMUNITY CHRISTIAN ("USER"), a California non-profit corporation.

RECITALS

The Parties intend that the following recitals are a substantive part of this FIRST AMENDMENT:

1. This FIRST AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on _____.
2. CITY and USER entered an Agreement for the lease of the El Toro Youth Center Building ("AGREEMENT"). The AGREEMENT is attached as Exhibit "B" to this FIRST AMENDMENT and incorporated herein by this reference.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

SECTION 1. Amendments: Pursuant to the provisions of Section 9 of the AGREEMENT, the Parties agree that all of the terms and conditions of the AGREEMENT attached hereto as Exhibit "B", 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 1.2 of the AGREEMENT, shall be amended to read in its entirety as follows:

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

1.2.1 Should the lease agreement be terminated prior to ten years from the Effective Date the City shall pay the User up to a maximum of \$20,000 for improvements made for by the User during the agreement term and specifically approved in Exhibit A, so long as the User has provided the City proof of payment for the improvements and improvements have been made in accordance with Section 2.6. This payment shall not be required should the agreement be terminated for sale of the Premises to the User.

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:

CITY OF MORGAN HILL:

Michelle Wilson, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

Donald Larkin, City Attorney

Date: _____

Christina Turner, City Manager

Date: _____

FIRST BAPTIST CHURCH MORGAN HILL
DBA COMMUNITY CHRISTIAN:

By: _____

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

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

Date: _____

Attachment: First Amendment Community Christian - signed by CC (2073 : Community Christian First Amendment)

Exhibit A

List of Approved Improvements

1. Replacement of windows, window frames, and wall areas associated with windows.
2. Floor coverings.
3. Structural repairs, including relocating/replacement of walls, improvements to ceilings and attic areas.
4. Other improvements specifically intended to support the capital improvements intended to last for over 10 years, approved in writing by the City's Public Services Director.

**LEASE AGREEMENT
BETWEEN THE CITY OF MORGAN HILL AND
COMMUNITY CHRISTIAN**

This LEASE AGREEMENT ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and First Baptist Church Morgan Hill doing business as Community Christian, a non-profit corporation ("User"), sets forth the respective roles of City and User in regard to use of City facilities and is made and entered into as of March 12, 2018 ("Effective Date"). Throughout this Agreement, City and User are referred to collectively as the "Parties" and individually as a "Party."

NOW, THEREFORE, for mutual consideration the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

1. TERM

The term of this Agreement is effective from the Effective Date to June 30, 2019 ("Termination Date"). The term of the Agreement may be extended for up to five years by mutual consent of the Parties, and City's City Manager is authorized to extend the term of this Agreement upon the same other terms and conditions contained herein on the Effective Date on behalf of City. User understands that City is contemplating the sale of the Premises, which may affect the renewal term.

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

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

1.1.2 If User or any assignee or sublessee thereof shall continue to occupy the Premises after the term of this Agreement has expired or is terminated in any manner and City has objected thereto, then City shall be entitled to reenter the Premises and enforce any other right available to it under the laws of California or the provisions of this Agreement.

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

2. PROPERTY USE

2.1. The Premises. The Parties hereto acknowledge that City is the owner of The El Toro Youth Center facility located at 17620 Crest Avenue, Morgan Hill, CA 95037 ("Premises"). City desires to

use the Premises as a non-profit service center ("Center"). The Premises are further described in Exhibit A.

2.2. El Toro Youth Center Policy. The parties hereto acknowledge that a 2018 Policy Statement of City's City Council regarding the use of the El Toro Youth Center Facility at the Premises states: "The purpose of the El Toro Building is to enhance the quality of community life. It is the City's intent to provide subsidized space at the facility for non-profit organizations that strive to meet an identifiable, social service, community need. The El Toro Youth Center Building is not intended to serve as a rental, event, or recreation center that directly competes with existing City services. The City Council anticipates partnering with organization(s) that recognize the value in leveraging resources to provide service to the Community. Partner organization(s) shall support providing community-wide services and manage the facility in a manner that helps to support the adjacent Crest Street area. The City Council recognizes the fact that the future need for and use of the facility may need to evolve over time and intends to formally review the facility's purpose and tenants every five years." (the goals set forth by the City Council Policy Statement are collectively referred to herein as, the "Policy".)

2.3. Permitted Use. City agrees to permit User to use the Premises to provide services to the community ("Program"), for the purposes, in the locations and manner, and subject to the terms and conditions described in this Agreement in fulfillment of the Policy. User shall not use or permit the Premises to be used for any other purpose without City's prior written consent, which consent may be granted or withheld in City's sole discretion.

2.3.1 It is further the intent of this lease to require the User to provide space to other tenants, as further described herein in this Agreement, who also provide services to the community (Subtenants). All subtenants must meet the eligibility criteria established in the El Toro Youth Center policy adopted by City's City Council in February 2018 to be considered for tenancy at the Premises. User managing and allowing non-profit uses for former Friendly Inn tenants is a specific consideration for the reduced rent provided for in this Agreement.

2.3.2 User shall accommodate use by other non-profits, including Alcoholics Anonymous (AA) and Narcotics Anonymous (NA).

User shall be allowed to charge NA and AA rent at a level equal to the current use fees paid by those organizations to the User.

- Rent for NA shall be \$280 per month.
- Rent for AA shall be \$300 per month.

2.3.2.1 AA and NA shall be provided at least the main conference room or an alternative space for the scheduled meetings currently occurring. Meeting schedule is attached as Attachment 1. Alternate locations to be approved by NA or AA. New meeting times or changes to meeting times to be approved by User.

2.3.2.2. AA and NA to be provided 50 square feet of locking storage space within the El Toro Youth Center.

2.3.2.3. User shall be allowed to sublease to other organizations with written approval from the City.

2.3.3 City shall be entitled to 20 use hours per year for meetings and programs at the facility during times not in use by User, NA or AA. City may utilize additional hours at established fees to be negotiated by the Parties.

2.3.4 User shall provide to City an annual report on operations. Report to include:

- Programs/activities offered
- Program costs for participation
- Financial assistance provided
- Demographic information including location of youth served (if possible)

2.3.5 Parking for the El Toro Youth Center is available at the adjacent Galvan Park public parking lot. Participants in programs offered out of the El Toro Youth Center shall be allowed to park in the parking lot, but will not have any priority over general members of the public utilizing the public parking.

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

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

2.6. Maintenance, Repairs, and Alterations. User shall, at its own cost, keep and maintain the interior and exterior of the Premises including, but not limited to, all fixtures, in good repair and lawful condition. Maintenance includes all exterior landscaping, all windows, the mechanical, plumbing, fire sprinklers, and electrical equipment serving the Premises, and the structure itself in reasonably good order and condition, excluding normal wear and tear, caused by User. Damage by User shall be repaired by User at User's expense. The standard of maintenance shall be equal to that of other City office buildings of a similar class in Morgan Hill. Proof of maintenance of systems must be submitted to the City quarterly, including but not limited to fire backflow, fire sprinklers, and fire alarm system.

2.6.1. City Inspections. A minimum of quarterly maintenance inspections of the Premises will be conducted by the City. User shall be responsible to address deficiencies outlined in the inspection reports in a timely manner. If after thirty (30) days written notice from City, User has failed to commence and diligently pursue completion of any and all maintenance, replacement, and repair which may be required to restore the Premises and any of its fixtures, equipment, and mechanical systems as a result of the neglect of or loss or damage caused by User or any of

its officers, employees, agents, invitees, or licensees or which otherwise results from User's use or occupancy of the Premises, then City shall have the right, but not the duty, to perform such maintenance, replacement, and repair at User's expense and User shall reimburse City for such costs promptly upon City's written demand. The performance of maintenance and repair by City shall, in no event, be construed as a waiver of User's duty to maintain and repair as herein provided. Unless City's written approval has been first obtained in each instance, User shall not alter the point of supply of any utilities in the Premises. User shall indemnify, defend, and hold harmless City against all actions, claims, and damages by reason of User's failure to comply with and perform the provisions of this section. Within one week of the effective date of this agreement an initial inspection shall be conducted of the premise and to identify the existing condition of the premises. Conditions outlined in the initial inspection shall not be noted as deficiencies in future inspection reports.

2.6.2 Alterations. User may make no alterations, additions or improvements to the Premises without prior written permission of City. Improvements must be approved by the City's Community Services Director. The Community Services Director shall respond to written requests for alterations, additions or improvements within 30 days. All required permit fees (Building Permits) are responsibility of User. User shall pay for all labor done and materials furnished in any repairs or any permitted alterations, additions, or improvements to the Premises. Upon User's completion of any improvements within the Premises, User shall furnish to City a set of reproducible, final "as built" drawings of any and all such alterations, additions, or improvements. User waives the right to make repairs at the expense of City or, in lieu thereof, to vacate the Premises, and waives the benefit of the provisions of Paragraph 1941 and 1942 of the California Civil Code or any successor statute thereto and any other similar law now or hereafter in effect.

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

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

2.6.5 User's Property. Any and all property belonging to or brought onto the Premises by User or any of its officers, employees, agents, invitees, or licensees shall be at the sole risk of User. User is hereby advised and understands that the personal property of User, and any of its tenants, is not insured by the City for either damage or loss, and the City assumes no liability for such loss. Subject to City's right of approval, User may place and install trade fixtures and other personal property in the Premises for use in connection with its operations hereunder and the same shall be and remain the property of User. User shall, however, be responsible for the cost of repairing any damage to the Premises or any other improvements of City which are caused by the removal of any such trade fixtures and personal property. Notwithstanding the foregoing, however, if User shall at any time be in default hereunder, then City shall have the benefit of

any statutory liens on User's property located in the Premises which are available to City under the laws of the State of California and User shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Agreement have been cured.

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

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

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

2.9. End of Term. At the end of the term or upon the earlier termination of this Agreement, User shall deliver to City possession of the Premises and all of the fixtures and equipment of City in their original condition in all respects, reasonable use and wear excepted. User agrees to reimburse City for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition provided, however, in the event User has caused any alterations, additions, or improvements to be made to the Premises, including, but not limited, to the addition, relocation, or removal of partitions and doorways (which such alterations or improvements shall be made at User's cost and only with the prior express written approval of City in each instance), City may elect, with respect to each such alteration, addition, or improvement, to accept it as it was at the time it was made or constructed, reasonable use and wear excepted, or to require the same to be restored to its original condition at User's expense.

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

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

2.12. City's Reserved Rights

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

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

2.13. Destruction of Premises. In the event the Premises are partially destroyed from any cause, City shall have the right to repair the Premises without providing any alternative space for User. If the repairs cannot be made within one hundred eighty (180) days, this Agreement may be terminated at the option of either Party by written notice given to the other Party. In the event the Premises suffer the destruction of more than twenty-five percent (25%) of the replacement cost or in the event insurance proceeds are not sufficient to cover at least ninety percent (90%) of the cost of repairs, City may elect to terminate this Agreement. City shall not be obligated to replace any of the User's personal property which may be damaged or destroyed.

3. FEES AND CHARGES

3.1. Rent. As consideration for User's use of Premises pursuant to the terms and conditions of this Agreement, User agrees to pay to City one hundred dollars (\$100.00) per month on the Effective Date and on the first of the month thereafter during such time as this Agreement continues to remain in effect.

3.2 Building Service Charges. User shall pay all Building Service Charges. "Building Service Charges" shall include charges and fees for utility charges (electricity, water and sewer), trash

collection, if any, property insurance premiums for the Premises, personal property taxes, reception services, operation of community rooms, and cost of on-site personnel employed by the User, if any, to implement maintenance or services. User shall be responsible for obtaining and paying for any other utilities (including, without limitation, telephone, cable, wireless internet service) as is necessary for User's use of the Premises.

4. INSURANCE REQUIREMENTS. User 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 User, including liability for damage or injury to the property or person (including death) of any User or invitee of User or any other person entering upon or using the Premises, or any structure thereon, or any part thereof, and arising from User's use and occupancy thereof, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. User further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to User, at any time as deemed necessary to protect the interests of City.

4.1. Insurance Types and Amounts.

4.1.1. Commercial General Liability (CGL). User shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five hundred thousand dollars (\$500,000.00) for property damage, or (ii) the maximum amount of such insurance available to User under User's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

4.1.2. Automobile Liability. User shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if User does not own automobiles, then User shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five hundred thousand dollars (\$500,000.00) for property damage, or (ii) the maximum amount of such insurance available to User under User's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

4.1.4. Other Liability Insurance. If the User's activity outlined in Section 2.3 (Permitted Use) involves contact with minors, User 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 User under User combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

4.2.1. General Liability.

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

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

4.2.1.3. insurance shall be primary non-contributing.

4.2.2. Workers Compensation.

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

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

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

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

5. INDEMNIFICATION

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

expiration or earlier termination of the term of this Agreement with respect to any acts or omissions occurring during the term of this Agreement.

6. ACCESS DISCLOSURE

The Premises have not undergone an inspection by a Certified Access Specialist (CASP), and a disability access inspection certificate, as described in subdivision (e) of Section 55.53 of the California Civil Code, has not been issued for the Premises. In accordance with Section 1938 of the California Civil Code, Tenant is advised of the following: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Accordingly, the parties hereby agree that Tenant shall have the right, but not the obligation, to have a CASp inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. If it is determined that the Premises do not meet all applicable construction-related accessibility standards, then Tenant shall promptly make, as soon as reasonably possible, but subject to Section 10 hereof, any repairs necessary to correct violations of construction-related accessibility standards identified by such inspection, at Tenant's sole cost and expense.

7. DEFAULT

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

8. WAIVER

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

9. AMENDMENTS

Amendments to this Agreement may be made by written mutual agreement between the Parties.

10. ASSIGNMENT AND SUBLETTING

Except as otherwise provided herein, User may not assign this Agreement or any of the rights granted to it hereunder or sublet the Premises or any portion thereof without the prior written consent of the City. Subtenants must meet the eligibility criteria established in the Policy to be considered for tenancy at the El Toro Youth Center.

11. SUCCESSORS AND ASSIGNS.

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

12. DOCUMENT REVIEW

User will, upon reasonable advance written notice from City, make books and other documents relating to the Program available for inspection to City.

13. NOTICES

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

For City: City Manager
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037

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

For User: Community Christian
 305 W. Main Avenue
 Morgan Hill, CA 95037

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

14. SEVERABILITY

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

15. JURISDICTION; GOVERNING LAW

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

16. ENTIRE AGREEMENT

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

17. COUNTERPARTS

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

18. SIGNATURES

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

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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.

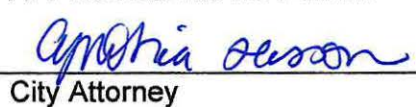
ATTEST:


 City Clerk/Deputy City Clerk

mr Michelle Wilson
 Print Name

Date: 3/13/18

APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin
 Print Name

Date: 3-5-18

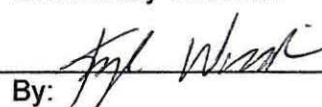
CITY OF MORGAN HILL


 City Manager

Christina Turner
 Print Name

Date: 3/12/18

Community Christian

By: 

Kyle Winder Senior Pastor
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: 2/12/18

By: 

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

Date: 2/12/18

Attachment: Exhibit B to First Amendment - Original Agreement (2073 : Community Christian First Amendment)

Exhibit A**Premises**

Premises are located at 17666 Crest Avenue, Morgan Hill, California 95037

Attachment 1 – Alcoholics Anonymous and Narcotics Anonymous Weekly Meeting Schedule

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7:30am AA	7am AA	7am AA	7am AA	7am AA	7am AA	
11am AA	12:30pm AA	12:30pm AA	12:30pm AA	12:30pm AA	12:30pm AA	12:30pm AA
6pm NA	5:30pm AA		5:30pm AA			
7:30PM AA	7pm NA	6pm AA	7pm NA	6:30pm NA	6pm AA	6pm NA
		8pm NA		8pm AA	7:30pm NA	8pm AA

20 AA meetings per week + 1 meeting second Sunday of every month

7 NA meetings per week + 1 meeting second Monday of every month and 1 meeting first Sunday of every month



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: John Lang, Economic Development Coordinator
APPROVED BY: City Manager

APPROVE IMPACT FEE FREEZE AGREEMENT WITH TBI-MISSION WEST II, LLC FOR THE DEVELOPMENT OF A MANUFACTURING BUILDING IN THE MADRONE BUSINESS PARK, PARCEL IDENTIFIED AS APN 726-35-029

RECOMMENDATION(S)

1. Approve an Impact Fee Freeze Agreement for the development of a 31,100 manufacturing building on 2.4 acres on Madrone Parkway identified by Assessor Parcel Number 726-35-029; and
2. Authorize the City Manager to execute and administer the Impact Fee Freeze Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

TBI-Mission West II, LLC (Toeniskoetter Development) has been exploring with Economic Development Team several prospective developments within the Madrone Business Park. Toeniskoetter owns five (5) vacant industrial/commercial parcels within the Madrone Business Park as well as manages 4 developed properties within Morgan Hill. Toeniskoetter Development has submitted applications for three prospective development projects.

A. Speculative Manufacturing Building APN 726-35-029

Toeniskoetter Development is proposing to build a 31,100 square foot speculative manufacturing building on a 2.44-acre lot located at the corner of Madrone Parkway and Butterfield Boulevard. This is the second speculative industrial building Morgan Hill has seen in the last six years. The most recent project located in the Mast/Vineyard industrial area, entered the market in early 2018 and is now fully leased. The proposed building will have clear heights of 18 feet with clearspan (no internal columns) resulting in an open space layout, providing the greatest flexibility for a future tenant. This project has received site review approval from the City and is processing building permits. Construction is expected to begin in the Spring of 2019.

B. Training Center Building APN 726-35-028

Toeniskoetter Development is working with tenant, Carpenter's Training Committee of Northern California, to build a new 50,000-square foot training facility on a 4.92-acre lot located on Madrone Parkway, immediately adjacent to NXEdge. The Carpenter's Training Committee currently occupies 35,000 square feet of office on Woodview Avenue. The Carpenter's Training Committee provides education and hands-on training and is looking to expand into a bigger space to accommodate increased demand. A new building allows them to relocate their existing operations while providing capacity for growth. The Carpenter's Training Committee has filed an application for a Conditional Use Permit to occupy this site which is scheduled to be heard by Planning Commission in late December, or early January. The Carpenter's Training Committee has been in discussions with the City for nearly a year about expanding their operations in South County. They have explored other options in Santa Clara County and wish to keep their existing operations in Morgan Hill.

C. Hotels at Madrone Plaza APN 726-33-029

Toeniskoetter Development is working with a hotel operator to build two hotels on a 5-acre parcel located on Madrone Parkway and Woodview Avenue (2nd phase of Madrone Plaza). Toeniskoetter Development recently submitted a Zoning Amendment to modify the existing PUD to allow the development of the two proposed hotels. Toeniskoetter is currently working through site review as part of the Zoning Amendment scheduled to be heard by Planning Commission on December 11, 2018. The two hotels proposed would have 98 and 127 rooms, respectfully.

Staff is recommending the City Council approve an Impact Fee Freeze Agreement to lock development impact fees for the construction of the 31,100-square foot industrial building. It is anticipated staff will bring forward Impact Fee Freeze Agreements for the other two projects as identified above in January 2019.

The Fee Freeze Program approved by Council in 2017 envisioned a 3-year window to incentivize immediate development, freezing fees for three years if the developer: 1) secured an Impact Fee Freeze Agreement, 2) secured entitlements; and, 3) submitted for building permits within the three-year window. While it is anticipated that the proposed industrial project will meet these criteria, including complete building permit submittals, it may not receive building permits until after July 1, 2020. For that reason, the proposed Fee Freeze Agreement extends the time to obtain building permits through Fiscal Year 2020-21.

The proposed building has completed site review and is in review for Building permits. The Impact Fee Freeze Agreement will utilize the Fiscal Year (FY) 2016-17 development impact fee schedule through FY 2020-21. The developer will have until June 30, 2021 to apply for, and receive building permits, to benefit from the impact fee freeze agreement. The estimated development impact fees for FY 2016-17 are \$245,878.

Once built and operational, it is estimated this project will generate a conservative \$2,600 annually in direct on-going property tax and sales tax revenue to the City's General Fund. Additionally, staff estimates the City will receive a one-time construction benefit, in the form of property (construction value) and sales tax, of about \$10,500. Should the developer apply for building permits before July 2019 (very likely), the one-time construction benefit will almost cover the negative impact of \$11,000. At the extreme, if the Developer does not pull building permits until June 2020, the benefit to the developer is \$19,000, which will be partially offset by the one-time construction benefit.

Benefit vs. First Year Revenue

Year		2019	2020
Impact Fee Schedule	2016-17	2018-19	2019-20
Impact Fee Estimate	\$246,000	\$257,000	\$265,000*
Potential Savings to Development		\$11,000	\$19,000

*Estimated

COMMUNITY ENGAGEMENT: Inform

Approving a Fee Freeze Agreement with Toeniskoetter Development Inc. 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 not to enter into an Impact Fee Freeze Agreement with Toeniskoetter Development, Inc.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 21, 2017 City Council approved a Citywide Impact Fee Freeze Program establishing 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 a Fee Freeze Agreement from a Development Agreement.

To date, the City Council has approved three Impact Fee Freeze Agreements for the following projects; Evergreen Development Company, Bridge Group Investments, LLC (Shoe Palace) and Morgan Hill Real Estate, LLC (Morgan Hill Dodge).

FISCAL AND RESOURCE IMPACT:

The potential loss of impact fee revenue to the City from approving this Impact Fee Freeze Agreement is expected to range between \$11,000 and \$19,000. The City is expected to receive a one-time construction benefit, in the form of sales and property tax of about \$10,500. Once fully built out and operational, the City will receive an ongoing benefit of approximately \$2,600 in direct property tax and sales tax to the City 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. Fee Freeze Agreement

IMPACT FEE FREEZE AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

TBI-MISSION WEST II, LLC

Attachment: Fee Freeze Agreement (1799 : Agreement with TBI-Mission West II, LLC)

IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND

TBI-MISSION WEST II, LLC

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of _____, 2018, by TBI-MISSION WEST II, LLC, a California Limited Liability Company (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, also known as Parcel E in the Madrone Business Park with the street address of 18695 Madrone Parkway, (the "Subject Property") upon which improvements are to be made for a new or expanding industrial or commercial business (the "Project").

C. On December 5, 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.

Attachment: Fee Freeze Agreement (1799 : Agreement with TBI-Mission West II, LLC)

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 2.44 acres located within the City, as more particularly described and shown on *Exhibit A* to this Agreement, and also defined as the Subject Property in the Recitals hereto.

(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, 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.

(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, 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; however, the payment, if any, of the Storm Drain Impact Fee and Storm Drain Frontage Charge shall be determined by separate agreement between the Parties.

(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, 2021 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.

4.05 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.

(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, 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 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:

<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>	TBI-Mission West II, LLC c/o Toeniskoetter Development, Inc. 1960 the Alameda, Suite 20 San Jose, CA 95126 Attn: Brad W. Krouskup, President & CEO Tel: (408) 260-3481

(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; however, the payment, if any, of the Storm Drain Impact Fee and Storm Drain Frontage Charge shall be determined by separate agreement between 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.

(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:

s/ _____

DEVELOPER:

TBI-Mission West II, LLC

*by: TBI-MWPI a California
limited partnership*

*s/ Teniz Ketter Development Inc.
its General Partner*

by: [Signature]

*Brad W. Krouskop
President/CEO*

Christina J. Turner
City Manager

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

s/ _____

Attest:

s/ _____

Name/Title [print]

Date: _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney
Date: _____

Attachment: Fee Freeze Agreement (1799 : Agreement with TBI-Mission West II, 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, described as follows:

PARCEL A:

PARCEL 1, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED NOVEMBER 19, 2015 IN BOOK 888 OF MAPS, PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR PRIVATE STORM DRAINAGE PURPOSES (P.S.D.E.) IN, OVER AND UPON THE "REMAINDER PARCEL", AS DESIGNATED AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED OCTOBER 4, 2000 IN BOOK 732 OF MAPS, PAGES 30, 31, 32 AND 33, SANTA CLARA COUNTY RECORDS.

PARCEL C:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS, APPURTENANT TO PARCEL A ABOVE, OVER THAT PORTION OF PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED NOVEMBER 19, 2015 IN BOOK 888 OF MAPS, PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS SHOWN AS "RECIPROCAL INGRESS/EGRESS EASEMENT" ON SAID PARCEL MAP.

Attachment: Fee Freeze Agreement (1799 : Agreement with TBI-Mission West II, LLC)

EXHIBIT B

2016-2017 Impact Fee Schedule



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

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

FEE SCHEDULE: 07.01.2016

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 _____
TRACT / APN _____		MAILING ADDRESS _____
ADDRESS / LOT _____		CITY, STATE, ZIP CODE _____
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

CALCULATED BY _____

CHECKED BY _____

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

Attachment: Fee Freeze Agreement (1799 : Agreement with TBI-Mission West II, LLC)

WATER FEES:**1. METER DEPOSIT: 650-37672**
(Authority: Res. #5558 approved 03.19.03, Updated 07.01.16)

1"	\$468	x		=
1 1/2"	\$1,434	x		=
2"	\$1,619	x		=
3" or larger	Time & Material + Meter Cost			=

METER CREDITS

\$ x =

SUBTOTAL =

2. BACKFLOW CONST. INSPECTION: 650-37659
(Authority: Res. #5558 approved 03.19.03, Updated 07.01.16)

\$ x Each =

3. WATER FRONTAGE CHARGE: 650-37653
(Authority: Res. #5558 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	LF	=
2 Sides	\$37	x	LF	=

4. WATER IMPACT FEE: 651-37648
(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential				
\$3,624 /DU	x	DU	=	
(Single Family)				
\$3,269 /DU	x	DU	=	
(Multi Family)				

b) Commercial & Industrial				
(Includes Landscape Service)				
\$10,288 /AC	x	AC	=	

WATER CREDITS

\$ x =

SUBTOTAL =

WATER FEE TOTALS =

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	=
11.8%	\$100,001	to	\$200,000	=
10.3%	\$200,001	to	\$500,000	=
8.8%	OVER		\$500,000	=

ENGINEERING FEE

DEPOSIT PAID

ENGINEERING FEE TOTAL =

5A. LONG RANGE PLANNING FEE: 207-37912

LONG RANGE PLANNING FEE (15% of E&I) =

SEWER FEES:**6. SEWER FRONTAGE CHARGE: 640-37653**
(Authority: Res. #5558 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	LF	=
2 Sides	\$37	/LF	x	LF	=

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	DU	=	
(Single Family)				
\$12,004 /DU	x	DU	=	
(Multi Family)				

b) Commercial & Industrial				
\$48.56 /GPD	x	GPD	=	
\$48.56 /GPD	x	GPD	=	

SEWER CREDITS

\$ x =

RDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	DU	=	
(Single Family)				
\$12,004 /DU	x	DU	=	
(Multi Family)				
\$48.56 /GPD	x	GPD	=	
(Commercial & Industrial)				

SUBTOTAL =

SEWER FEE TOTALS =

STORM DRAIN FEES:**8. STORM DRAIN FRONTAGE CHARGE: 304-37663**
(Authority: Res. #5558 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	LF	=
2 Sides	\$53	/LF	x	LF	=

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	DU	=	
(Single Family)				
\$2,001 /DU	x	DU	=	
(Multi Family)				

\$41,897 /ACRE	x	AC	=	
(Commercial & Office)				
\$30,505 /ACRE	x	AC	=	
(Industrial)				

STORM CREDITS

\$ x =

SUBTOTAL =

STORM DRAIN FEE TOTALS =

10. UNDERGROUNDING UTILITIES: 350-37649

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$681	x	_____	LF	=	_____
2 Sides	\$343	x	_____	LF	=	_____

11a. PARK IMPACT FEE: 301-37649

(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$5,378 /DU	x	_____	DU	=	_____
(Single Family - Sub)					
\$3,910 /DU	x	_____	DU	=	_____
(Single Family - No Sub)					
\$5,181 /DU	x	_____	DU	=	_____
(Multi Family - Sub)					
\$3,771 /DU	x	_____	DU	=	_____
(Multi Family - No Sub)					

11b. PARK MAINTENANCE DEV. FEE: 302-37649

\$	x	_____	EACH	=	_____
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PARK CREDITS

_____	x	_____	=	_____
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PARK FEE TOTAL = _____**12. TRAFFIC IMPACT FEE: 309-37648**

(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16)

\$1,863 /DU	x	_____	DU	=	_____
(Single Family)					
\$1,155 /DU	x	_____	DU	=	_____
(Multi Family)					
\$1,863 /PHT	x	_____	PHT	=	_____
(Commercial)					
\$1,863 /PHT	x	_____	PHT	=	_____
(Industrial)					

TRAFFIC CREDITS

\$	x	_____	=	_____
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TRAFFIC FEE TOTAL = _____**13. LIBRARY IMPACT FEE: 348-37648**

(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$1,974 /DU	x	_____	DU	=	_____
(Single Family)					
\$1,902 /DU	x	_____	DU	=	_____
(Multi Family)					

LIBRARY CREDITS

\$	x	_____	=	_____
----	---	-------	---	-------

LIBRARY FEE TOTAL = _____**14. BURROWING OWL MITIGATION: 232-38145**

(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)

\$200 /DU	_____	DU	=	_____
(Residential)				
\$1,395 /AC	_____	AC	=	_____
(Commercial/Industrial)				

15a. MAP CHECK FEE: 206-38716

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

PARCEL MAP:	\$3,805	=	_____
TRACT MAP:	\$5,667	=	_____

16. POLICE IMPACT FEE: 311-37648

(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$767 /DU	x	_____	DU	=	_____
(Single Family)					
\$741 /DU	x	_____	DU	=	_____
(Multi Family)					
\$1,666 /ACRE	x	_____	AC	=	_____
(Commercial)					
\$2,333 /ACRE	x	_____	AC	=	_____
(Industrial)					

POLICE CREDITS

\$	x	_____	=	_____
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POLICE FEE TOTAL = _____**17. FIRE IMPACT FEE: 313-37648**

(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)

\$118 /DU	x	_____	DU	=	_____
(Single Family)					
\$112 /DU	x	_____	DU	=	_____
(Multi Family)					
\$1,550 /ACRE	x	_____	AC	=	_____
(Commercial)					
\$1,550 /ACRE	x	_____	AC	=	_____
(Industrial)					

FIRE CREDITS

\$	x	_____	=	_____
----	---	-------	---	-------

FIRE FEE TOTAL = _____**18. PUBLIC FACILITIES IMPACT FEE: 347-37848**

(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$512 /DU	x	_____	DU	=	_____
(Single Family)					
\$493 /DU	x	_____	DU	=	_____
(Multi Family)					
\$1,128 /ACRE	x	_____	AC	=	_____
(Commercial)					
\$1,579 /ACRE	x	_____	AC	=	_____
(Industrial)					

PUBLIC FACILITIES CREDITS

\$	x	_____	=	_____
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PUBLIC FACILITIES FEE TOTAL = _____**20. COUNTY/REC CTRS IMPACT FEE: 360-37648**

(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)

\$3,663 /DU	x	_____	DU	=	_____
(Single Family)					
\$3,213 /DU	x	_____	DU	=	_____
(Multi Family)					

PUBLIC FACILITIES CREDITS

\$	x	_____	=	_____
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PUBLIC FACILITIES FEE TOTAL = _____



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

ADOPT RESOLUTION INITIATING 2019 HAZARDOUS VEGETATION PROGRAM

RECOMMENDATION(S)

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 6, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

Under Government Code section 39561, cities may adopt a resolution declaring weeds and dry brush to be a public nuisance and order their abatement.

Weed and brush abatement services constitute the City's hazardous vegetation program and are key to reducing fire risk and protecting public safety. The City of Morgan Hill has contracted with Santa Clara County for weed and brush abatement services since 1996. In the last several years, City and County staff have successfully worked together to streamline program administration and improve communications with Morgan Hill property owners. The County's Consumer and Environmental Protection Agency - Weed Abatement Program manages the program.

As in prior years, staff has combined the initial resolution (attached) for both the weed and brush abatement programs. Staff proposes that the abatement program commencement hearing take place on February 6, 2019. Once the resolution is adopted, County staff will notify the affected property owners of the February 6th public hearing and of their obligations to abate hazardous vegetation before the deadline. In response to the City's past request for more notification to the property owners, the County will also be mailing a courtesy notice out to affected property owners in the early Spring to further remind them of their obligations.

The City's Fire Department and the County's Weed Abatement Division are continuing to integrate their efforts and communication methods to enhance customer service. The improvements instituted have eliminated customer complaints about receiving conflicting information from the two programs.

COMMUNITY ENGAGEMENT: Empower

The hazardous vegetation abatement program relies on a full range of community engagement approaches. Much of it begins when the County Program or City Fire Department informs a property owner that a hazardous situation has been observed on their property. The owner is given several months during which he or she may consult and work together with program staff to understand the situation and the needed remedies. Ultimately, each property owner is invited and empowered to remedy the situation themselves in order to minimize their program charges while maintaining public safety. In addition, many of the properties on the original list get onto the list as a result of a complaint from a community member about a hazardous situation.

ALTERNATIVE ACTIONS:

The Council could choose to not act or delay action on this resolution. Not declaring weeds and brush to be a nuisance would potentially compromise community fire safety. Delaying action would ultimately provide the affected property owners with less notice and time to plan for abating their hazardous vegetation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While this will be the first Council action addressing hazardous vegetation for the 2019 fire season, the recommended approach is consistent with the actions taken by the Council for over a decade.

FISCAL AND RESOURCE IMPACT:

The Hazardous Vegetation Program is designed to be user fee supported. The per-lot assessment includes costs for doing the weed and brush control work plus overhead county costs to administer the program. Based on the recent amendment to the City's agreement with the County, the City may need to ultimately contribute to the program's costs if user fee revenues do not completely cover all of the County's costs. Administering this program is an activity anticipated in the Community Services and Fire Departments' work programs and budgets.

CEQA (California Environmental Quality Act):

Categorical Exemption

These activities are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304(i) (Minor Alterations to Land – Fuel Management Activities).

LINKS/ATTACHMENTS:

1. Initial Resolution

RESOLUTION NO. 18-XXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN THE CITY OF MORGAN HILL TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC HEARING THEREON**

WHEREAS, the City Council finds that certain weeds and brush are growing in the City of Morgan Hill upon the various streets, alleys, sidewalks, and upon private property, which said weeds and brush bear seeds of a wingy or downy nature, or may attain such growth as to become, when dry, a fire menace, or which are otherwise noxious and dangerous; and

WHEREAS, the City Council further finds and declares that said weeds and brush constitute a public nuisance.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill authorizes as follows:

1. That the weeds, as described in the above recital, constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8, Chapter 8.20 of the Morgan Hill Municipal Code.
2. That the nuisance exists upon all streets, alleys, sidewalks, and private property within said City as shown, described and delineated on the several maps of the property in the City, which are recorded in the Office of the County Recorder of the County of Santa Clara, reference in each instance for the description of any particular street, alley, or private property being hereby made to the several maps mentioned, and in the event of there being several subdivision maps on which lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Wednesday, the 6th day of February 2019, at 7:00 p.m., in the Council Chambers of the City Council of the City of Morgan Hill is hereby fixed as the time and place when objections to the proposed destruction of removal of weeds shall be heard and be given due consideration.
4. That the City Clerk of the City of Morgan Hill is hereby ordered and directed to cause notice of the adoption of this Resolution and notice of hearing to be given to property owners pursuant to Section 39562.1 of the Government Code.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Initial Resolution (2067 : 2019 Hazardous Vegetation Program)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

APPROVE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT ON FOUNTAIN OAKS RANCH

RECOMMENDATION(S)

1. Authorize the City Manager to negotiate and execute an agreement with Fountain Oaks Ranch, LLC for the purchase of an agricultural conservation easement for up to \$3.0 million on approximately 33 acres of land consisting of the entire historical parcels 155, 168, and 169 on APN 817-21-011 subject to the review and approval of the City Attorney; and
2. Authorize the City Manager to execute all additional forms and agreements relating to the preservation of the agricultural lands including the transfer of the agricultural conservation easement to another agency, land trust, or other qualified entity.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to approve the purchase of an approximately 33-acre agricultural conservation easement (ACE) on the Fountain Oaks Ranch for \$3.0 million.

On November 5, 2014, the City Council adopted an Agricultural Lands Preservation Program (Program) as a component of the City's actions addressing the Southeast Quadrant (SEQ). While the related land use annexation in the SEQ was denied by the Santa Clara Local Agency Formation Commission, the Agricultural Program (Program) remains active and a high priority for the City. Preserving agricultural uses is specifically called out as one of the "Big Ideas" in the City's new General Plan and is supported by numerous policies in the General Plan.

A key implementation activity in the Program involves securing ACEs on private properties through dedication, purchase, or donation. Once recorded, an ACE essentially eliminates future development or subdivision of the subject property, which ensures that the land will remain available for agricultural activities. The Program specifies that the City's efforts to secure ACEs should be focused within the SEQ itself.

For the past two years, the City has been collaborating with staff from Santa Clara County (County) and the Santa Clara Valley Open Space Authority (Authority) on the development of a large 68-acre ACE on the Fountain Oaks Ranch property, which is owned by the Chiala Family. The City has funded the title report and appraisal for the property. The County, with the assistance of the City's agricultural preservation consultant and staff from the Authority, prepared a grant application that was submitted to the State High Speed Rail Authority (HSR) last May. The HSR tentatively awarded the grant for the easement purchase pending the resolution of some concerns relating to the appraisal and some relatively minor formalities. As originally envisioned, the City and the Authority would provide half of the ACE purchase costs with the HSR grant providing the other half. Unfortunately, despite the best efforts of the County, the Authority, and the City's Team, the State's concerns about the high cost of the ACE have resulted in the grant funds being unavailable.

Given the length of time that the City and the landowners have been working on this project, the unavailability of the State grant does not need to be the end of the partnership between the City and the landowners. The landowners have identified three parcels, as indicated on the attached map and which together include nearly 50% of the original easement lands, that are available for a separate ACE that the City could purchase alone within the existing City Council-approved negotiation parameters for the project. While the City would have received 29 acres of mitigation credits in the original collaborative purchase plan, the City will receive 33 acres with this separate purchase if it is approved by the Council. The attached draft agreement describes the general terms of the transaction and will be subject to additional minor negotiation.

If the purchase is approved and finalized, the City will subsequently work with the Authority, the Land Trust, or other entities to arrange for the long-term stewardship of the land under the ACE.

COMMUNITY ENGAGEMENT: Collaborate

The concept of preserving agricultural land in and around the City is itself an outgrowth of input and discussion held with the community. The purchase of this ACE is only possible because the City, the land owner, and other organizations collaborated to secure the ACE.

ALTERNATIVE ACTIONS:

The Council could decline to approve the purchase or direct staff to proceed in numerous alternative ways.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The concept of purchasing ACEs was a key provision of the City's Agricultural Lands Preservation Program which was approved by the Council on November 5, 2014. The purchase of this particular ACE has been worked on for several years and has been approved by the Council on three prior occasions. The support of the grant submission to the HSR and negotiation parameters were approved by the Council on May 17, 2017. The prior collaborative purchase received its final approval from the Council on April 18,

2018. Negotiation parameters for the City's separate purchase of this smaller ACE were reviewed and approved on October 3, 2018.

FISCAL AND RESOURCE IMPACT:

The City's direct contribution to the purchase of the ACE is \$3.0 million with up to \$200,000 in additional escrow-related fees expected. Funds for this investment come from Fund 306, the City's Agriculture and Open Space Preservation Fund (Fund). The primary revenue source for this Fund is voluntary contributions from developers made through the Residential Development Control System. Additional revenues contributed to the Fund come from mitigation fees required for development that converts agricultural lands. This purchase was planned for and included in the Agricultural Preservation Project in the City's Capital Improvement Program.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities authorized by this report are categorically exempt under the provisions of the California Environmental Quality Act Guidelines as specified in Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) Subsection (b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.

LINKS/ATTACHMENTS:

1. DRAFT December 2018 Fountain Oaks PSA
2. FountainOaks_EasementArea

PURCHASE AGREEMENT

This Agreement for the sale and purchase of an Agricultural Conservation Easement ("Easement") is made and entered into by and between Fountain Oaks Ranch, LLC ("Seller") and the City of Morgan Hill ("City"). Seller and City are hereinafter collectively referred to as the "Parties" or individually as "Party".

RECITALS

WHEREAS, Seller is the owner of certain real property, which has open space and agricultural value, located within an unincorporated area of the County of Santa Clara, and being more particularly described within the body of this Agreement; and

WHEREAS, Purchase of the Easement will serve as mitigation for development within current municipal boundaries; and

WHEREAS, Seller wishes to sell and convey an Easement and City wishes to purchase and hold the Easement subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. Purchase and Sale. Seller agrees to sell to City, and City agrees to purchase from Seller an Easement over Seller's real property located within an unincorporated area of the County of Santa Clara, State of California, described as Santa Clara County as a portion of Assessor's Parcel Numbers 817-~~2721~~-011 containing approximately 33.62 acres, more or less ("Property"), and further described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference. The Purchase and Sale is contingent on Seller's subordination of any existing options, leases, and liens affecting the Property to the satisfaction of the City.

2. Purchase Price. Seller agrees to sell the Easement to City in consideration for a price of Three Million Dollars

INITIAL: Seller _____

(\$3,000,000) ("Purchase Price"):

A. After full execution of this Agreement by Parties, City will deposit the sum of Ten Thousand No/100 Dollars (\$10,000), which shall be held in escrow and be credited towards the Purchase Price upon "Closing" as defined in Section 3A herein.

B. The balance of two million nine hundred ninety thousand Dollars (\$2,990,000), less any additional funds that were deposited into escrow, shall be paid in cash at "Closing" as defined in Section 3A herein.

3. Escrow. Promptly upon execution of this Agreement by City, in accordance with Section 12 herein, an escrow shall be opened at Chicago Title Company, 675 North First Street, Suite 100, San Jose, CA 95112, telephone number (408) 292-4212, or other title company acceptable to Parties ("Escrow Holder"), through which the purchase and sale of the Easement shall be consummated. A fully executed copy of this Agreement shall be deposited with Escrow Holder to serve as escrow instructions to Escrow Holder; provided that the Parties shall execute such additional supplementary or customary escrow instructions as Escrow Holder may reasonably require. This Agreement may be amended or supplemented by additional joint escrow instructions signed by both the Seller and City, but the printed portion of such escrow instructions shall not supersede any inconsistent provisions contained herein. Escrow Holder is hereby appointed and instructed to deliver, pursuant to the terms of this Agreement, the documents and monies to be deposited into the escrow as herein provided, with the following terms and conditions to apply to said escrow:

A. The time provided for in the escrow for the close thereof shall be on or before December 31, 2018. However, the Parties may, by written mutual agreement, extend the time for Closing. The term "Closing" as used herein shall be deemed to be the date when Escrow Holder causes the Grant Deed (as defined below) to be recorded in the Office of the County Recorder of Santa Clara County.

B. Parties shall, during the escrow period, execute any and all documents and perform any and all acts reasonably necessary or appropriate to consummate the purchase and sale pursuant to the terms of this Agreement.

INITIAL: Seller _____

C. Seller shall deposit into the escrow on or before the Closing an executed and recordable Grant Deed granting the Easement to City.

D. The following shall also be deposited into the escrow, on or before the Closing as follows:

(i) Readily available funds in the amount of the balance of the Purchase Price specified in Section 2 of this Agreement.

(ii) The City will deposit the required Certificate of Acceptance for the Easement, duly executed by City and to be dated as of the Closing.

(iii) Parties shall deposit into escrow on or before the closing an executed and recordable Notice of Transfer Fee.

E. The Seller shall pay the escrow fees and the CLTA Standard Policy of Title Insurance. City is exempt from recording fees pursuant to Gov. Code 6103, 27383 and exempt from transfer tax pursuant to Revenue and Taxation Code 11922. However, if any recording fees or transfer taxes are imposed by Santa Clara County on the purchase and sale of the Easement, Seller shall pay such recording fees and transfer taxes. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between City and Seller in the manner customary in Santa Clara County.

F. City shall cause Chicago Title Company, or other title company acceptable to Parties, to be prepared and committed to deliver to City a Pro Forma and a CLTA Standard Policy of Title Insurance, dated as of the Closing, insuring City and the Department as an additional insured for the Purchase Price for the Easement showing the Agricultural Conservation Easement conveyed to City, subject only to title exceptions XX the Preliminary Title Report issued by Chicago Title Company, dated March 8, 2018.

G. Escrow Holder shall, when all required funds and instruments have been deposited into the escrow by the appropriate Parties and when all other conditions to Closing have been fulfilled, cause the Grant Deed and the attendant Certificate of Acceptance to be recorded in the Office of the

INITIAL: Seller _____

County Recorder of Santa Clara County. Upon the Closing, Escrow Holder shall cause to be delivered to City the original of the CLTA Standard Policy of Title Insurance required herein, and to Seller the Escrow Holder's check for \$3,000,000 and to the Parties, as the case may be, all other documents or instruments which are to be delivered to them. In the event the escrow terminates as provided herein, Escrow Holder shall return all monies, documents or other things of value deposited in the escrow to the party depositing the same.

4. Rights and Liabilities of the Parties in the Event of Breach. In the event this Agreement is breached, the non-breaching party shall be excused from any further obligations hereunder. Each party expressly reserves any other rights and remedies which it may have against any other party by reason of a wrongful termination or failure to close escrow, including, but not limited to, specific performance and damages.

5. Leases or Occupancy of Premises. Seller warrants that at the time of closing there will exist no oral or written leases or rental agreements affecting all or any portion of the Property except for [list leases].

6. Seller's Representations and Warranties. For the purpose of consummating the sale and purchase of the Property in accordance herewith, Seller makes the following representations and warranties to Parties, which shall survive close of escrow, each of which is material and is being relied upon by Parties in executing this Agreement.

A. Warranty of Authorization. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so and has the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder.

B. Valid and Binding Agreements. This Agreement and all other documents delivered by Seller to Parties now or at the Closing have been or will be duly authorized and executed and delivered by Seller and are legal, valid and binding obligations of Seller sufficient to convey to City the Easement described herein, and are enforceable in accordance with their respective terms and do not violate any provisions of any agreement to which Seller is a party or by which Seller may be bound or any articles, bylaws or corporate

INITIAL: Seller _____

resolutions of Seller, if any.

C. Good Title. Seller has, and at the Closing date shall have good, marketable and indefeasible fee simple title to the Property and the interests therein to be conveyed to City hereunder, free and clear of all liens and encumbrances of any type whatsoever and free and clear of any recorded or unrecorded option rights or purchase rights or any other right, title or interest held by any third party except for the following exceptions permitted under the express terms hereof: [SET FORTH RIGHTS/INTERESTS INCLUDING VERIZON LEASE] and Seller shall forever indemnify and defend City from and against any claims made by any third party which are based upon any inaccuracy in the foregoing representations.

D. Seller's Studies and Leases. Seller shall deliver to Purchaser, within five (5) days of the full execution of this Agreement, copies of all governmental reports and notices, environmental reports, soils tests, building plans, surveys, engineering reports, leases and any other documents relating to the property in Sellers' possession or under Seller's control.

7. City's Representations and Warranties. City's City Manager is authorized by City to agree, at her discretion, to an extension of time for the performance of any obligations on the part of City pursuant to this Agreement. The City Manager is also authorized to take any actions and execute any documents necessary or appropriate to closing escrow and completing this conveyance.

8. Integrity of Property. Except as otherwise provided herein by express written permission granted by City, or to the extent the activities are consistent with continued agricultural use, Seller shall not, between the time of Seller's execution hereof and the close of escrow, cause or allow any physical changes on the Property. Such changes shall include but not be limited to grading, excavating or other earthmoving activities, cutting or removing trees, shrubs, brush or other vegetation, and damaging or demolition of improvements or structures on the Property.

9. Hazardous Waste or Substances. "Hazardous waste or substances" as used herein means and includes polychlorinated biphenyls (PCB's), benzene, asbestos, petroleum and its derivatives, or any other substance which the placement,

INITIAL: Seller _____

storage, use or removal of is prohibited or regulated by federal, state or local law.

(a) Seller warrants and represents that:

(i) During Seller's ownership of the Property, Seller has not placed or stored or allowed to be placed or stored any hazardous waste or substances on the Property.

(ii) Seller has no knowledge of the presence on the Property of any hazardous waste or substances.

(b) If hazardous waste or substances are subsequently found to exist on the Property, City may exercise its right to bring an action if necessary to recover cleanup costs from Seller and/or any person(s) potentially responsible for the hazardous waste or substances on the Property.

10. Access for Investigations. From the date Seller delivers an executed copy of this Purchase Agreement to all Parties and until Closing, City and City's agents, lenders, contractors, engineers, consultants, employees, subcontractors and other representatives (the "City's Parties") may enter upon the Property for the purpose of inspecting, testing and evaluating the same; provided, however, that City may not perform any work on the Property without Seller's prior written consent from Seller's representative, which has been designated by Seller as Bill Chiala, and such consent shall not be unreasonably withheld or delayed. City shall indemnify, protect, defend and hold Seller free and harmless from and against any and all claims, actions, causes of action, suits, proceedings, costs, expenses (including, without limitation, reasonable attorney's fees and costs), liabilities, damages, and liens caused by the activities of City while upon the Property prior to the Closing; provided, however, the foregoing indemnity shall not cover or include any claims, damages or liens resulting from City's discovery of any hazardous waste or substances or other pre-existing adverse conditions pursuant to its inspections, testing or evaluation. City's inspections shall be at City's sole expense. City shall repair any damage to the Property that may be caused by City while on the Property performing its inspection.

A. Property Condition a Contingency of Agreement

INITIAL: Seller _____

City's acceptance of the condition of the Property is a contingency of this Agreement, and as specified above, City has the right of inspection of the Property. City may terminate this Agreement based on a condition of the Property that is unacceptable to City. Prior to the close of escrow City must notify Seller in writing of any condition of the Property that is unacceptable to City and that City will terminate this Agreement based on said condition. If City provides notice of termination as specified above, escrow shall also terminate. In the event that no notice is given to Seller within the timeframe specified in this paragraph, this contingency is removed.

B. Baseline Report City shall undertake to prepare the Baseline Documentation Report with Seller's reasonable cooperation and review. The Baseline Documentation Report shall be prepared by the City and is required to establish the condition of the Property at the time of the conveyance of the Easement and will become part of the basis upon which the City will monitor compliance with the restrictions and reserved rights of the Easement in perpetuity and may consist of the following: U.S. Geological Survey Maps showing the property lines and other contiguous or nearby protected areas; a scaled map of the area showing all existing man-made improvements, including roads, and fences and any applicable building envelopes, vegetation and identification of flora and fauna, land use history and distinct natural features; aerial photo(s) of the Property, and on-site photographs keyed to specific locations on the Property. On or before Closing, Seller and City shall sign a statement acknowledging that the Baseline Documentation Report accurately represents the condition of the Property at the time of the conveyance of the Easement. If the objections cannot be resolved, Seller or the City may terminate this Agreement.

11. Choice of Law. The internal laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Parties.

12. Attorneys' Fees. If any party hereto incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by reason of any default or alleged default of the other party hereunder, the party prevailing in such action or proceeding shall be entitled to recover from the other party reasonable expenses

INITIAL: Seller _____

and attorneys' fees in the amount determined by the Court, whether or not such action or proceeding goes to final judgment. In the event of a settlement or final judgment in which no party is awarded all of the relief prayed for, the prevailing party as determined by the Court shall be entitled to recover from the other party reasonable expenses and attorneys' fees.

13. Amendment and Waiver. The Parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may in writing: (i) extend the time for the performance of any of the obligations of the other party; (ii) waive any inaccuracies in representations and warranties made by the other party contained in this Agreement or in any documents delivered pursuant hereto; (iii) waive compliance by the other party with any of the covenants contained in this Agreement or the performance of any obligations of the other party; or (iv) waive the fulfillment of any condition of the other party that is precedent to the performance by such party of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing.

14. Rights Cumulative. Each and all of the various rights, powers and remedies of the Parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which the Parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

15. Notices. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Agreement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or if delivered by Federal Express or other private messenger, courier or other delivery service or sent by facsimile transmission or other similar electronic medium, addressed as indicated as follows:

If to Seller, to: Bill Chiala
Fountain Oaks Ranch, LLC

INITIAL: Seller _____

2880 Tennant Ave
Morgan Hill, CA 95037

If to City, to: Christina Turner, City Manager
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037
Telephone: (408) 779-7271

If sent by facsimile copy or other similar electronic medium, a confirmed copy of such facsimile electronic communication shall promptly be sent by mail (in the manner provided above) to the addressee. Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirement of written notice as provided in this Agreement.

16. Severability. If any of the provisions of this Agreement are held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the Parties, the Parties agree that such determination shall not result in the nullity or unenforceability of the remaining portions of this Agreement. The Parties further agree to replace such void or unenforceable provisions which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

17. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed as an original, and when executed, separately or together, shall constitute a single original instrument, effective in the same manner as if the Parties had executed one and the same instrument.

18. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be

INITIAL: Seller _____

construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

19. Entire Agreement. This Agreement is intended by the Parties to be the final expression of their agreement; it embodies the entire agreement and understanding between the Parties hereto; it constitutes a complete and exclusive statement of the terms and conditions thereof, and it supersedes any and all prior correspondence, conversations, negotiations, agreements or understandings relating to the same subject matter.

20. Time of Essence. Time is of the essence of each provision of this Agreement in which time is an element.

21. Survival of Covenants. All covenants of City or Seller which are expressly intended hereunder to be performed in whole or in part after the Closing, and all representations and warranties by either party to the other, shall survive the Closing and be binding upon and inure to the benefit of the respective Parties hereto and their respective heirs, successors and permitted assigns.

22. Assignment. Except as expressly permitted herein, no party to this Agreement shall assign its rights or obligations under this Agreement to any third party without the prior written approval of the other party.

23. Further Documents and Acts. Each of the Parties hereto agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this Agreement.

24. Binding on Successors and Assigns. This Agreement and all of its terms, conditions and covenants are intended to be fully effective and binding, to the extent permitted by law, on the successors, heirs and permitted assigns of the Parties hereto.

25. Broker's Commission. City shall not be responsible for any real estate commission or other related costs or fees in this transaction. Seller agrees to and does hereby indemnify and hold City harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or

INITIAL: Seller _____

finder, licensed or otherwise, claiming through, under or by reason of the conduct of Seller in connection with this transaction.

26. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, or as evidence of the intention of the Parties hereto.

27. Pronoun References. In this Agreement, if it be appropriate, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.

28. Acceptance. Provided that this Agreement is accepted by City, this transaction shall close as soon as practicable in accordance with the terms and conditions set forth herein.

[signature page follows]

INITIAL: Seller _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers to be effective as of the date this Agreement is fully executed in accordance with the terms hereof.

FOUNTAIN OAKS RANCH, LLC.

By: _____ Date: _____
[Title]

CITY OF MORGAN HILL

By: Christina Turner Date: _____
City Manager

Approved as to form:

By: Donald Larkin Date: _____
City Attorney

INITIAL: Seller _____

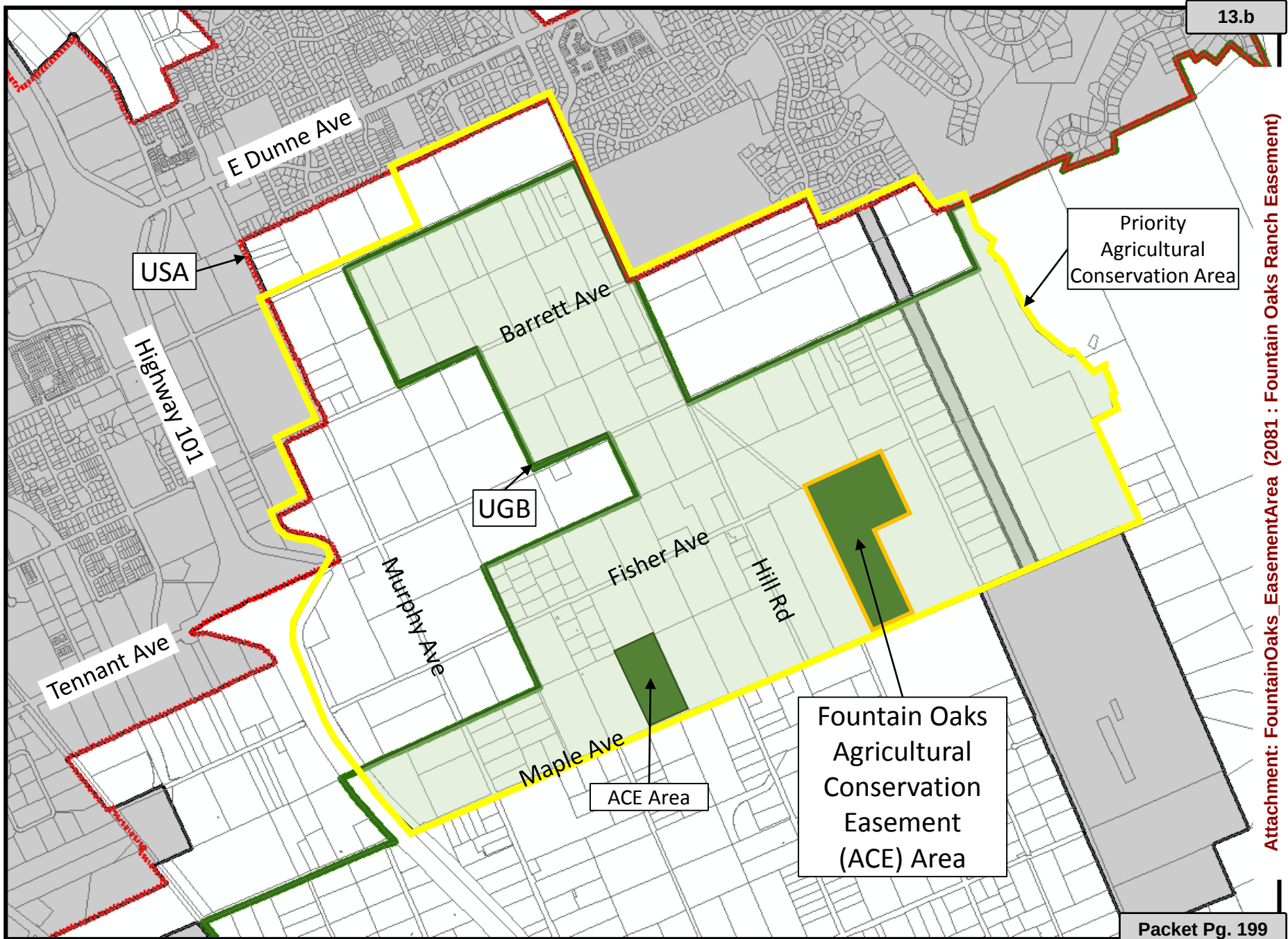
Exhibit A: Legal Description

To be provided later

DRAFT

Attachment: DRAFT December 2018 Fountain Oaks PSA (2081 : Fountain Oaks Ranch Easement)

INITIAL: Seller _____





CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE AND FILE THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

RECOMMENDATION(S)

Receive and file the report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The Local Agency Special Tax and Bond Accountability Act ("The Act") requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of proceeds.

The Act was enacted by Senate Bill 165 and codified in the California Government Code Sections 53410 through 53412. The City's Community Facilities District (CFD) No. 2014-1 (Fisher Creek) falls within these reporting requirements and the attached annual report is intended to comply with the regulation.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the required reporting information for the CFD.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the SB 165 Report for CFD No. 2014-1 (Fisher Creek) annually.

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. FY17-18 SB165

SENATE BILL 165

Senate Bill 165, filed with the Secretary of State on September 19, 2000, enacted the Local Agency Special Tax and Bond Accountability Act. This Act requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of the proceeds. The Act only applies to any local special tax measure or local bond measure adopted on or after January 1, 2001 in accordance with Section 50075.1 or Section 53410 of the California Government Code.

Some of the requirements of the Act are handled at the formation of the Special Tax District and others are handled through annual reports. This Section of this report intends to comply with Section 50075.3 or Section 53411 of the California Government Code that states:

“The chief fiscal officer of the issuing local agency shall file a report with its governing body no later than January 1, 2002, and at least once a year thereafter. The annual report shall contain all of the following:

- (a) The amount of funds collected and expended.
- (b) The status of any project required or authorized to be funded as identified in subdivision (a) of Section 50075.1 or Section 53410.”

The requirements of the Act apply to the Funds for the following District:

City of Morgan Hill
Community Facilities District No. 2014-1 (Fisher Creek)
Formed September 17, 2014

Purpose of Special Tax

The District was formed to fund all or a portion of the costs of the maintenance and monitoring required by the San Francisco Bay Regional Water Quality Control Board for the realignment of Fisher Creek. The special tax funds the cost of maintenance, monitoring and reporting of the Fisher Creek Realignment project; pay for administrative expenses; pay for any amounts required to establish or replenish capital improvement funds, repair and contingency funds or reserve funds; and pay for reasonable anticipated delinquent special taxes.

Collections & Expenditures

Fund	7/1/2017 Balance	Total Amount Collected ⁽¹⁾	6/30/2018 Balance ⁽²⁾	Amount Expended ⁽³⁾	Service Status
Special Tax Fund	\$60,575.00	\$43,423.00	\$82,638.00	\$21,360.00	Ongoing

(1) Figure represents the total amount levied for Fiscal Year 2017/18, less County Collection Fees of 1.0% of the total levy amount and delinquencies.

(2) Includes interest earned.

(3) As reported by the City.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Monica Delgado, Budget Manager
APPROVED BY: NA

APPROVE FISCAL YEAR 2017-18 RECOMMENDED YEAR END BUDGET AMENDMENTS

RECOMMENDATION(S)

Adopt resolution amending the Fiscal Year 2017-18 adopted budget to appropriate a total of \$314,317, in various funds, as detailed in Exhibit A to the resolution.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications
Financial Stewardship
Infrastructure
Regional Initiatives
Telecommunications

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Public Safety Master Plan
Sewer System Master Plan
Station Area Master Plan
Vision Zero
Water System Master Plan

REPORT NARRATIVE:

At the end of each fiscal year, staff requests that the City Council appropriate additional funds for final budget amendments. In most cases, these final budget amendments are also included in the following year's adopted budget, as a year end projection, thus fund balance is not affected.

Staff recommends that the City Council adopt the attached resolution thereby increasing the fiscal year 2017-18 amended appropriations by \$314,317 as detailed in Exhibit A to the resolution.

COMMUNITY ENGAGEMENT:

Not applicable.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the FY 2017-18 Operating and FY 2016-22 Capital Improvement Program budgets on June 15, 2016.

FISCAL AND RESOURCE IMPACT:

Staff recommends that the City Council adopt the attached resolution thereby increasing the fiscal year 2017-18 amended appropriations by \$314,317, as detailed in Exhibit A to the resolution.

CEQA (California Environmental Quality Act):

Not a Project

LINKS/ATTACHMENTS:

1. Resolution Year End Budget Amendments FY 2017-18

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING YEAR-END AMENDMENTS TO THE CITY'S FISCAL YEAR 2017-18 ADOPTED BUDGET TO APPROPRIATE \$314,317 FROM VARIOUS FUNDS, THEREFORE

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

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

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

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

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

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

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

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

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 7th day of November 2018 by the following vote:

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

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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

FY 2017-18 Year-End Budget Adjustments

Fund			Additional Appropriation Requested	Description of Overage
205		Supplemental Law Enforcement	\$ 6,000	Overage due to true-up of fund balance
215/216		Community Development Block Grant	\$ 79,391	\$38,725 of bad debt write-off which the Court approved on June 6, 2018 and \$40,666 in over allocation of expenditures for Construction of Galvan Handball Court Project.
232		Environmental Programs	\$ 21,795	Burrowing Owl Fees collected by City and paid to Habitat Agency, per agreement.
Total Special Revenue Funds			\$ 107,186	
770		Workers' Compensation	\$ 106,188	Higher than anticipated premium and claims damages.
791		Employee Benefits Fund	\$ 100,943	Higher than anticipated leave payouts.
Total Internal Service Funds			\$ 207,131	
Total All Funds			\$ 314,317	



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2017-18

RECOMMENDATION(S)

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Government Code Section 66000 et seq. requires that any city imposing development impact fees must report certain information each year. In accordance with this requirement, staff is presenting the Annual Development Impact Fee Report, Attachment No. 2, for the fiscal year ending June 30, 2018. The report includes a fee description, a schedule of impact fees for the reporting period as approved by City Council, and a report of the 2017-18 revenues and expenditures for each impact fee, along with the balance available for current and future projects. A description of the project that resources were used for is also included for each impact fee.

Section 66001(d) requires that for the fifth fiscal year following the collection of development fees, and every five years thereafter, the local agency shall make findings with respect to any portion of the fee collected remaining unexpended, whether committed or uncommitted. Staff identified \$2,609,574 from Storm Drain Impact Fee (Fund 303); and \$3,390,175 from Fire Impact Fee (Fund 313) in unexpended fees that were collected over five years ago. These unexpended fees have been or will be appropriated into existing and future capital improvement projects:

- 1) Storm Drain Impact Fee to fund drainage improvements identified in the City's Storm Drainage System Master Plan that feed into the Upper Llagas Creek Flood Protection Project and the West Little Llagas Creek watershed. A total of \$5,864,000 from Storm Drain Impact Fees has been allocated to this project (417099) in the adopted Fiscal Year 2018/19-2023/24 Capital Improvement Program (CIP).

- 2) Fire Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. A total of \$4,297,000 from Fire Impact Fees has been allocated to this project (231018) in the adopted Fiscal Year 2018/19-2023/24 Capital Improvement Program (CIP).

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares this annual report in an effort to keep City Officials, Council, Community, and stakeholders informed on the financial status of each impact fee, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an annual report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The annual impact fee report is presented to Council each year for the prior fiscal year ending June 30.

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. Resolution
2. FY2017-18 - Impact Fee Report

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING FINDINGS FOR UNEXPENDED DEVELOPMENT IMPACT FEES IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 66001 AND ACCEPTING THE ANNUAL DEVELOPMENT IMPACT FEE REPORT

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 et seq., authorizes the City of Morgan Hill ("City") to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and;

WHEREAS, among the procedural requirements mandated by the Mitigation Fee Act is a requirement that beginning with the fifth fiscal year following deposit of development fees into a designated account, and each fifth fiscal year thereafter, the City make specified findings regarding any portion of the fees that remain unexpended; and

WHEREAS, a portion of the fees currently deposited in the City's Storm Drain Impact Fee Fund and Fire Impact Fee Fund were collected over five (5) years ago, and therefore the City wishes to make the findings required by Government Code Section 66001(d); and

WHEREAS, the City also wishes to review and accept reports required by the Mitigation Fee Act under the annual information disclosure requirements of Government Code Section 66006(b), including but not limited to the amount of the fee, the beginning and ending balance of the fee account or fund, and the interest earned thereon.

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

1. The City Council has considered the full record before it, which may include, but is not limited to, the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that the Storm Drain Impact Fee Fund currently contains Two Million Six Hundred Nine Thousand Five Hundred Seventy Four Dollars (\$2,609,574), and Fire Impact Fee Fund currently contains Three Million Three Hundred Ninety Thousand One Hundred Seventy Five Dollars (\$3,390,175) in unexpended fees that were collected over five (5) years ago.
3. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:
 - a. The Unexpended Fees will be used to provide for the following projects:

- (A) Storm Drain Impact Fee to fund Llagas Flood Control Project to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. The project would provide flood protection and mitigate the increased risk of flooding when the ULCFPP is completed;
 - (B) Fire Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. The project will address the need for a new fire station as the community grows.
- b. There exists a reasonable relationship between the Unexpended Fees and the purpose for which they were charged as described above.
 - c. The current estimated costs that have been appropriated or will be appropriated for the Llagas Flood Control Project is approximately Five Million Eight Hundred Sixty Four Thousand Dollars (\$5,864,000); and Fire Station on Butterfield Boulevard is approximately Four Million Two Hundred Ninety Seven Thousand Dollars (\$4,297,000). The City's funding sources will include the Unexpended Fees described above and future impact fees to be collected for these projects.
 - d. The Unexpended Fees have been deposited in the respective Impact Fee Funds, which are the appropriate funds to finance the projects described above.
- 4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

**City of Morgan Hill
AB 1600 Development Impact Fee Report
Fiscal Year 2017-18**

Impact Fee Fund Descriptions

Park Impact – This fund receives revenues from developers of properties and the fund may only be used for the design, development, maintenance, and construction of new parks within the City.

Storm Drain – This fund receives revenues from developers of properties to cover the costs of design and construction of new storm drain that benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Traffic Impact – This fund receives revenues from developers when their projects have an adverse impact on traffic flows, etc. The funds collected may be expended on new streets, traffic signals and improvements of existing streets where they are impacted by new development.

Police Impact – Revenues are collected to finance the expansion of police facilities necessary to benefit, and to provide police services to new customers residing within the City of Morgan Hill as a result of growth in population.

Fire Impact – Revenues are collected to finance the expansion of fire facilities necessary to benefit, and to provide fire services to new customers residing within the City of Morgan Hill as a result of growth in population.

Community/Recreation Center Impact – Revenues are collected to finance the expansion of existing and construction of new recreation and community center facilities demanded by new development.

Public Facilities – Revenues are collected to finance the expansion of public facilities necessary to benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Library Impact – Revenues are collected to finance the provision of future library space and materials necessary to benefit, and necessary to provide library services to, new residents residing in the City of Morgan Hill as a result of population growth.

Sewer Impact – Revenues are collected to finance the expansion of wastewater facilities necessary to benefit, and necessary to provide wastewater services to new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

Water Impact – Revenues are collected to finance the expansion of water facilities necessary to benefit, and necessary to provide water services to, new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

City of Morgan Hill
Impact Fee Schedule Summary
Fiscal Year 2017-18

Description of Fee	Unit of Measure	Amount
Water Impact Fee	Single Family Dwelling Unit	3,770.00
	Multi Family Dwelling Unit	3,401.00
	Commercial/Industrial/Office per acre	10,701.00
Sewer Impact Fee	Single Family Dwelling Unit	14,753.00
	Multi Family Dwelling Unit	12,486.00
	Commercial/Industrial/Office per GPD	50.51
Storm Drain Impact Fee	Single Family Dwelling Unit	4,002.00
	Multi Family Dwelling Unit	2,081.00
	Commercial/Office per acre	43,581.00
	Industrial per acre	31,730.00
	Auto Dealership per acre	54,477.00
	Hotel per room	1,326.00
Park Impact Fee	Single Family Dwelling Unit-Sub	5,594.00
	Single Family Dwelling Unit-No Sub	4,067.00
	Multi Family Dwelling Unit-Sub	5,390.00
	Multi Family Dwelling Unit-No Sub	3,923.00
Traffic Impact Fee	Single Family Dwelling Unit	1,938.00
	Multi Family Dwelling Unit	1,202.00
	Commercial/Industrial/Office per PHT	1,938.00
Library Impact Fee	Single Family Dwelling Unit	2,054.00
	Multi Family Dwelling Unit	1,979.00
Police Impact Fee	Single Family Dwelling Unit	798.00
	Multi Family Dwelling Unit	771.00
	Commercial per acre	1,733.00
	Office per acre	2,072.00
	Industrial per acre	2,427.00
	Auto Dealership per acre	690.00
Fire Impact Fee	Hotel per room	20.00
	Single Family Dwelling Unit	123.00
	Multi Family Dwelling Unit	117.00
	Commercial/ Industrial per acre	1,612.00
	Office per acre	1,954.00
	Auto Dealership per acre	528.00
Public Facilities	Hotel per room	5.00
	Single Family Dwelling Unit	533.00
	Multi Family Dwelling Unit	513.00
	Commercial per acre	1,173.00
	Office per acre	1,394.00
	Industrial per acre	1,642.00
	Auto Dealership per acre	470.00
	Hotel per room	13.00

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 301 - PARKS IMPACT FEE	Project Number	FY 17-18 AB 1600		
<u>Revenue</u>				
Interest		\$ 62,610		
Development Impact Fees		2,122,998		
Project Reimbursement/Others		100,033		
Total Revenue		<u>\$ 2,285,641</u>		
			% from this	Total Project
			Fund	Expenditures
<u>Revenue Expended For</u>				
Parks Land	110097	\$ 32,325	100.00%	32,325
Downtown Parks	135013	3,523,255	90.23%	3,904,810
Inclusive Playground	137015	200,078	100.00%	200,078
Galvan Park New Handball Court	141A16	379,083	70.74%	535,866
Community Garden	142017	11,469	100.00%	11,469
Tree Planting/Urban Forest Mgmt	143017	10,823	100.00%	10,823
Butterfield Blvd Connector Path Project	148017	12,506	100.00%	12,506
Bike Lane and Other		45,010	100.00%	45,010
General Plan Update		7,704	7.00%	110,000
RCSD Services		75,000	100.00%	75,000
Banking and Merchant Service Fees		3,078	100.00%	3,078
Taxes		12,676	100.00%	12,676
Impact Fee Study		6,137	11.11%	55,237
Administration		29,580	2.24%	1,323,077
Total Expenditures		<u>\$ 4,348,724</u>		
Revenue Less Expenditures		<u>\$(2,063,083)</u>		
Balance as of July 1, 2017		<u>4,850,439</u>		
Balance as of June 30, 2018		<u><u>\$ 2,787,356</u></u>		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 303 - STORM DRAIN IMPACT FEE	Project Number	FY 17-18 AB 1600		
<u>Revenue</u>				
Interest		\$ 148,834		
Development Impact Fees		1,893,553		
Total Revenue		<u>\$ 2,042,387</u>		
			% from this Fund	Total Project Expenditures
<u>Revenue Expended For</u>				
Impact Fee Study	6,138		11.11%	55,237
General Plan Update	7,704		7.00%	110,000
Banking and Merchant Service Fees	183		100.00%	183
Administration	4,128		0.31%	1,323,077
Total Expenditures		<u>\$ 18,153</u>		
Revenue Less Expenditures		\$ 2,024,234		
Balance as of July 1, 2017		<u>8,381,670</u>		
Balance as of June 30, 2018		<u><u>\$10,405,904</u></u>		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 309 - TRAFFIC IMPACT FEE	Project Number	FY 17-18 AB 1600		
REVENUE				
Interest		\$ 59,016		
Traffic Impact Fees		838,926		
Project Reimbursement/Others				
TOTAL REVENUE		\$ 897,942		
Revenue Expended For			% from this Fund	Total Project Expenditures
Hale Avenue Plan Line	501f14	\$ 8,445	100.00%	8,445
Hale Avenue Extension	546007	1,889,786	100.00%	1,889,786
New Signal Construction - 4th/Monterey	561012	12,189	100.00%	12,189
DeWitt Ave "S" Curve Realignment	562012	6,499	33.51%	19,392
Intersection Capacity Analysis	575015	38,277	100.00%	38,277
General Plan Update		31,896	29.00%	110,000
Impact Fee Study		6,138	11.11%	55,237
Banking and Merchant Service Fees		1,183	100.00%	1,183
Administration		5,148	0.39%	1,323,077
Total Expenditures		\$ 1,999,561		
Revenue Less Expenditures		\$ (1,101,619)		
Balance as of July 1, 2017		4,539,601		
Balance as of June 30, 2018		\$ 3,437,982		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 311 - POLICE IMPACT FEE **FY 17-18**
AB 1600

REVENUE

Interest	\$ 554
Police Impact Fees	275,778
TOTAL REVENUE	<u>\$ 276,332</u>

Revenue Expended For

		% from this	Total Project
		Fund	Expenditures
Police Facility Bond Debt service	\$ 227,542	50.04%	454,688
Impact Fee Study	6,138	11.11%	55,237
Banking and Merchant Service Fees	455	100.00%	455
Administration	936	0.07%	1,323,077
Total Expenditures	<u>\$ 235,071</u>		

Revenue Less Expenditures **\$ 41,261**

Balance as of July 1, 2017 (778,193)

Balance as of June 30, 2018 **\$ (736,932)**

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 313 - FIRE IMPACT FEE	Project #	FY 17-18 AB 1600		
<u>REVENUE</u>				
Interest		\$ 56,986		
Fire Impact Fees		44,579		
TOTAL REVENUE		\$ 101,565		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Impact Fee Study		\$ 6,138	11.11%	55,237
Banking and Merchant Service Fees		70	100.00%	70
Administration		1,320	0.10%	1,323,077
Total Expenditures		\$ 7,528		
Revenue Less Expenditures		\$ 94,037		
Balance as of July 1, 2017		3,812,916		
Balance as of June 30, 2018		\$ 3,906,953		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 347 - PUBLIC FACILITIES IMPACT FEE	Project Number	FY 17-18 AB 1600		
REVENUE				
Interest/Other		\$ 6,690		
Public Facilities Impact Fees		178,015		
TOTAL REVENUE		\$ 184,705		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Impact Fee Study		\$ 6,138	11.11%	55,237
Banking and Merchant Service Fees		304	100.00%	304
Administration		972	0.07%	1,323,077
Total Expenditures		\$ 7,414		
Revenue Less Expenditures		\$ 177,291		
Balance as of July 1, 2017		343,009		
Balance as of June 30, 2018		\$ 520,300		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 348 - LIBRARY IMPACT FEE	Project Number	FY 17-18 AB 1600		
REVENUE				
Interest		\$ 34,150		
Library Impact Fees		602,311		
Library Lease		132,011		
TOTAL REVENUE		\$ 768,472		
Revenue Expended For			% from this Fund	Total Project Expenditures
Library Expansion	251015	\$ 280,294	100.00%	280,294
Civic Center Debt Service		211,368	62.63%	337,502
Impact Fee Study		6,138	11.11%	55,237
Banking and Merchant Service Fees		1,279	100.00%	1,279
Administration		1,488	0.11%	1,323,077
Total Expenditures		\$ 500,567		
Revenue Less Expenditures		\$ 267,905		
Balance as of July 1, 2017		2,103,639		
Balance as of June 30, 2018		\$ 2,371,544		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 360 - COMMUNITY/REC CENTERS IMPACT FEE	Project Number	FY 17-18 AB 1600		
REVENUE				
Interest/Others		\$ 12,197		
Com/Rec Centers Impact Fees		996,966		
TOTAL REVENUE		\$ 1,009,163		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Centennial Recreation Center Expansion	138016	162,092	100.00%	162,092
Banking and Merchant Service Fees		2,174	100.00%	2,174
Total Expenditures		\$ 164,266		
Revenue Less Expenditures		\$ 844,897		
Balance as of July 1, 2017		268,767		
Balance as of June 30, 2018		\$ 1,113,664		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 641 - SEWER IMPACT FEE	Project Number	FY 17-18 AB 1600		
REVENUE				
Interest		\$ 229,257		
Sewer Impact Fees		4,172,476		
TOTAL REVENUE		\$ 4,401,733		
Revenue Expended For			% from this Fund	Total Project Expenditures
Sewer Plant Improvements	303a11	\$ 1,164,780	100.00%	1,164,780
Lift Station Rebuild J/K	304j15	2,289	2.48%	92,262
Lift Station Impvts F/D/W	304k15	9,668	4.93%	195,916
Sewer Main Upgrades	302n15	22,870	25.22%	90,698
Llags Basin I & I Study	308d15	4,959	100.00%	4,959
Trunk Line -Highland to Cohansey	308e16	394,026	85.89%	458,767
Trunk Line -Cohansey to Renz	308f17	73,424	100.00%	73,424
General Plan Update		7,704	7.00%	110,000
Debt Service		330,441	17.03%	1,939,800
Impact Fee Study		6,138	11.11%	55,237
Banking and Merchant Service Fees		9,396	100.00%	9,396
Administration		13,944	1.05%	1,323,077
Total Expenditures		\$ 2,039,639		
Revenue Less Expenditures		\$ 2,362,094		
Balance as of July 1, 2017		13,739,517		
Balance as of June 30, 2018		\$ 16,101,611		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2017-18

FUND 651 - WATER IMPACT FEE	Project Number	FY 17-18 AB 1600		
REVENUE				
Interest		\$ 58,284		
Water Impact Fees		1,050,635		
TOTAL REVENUE		\$ 1,108,919		
Revenue Expended For			% from this Fund	Total Project Expenditures
Main Ave Well #3	601u15	\$ 66,048	52.807%	125,075
Water Supply Well Buildings	601v15	130,821	100.000%	130,821
Dunne Hill Tank Water Main	603g15	2,406	100.000%	2,406
Oak Canyon Booster Station	607d14	31,313	15.068%	207,809
General Plan Update		7,704	7.004%	110,000
Debt Service		656,538	41.000%	1,601,313
Impact Fee Study		6,138	11.11%	55,237
Banking and Merchant Service Fees		2,398	100.000%	2,398
Administration		3,948	0.298%	1,323,077
Total Expenditures		\$ 907,314		
Revenue Less Expenditures		\$ 201,605		
Balance as of July 1, 2017		3,153,845		
Balance as of June 30, 2018		\$ 3,355,450		

Attachment: FY2017-18 - Impact Fee Report (2069 : AB 1600 Development Impact Fee Report For FY 2017-18)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2018

RECOMMENDATION(S)

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The Fiscal Year 2017-18 Comprehensive Annual Financial Report (CAFR) is presented for your review. Each year the City engages an independent firm to audit the books and accounts of the City's general ledger. Included in this audit are the review and verification of all finance processes. An annual audit is required by state law and by bond covenants.

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unmodified audit opinion from Maze & Associates, the City's external auditors, stating that the financial statements present fairly the results of operations for the year ended June 30, 2018, in conformance with Generally Accepted Accounting Principles (GAAP). An auditor gives an Unmodified Opinion (or clean opinion) when he or she does not have any significant reservation in respect of matters contained in the Financial Statements.

A summary of significant highlights follows:

General Fund: The fund balance increased by \$0.7 million as the City continued to benefit from a strong local economy, demand for development, and the resulting increased property values and associated revenues. Actual revenues in the General Fund were \$1.5 million more than the final budget or \$2.6 million without the fair market value adjustment for the investments, mostly attributed to the increase in property and sales taxes.

Development Services Fund: The fund balance amounted to \$2.0 million, all of which is restricted, a decrease of \$0.6 million or 23% from prior year.

Wastewater Enterprise Funds: The funds combined added \$1.0 million to its net position.

Water Enterprise Funds: The funds combined added \$1.7 million to its net position.

COMMUNITY ENGAGEMENT: Inform

Finance staff presents these audited reports in an effort to keep the City Council, 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 decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an audited report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The audited comprehensive financial report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact for the recommended action.

CEQA (California Environmental Quality Act):

Not a Project as this is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Comprehensive Annual Financial Report, Year Ended June 30, 2018 (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

CONTINUE RECRUITMENT EFFORTS TO FILL UP TO TWO VACANCIES ON THE PLANNING COMMISSION

RECOMMENDATION(S)

Direct the City Clerk to continue recruitment efforts to fill up to two unexpired terms ending June 1, 2021, on the Planning Commission.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth

Seniors

and Entire Community

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

A municipal election was held on Tuesday, November 6, 2018. Planning Commissioners John McKay and Yvonne Martinez-Beltran were on the ballot for City Council seats and are now both Council Members-elect until certification of the election results, which will take place on December 12, 2018. The City Clerk's office has begun the recruitment efforts to fill the vacancies which have terms ending on June 1, 2021. Planning Commission applicant interviews are tentatively scheduled for January 23, 2019 at 6:00 p.m. Staff recommends that Council 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 Planning Commission. Citizens that are interested in serving on the Planning Commission can learn more about the Commission by contacting the Planning Department and/or visiting the City's Planning Commission webpage <http://www.morgan-hill.ca.gov/569/Planning-Commission>. They can apply by completing the application on the City's Commission webpage <http://www.morgan-hill.ca.gov/FormCenter/City-Clerk-9/Commission-Application-148>.

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 and work plan.

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: December 5, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant

APPROVED BY: City Manager

ADOPT ORDINANCE AUTHORIZING THE CITY MANAGER TO APPOINT THE CITY CLERK

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2291, 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

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

On November 28, 2018, the City Council introduced Ordinance No. 2291 New Series, by the following roll call vote: AYES: Carr, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: Constantine.

To ensure that future City Clerks of Morgan Hill are qualified professionals with adequate experience and knowledge of the tasks and requirements of the role, the City Council, per Government Code §36508, voted unanimously on July 18, 2018 to place the question of "Shall the office of City Clerk be appointive?" on the November 6, 2018 Ballot. The preliminary results of the election show Measure J passing with 62% in favor. The Santa Clara County Registrar of Voters will certify the election results on December 6, 2018.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the appointment process for the newly appointive City Clerk position.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 18, 2018, the City Council approved placing a measure on the November 6, 2018 ballot asking, "Shall the office of the City Clerk be appointive"?

On November 28, 2018, the City Council voted unanimously to delegate the appointment authority to the City Manager by introducing the attached ordinance.

FISCAL AND RESOURCE IMPACT:

There is no fiscal or resource impact associated with the preparation of this staff report and proposed actions as this process is accommodated for in the City Manager operating budget.

CEQA (California Environmental Quality Act):

Not a Project - Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment and are therefore exempt activities.

LINKS/ATTACHMENTS:

1. Ordinance 2291

ORDINANCE NO. 2291, NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL
AUTHORIZING THE CITY MANAGER TO APPOINT THE
CITY CLERK.**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. At the expiration of the existing term of the City Clerk of the City of Morgan Hill, the City Manager shall appoint the City Clerk on the basis of his or her experience and ability. The City Clerk shall hold the office at the pleasure of the City Manager.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect on January 5, 2019. 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 28TH DAY OF NOVEMBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF DECEMBER, 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. 2291, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th day of December 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2291 (2083 : Adopt Ordinance 2291- City Clerk Appointment)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

ADOPT ORDINANCE ADDING CHAPTER 5.68 TO TITLE 5 (BUSINESS LICENSES GENERALLY) OF THE MORGAN HILL MUNICIPAL CODE TO PROVIDE UNIFORM REGULATIONS APPLICABLE TO ALL FIREARM DEALERS IN THE CITY

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2292, 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
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

On November 28, 2018, the City Council introduced Ordinance No. 2292 New Series, by the following roll call vote: AYES: Carr, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: Constantine.

This ordinance will regulate firearms dealers by requiring licensed firearms dealers to first obtain a City permit, demonstrating the use of best practices to prevent theft of firearms, and recognizing and preventing sales to straw purchasers.

COMMUNITY ENGAGEMENT: Consult

As discussed in the November 28, 2018 staff report, City staff engaged in extensive outreach to interested residents, including discussion at four City Council meetings, one ad hoc subcommittee meeting, one community forum, and extensive e-mail outreach.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 7, 2018, the City Council adopted a resolution condemning recent mass shootings and advocating for local, state, and federal measures to reduce gun violence.

On March 19, 2018, the City Council directed the City Attorney to draft ordinances requiring gun owners to report the loss or theft of a firearm; requiring the safe storage of firearms; prohibiting the possession of large capacity magazines; and requiring a local permit to conduct retail firearm and/or ammunition sales.

On May 16, 2018, the City Attorney provided an update to Council on the proposed ordinances. At that meeting, Staff was directed to conduct further outreach to the community, including a meeting with an ad hoc committee of the Council. Those community outreach efforts are discussed above.

On October 24, 2018, the City Council introduced an ordinance amending the existing "Weapons" ordinance requiring the reporting of the loss or theft of a firearms within 48 hours of discovery, requiring the safe storage of firearms when unattended, and prohibiting the possession of large capacity magazines except in limited circumstances.

On November 28, 2018, the City Council held a public hearing and introduced ordinance 2292.

FISCAL AND RESOURCE IMPACT:

Some staff time will be required for additional outreach and education. All staff time, including enforcement, will be incorporated into existing work-plans.

CEQA (California Environmental Quality Act):

The proposals set forth in this report are exempt from CEQA under Guideline §15061(b) because the actions as proposed will have no significant effect on the environment.

LINKS/ATTACHMENTS:

1. Ordinance 2292

ORDINANCE NO. 2292, NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING CHAPTER 5.68 TO TITLE 5 (BUSINESS
LICENSES GENERALLY) OF THE MORGAN HILL
MUNICIPAL CODE TO PROVIDE UNIFORM
REGULATIONS APPLICABLE TO ALL FIREARM
DEALERS IN THE CITY**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Chapter 5.68 (Firearms Dealers) is hereby added to Title 5 (Business Licenses Generally) as follows:

FIREARMS DEALERS

Sections:

- 5.68.010 Definitions.
- 5.68.020 Permit required.
- 5.68.030 Application fee.
- 5.68.040 Administration of chapter – Application and investigation for permits.
- 5.68.050 Permit approval, renewal, suspension, conditions and revocation criteria.
- 5.68.060 Security requirements – Chief of Police authority to adopt administrative regulations.
- 5.68.070 Permit forms.
- 5.68.080 Permit duration.
- 5.68.090 Permit transition period.
- 5.68.100 Permit conditions.
- 5.68.110 Permit denial, suspension, conditioning, revocation, denial of renewal.
- 5.68.120 Appeal of adverse action.
- 5.68.130 Costs of appeal and attorneys' fees.
- 5.68.140 Permit liability insurance.
- 5.68.150 Inspection authority.
- 5.68.160 Compliance.
- 5.68.170 Temporary suspension.

5.68.010 Definitions.

The following words and phrases, whenever used in this chapter, are defined as follows:

- a) “Applicant” means the firearms dealer as defined in this chapter who is making application to the City for a firearms dealer permit or gunsmith permit as required by Cal. Penal Code § 26700.
- b) “Chief of Police” means the Chief of Police of the City or his/her designee charged with the administration of this chapter, subject to the administrative direction of the City Manager.
- c) “Collector of curios and relics” means a person who is a collector of any antique firearm or any firearm that is a curio or relic as defined in Sections 178.11 et seq. of Title 27 of the Code of Federal Regulations and who only possesses a valid Bureau of Alcohol, Tobacco and Firearms Federal Firearms License of Type 03 (collectors of curios and relics).
- d) “Engaged in business” means the conduct of a business by the selling, transferring, or leasing of any firearm; or the preparation for such conduct of business as evidenced by the securing of applicable federal and state licenses; or the holding of one’s self out as engaged in the business of selling, transferring, or leasing of firearms in quantity, in series, or in individual transactions, or in any other manner indicative of trade.
- e) “Firearm” means any device, designed to be used as a weapon or modified to be used as a weapon, from which a projectile is expelled through a barrel by the force of an explosion or other form of combustion.
- f) “Firearms dealer” means a person engaged in the business of selling, transferring, leasing, or advertising for sale, transfer, or lease any firearm with the exception of a Bureau of Alcohol, Tobacco and Firearms Federal Firearms License of Type 03 (collectors of curios and relics) and Type 01 (limited to those who engage only in gunsmith activities and do not conduct any sales transactions). Included in this definition are persons involved solely in the warehousing and storage of firearms.
- g) “Gunsmith” means a person whose occupation is to design, modify, make or repair firearms. For the sales of firearms, refer to “firearms dealer” under subsection (f) of this section.
- h) “Permittee” means the person(s) listed on the firearms dealer permit issued by the City.
- i) “Person” means any natural person, firm, corporation, organization, company association, business trust, joint-stock company, partnership, joint venture, club, or the agent, servant, manager, officer, employee, or lessee of any of them, and any municipal, political, or governmental corporation, district, body, or agency other than the City.

5.68.020 Permit required.

- a) Firearms Dealers. No person, partnership, cooperative, corporation, firm, or association will engage in the business of operating or managing any business in the City which sells, transfers, leases, or offers or advertises for sale, transfer, or lease, any firearm without first obtaining a firearms dealer permit from the Chief of Police. Application for any such permit shall be made in writing to the Chief of Police in such form as shall be prescribed by him/her. The applicant shall provide all information requested, including proof of compliance with all applicable federal, state, and local laws, or the application will not be deemed complete. Persons who are

collectors of antique firearms as described in Section 5.68.010(c) shall not be required to obtain and maintain a firearms dealer permit.

- b) Gunsmiths. No person, partnership, cooperative, corporation, firm, or association will engage in the business of operating or managing a business which designs, modifies, makes or repairs firearms in the City without first obtaining a gunsmith permit from the Chief of Police. Application for any such permit shall be made in writing to the Chief of Police in such form as shall be prescribed by him/her. The applicant shall provide all information requested, including proof of compliance with all applicable federal, state, and local laws, or the application will not be deemed complete.

5.68.030 Application fee.

The application shall be accompanied by a nonrefundable fee as set forth in the City of Morgan Hill master fee resolution. The fee shall include an amount necessary to cover the full cost of processing, background, issuance, inspection, enforcement, and hearing procedures.

5.68.040 Administration of chapter – Application and investigation for permits.

- a) The Chief of Police shall administer this chapter.
- b) The Chief of Police shall conduct an appropriate investigation to determine the eligibility of each owner, partner, employee, manager, officer, agent, lessee, or other responsible person engaged in the business for which the applicant is seeking a firearms dealer permit or gunsmith permit. This investigation shall be conducted for the protection of the public safety and to determine if a permit may be issued. The applicant, owner, partner, employee, manager, officer, agent, lessee, or other responsible person engaged in the business shall fully cooperate by providing necessary authorization for access to private records and information.

5.68.050 Permit approval, renewal, suspension, conditions and revocation criteria.

The Chief of Police may issue or renew a permit only if the following criteria are met. The Chief of Police is hereby authorized to adopt all necessary administrative regulations to carry out the intent of this section including, but not limited to, the imposition of additional criteria. The Chief of Police may deny a new permit or suspend, revoke or impose reasonable conditions for issuance or renewal of an existing permit for failure to meet the following criteria:

- a) Applicants must be at least 21 years old.
- b) The applicant must hold all required federal, state and local licenses and authorizations.
- c) The applicant has no prior revocation, or denial of similar permit, for good cause within the last two years.
- d) The applicant has provided accurate statements of fact on his/her application.
- e) The applicant must have paid all applicable fees as provided in the City of Morgan Hill master fee resolution.
- f) The applicant is free of a conviction for any of the following offenses:

- (1) Any offense that would disqualify the applicant from owning or possessing a firearm under federal, state and local laws.
- (2) Any offense related to the manufacturing, sale, possession, use, or registration of any firearm or dangerous or deadly weapon.
- (3) Any offense involving the use of force or violence against the person of another.
- (4) Any offense involving the manufacturing, sale, possession, or use of any controlled substance as defined in the California Health and Safety Code.
- g) The applicant is not an unlawful user of any controlled substance as defined by the California Health and Safety Code, or an excessive user of alcohol to the extent that it would impair his/her ability to be a dealer in firearms.
- h) The applicant is not a mental patient in a hospital or institution, or on leave of absence from any hospital or institution, or adjudicated by a court to be a danger to others as a result of a mental disorder or illness, or a mentally disordered sex offender, or suffers from any psychological disturbance which would impair his/her ability to be a firearms dealer.
- i) The applicant proposes to operate the business in a manner which complies with all federal, state, and local laws.
- j) The applicant operates his or her business:
 - (1) Within a zoning district where the proposed use is permitted by zoning regulations; or
 - (2) Within a zoning district where applicant has obtained required permits or approvals as prescribed by this code and general law.
- k) The applicant can provide evidence of possessory interest in the property at which he/she proposes to conduct business.

5.68.060 Security requirements – Chief of Police authority to adopt administrative regulations.

Firearms security regulations shall be adopted as provided in this section.

- a) The primary objectives of this chapter are to discourage theft from the premises of firearms dealers, to provide a safe and secure facility for storage and sale of firearms, and to ensure that firearms dealers use best practices to prevent the sale of firearms to unauthorized purchasers. To this end the permittee shall comply with all firearms dealer regulations prescribed by the Chief of Police. The Chief of Police is hereby authorized to adopt all necessary administrative regulations to carry out the intent of this chapter.
- b) The Chief of Police shall adopt firearms security regulations requiring, but not limited to, the following:
 - (1) The provision of secure locks, windows and doors, adequate lighting and an alarm security system in accordance with permitted City security regulations and/or specified by the Chief of Police.
 - (2) The storage of all firearms on the premises out of reach of customers in secure, locked locations, so that the access to the firearms is controlled by the dealer and/or owner, partner, employee, manager, officer, agent, lessee, or other responsible person engaged in the business and to the exclusion of others. Storage of ammunition, gunpowder or

other flammable or explosive material shall be in accordance with the Uniform Fire Code and the City's hazardous materials management ordinance (Chapter 8.40).

- (3) Training requirements to detect and prevent straw purchases, where a person buys a firearm for someone who is prohibited from firearms possession.

5.68.070 Permit forms.

All permits issued pursuant to this chapter shall be in a form prescribed by the Attorney General of the state.

5.68.080 Permit duration.

- a) All permits issued pursuant to this chapter shall expire one year after the date of issuance, unless suspended or revoked prior to the expiration date.
- b) All permits issued pursuant to this chapter shall be subject to renewal after one year. The permittee shall file a renewal application and pay all applicable fees as specified in the City of Morgan Hill master fee resolution. Such application will then be reviewed by the Chief of Police for compliance with the provisions of this chapter. A permit will be issued by the Chief of Police for a renewal application which meets the provisions specified in this chapter. The permit will be valid for one year.
- c) Applications for renewal of an existing valid permit must be completed and received by the Chief of Police, in completed form, no later than 30 days prior to the expiration of the current permit.

5.68.090 Home Occupation Permit transition period.

- a) A federally licensed firearms dealer possessing a home occupation permit for the sale of firearms from his/her residence will be required to cease selling firearms from his or her home by December 31, 2021. A residentially based firearms dealer shall be subject to all provisions specified in this chapter; however, such dealer shall be exempted from the requirement for liability insurance.
- b) A federally licensed firearms dealer conducting business as a gunsmith from a residence under a home occupation permit will be permitted to continue to operate in the manner prescribed in this chapter.

5.68.100 Permit conditions.

- a) All permits issued pursuant to this chapter shall be subject to the following conditions. The violation of any of the listed conditions will be grounds for suspension or revocation of the permit by the Chief of Police.
 - (1) No firearms dealer permit will be issued to a person engaged in the business of selling, transferring, leasing, or advertising for sale, transfer, or lease any firearm from a residence.
 - (2) The business shall be conducted only in the building located at the street address indicated on the permit.

- (3) The sales of firearms shall be conducted only by the person(s) listed on the firearms dealer permit issued by the City, known as the “permittee.” If the permittee is to be assisted by another person such as an owner, partner, employee, manager, officer, agent, lessee, or other responsible person engaged in the business of the sale of firearms, these individuals must be reviewed under the requirements of Section 5.68.050(a), (e), (f), (g), and (h).
- (4) The assignment of any permit issued pursuant to this chapter is unlawful and any such assignment shall render the permit null and void. In addition, the attempt to transfer or assign any permit issued pursuant to this chapter shall be further grounds for revocation.
- (5) The permittee shall comply with Cal. Penal Code §§ 27510, 28050-28070, 28100, 28105, 28150-28180, and 28200-28250, to the extent that the provisions remain in effect.
- (6) The permittee shall comply with all sections of this chapter.
- b) Any permit pursuant to this chapter shall be subject to additional conditions as the Chief of Police deems reasonably related to the purpose of this chapter.

5.68.110 Permit denial, suspension, conditioning, revocation, denial of renewal.

- a) The Chief of Police may deny a new permit application or suspend, modify, revoke or deny renewal of an existing permit for failure of the applicant or permittee to satisfy any of the criteria provided in Sections 5.68.050, 5.68.060, 5.68.090, 5.68.100, 5.68.140 and 5.68.150.
- b) Any decision to deny a new permit application, suspend, revoke, modify or deny renewal of an existing permit shall be given to the applicant or permittee in writing, addressed to the permittee or applicant at the address on the application, and shall set forth the factual and legal grounds for the decision.

5.68.120 Appeal of adverse action.

- a) Within 30 days after the date of deposit of the decision of the Chief of Police in the mail in accordance with Section 5.68.110, the applicant or permittee may appeal the decision in writing to the City Manager, setting forth the factual and legal grounds for appeal.
- b) The City Manager (or designee) shall:
 - (1) Set a time and place for the hearing on the appeal;
 - (2) Appoint a City hearing officer to conduct a hearing; and
 - (3) Notify the applicant or permittee in writing of such date and time not later than 30 days from the date the appeal was received by the City Manager.
- c) The hearing shall be conducted within 45 days from the date the appeal was received by the City Manager. In any hearing under this section, the applicant shall bear the burden of proof to establish entitlement to the requested permit by a preponderance of the evidence.
- d) After hearing the appeal, the City hearing officer may:
 - (1) Refer the matter back to the Chief of Police for a new investigation and decision consistent with direction provided by the hearing officer;

- (2) Affirm the decision of the Chief of Police;
 - (3) Approve the application for a permit subject to any conditions the hearing officer may prescribe; or
 - (4) Approve the application for a permit without conditions.
- e) The decision of the City hearing officer shall be the final administrative determination and is subject to judicial review.

5.68.130 Costs of appeal and attorneys' fees.

In any appeal hearing conducted under this chapter, the City hearing officer shall award all costs of the hearing, including direct and indirect staff costs and overhead, hearing officer costs and attorneys' fees, to the City whenever the City prevails.

5.68.140 Permit liability insurance.

- a) No firearms dealer permit shall be issued or renewed pursuant to this chapter unless there is in full force and effect prior to issuance of a permit or renewal a policy of insurance in such form that the City Attorney and City Risk Manager deem proper, executed by an insurance company approved by the City Attorney whereby the applicant or permittee is insured against liability for damage to property and for injury to or death of any person as a result of the sale, transfer or lease, or advertising for sale, transfer or lease, or advertising for lease, any firearm. The minimum liability limits shall not be less than \$1,000,000 for damages to or destruction of property in any one incident, and \$1,000,000 for the death or injury of any one person; provided, however, that additional amounts may be required by the City Attorney if deemed necessary. Person(s) engaged in the business of operating or managing a gunsmith business which designs, modifies, makes or repairs firearms will not be required to obtain and maintain liability insurance as discussed in this section.
- b) The policy of insurance shall name the City, its officers, agents and employees as additional insureds. Applicants and permittees shall indemnify, defend and hold harmless the City, its officers, agents, and employees from claims arising from the negligence of the applicant or permittee. Such policy of insurance shall contain an endorsement providing that the policy will not be canceled until notice in writing has been given to the Chief of Police 60 days prior to cancellation.
- c) A federally licensed firearms dealer possessing a home occupation permit shall be exempted from this requirement.

5.68.150 Inspection authority.

The Chief of Police or his/her designee shall have the right to enter any firearms dealer establishment from time to time during regular business hours to make reasonable inspections to ascertain whether the provisions of this chapter are being complied with. A warrant shall be obtained whenever required by law.

5.68.160 Compliance.

Any person engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering for sale, transfer, or lease, any firearm on the effective date of this chapter shall have 60 days from the effective date to comply with the provisions of this chapter.

5.68.170 Temporary suspension.

- a) If a firearm dealer violates any federal, state or local county or City law, the Chief of Police may immediately suspend the right of the dealer to sell firearms.
- b) The temporary suspension will not exceed three days. If the violation results in a criminal charge brought in federal or state court, such permit to sell firearms may be suspended until the case is adjudicated in a court of law.
- c) Notice of suspension and rights to appeal and costs shall be the same as provided in Sections 5.68.110, 5.68.120 and 5.68.130.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect on January 5, 2019. 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 28TH DAY OF NOVEMBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF DECEMBER, 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. 2292, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th day of December 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2292 (2085 : Adopt Ordinance 2292- Firearms Dealer Regulations)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant

APPROVED BY: City Manager

ADOPT ORDINANCE APPROVING ZONING AMENDMENT ZA 2018-0006 CHANGING THE ZONING DESIGNATION OF AN APPROXIMATELY 16.28-ACRE SITE LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE (ASSESSOR PARCEL NUMBERS 728-30-003, -004) FROM R-2 3,500/PD PLANNED DEVELOPMENT DISTRICT TO RAL-3,500 RESIDENTIAL ATTACHED LOW DISTRICT

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2293, 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

Protecting the Environment

Preserving and Cultivating Public Trust

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On November 28, 2018, the City Council introduced Ordinance No. 2293 New Series, by the following roll call vote: AYES: Carr, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: Constantine.

Ordinance 2293 will amend the zoning of a 16.28-acre site from R-2 3,500/PD (Planned Development) to RAL-3,500 to be consistent with the General Plan land use designation. The existing Planned Development zoning that limits land uses on this parcel to assisted living and other senior care uses will be removed. The base zoning will remain the same.

COMMUNITY ENGAGEMENT: Involve

Per Planning Commission direction, the mailed public notice for the proposed project was extended from 300 to 600 feet of the project. Standard newspaper legal noticing also occurred for the minimum 10-day period and a sign was posted at the property location pursuant to the Zoning Code requirements

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 23, 2018, the Planning Commission considered the application request to rezone two parcels totaling 16.28 acres from R-2 3,500/PD to RAL-3,500. The Commission voted 6-1 to recommend rezoning the two parcels to RAL-3,500 with Commissioner Martinez Beltran voting no. The Commission action included direction to staff to expand the public hearing mailing to property owners from 300 feet to within 600 feet of the project site. The expanded mailing was completed for the November 28, 2018 City Council meeting.

On November 28, 2018 the City Council held a public hearing and introduced ordinance 2293.

FISCAL AND RESOURCE IMPACT:

Application fees were collected to cover the cost of processing the zoning amendment.

CEQA (California Environmental Quality Act):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074). CEQA Guideline Section 15183 mandates that projects consistent with the development density established by existing zoning, community plan, or general plan policies 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 which are peculiar to the project or its site. A development project is not proposed at this time. This is a rezone of the property consistent with the General Plan land use. There are no new environmental effects peculiar to the property or the project site and no new information that would require additional environmental review.

LINKS/ATTACHMENTS:

1. Ordinance 2293 Half-Trumark

ORDINANCE NO. 2293, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING ZONING AMENDMENT ZA 2018-0006 CHANGING THE ZONING DESIGNATION OF AN APPROXIMATELY 16.28-ACRE SITE LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE (ASSESSOR PARCEL NUMBERS 728-30-003, -004) FROM R-2 3,500/PD PLANNED DEVELOPMENT DISTRICT TO RAL-3,500 RESIDENTIAL ATTACHED LOW DISTRICT

WHEREAS, Trumark Properties, LLC applied for rezoning of the property located at 1105 Half Road, APN 728-30-003, - 004 on behalf of the owner of the properties, Llagas Road LLC (“Owner”), from R-2 3,500/PD Planned Development District to RAL-3,500 Residential Attached Low District to be consistent with the General Plan;

WHEREAS, the General Plan designates the two above-referenced parcels as Residential Attached Low;

WHEREAS, such application was considered by the City Council at their regular meeting of November 28, 2018; and

WHEREAS, the project site was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the requirements of the California Environmental Quality Act. No new environmental effects peculiar to the property or the project and no new information has been identified, and thus additional environmental review is not required pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183; and

WHEREAS, the Zoning Amendment complies with the General Plan as required by Government Code Section 65860; 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 any applicable specific plan as provided by Government Code Section 65860. RAL-3,500 zone district is a corresponding zone district for the Residential Attached Low General Plan designation. The proposed zoning amendment from R-2 3,500/PD to RAL-3,500 Residential Attached Low would conform to the site's Residential Attached Low-Density General Plan designation.

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 Morgan Hill Municipal Code. Amending the site zoning may allow future residential development consistent with the City's General Plan land use diagram and General Plan goals and policies related to the provision of an adequate housing supply.

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 community at large as provided in Section 18.114.060 and as described in the October 23, 2018 Planning Commission Report on the application.

The subject properties are adjacent to existing urban development to the north. City utilities, including sewer, water and storm drainage facilities are in DePaul Drive to the north. City water service also extends to Half Road on the south side of the site. The combined 16.28 acres is sufficient in size to accommodate future residential development consistent with the General Plan and zoning. The site is similar in characteristics (level ground and devoid of any significant ground features) to the residential zoned property to the east on Mission View Drive.

SECTION 4. Additional environmental review is not required pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183.

SECTION 5. The City Council hereby approves amendment to the City zoning map changing the zoning designation from R-2 3,500/PD Planned Development to the RAL-3,500 Residential Attached Low-Density Residential District to the site described attached hereto, as Exhibit "A", Legal Description and Exhibit "B" Zoning Plat and by this reference incorporated herein.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 28TH DAY OF NOVEMBER, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF DECEMBER 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: January 5, 2019

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No.2293, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 5th day of December, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2293 Half-Trumark (2086 : Adopt Ordinance 2293- Zoning Amendment Half-Trumark)

"EXHIBIT A"

Rezoning Lands of Llagas LLC, A Limited Liability Company, Being Part of Ordinance No. _____, New Series

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being all of "Parcel 1", all of "Parcel 2" and a portion of "Half Road", as shown on the Parcel Map filed August 15, 1969 in Book 258 of Maps, at Page 3, Records of Santa Clara County, California, being more particularly described as follows:

Beginning at the northeast corner of said "Parcel 1"; thence along the northeast line of said "Parcel 1" and it's southerly extension, S35°40'08"E, a distance of 1,676.09 feet to the southeast line of said "Half Road"; thence along said southeast line, S46°06'04"W, a distance of 430.98 feet to the intersection said southeast line of "Half Road" with the southerly extension of the southwest line of said "Parcel 1"; thence along said southwest line of "Parcel 1" and it's southerly extension, N35°38'56"W, a distance of 1,715.53 feet to the northwest line of said "Parcel 2"; thence along said northwest line, N51°20'25"E, a distance of 426.52 feet to the **Point of Beginning**.

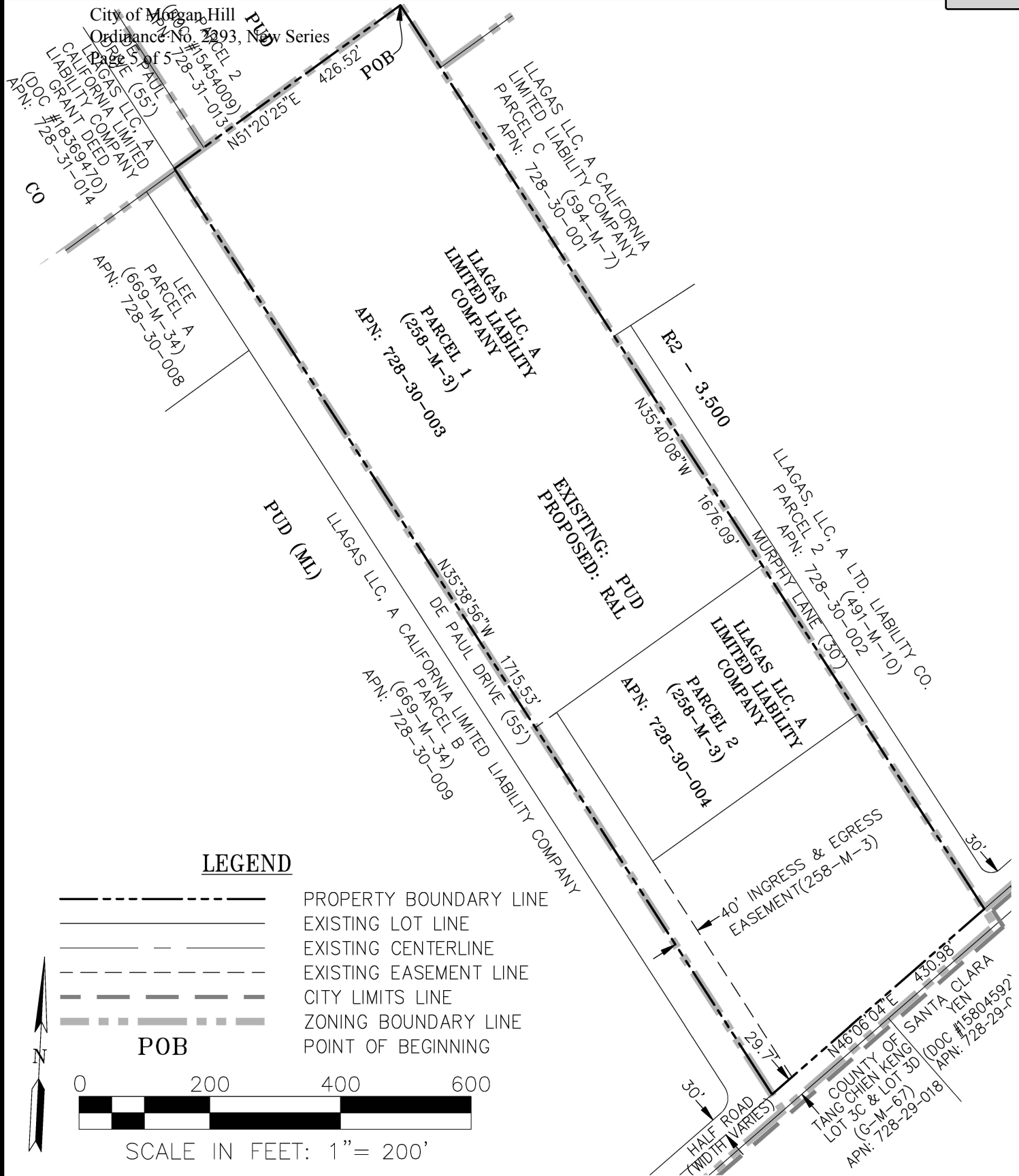
Containing 722,812 square feet or 16.59 acres, more or less.
 As shown on "Exhibit B", attached hereto and made a part hereof.

END OF DESCRIPTION.

This description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.

 Bryan Pierce, PLS 8859 Date
 Expires: 12/31/2019

Attachment: Ordinance 2293 Half-Trumark (2086 : Adopt Ordinance 2293- Zoning Amendment Half-Trumark)



Attachment: Ordinance 2293 Half-Trumark (2086 : Adopt Ordinance 2293- Zoning Amendment Half-Trumark)

"EXHIBIT B"

MAP SHOWING REZONING LANDS OF
LLAGAS LLC, A LIMITED LIABILITY COMPANY,
BEING A PART OF
ORDINANCE NO. _____, NEW SERIES
MORGAN HILL, CALIFORNIA

RJA**RUGGERI-JENSEN-AZAR**

ENGINEERS ■ PLANNERS ■ SURVEYORS

8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302DRAWN BY:
BPSCALE:
1" = 200'DATE:
08/28/2018

JOB NO.:

Packet Pg. 250

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, November 28, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Tate called the meeting to order at 7:02 p.m.

ROLL CALL ATTENDANCE

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Present	
Rich Constantine	Mayor Pro Tem	Absent	
Larry Carr	Council Member	Late	7:15 PM
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

Minutes Acceptance: Minutes of Nov 28, 2018 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr had no report.

CITY MANAGER'S REPORT

City Manager Christina Turner mentioned the evening's supplements and presentations. She announced that the election results will be certified by the County of Santa Clara Registrar of Voter's Office on December 6th, just in time for the City Council to certify the results on December 12th. She shared that the December 12th meeting will start at 7:00 p.m., the current Council will take their seats at the dais and take action to certify the election results, then the new Council will be sworn in and take their seats. She reminded the community that the annual Holiday Lights Parade and Tree Lighting Ceremony will take place Saturday evening at 5:30 p.m. Downtown. She announced that starting on Sunday, December 9th, the Morgan Hill Library will be open on Sundays between 1:00 p.m. and 5:00 p.m. She concluded by sharing that there will be a High Speed Rail update at the December 19th City Council meeting.

RECOGNITIONS

Quarterly Teammate Recognition

New Hires

Sergio Lopez - Police Officer
Elysa Olivares, Human Resources Technician

New Promotions

Jake Hess, Fire Chief

Retirements

Troy Hoefling, Police Sergeant
Derek Witmer, Fire Chief

2018 Peak Performance Award Recipients

Employee of the Year - Shane Palsgrove

Customer Service - Tony Haro

Challenge - Inga Alonzo, Frank Alvarez

Professional Growth - Christie Thomas

Innovation - John Henry, Mark Rauscher, Pam van der Leeden

Teamwork - Eric Blomquist, Daniel Cardwell, John Amos, Rudy Medina, Shawn Lopez, Steve Pennington, Caitlin Souza, Elizabeth Bassett, Anna King, Lucy Steuber

Get-Er Done! - Anthony Eulo

Highest of High Fives! - Margarita Huertas-Balagso

Community Whisperer - John Amos

Service Year Recipients

35 Years

Toni Maiquez, Public Safety Dispatcher

30 Years

John Henry, Engineering Technician
Johnny Gonzales, Utility Worker
Troy Hoefling, Police Sergeant

20 Years

Teo Herrera, Utility Worker
Anna King, Development Services Technician

15 Years

Jorge Lopez, Custodian
Chiquy Mejia, Recreation Coordinator

10 Years

Carson Thomas, Police Sergeant
Candice Abdurahman, Public Safety Dispatcher
Lisa Cardenas, Executive Assistant to the Chief of Police
Jennifer Ponce, Emergency Services Coordinator
Scott Martin, Police Corporal
Johnny Roberson, I.S. Technician
Tom Neff, Utility Supervisor
Tim Conlon, Utility Worker
Michelle Bigelow, Council Services and Records Manager
Sandra Diner, Office Assistant II

5 Years

Kevin Nelson, Water Quality Specialist
Santiago Fierro, Police Officer
Jason Lorenzo, Multi Services Officer
Fernando Del Moral, Police Officer
Christopher Gridley, Police Corporal
Todd Davis, Police Officer
Erica Corona, Human Resources Technician
Angie Gonzalez, Council Services Assistant

TEAMMATE RECOGNITION PRESENTATION**CITY ATTORNEY'S REPORT**

City Attorney Donald Larkin had no report.

OTHER REPORTS

None.

PRESENTATIONS

YAC PRESENTATION- ASSET #41- POSITIVE CULTURAL IDENTITY

PUBLIC COMMENT

The public comment was opened at 7:24 p.m.

Dick Oliver was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR**MOTION:**

Approving consent calendar items 1, 3, 5, and 8.

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

1. APPOINTMENT TO THE PARKS AND RECREATION COMMISSION

Recommendation:

Appoint Neil Berman to serve on the Parks and Recreation Commission to fill a vacancy with a term ending April 1, 2022.

2. ITEM PULLED FOR DISCUSSION**3. AWARD LANDSCAPE MAINTENANCE AGREEMENT FOR CITY FACILITIES AND ASSESSMENT DISTRICTS**

Recommendation:

1. Award a two-year contract to Brightview Landscape Services, Inc. in the amount of \$300,648 to service Group 2: City Facilities, Group 4: Landscape Assessment Districts, and extra services; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Brightview Landscape Services and to extend the agreement for up to three, one-year additional terms.

4. ITEM PULLED FOR DISCUSSION**5. ADOPT A RESOLUTION OF INTENT TO ESTABLISH A TOURISM BUSINESS IMPROVEMENT DISTRICT**

Recommendation:

1. Adopt resolution declaring the City's intention to establish the Morgan Hill Tourism Business Improvement District (MHTBID) to levy assessments within the District and setting a time and place for a public hearing;
2. Direct the City Clerk to mail written notice to the owners of all businesses proposed to be within the District; and
3. Appoint the Economic Development Director and the Public Services Director to the MHTBID Owners' Association Board.

6. ITEM PULLED FOR DISCUSSION

7. ITEM PULLED FOR DISCUSSION

8. APPROVE THE NOVEMBER 7, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION

2. AWARD AQUATICS CENTER SLIDE REPAIR AND REFURBISHMENT

Recommendation:

1. Adopt resolution amending the Fiscal Year 2018-19 adopted budget to appropriate an additional \$54,000 from the General Fund (010) to Building Maintenance Fund (740) for the Aquatics Center Slides Refurbishment Project;
2. Award contract to Teca Aquatics Innovations, Inc. in the amount of \$130,290; and Authorize the expenditure of contingency funds not to exceed \$13,029; and
3. Authorize the City Manager to execute and administer that certain construction contract with Teca Aquatics Innovations, Inc.

Program Administrator Anthony Eulo answered questions.

MOTION:

Approving the recommended actions.

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

4. APPROVE CONSULTANT AGREEMENT WITH CITYGATE ASSOCIATES, LLC., FOR FIRE STANDARDS OF COVERAGE (SOC) STUDY AND COMMUNITY RISK ASSESSMENT, AND REIMBURSEMENT AGREEMENTS WITH CITY OF GILROY AND SOUTH SANTA CLARA COUNTY FIRE DISTRICT

Recommendation:

1. Approve and authorize the City Manager to review, negotiate, amend, and execute a consultant agreement with Citygate Associates, LLC for a Sub-Regional South County Standards of Coverage (SOC) and community risk assessment study in the amount of \$79,530;
2. Authorize the expenditure of contingency funds not to exceed \$3,970;

3. Adopt resolution amending the Fiscal Year (FY) 2018-19 adopted budget, to appropriate \$83,500 from the General Fund (010) for the study to be prepared by Citygate Associates, LLC; and
4. Approve and authorize the City Manager to review, amend, and execute reimbursement agreements with the City of Gilroy (\$31,520) and South Santa Clara County Fire District (\$24,735) for their share of the study, including any future amendments subject to change in scope, up to the available contingency amount of \$3,970.

Fire Chief Jake Hess and Division Chief Jim Crawford answered questions.

MOTION:

Approving the recommended actions.

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

6. PILOT PROJECT TO REDUCE USE OF RODENTICIDES AT CITY FACILITIES

Recommendation:

Direct staff to implement a rodenticide reduction pilot project and report on the project's findings and results at the June 5, 2019 City Council meeting.

Program Administrator Anthony Eulo presented the report.

The public comment was opened at 7:43 p.m. The following people were called to speak:

Joy Joyner

Kyra Pehrson

Doug Muirhead

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

MOTION:

Approving the recommended action.

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

7. ADOPT ORDINANCE AMENDING CHAPTER 9.04 ("WEAPONS") OF TITLE 9 ("PUBLIC PEACE, MORALS AND WELFARE") OF THE MORGAN HILL MUNICIPAL CODE TO REQUIRE SAFE FIREARMS STORAGE, REQUIRE THE REPORTING OF FIREARMS THEFT, AND PROHIBIT LARGE CAPACITY MAGAZINES

Recommendation:

Waive the reading, adopt Ordinance No. 2289, 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.

The public comment was opened at 7:56 p.m. The following people were called to speak:

Leon Knyshov

Jeff Klopotic

Jonathan Hsu
 Dave Truslow
 G. Mitchell Kirk
 Anonymous

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

City Attorney Donald Larkin answered questions.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [3 TO 1]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Carr, Jachimowicz
NAYS:	Spring
ABSENT:	Constantine

OTHER BUSINESS

A recess was called at 8:17 p.m.

The meeting reconvened at 8:24 p.m.

9. PROVIDE DIRECTION REGARDING MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES

Recommendation:

1. Receive presentation on Monterey Corridor Block-Level Master Plan Alternatives; and
2. Direct staff to proceed with Monterey Corridor Block-Level Master Plan process.

Principal Planner John Baty and Development Services Director Jennifer Carman presented the report.

The public comment was opened at 8:51 p.m.

Dick Oliver was called to speak.

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

Council provided direction to staff.

RESULT:	NO ACTION TAKEN
----------------	------------------------

10. INTRODUCE ORDINANCE DELEGATING AUTHORITY TO CITY MANAGER TO APPOINT CITY CLERK

Recommendation:

1. Waive the first and second reading of the ordinance delegating the appointment authority of the City Clerk position to the City Manager; and
 2. Introduce the ordinance.
- OR
3. Direct staff to return with a job description and employment contract for the City Clerk position to report into the City Council.

City Manager Christina Turner presented the report.

The public comment was opened at 9:39 p.m.
There being no requests to speak, the public comment was closed.

MOTION:

Waiving the first and second reading of the ordinance.

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

MOTION:

Introducing the ordinance.

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

PUBLIC HEARING

11. INTRODUCE ORDINANCE REGULATING FIREARMS DEALERS

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce the ordinance adding Chapter 5.68 titled "Firearms Dealers," to Title 5 (Business Licenses Generally) of the Morgan Hill Municipal code, to provide uniform regulations applicable to all firearm dealers in Morgan Hill.

City Attorney Donald Larkin presented the report.

The public hearing was opened at 9:53 p.m. The following people were called to speak:

Dave Truslow
Trevor Bacolini
Leon Knyshov
G. Mitchell Kirk
Anonymous
Jeff Klopotic

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

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, Carr, Jachimowicz, Spring
ABSENT: Constantine

MOTION:

Introducing the ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Larry Carr, Caitlin Jachimowicz
AYES: Tate, Carr, Jachimowicz, Spring
ABSENT: Constantine

12. ZA2018-0006: HALF - TRUMARK: ZONING AMENDMENT TO AMEND THE ZONING MAP DESIGNATION FOR TWO PARCELS FROM R-2 3,500/PD TO RAL-3,500. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBER(S) 728-30-003 AND -004, ARE LOCATED ON THE NORTHERLY SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE (LLAGAS LLC, OWNER)

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance approving zoning amendment; and
3. Introduce the ordinance.

Development Services Director Jennifer Carman presented the report.

The public hearing was opened at 10:32 p.m. The following people were called to speak:

Chris Davenport

Rick Kent

Harry Singla

Terry Williams

Ron Kumar

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

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, Carr, Jachimowicz, Spring
ABSENT: Constantine

MOTION:

Introducing the ordinance

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

MOTION:

Extending the meeting to 11:30 p.m.

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

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 10:56 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 10:56 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 AFSCME Local 101 Morgan Hill Community Service Officers Association

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Pursuant to Government Code Section 54956.9(d)(1)
Case Name:	O'Malley v. City of Morgan Hill
Case Number:	Santa Clara County Superior Court Case No: 16-CV-300450

RECONVENE

The meeting reconvened at 11:21 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced that the Council unanimously approved a settlement agreement in the amount of \$187,500.

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:22 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

EDEN HOUSING - APPROVE ASSIGNMENT, MODIFICATION, EXTENSION, ASSUMPTION, AND RE-SUBORDINATION OF EXISTING CITY LOANS AND GROUND LEASES FOR REHABILITATION OF APARTMENTS; SKEELS, VILLA CIOLINO, WILLOWS APARTMENTS AND DEPOT COMMONS

RECOMMENDATION(S)

1. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of \$162,331 and accrued interest of approximately \$68,339 for rehabilitation of 13-unit Skeels Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
2. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for rehabilitation of housing component of Skeels Affordable Housing Apartment Complex and potential subdivision of commercial space subject to the final review and approval of the City Manager;
3. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of \$2,375,000 and accrued interest of approximately \$1,783,111 for rehabilitation of 42-unit Villa Ciolino Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
4. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for 20-unit Willows Affordable Housing Apartment Complex subject to the final review and approval of the City Manager; and
5. Approve a letter of commitment to support EDEN's efforts to seek new Low Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation of projects.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Financial Stewardship
Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

Should the City Council approve the assignment, modification, extension, assumption, and re-subordination of existing City loans and ground leases for the rehabilitation of Eden Housing affordable apartment communities?

REPORT NARRATIVE:

Eden Housing, Inc., a California nonprofit public benefit corporation and sponsor of several affordable housing developments in the City of Morgan Hill, requests that the City approve the assignment, modification, extension, assumption, and re-subordination of its existing City debt and ground leases in support of substantially rehabilitating Depot Commons, Skeels Hotel, Villa Ciolino, and Willows Apartments.

Eden Housing, Inc. and its affiliates (“Eden”) control the ownership of these four developments and intend to seek new Low-Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation. Eden will sell these developments to new tax credit limited partnerships controlled by Eden in order to facilitate the tax credit investment, and the new tax credit limited partnerships will need to assume the modified and extended existing City loans and ground leases. Eden is seeking the City’s approval and consent to assign, modify, extend ground leases and re-subordinate rehabilitation loans unique to each project site.

Eden proposes financing four sites together in two “bundles” to reduce transactional costs and attract a higher level of tax credit investment. Eden proposes to finance Depot Commons and The Willows together; and, Skeels Hotel and Villa Ciolino together. The non-profit developer is also considering subdividing the commercial portion of Skeels Hotel and transferring it to separate ownership that would be controlled by Eden or yet another of its affiliates. This determination will be made at a later date, depending upon the financing advantage and terms acceptable to the City.

Eden is seeking to use financing provided by a geographically-based Low Income Tax Credit “boost” that will expire at the end of this year. To qualify, Eden will need to submit an application for tax-exempt bonds to the State of California prior to December 14th. Notice that this geographically-based tax credit boost is terminating was only recently published by the Federal Government on October 19th. By utilizing this tax credit boost, Eden can proportionately reduce any commensurate need for local sources of gap financing, preserving that financing for other affordable housing projects. To qualify, Eden must be able to demonstrate that the City of Morgan Hill will re-subordinate its loan(s) and extend/assign the ground leases which exist on each property but Depot Commons, to the newly created tax credit entity.

Morgan Hill’s policy towards its multifamily housing partnerships is to provide stewardship to guaranty investment and re-investment in quality, long term housing stock. This generally results in supporting non-profit partners as they raise rehabilitation dollars for renovation of older aging structures from the private market through a combination of sources including tax credit funds. With a goal of rehabilitation and modernization of dwelling units, it makes sense for Morgan Hill to re-subordinate its’

position in the transactions and assign ground leases to support the modernization of the structures.

Although a letter of intent must be submitted by December 14th, 2018, Eden will have up to two years from December 14th to close the new tax credit financing and retain the tax credit boost. Prior to that, a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing will be held before the Morgan Hill City Council, with rehab work intended to occur immediately thereafter. The Housing Team has worked with Eden to review the proposed improvements at each site and made recommendations regarding their intended scopes of work. The impacted housing projects are:

Depot Commons:

Depot Commons, located at 17135-17145 Depot Street, contains 12 studio apartments affordable to low-income residents and one staff apartment. Eden proposes combining Depot Commons with Willows Apartments to obtain new scattered-site financing. Depot Commons does not currently have existing City loans or a ground lease but, as part of a scattered-site project, would share financing and be cross-collateralized with The Willows Apartments, which does have a ground lease from the City.

Depot Commons has an existing residual receipts loan from the California Department of Housing and Community Development ("HCD"), with a principal amount of \$600,000 and accrued interest of \$394,323. Depot Commons has two existing Santa Clara County ("County") loans with combined principal of \$324,672 and accrued interest of \$440,269. Eden is asking HCD and the County to approve the assignment, modification, extension, assumption, and re-subordination of those loans as well.

Eden is working with City staff to evaluate the potential of increasing the number of affordable units provided at Depot Commons by an additional three units, for a total of 15 units. With minor alterations to the footprint of the existing buildings, by reconfiguring the interior spaces, Eden may be able to create 3 new units. If agreement is reached on this strategy, Eden anticipates returning to the City for all requisite approvals. This could be an opportunity for the City to obtain much needed very low-income units in an existing building, assisting the City with its Regional Housing Needs Allocation (RHNA) Goals.

Skeels Apartments:

Skeels Apartments, located at 17305 Monterey Road, contain 13 efficiency studios affordable to low-income residents. Eden proposes combining the residential portion of Skeels Hotel with Villa Ciolino in a new scattered-site financing. They would share financing and be cross-collateralized. Eden is exploring the possibility of subdividing the commercial portion of the building and transferring it to separate ownership that is controlled by Eden or its affiliates to eliminate complications with financing and underwriting.

Skeels Hotel has an existing City loan (\$300,000) with a principal balance of \$162,331 and \$68,339 of accrued interest at 3% simple interest with a maturity date of April 1, 2026. By the time the financing closes, Eden anticipates that additional interest would

have accrued. Eden is proposing to extend the term of the loan and the affordability restrictions attached to the loan for a new 55-year term. In order to be compatible with new tax credit financing and to satisfy Internal Revenue Code requirements, Eden proposes recasting the principal and accrued interest at the Applicable Federal Rate ("AFR") that will be in effect as of the date of closing for the new financing (for reference, the AFR is 3.22% as of November 1st, 2018). The residual receipts repayments of the City loan may also have to be renegotiated among the government entities that have existing loans to Skeels Hotel and Villa Ciolino. Eden is asking the City to approve the assignment, modification, extension, assumption, and re-subordination of its loan and its related regulatory agreement.

Skeels Hotel has an existing City ground lease of \$1 per year. Eden is proposing to extend the term of the ground lease and the affordability restrictions attached to the ground lease to satisfy the terms of new financing. Eden is asking the City to approve the assignment, modification, extension, and assumption of its ground lease, based upon the terms of the financing subject to the City of Morgan Hill's final review. In addition, in the event that Eden subdivides the commercial portion, Eden is asking the City to approve modifying the existing ground lease to remove the commercial portion from the legal description and to enter into a new separate ground lease to encumber only the subdivided commercial parcel, under the same ground lease terms. Skeels Hotel has four existing residual receipts loans from the County, with a combined principal amount of \$961,195 and accrued interest of \$803,587. Eden is asking the County to approve the assignment, modification, extension, assumption, and re-subordination of those loans as well.

Villa Ciolino:

Villa Ciolino Apartments, located at 80 Ciolino Ave, contains 41 rental units affordable to low-income families and one staff unit. Eden proposes combining Villa Ciolino with the residential portion, and possibly also the commercial portion, of Skeels Hotel in a new scattered-site financing. They would share financing and be cross-collateralized.

Villa Ciolino has an existing City loan in the principal amount of \$2,375,000 and \$1,783,111 of accrued interest at 4% simple interest with a maturity date of April 1, 2054. By the time the financing closes, Eden anticipates that additional interest would have accrued. Eden is proposing to extend the term of the loan and the affordability restrictions attached to the loan for a new 55-year term. In order to be compatible with new tax credit financing, Eden proposes recasting the principal and accrued interest at AFR as of the date of closing for the new financing. The residual receipts repayments of the City loan may also have to be renegotiated among the government entities that have existing loans to Skeels Hotel and Villa Ciolino. Eden is asking the City to approve the assignment, modification, extension, assumption, and re-subordination of its loan and its related regulatory agreement.

Villa Ciolino has an existing residual receipts loan from the County, with a principal amount of \$300,000 in accrued principal and \$314,705 in accrued interest. Eden is asking the County to approve the assignment, modification, extension, assumption, and re-subordination of those loans as well.

Willows Apartments:

The Willows Apartments, located at 50 West Edmundson Ave, contains 19 rental units affordable to low-income families and one staff unit. Eden proposes combining Depot Commons with Willows Apartments in a new scattered-site financing. They would share financing and be cross-collateralized.

The Willows Apartments has an existing City ground lease that terminates in 2046. Eden is proposing to extend the term of the ground lease and the affordability restrictions attached to the ground lease for a new year term, commensurate with their financing requirements. Eden is asking the City to approve the assignment, modification, extension, and assumption of its ground lease, subject to final review of documents.

Villa Ciolino has an existing residual receipts loan from HCD, with a principal amount of \$954,228 and accrued interest of \$719,857. Eden is asking HCD to approve the assignment, modification, extension, assumption, and resubordination of its loan.

Uses of the Loan Proceeds:

The uses proposed for the loan proceeds include performing critical repairs in excess of \$4 million across the four sites, within 12 months of the closing of the refinancing, and customary entitlement, design, financing, and transactional costs. In addition, Eden will earn a developer fee in accordance with the Internal Revenue Code and State of California's regulations controlling developer fee.

The loan proceeds will enable Eden to repair and upgrade the property for the long-term benefit of the residents and the community. The estimate of the repairs is in process. The proposed repairs will include (among other items) roof repair and/or replacement, mechanical system upgrades, and common area and unit interior improvements. In addition, Eden will implement increased energy and water efficiency measures and pursue the installation of solar photovoltaic systems to offset electricity usage where feasible.

In the event that excess funds are available from the refinance, Eden proposes that the refinance transaction repay up to \$100,000 of its current City loans. This pay down would be contingent on the project securing favorable tax credit and tax-exempt bond financing, and the ability to cover the costs for renovations and improvements. Eden would also ask that the City consider some lesser amount (amount to be determined) if staff and Eden determine that project funds would be best utilized to address current and unforeseen renovation scope items.

The City loans are Residual Receipt loans, which means that the City would continue to be eligible for a prorated portion of cash flow from these affordable housing developments, to the extent that there is sufficient cash flow. The proration will be made among all of the residual receipts loans from all sources, as well as deferred sources coming from Eden and its affiliates in accordance with Internal Revenue Code and State of California tax credit regulations.

Staff has discussed with EDEN Housing the City's desire to work together to streamline opportunities to assist individuals and families that are serviced by South County programs and the Morgan Hill school district, experiencing homelessness, and overcrowded living accommodations. One example of a connection that could be made is as new units are created, and possibly as turn over occurs, there may be an opportunity to create a bridge to permanent housing for families participating in the City's homeless safe parking program.

COMMUNITY ENGAGEMENT: Inform. This report is intended to inform the Morgan Hill community.

ALTERNATIVE ACTIONS:

As an alternative action to the staff recommendation, the City Council may decide to not approve the recast and re-subordination of the its loans and require Eden Housing to pay the loans off in full, and the opportunity to substantially rehabilitate these projects would no longer be financially viable. Furthermore, in this circumstance, the City would lose the ability to require the projects to remain affordable to low income individuals for an additional 55 years.

The City Council may also decide to not approve the extension of the ground leases for the Skeels Apartments and Willows Apartments on City-owned land. In this circumstance, the City would compromise the financial viability of the rehabilitation projects, and the projects would not be able to qualify for tax credit financing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously considered the terms of the loans for the Skeels Apartments and Villa Ciolino Apartments and consented to the assignment from entities controlled by South County Housing and its affiliates and to assumption entities controlled by Eden Housing and its affiliates.

The City Council previously considered the terms of the ground leases for Skeels Apartments and The Willows Apartments and consented to the assignment from entities controlled by South County Housing and its affiliates and to assumption entities controlled by Eden Housing and its affiliates. The City Council also approved restating the annual ground rent due from Skeels Apartments and The Willows and forgiving accrued unpaid ground rent.

FISCAL AND RESOURCE IMPACT:

With execution of the refinance, the City's Housing Fund (255) will potentially be increased by \$100,000 during Fiscal Year 2019-20, and possibly in coming years through residual receipts payments.

The execution of the refinance will extend the affordability agreements associated with the Skeels Apartments, Villa Ciolino Apartments, and The Willows Apartments, continuing to make affordable housing available to the City's low-income residents for the next 55 years.

CEQA (California Environmental Quality Act):

These projects are Categorical Exempt pursuant to Section 15301 of CEQA Guidelines as proposed repairs, maintenance and minor alteration of existing facilities involving no expansion of existing use will not have a significant effect on the environment.

LINKS/ATTACHMENTS:

1. City Commitment Letter_EDEN Rehab (002)
2. Conflicts



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December 5, 2018

Linda Mandolini
President Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541

Dear Ms. Mandolini:

Eden Housing, Inc., a California nonprofit public benefit corporation, has requested that the City of Morgan Hill, (“City”) approve the assignment, modification, extension, assumption, and re-subordination of its existing City debt and ground leases in support of substantially rehabilitating Depot Commons, Skeels Hotel, Villa Ciolino, and the Willows Apartments.

This letter is to acknowledge that, in support of a substantial rehabilitation of the projects mentioned, the City will commit its existing, in force regulatory agreements and the loan, originally made to Eden Housing, Inc., in support of the new tax credit partnerships. It is the City’s understanding that Eden Housing, Inc. and its affiliates (“Eden”) control the ownership of these four developments and intend to seek new Low-Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation. Eden will then sell these developments to new tax credit limited partnerships controlled by Eden in order to facilitate the tax credit investment, and the new tax credit limited partnerships will need to assume the modified and extended existing City loans and ground leases.

The City is in support of assigning, modifying, and extending ground leases, and re-subordination of rehabilitation loans unique to each project site. Eden proposes financing four sites together in two bundles, Eden proposes to finance Depot Commons and The Willows together; and, Skeels Hotel and Villa Ciolino together.

Morgan Hill’s policy towards its multifamily housing partnerships is to provide stewardship to guaranty investment and re-investment in quality, long term housing stock. This generally results in supporting non-profit partners as they raise rehabilitation dollars for renovation of aging structures from the private market through a combination of sources including tax credit funds. With a goal of rehabilitation and modernization of dwelling units, it is policy consistent that Morgan Hill re-subordinate its position in the transactions and assign ground leases to support the modernization of the structures.

Prior to finalization of new tax credit financing, a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing will be held before the Morgan Hill City Council, with rehab work intended to occur immediately thereafter. The Housing Team has worked with Eden to review the proposed improvements at each site and made recommendations regarding their intended scopes of work. The impacted housing projects are:

Depot Commons:

Depot Commons, located at 17135-17145 Depot Street, contains 12 studio apartments affordable to low-income residents and one staff apartment. Eden proposes combining Depot Commons with Willows Apartments to obtain new scattered-site financing. Depot Commons does not currently have existing City loans or a ground lease but, as part of a scattered-site project, would share financing and be cross-collateralized with The Willows Apartments, which does have a ground lease from the City.

Skeels Apartments:

Skeels Apartments, located at 17305 Monterey Road, contain 13 efficiency studios affordable to low-income residents. Eden proposes combining the residential portion of Skeels Hotel with Villa Ciolino in a new scattered-site financing. They would share financing and be cross-collateralized. Eden is exploring the possibility of subdividing the commercial portion of the building and transferring it to separate ownership that is controlled by Eden or its affiliates to eliminate complications with financing and underwriting. Skeels Hotel has an existing City loan (\$300,000) with a principal balance of \$162,331 and \$68,339 of accrued interest at 3% simple interest with a maturity date of April 1, 2026. Eden is proposing to extend the term of the loan and the affordability restrictions attached to the loan. Skeels Hotel also has an existing City ground lease from the City. Eden is proposing to extend the term of the ground lease and the affordability restrictions attached to the ground lease to satisfy the terms of new financing.

Villa Ciolino:

Villa Ciolino Apartments, located at 80 Ciolino Ave, contains 41 rental units affordable to low-income families and one staff unit. Eden proposes combining Villa Ciolino with the residential portion, and possibly also the commercial portion, of Skeels Hotel in a new scattered-site financing. They would share financing and be cross-collateralized. Villa Ciolino has an existing City loan in the principal amount of \$2,375,000 and \$1,783,111 of accrued interest at 4% simple interest with a maturity date of April 1, 2054.

Willows Apartments:

The Willows Apartments, located at 50 West Edmundson Ave, contains 19 rental units affordable to low-income families and one staff unit. Eden proposes combining Depot Commons with Willows Apartments in a new scattered-site financing. They would share financing and be cross-collateralized. The Willows Apartments has an existing City ground lease which terminates in 2046. Eden is proposing to extend the term of the ground lease and the affordability restrictions attached to the ground lease for a new year term, commensurate with their financing requirements.

Uses of the Loan Proceeds:

The uses proposed for the loan proceeds include performing critical repairs in excess of \$4 million across the four sites, within 12 months of the closing of the refinancing, and customary entitlement, design, financing, and transactional costs. It is the City's understanding that the loan proceeds will enable Eden to repair and upgrade the property for the long-term benefit of the residents and the community.

The City acknowledges that Eden Housing, Inc. intends to sponsor a new Federal Low -Income Housing Tax Credit project for the purposes of substantially rehabilitating the above-mentioned projects, and an Eden affiliate is contemplated to control the General Partner of this new tax credit partnership. Eden will be able to demonstrate site control for these projects by the date that it applies to the tax credit financing committees for this new scattered-site project.

The City intends to support this project by extending, assigning, and modifying its existing regulatory agreements and loan to the new tax credit partnership. The City is proposed to have an identical security interest or better, in both projects going forward, and the City loan term would be extended to 55 years,

subject to the California government Code. The new interest rate is anticipated not to exceed the Applicable Federal Rate on the date of construction financing closing, as determined by tax counsel. The City will resubordinate its loans to the new senior mortgage and State of California Housing and Community Development loans to the partnership.

The City hereby acknowledges that the City regulatory agreements and loans and lease extensions would need to be assumed by the new ownership entity and that the assumption would take place upon the acquisition of the projects, and just prior to the commencement of the substantial rehabilitation of these projects.

Finally, the City acknowledges that the above transactions will be subject to meeting all required public hearings, due diligence and other City requirements. If you have any questions, please feel free to contact me at 408-310-4637 or Rebecca.Garcia@morganhill.ca.gov.

Sincerely,

Rebecca Garcia
Housing Manager

4341.txt

Mayor Tate has a conflict with Willows Apartments, located at 50 W. Edmundson Ave.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Jennifer Carman, Community Development Director
APPROVED BY: City Manager

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES FOLLOW-UP

RECOMMENDATION(S)

1. Receive follow-up information on Monterey Corridor Block-Level Master Plan Alternatives and Specific Plan preparation; and
2. Direct staff to proceed with Monterey Corridor Block-Level Master Plan process.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Economic Development and
Telecommunications
Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATION:

Should the City pursue an alternative to a full Block-Level Master Plan (BLMP) that would allow a Monterey Corridor applicant to participate in the 2018/2019 RDCS competition for residential allotments?

REPORT NARRATIVE:

Block Level Master Plan Background

On April 4, 2018, City Council discussed the Monterey Corridor Study Report, Implementation Memo, and Planning Commission's recommendations. A number of implementation measures were discussed, and staff was directed to proceed with the preparation of a Block-Level Master Plan (BLMP) for the Monterey Road corridor, which, if approved, would fulfill the General Plan requirement that such a plan be adopted prior to development of residential or mixed-use projects within the Mixed-Use Flex land use designation. The Block-Level Master Plan would also serve as the foundation for a future Monterey Corridor Form-Based Code or Specific Plan. The goal was to have the BLMP adopted in time for projects to compete in the 2019 RDCS Competition.

As the Overall BLMP work proceeded, it became clear through the public process and discussion, that the timelines required of the work program would extend past the

RDCS competition deadline for 2019. Work on the larger, overall project stopped and staff returned to City Council to discuss alternative methods to both satisfy the BLMP requirement and meet the submission deadline for the 2019 RDCS competition at the meeting of November 28, 2018. Those items included:

- Alternative 1: BLMP Zoning Overlay – Simplified
- Alternative 2: Morgan Hill 2035 General Plan Text Amendment
- Alternative 3: Conditional Use Permit as Block-Level Master Plan
- Alternative 4: Privately-initiated Planned Development Zoning as Block-Level Master Plan
- Alternative 5: Specific Plan as Block-Level Master Plan

There was significant discussion regarding Alternatives 1 & 2 and based on those comments staff believes a hybrid of 1 & 2 could address a number of concerns raised by Council Members.

The Council discussed possibly focusing future planning efforts on certain blocks by prioritizing those that are close to Downtown and/or that have greater development potential. A variation of Alternative 4 where the City initiates Planned Development (PD) Zonings on specific blocks could serve as the required BLMP.

Discussion again turned to the idea of looking at Monterey Corridor as a whole or in sections larger than just the MU-F zoned blocks via a Specific Plan.

There was also Council Member consensus directing staff to ensure that the 2019 RDCS submission deadline in March does not drive whatever process is chosen to achieve the goals of the BLMP requirement. With that in mind, resuming work on the BLMP process initiated with the Lisa Wise Consulting team for all of the Mixed-Use Flex (MU-F) zoned blocks may also be a solution.

Staff intends to return on December 19 with clearly defined processes that meet the BLMP requirement and achieve Council goals relating to cohesive development that does not default exclusively to residential use.

Specific Plan

During the November 28, 2018 meeting, staff also discussed returning with options for funding of a Specific Plan process. At the meeting of April 4, 2018, significant time was spent discussing the merits of pursuing a Specific Plan process for the entire Monterey Corridor. A Specific Plan for the Monterey Corridor would fulfill the Block-Level Master Plan requirement but would likely not be completed/adopted for 2 or more years. Applicants would not be able to participate in the RDCS competition process for residential allotments on Mixed Use Flex designated sites until the Specific Plan was completed, unless the City established a way for certain projects to compete in the interim.

	Implementation Option	Rough Budget Consultant Costs	Est.	Time Est. (mos.)
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1.1	Comp. Form Based Code	\$125,000 - \$330,000	10 – 18
1.2	Scaled-down Form Based Code	\$95,000 - \$200,000	8 – 12
2	Conventional Code	\$60,000 - \$110,000	6 - 10
3	Specific Plan	\$350,000 - \$700,000	18 – 24
4	Guidelines for “Block-Level MP”	\$25,000 - \$45,000	4 – 6
5	Streetscape Improvement Plan	TBD	TBD

A potential funding plan for a Specific Plan will also be brought back for discussion at the December 19th City Council meeting.

COMMUNITY ENGAGEMENT: Inform

Throughout the Monterey Corridor Study and Block-Level Master Plan process there have been opportunities for formal and informal community participation, including stakeholder meetings, Planning Commission and City Council meetings, and joint City Council/Planning Commission workshops. Adoption of a Block-Level Master Plan Zoning Overlay will include noticed Planning Commission and City Council public hearings.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 27, 2018, the Planning Commission reviewed and discussed the Monterey Corridor Analysis Report and Implementation Options Memo and recommended both a near-term (Block-Level Master Plan) and long-term implementation option (Specific Plan) for City Council consideration.

On April 4, 2018, the City Council considered and supported the Planning Commission recommendation to prepare a near-term Block-Level Master Plan for the Monterey Corridor that would serve as the foundation for a future Specific Plan.

On July 25, 2018, the City Council approved a consultant agreement with Lisa Wise Consulting and scope of work/budget for preparation of a Block-Level Master Plan.

On October 17 and 24, 2018, the City Council and Planning Commission held a workshop to discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor and to discuss and provide feedback on the results and recommendations of a block-level commercial analysis.

FISCAL AND RESOURCE IMPACT:

A consultant agreement with Lisa Wise Consulting for preparation of the Monterey Corridor Block-Level Master Plan and associated Long-Range Planning Fund (Fund 207) expenditure were previously approved by City Council on July 25, 2018 and included in the FY 2018-19 Adopted Budget.

CEQA (California Environmental Quality Act):

Statutory Exemption

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

Although the identification of a preferred planning process for implementing a Monterey Corridor Block Level Master Plan is exempt from CEQA, the future adoption of a plan or plans for the Monterey Corridor will be subject to additional CEQA review.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

SEPTEMBER 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 three months ended September 30, 2018. Overall, the City received 19% of the budgeted revenues for all funds as there is typically a delay in remittances. However, the amount received year to date for all funds is approximately \$3.9 million or 16% higher than prior year at this time. The increase was primarily led by an increase in Enterprise Funds revenues of \$1.8 million, of which, approximately \$956,000 was due to higher developer impact fees collected.

General Fund revenues totaled \$6.8 million and General Fund expenditures totaled \$9.7 million, or 22% of the budget. Expenditures, including encumbrances amounted to \$13.1 million or 30% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers, such as Cal-West Lighting and Signal Maintenance for the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

Community Development Fund revenues totaled \$1.4 million, or approximately 28% of the budget. The amount received to date is approximately \$365,000 more than the prior year mainly due to the updated fees which went into effect January 1, 2018. Expenditures and encumbrances totaled \$2.0 million, or approximately 32% of the budgeted appropriation.

Enterprise Funds revenues which comprised of Water and Sewer totaled \$10.3 million or 29% of the budget, an increase of \$1.8 million or 20% from a year ago at this time primarily due to higher development impact fees collected and water sales.

Expenditures, including encumbrances amounted to \$13.6 million or 32% of the budget.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. September 2018 Financial Statement Analysis
2. September 2018 Financial and Investment Report
3. Presentation - 1st Quarter FY18-19 Financial Report

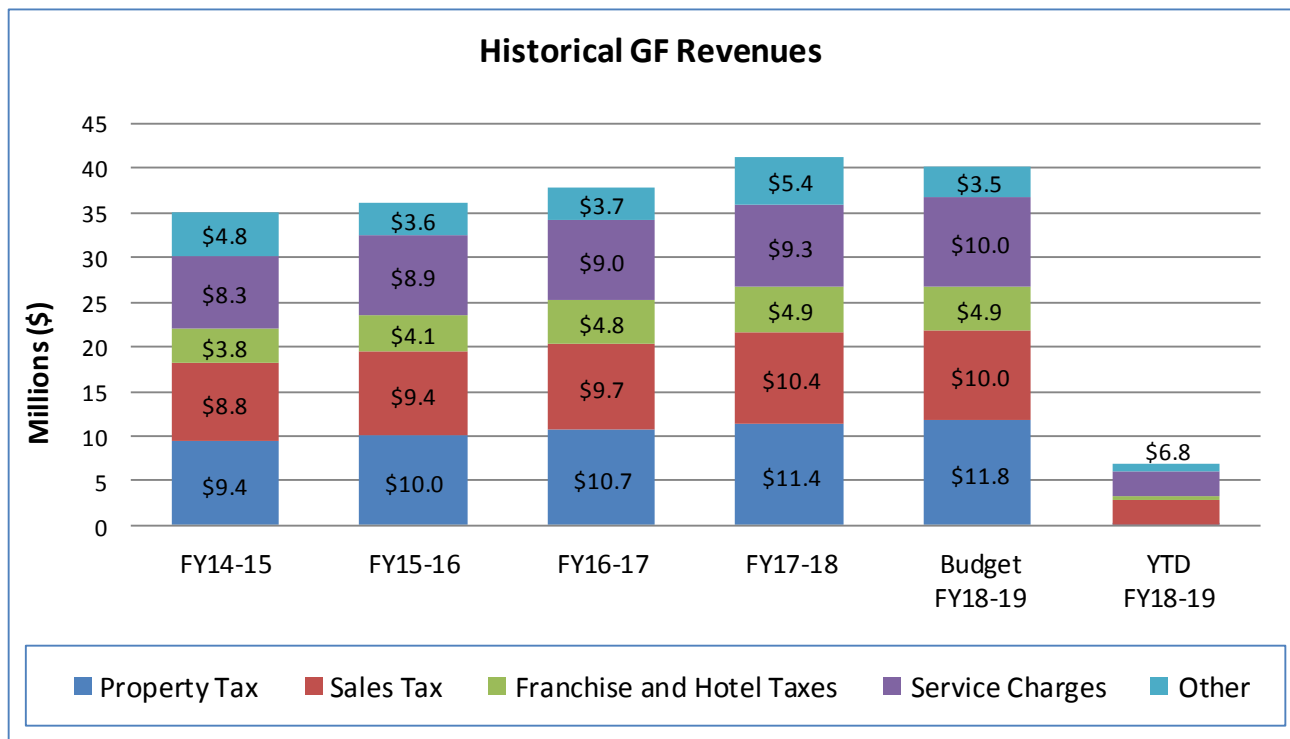


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED SEPTEMBER 2018 – 25% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of September totaled \$6.8 million, or 17% 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 \$40.2 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

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

The chart below shows historical General Fund revenues by major revenue category from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of September 30, 2018.

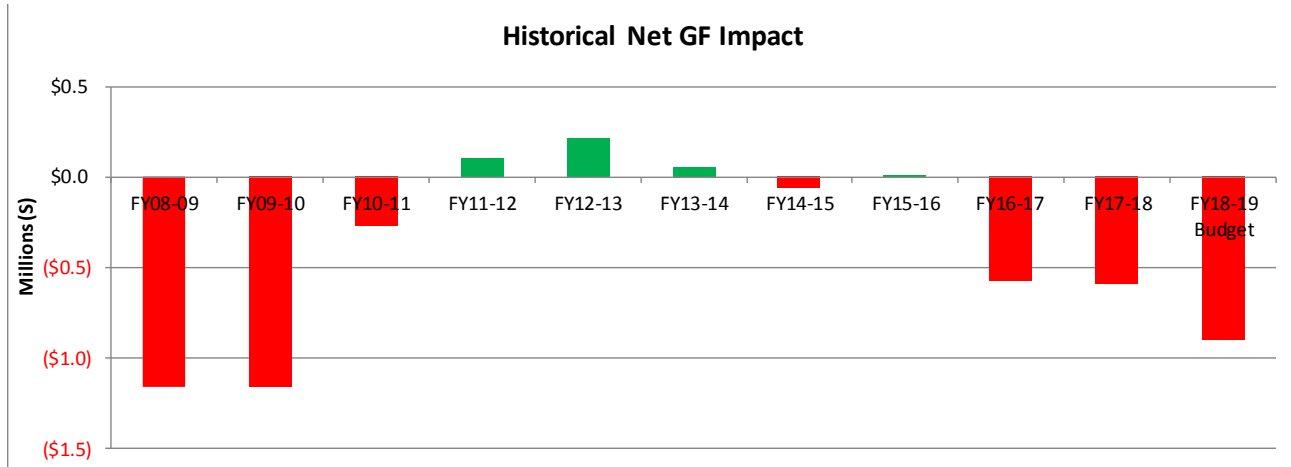


General Fund expenditures and encumbrances as of September 30, 2018 totaled \$13.1 million, of which approximately \$3.4 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED SEPTEMBER 2018 – 25% OF YEAR COMPLETE

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.4 million through the month of September. Without the carry-over encumbrances, the year to date operations through the month of September resulted in a small net benefit to the general fund of approximately \$934,000. 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 through September totaled \$1.4 million, an increase of 36% or approximately \$365,000 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 \$2.0 million. Without the outstanding encumbrances, however, expenditures through the month of September amounted to \$1.2 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$1.4 million.
- **Debt Service Funds** – Expenditures through the month of September totaled \$3,300. 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 through the month of September totaled \$2.7 million. Expenditures and outstanding encumbrances totaled \$2.6 million or 23% of the budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED SEPTEMBER 2018 – 25% OF YEAR COMPLETE

The table below shows historical Sewer Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of September 30, 2018.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	10.3	10.2	9.7	10.3	10.7	2.7
Expenditures	8.8	12.0	9.8	10.8	11.3	2.6
Operating Margin	1.5	(1.8)	(0.1)	(0.5)	(0.6)	0.1
Operating Margin without Encumbrances	1.5	(1.8)	(0.0)	(0.3)	(0.6)	0.3

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of September totaled \$4.3 million, approximately 12% more than a year ago partially due to rate adjustment. Water Operations expenditures, including outstanding encumbrances, totaled \$3.8 million for the year. Without the encumbrances, however, the expenditures amounted to \$2.7 million. The table below shows Water Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of September 30, 2018.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	8.8	8.5	10.9	13.0	13.8	4.3
Expenditures	9.3	9.7	11.2	12.1	13.5	3.8
Operating Margin	(0.5)	(1.2)	(0.3)	0.9	0.3	0.5
Operating Margin without Encumbrances	(0.5)	(1.2)	(0.1)	1.4	0.3	1.6

- **Investments** – Two purchases were made, and two securities were called during the month of September 2018. Total interest earnings received on investments were \$14,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
September 30, 2018 - 25% of Year Complete

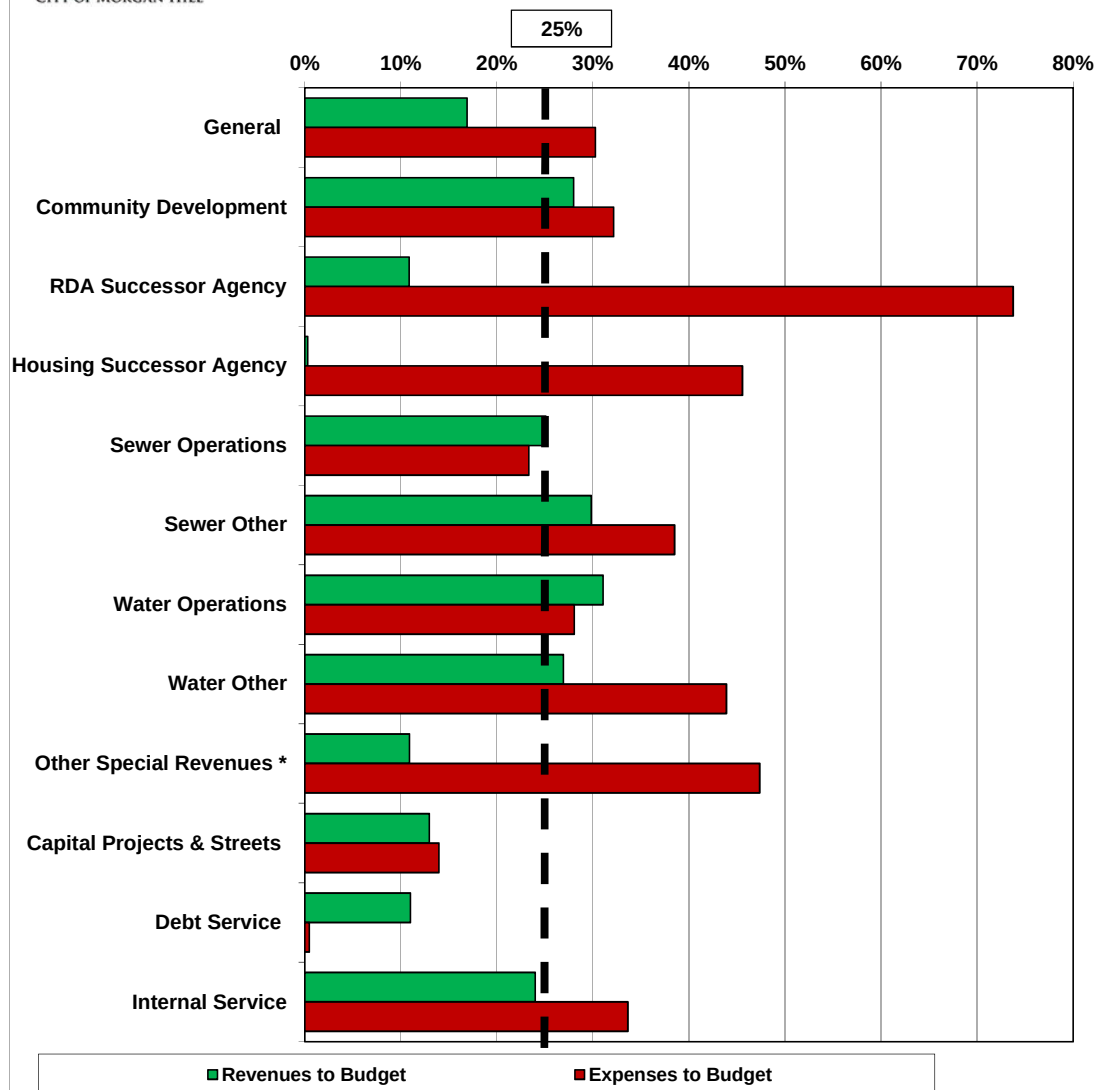


CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT

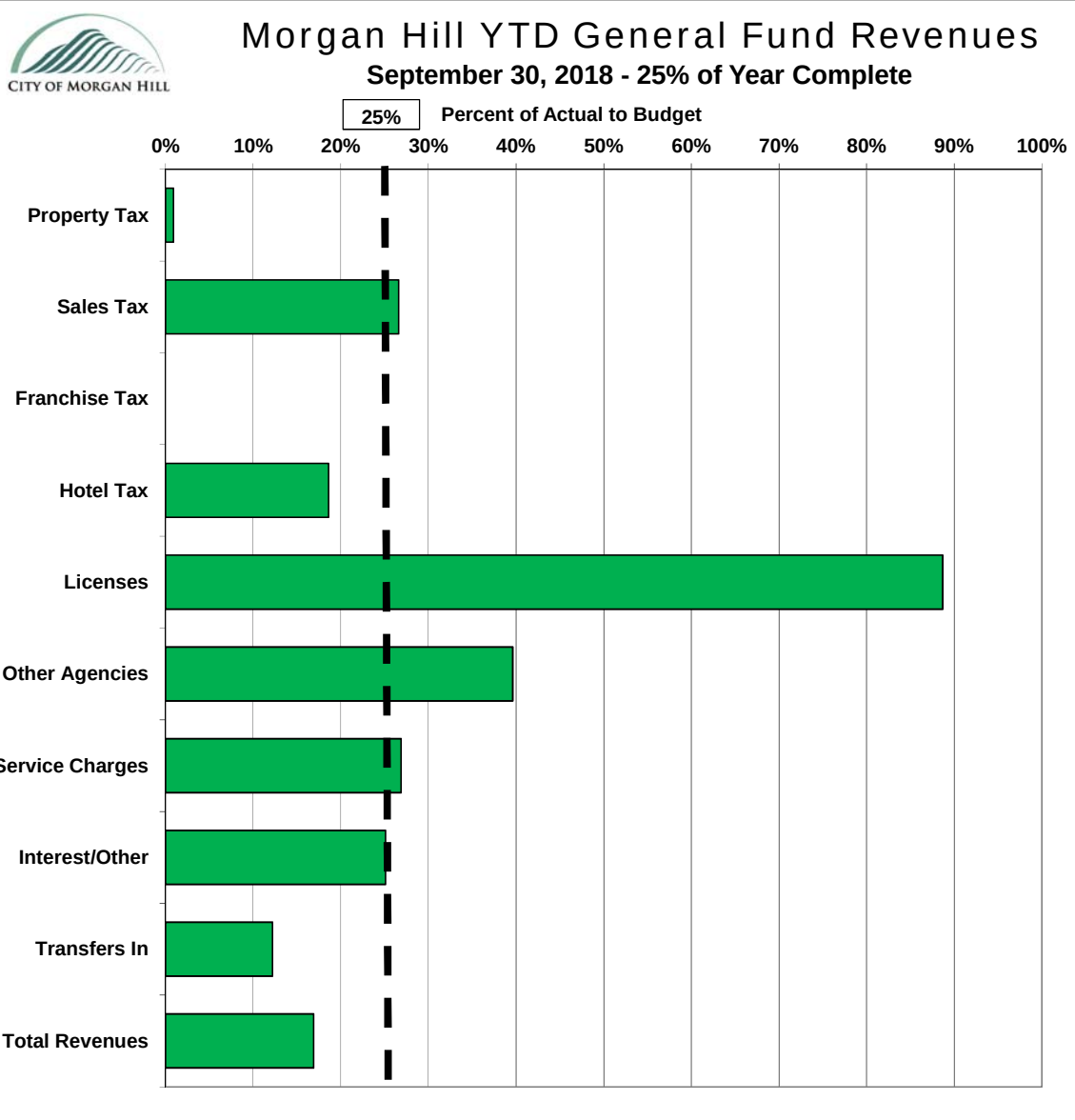


Morgan Hill YTD Revenue & Expense Summary September 30, 2018 - 25% of Year Complete



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 6,789,406	17%	\$ 13,067,590	30%
Community Development	1,366,793	28%	2,007,462	32%
RDA Successor Agency	862,762	11%	5,889,080	74%
Housing Successor Agency	7,415	0%	1,676,672	46%
Sewer Operations	2,698,180	25%	2,640,645	23%
Sewer Other	2,316,951	30%	4,901,307	38%
Water Operations	4,272,766	31%	3,778,338	28%
Water Other	1,015,355	27%	2,292,067	44%
Other Special Revenues *	448,964	11%	2,602,922	47%
Capital Projects & Streets	5,137,830	13%	6,774,865	14%
Debt Service	74,236	11%	3,312	0%
Internal Service	2,832,945	24%	3,849,585	34%
TOTAL FOR ALL FUNDS	\$ 27,823,604	19%	\$ 49,483,846	29%

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

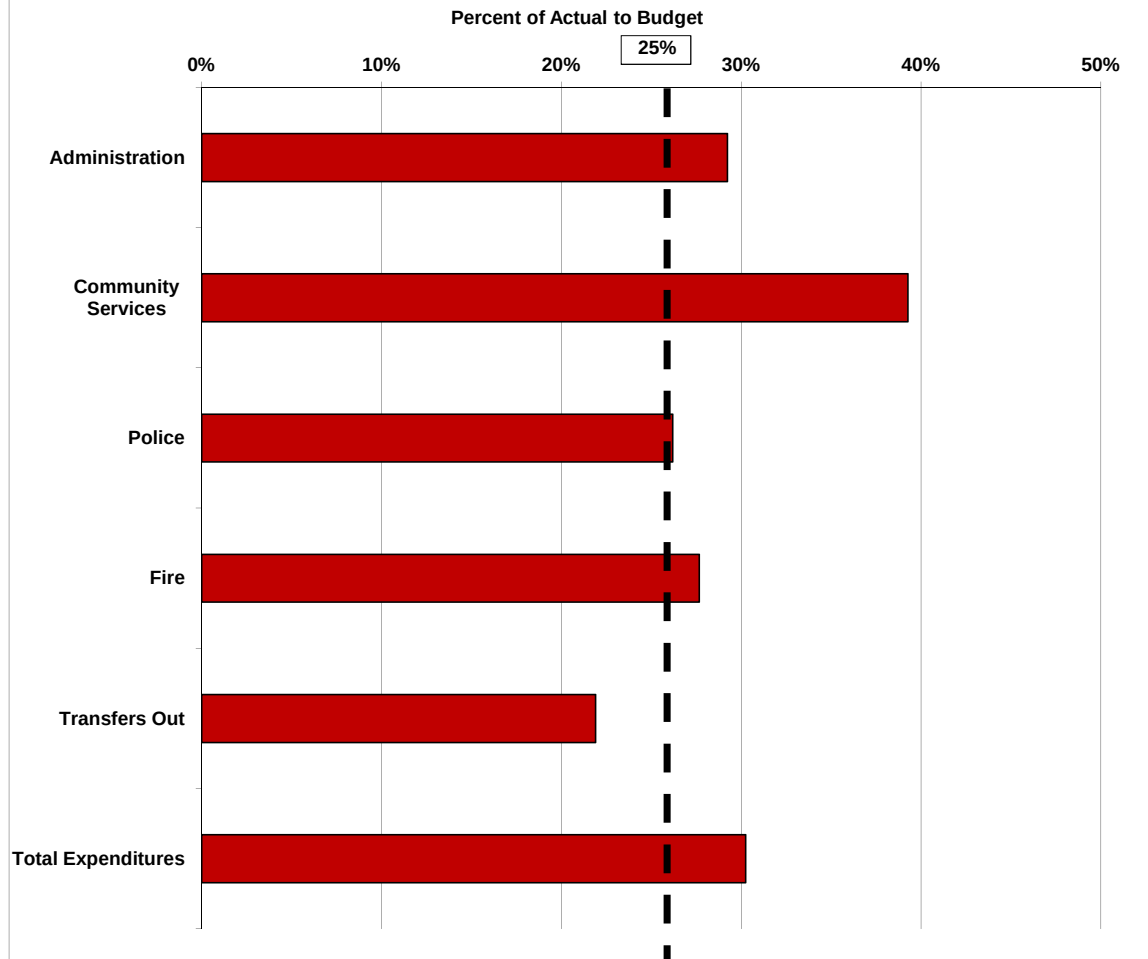


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$11,813,532	\$ 103,321	1%	\$ 24,641	319%
Sales Tax	9,981,124	2,650,557	27%	2,591,346	2%
Franchise Tax	2,164,190	-	-	-	-
Hotel Tax	2,754,000	510,945	19%	526,234	-3%
Licenses	200,800	178,183	89%	167,252	7%
Other Agencies	314,398	124,547	40%	72,393	72%
Service Charges	9,993,089	2,688,112	27%	2,545,615	6%
Interest/Other	1,330,787	334,051	25%	1,287,343	-74%
Transfers In	1,637,720	199,689	12%	337,513	-41%
TOTAL REVENUES	\$40,189,640	\$ 6,789,406	17%	\$ 7,552,338	-10%



Morgan Hill YTD General Fund Expenditures

September 30, 2018 - 25% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,943,269	\$ 1,445,109	29%	\$ 2,176,314	-34%
Community Services	12,195,638	4,789,693	39%	4,396,096	9%
Police	17,301,708	4,532,388	26%	4,068,561	11%
Fire	6,666,707	1,845,140	28%	1,639,684	13%
Transfers Out	2,077,498	455,259	22%	602,919	-24%
TOTAL EXPENDITURES	\$ 43,184,819	\$ 13,067,590	30%	\$ 12,883,574	1%

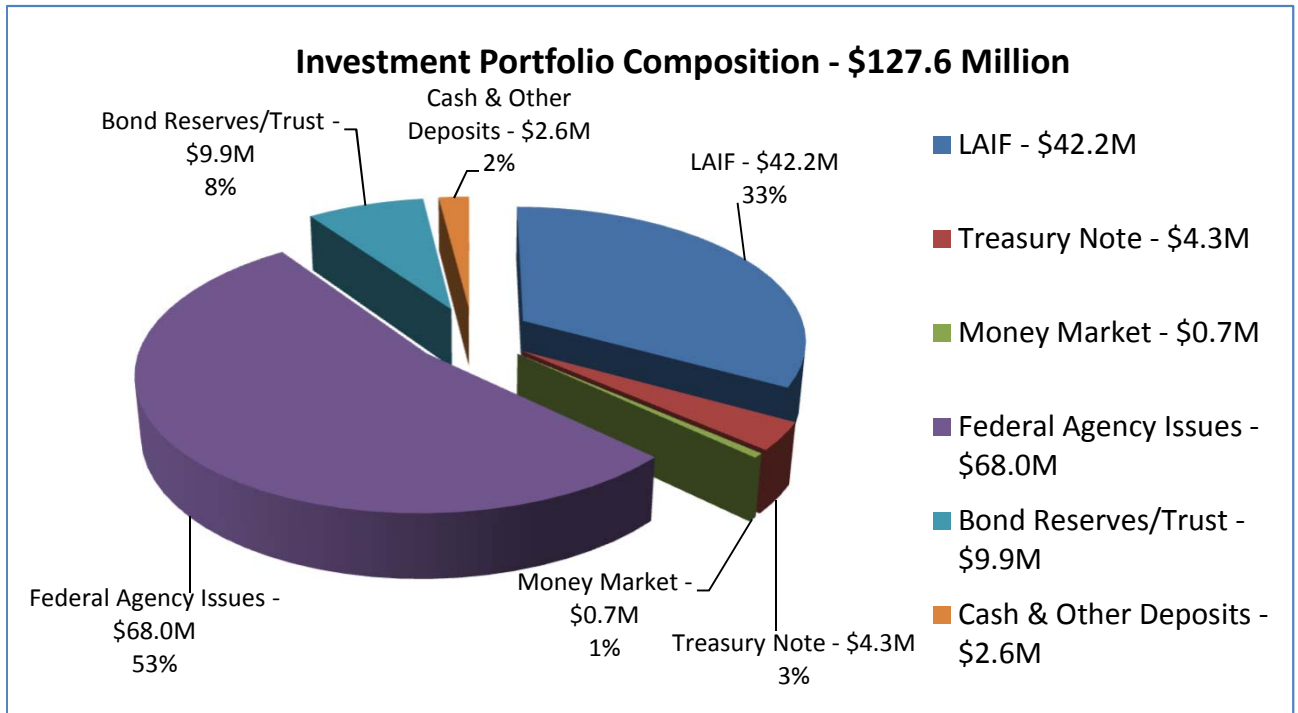


**City of Morgan Hill
Recreation Report - Fiscal Year 2018-19
For the Month and Three Ended September 30, 2018
25% of Year Complete**

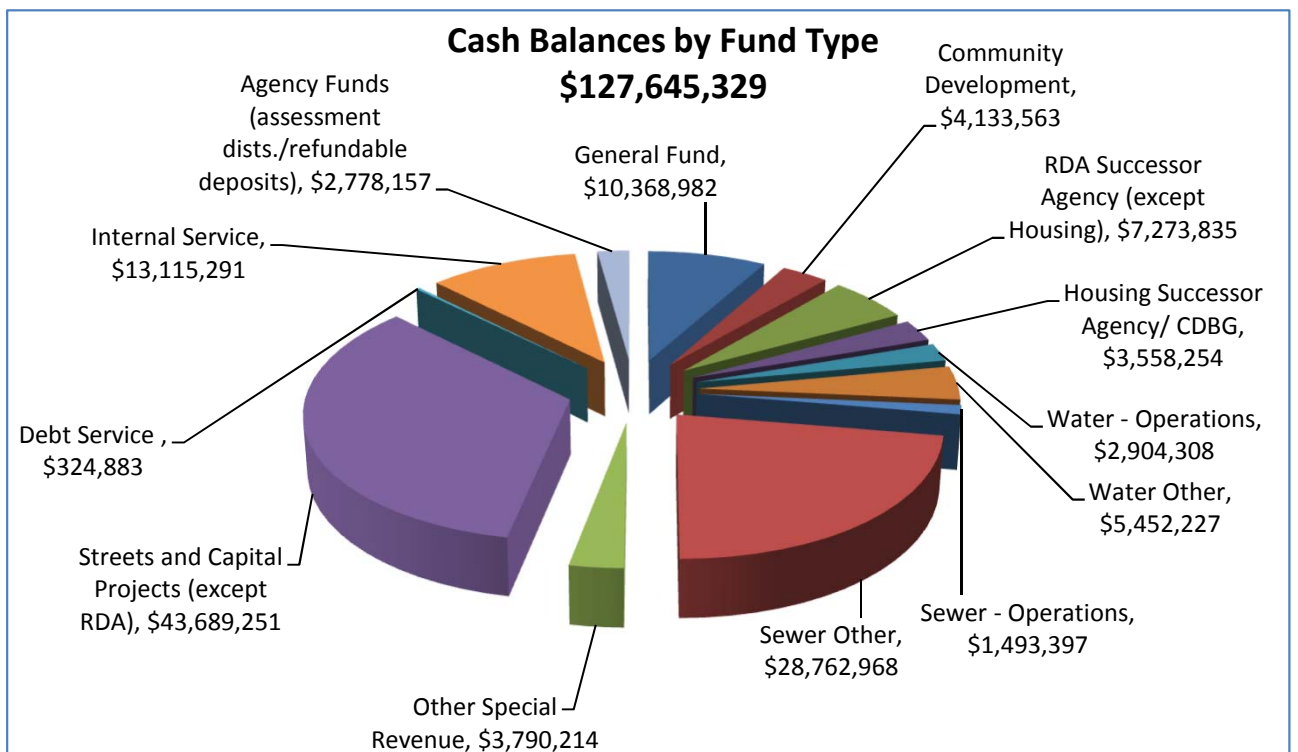
	<u>Budget</u>	<u>September 2018</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,241,196	\$ 463,393	\$ 1,849,254	
Facility Rentals	898,700	78,012	282,367	
Community Services	147,840	5,454	14,375	
Transfers in	75,000	6,250	18,750	
Total Revenues	\$ 7,362,736	\$ 553,109	\$ 2,164,746	29%
Less: Expenditures				
Membership & Program Services	\$ 6,255,009	\$ 348,913	\$ 1,609,140	
Facility Rentals	1,355,732	109,063	325,721	
Community Services	653,307	33,291	136,701	
Total Expenditures	\$ 8,264,049	\$ 491,266	\$ 2,071,562	25%
Net Impact without encumbrances	\$ (901,313)	\$ 61,843	\$ 93,184	
Encumbrances	-	-	1,481,066	
Net Impact with encumbrances	\$ (901,313)	\$ 61,843	\$(1,387,882)	

City of Morgan Hill Monthly Investment Report - September 30, 2018

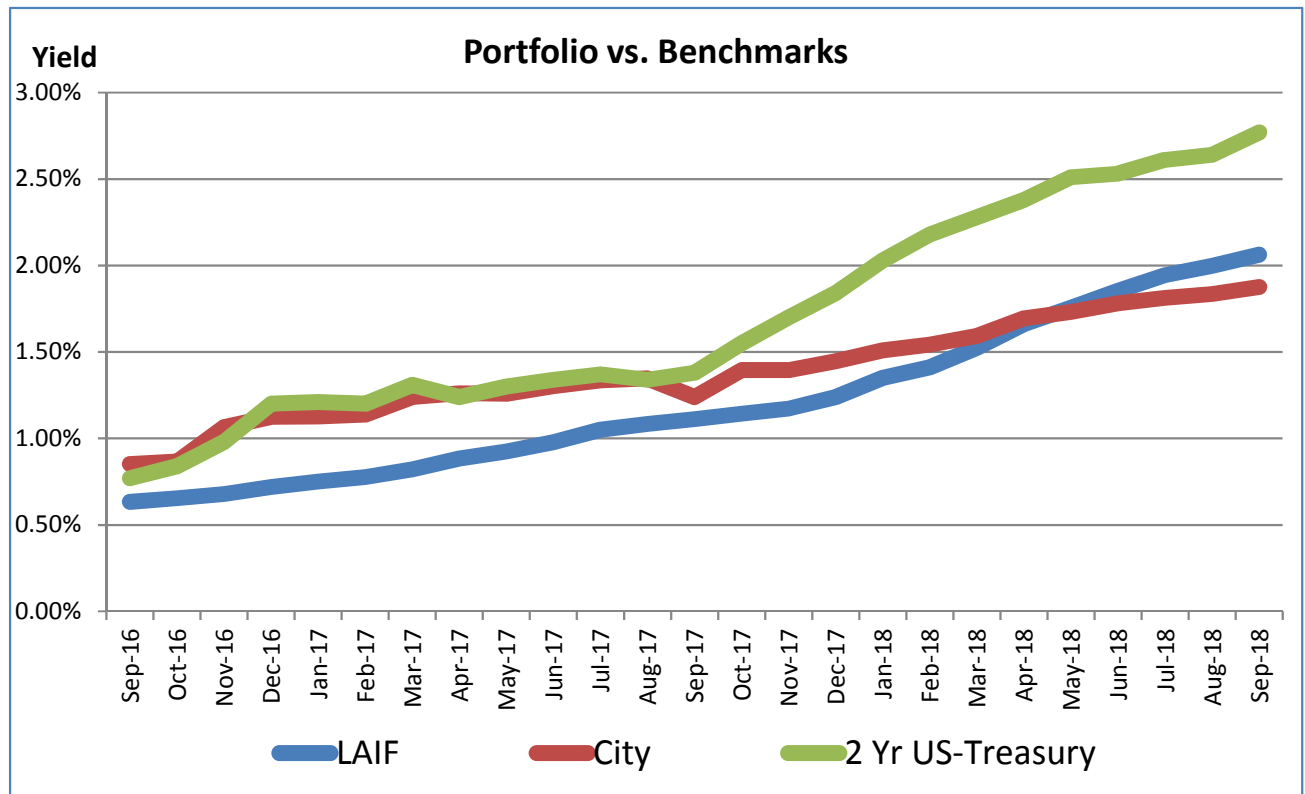
The following are the snapshots of City's investment portfolio as of September 30, 2018. The first chart shows the portfolio composition by investment type:



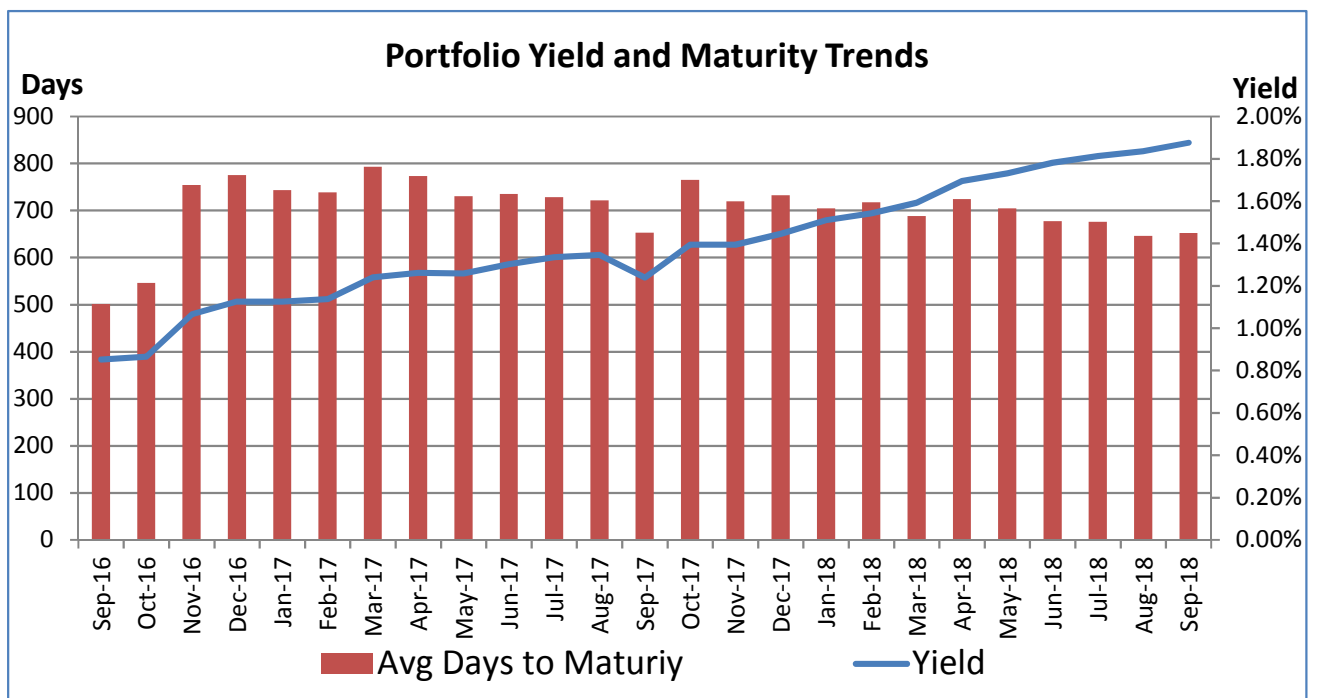
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





City of Morgan Hill
Investment Portfolio Detail
As of September 30, 2018

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 42,186,738	33.05%	\$ 42,107,717	2.00%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	3.13%	3,907,400	1.70%	10/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	3.13%	3,854,240	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	3.13%	3,823,880	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.57%	1,917,880	1.65%	12/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	3.13%	3,818,000	1.60%	12/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	3.13%	3,847,280	1.60%	10/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	3.13%	3,799,880	1.55%	10/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.57%	1,926,540	1.65%	10/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	3.13%	3,838,920	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.35%	2,887,200	1.65%	10/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	3.13%	3,846,840	1.63%	10/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	3.13%	3,850,920	1.88%	10/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	1.02%	1,257,269	2.15%	3/29/2019	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	3.02%	3,714,711	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	3.25%	4,000,932	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.35%	2,916,210	2.50%	1/30/2019	1/30/2023
Treasury Note	4/30/2018	4,268,439	3.34%	4,228,245	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,568,439	46.67%	\$ 57,436,347	1.82%		
Money Market		\$ 687,997	0.54%	\$ 687,997	1.85%		
Total City Managed/Average		\$ 102,443,173	80.26%	\$ 100,232,059	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,854	0.59%	\$ 746,895	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,828	0.59%	741,143	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,978	0.59%	741,083	1.25%	11/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.59%	741,263	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	10/7/2016	749,891	0.59%	740,250	1.29%	9/12/2019	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,926	0.59%	743,963	1.22%	11/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,801	0.58%	736,603	1.03%	1/30/2019	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,974	0.59%	740,123	1.25%	9/30/2019	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,971	0.59%	749,235	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,002,634	0.79%	995,010	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,941	0.78%	997,040	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	749,031	0.59%	744,698	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	741,888	0.58%	735,945	1.39%	6/20/2019	6/20/2019
Fed Home Loan Bank	6/19/2018	943,811	0.74%	942,999	2.38%	5/28/2019	5/28/2019
Fed Home Loan Mortgage	9/14/2018	816,117	0.64%	815,983	2.56%	8/1/2019	8/1/2019
Fed Home Loan Bank	9/26/2018	745,369	0.58%	745,448	2.80%	3/30/2020	3/30/2020
Money Market		17,723	0.01%	17,723	1.85%		
Sub Total/Average		\$ 12,755,736	9.99%	\$ 12,675,400	1.49%		
Bond Reserve Accounts - Held By Trustees		\$ 7,697,089	6.03%	\$ 7,693,390			
Cash/Deposits		\$ 2,561,927	2.01%	\$ 2,561,927			
PARS Trust		\$ 2,187,404	1.71%	\$ 2,454,133			
GRAND TOTAL/AVERAGE		\$ 127,645,329	100.00%	\$ 125,616,910			

Attachment: September 2018 Financial and Investment Report (2079 : September 2018 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF SEPTEMBER 30, 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	2.00%	\$ 35,805,477	28.05%	\$ 35,738,408
2014 Water Rev Bonds - Water Impact	Water Fund	2.00%	526,900	0.41%	525,913
2014 Water Rev Bonds - Water CIP	Water Fund	2.00%	117,460	0.09%	117,240
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.00%	5,736,901	4.49%	5,726,155
Federal Issues	All Funds Pooled	1.50%	68,038,013	53.30%	65,865,779
US Treasury Notes	All Funds Pooled	2.73%	4,268,439	3.34%	4,228,245
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.85%	705,720	0.55%	705,720
	SUBTOTAL		\$ 115,198,909	90.25%	\$ 112,907,460
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	1.73%	55	0.00%	55
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.73%	70	0.00%	70
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.02%	313,449	0.25%	313,449
US Treasury Notes - Reserve Acct.	Successor Fund	1.33%	6,862,871	5.38%	6,859,172
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.73%	256,693	0.20%	256,693
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.73%	263,952	0.21%	263,952
	SUBTOTAL		7,697,089	6.03%	7,693,390
Other Cash/Deposits					
General Checking	All Funds		2,524,815	1.98%	2,524,815
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	1.09%	1,577,549
PARS - PENSION Trust			800,000	0.63%	876,584
	SUBTOTAL		4,749,331	3.72%	5,016,059
Total Cash and Investments			\$ 127,645,329	100.00%	\$ 125,616,910

CASH ACTIVITY SUMMARY
FY 2018-19

Fund Type	Unaudited 07/01/18 Balance	Change in Cash Balance	9/30/2018 Balance
General Fund	\$ 14,905,287	\$ (4,536,305)	\$ 10,368,982
Community Development	3,444,772	688,792	4,133,563
RDA Successor Agency (except Housing)	12,278,895	(5,005,061)	7,273,835
Housing Successor Agency/ CDBG	4,152,743	(594,489)	3,558,254
Water - Operations	2,341,115	563,193	2,904,308
Water Other	4,954,819	497,408	5,452,227
Sewer - Operations	1,519,052	(25,655)	1,493,397
Sewer Other	29,212,177	(449,210)	28,762,968
Other Special Revenue	5,093,029	(1,302,815)	3,790,214
Streets and Capital Projects (except RDA)	42,155,177	1,534,074	43,689,251
Debt Service	253,645	71,238	324,883
Internal Service	13,022,186	93,106	13,115,291
Agency Funds (assessment dists./refundable deposits)	4,116,381	(1,338,224)	2,778,157
Total	\$ 137,449,278	\$ (9,803,949)	\$ 127,645,329

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

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

Prepared by: Harjot Sangha, Accounting Manager

Approved by: _____

Reviewed by: Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Three Months Ended September 30, 2018
25% 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	73,755	5%	-	73,755	n/a
Property Tax - Supplemental Roll	276,150	276,150	29,567	11%	24,641	4,925	20%
Sales Tax	9,601,124	9,601,124	2,583,776	27%	2,528,633	55,143	2%
Public Safety Sales Tax	380,000	380,000	66,780	18%	62,713	4,068	6%
Transient Occupancy Taxes	2,754,000	2,754,000	510,945	19%	526,234	(15,289)	-3%
Franchise (Refuse, Cable, PG&E)	2,164,190	2,164,190	-	0%	-	-	n/a
Property Transfer Tax	505,000	505,000	108,533	21%	93,140	15,393	17%
TOTAL TAXES	27,217,846	27,217,846	3,373,356	12%	3,235,361	137,995	4%
LICENSES/PERMITS							
Business License	196,000	196,000	174,878	89%	164,516	10,363	6%
Other Permits	4,800	4,800	3,305	69%	2,736	569	21%
TOTAL LICENSES/PERMITS	200,800	200,800	178,183	89%	167,252	10,932	7%
FINES AND PENALTIES							
Parking Enforcement	8,250	8,250	1,872	23%	993	879	89%
Bails & Fines	71,500	71,500	12,186	17%	7,253	4,933	68%
Administrative Citations	9,500	9,500	2,043	22%	5,750	(3,707)	-64%
TOTAL FINES AND PENALTIES	89,250	89,250	16,101	18%	13,995	2,105	15%
OTHER AGENCIES							
Motor Vehicle in-Lieu	23,934	23,934	-	0%	-	-	n/a
Other Revenue - Other Agencies	271,398	314,398	124,547	40%	72,393	52,154	72%
TOTAL OTHER AGENCIES	295,332	338,332	124,547	37%	72,393	52,154	72%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,000	33,000	6,478	20%	7,790	(1,311)	-17%
Business License Application Review	36,000	36,000	13,062	36%	9,568	3,494	37%
Membership Services & Rec Programs	6,241,196	6,241,196	1,849,254	30%	1,764,022	85,232	5%
Facility Rentals	898,700	898,700	282,367	31%	285,868	(3,501)	-1%
Community Services	147,840	147,840	14,375	10%	23,541	(9,166)	-39%
General Administration Overhead	1,709,712	1,709,712	426,528	25%	330,072	96,456	29%
Other Charges Current Services	926,641	926,641	96,048	10%	124,755	(28,707)	-23%
TOTAL CURRENT SERVICES	9,993,089	9,993,089	2,688,112	27%	2,545,615	142,497	6%
OTHER REVENUE							
Use of money/property	458,589	458,589	85,049	19%	78,127	6,923	9%
Other Revenues	254,014	254,014	124,368	49%	1,102,082	(977,713)	-89%
TOTAL OTHER REVENUE	712,603	712,603	209,417	29%	1,180,208	(970,791)	-82%
TRANSFERS IN							
One Time Transfer	-	-	-	0%	-	-	0%
Public Safety	100,000	100,000	-	0%	16,000	(16,000)	-100%
Streets	738,968	738,968	-	0%	123,000	(123,000)	-100%
Police Impact	25,000	25,000	6,249	25%	6,249	-	n/a
Sewer Operations	349,376	349,376	87,345	25%	86,757	588	1%
Water Operations	349,376	349,376	87,345	25%	86,757	588	1%
Park Development	75,000	75,000	18,750	25%	18,750	-	n/a
TOTAL TRANSFERS IN	1,637,720	1,637,720	199,689	12%	337,513	(137,824)	-41%
TOTAL GENERAL FUND	40,146,640	40,189,640	6,789,406	17%	7,552,338	(762,932)	-10%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	751,089	751,089	101,875	14%	123,930	(22,055)	-18%
Interest / Other Revenue/Other Charges	-	-	57	n/a	190	(133)	-70%
202 STREET MAINTENANCE	751,089	751,089	101,932	14%	124,120	(22,188)	-18%

Attachment: September 2018 Financial and Investment Report (2079 : September 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Three Months Ended September 30, 2018
25% 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	23	11%	29	(6)	-22%
Police Grant/SLEF/JAG	100,000	100,000	-	n/a	-	-	0%
205 PUBLIC SAFETY TRUST	100,202	100,202	23	0%	29	(6)	-22%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,996,450	2,996,450	874,455	29%	588,007	286,448	49%
Planning Fees	1,396,529	1,396,529	299,596	21%	151,216	148,380	98%
Engineering Fees	462,524	462,524	190,448	41%	256,076	(65,628)	-26%
Other Revenue/Current Charges	24,265	24,265	2,293	9%	6,673	(4,380)	-66%
206 COMMUNITY DEVELOPMENT	4,879,768	4,879,768	1,366,793	28%	1,001,972	364,821	36%
207 LONG RANGE PLANNING	741,894	741,894	204,782	28%	163,554	41,228	25%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	2,821	2,821	30	1%	1,295	(1,264)	-98%
215 and 216 HCD BLOCK GRANT	2,821	2,821	30	1%	1,295	(1,264)	-98%
225 ASSET SEIZURE	1,670	1,670	1,286	77%	238	1,048	441%
229 LIGHTING AND LANDSCAPE	188,591	188,591	67	0%	242	(174)	-72%
230 COMMUNITY FACILITIES DISTRICT	44,198	44,198	36	0%	100	(64)	-64%
232 ENVIRONMENTAL PROGRAMS	394,158	394,158	121,665	31%	118,557	3,108	3%
234 MOBILE HOME PARK RENT STAB.	661	661	20	3%	71	(52)	-72%
235 SENIOR HOUSING	3,347	3,347	102	3%	384	(282)	-73%
236 HOUSING MITIGATION	1,613,912	2,613,912	115,188	4%	95,222	19,967	21%
240 EMPLOYEE ASSISTANCE	28,949	28,949	5,700	20%	8,191	(2,491)	-30%
247 ENVIRONMENT REMEDIATION	2,118	2,118	64	3%	248	(184)	-74%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,946,430	7,946,430	862,762	11%	30,422	832,340	2736%
255 HOUSING SUCCESSOR AGENCY	2,386,006	2,386,006	7,415	0%	117,533	(110,118)	-94%
TOTAL SPECIAL REVENUE FUNDS	19,085,815	20,085,815	2,787,866	14%	1,662,178	1,125,689	68%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	7,959,013	7,959,013	558,334	7%	956,265	(397,931)	-42%
302 PARK MAINTENANCE	1,320,332	1,320,332	231,406	18%	587,379	(355,973)	-61%
303 LOCAL DRAINAGE	1,394,482	1,394,482	311,757	22%	728,622	(416,866)	-57%
304 LOCAL DRAINAGE/NON AB1600	80,981	80,981	71,356	88%	52,854	18,502	35%
306 AGRICULTURE & OPEN SPACE PRESERVATION	2,652,538	2,652,538	1,304,443	49%	126,794	1,177,649	929%
308 STREET CIP	3,861,662	3,861,662	856,029	22%	297,893	558,137	187%
309 TRAFFIC IMPACT	17,251,157	17,251,157	722,952	4%	76,470	646,482	845%
311 POLICE IMPACT	277,713	277,713	87,679	32%	46,234	41,445	90%
313 FIRE IMPACT	349,306	349,306	77,713	22%	13,627	64,086	470%
346 PUBLIC FACILITIES NON-AB1600	590,499	590,499	93,952	16%	60,589	33,363	55%
347 PUBLIC FACILITIES IMPACT	198,932	198,932	58,736	30%	31,471	27,265	87%
348 LIBRARY	909,565	909,565	226,659	25%	122,618	104,040	85%
350 UNDERGROUNDING	45,800	45,800	133,662	292%	196,971	(63,309)	-32%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	684,678	684,678	5,691	1%	47,600	(41,909)	-88%
360 COMMUNITY/REC IMPACT FUND	1,275,010	1,275,010	295,529	23%	189,150	106,379	56%
TOTAL CAPITAL PROJECTS FUNDS	38,851,668	38,851,668	5,035,898	13%	3,534,538	1,501,360	42%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	298,856	298,856	74,236	25%	73,791	446	1%
441 POLICE FACILITY BOND	375,764	375,764	-	n/a	163	(163)	-100%
TOTAL DEBT SERVICE FUNDS	674,620	674,620	74,236	11%	73,953	283	0%

Attachment: September 2018 Financial and Investment Report (2079 : September 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Three Months Ended September 30, 2018
25% 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	2,589,306	25%	2,425,332	163,973	7%
Interest Income/Transfers	37,151	37,151	1,007	3%	3,832	(2,825)	-74%
Other Revenue/Current Charges	318,700	318,700	107,866	34%	128,084	(20,218)	-16%
640 SEWER OPERATION	10,746,851	10,746,851	2,698,180	25%	2,557,249	140,931	6%
641 SEWER EXPANSION							
Interest Income	215,856	215,856	9,045	4%	25,847	(16,802)	-65%
Development Impact Fee	4,717,263	4,717,263	1,619,679	34%	858,345	761,334	89%
Transfers/Other	-	-	-	0%	-	-	0%
641 SEWER EXPANSION	4,933,119	4,933,119	1,628,724	33%	884,192	744,532	84%
642 SEWER RATE STABILIZATION	38,641	38,641	1,173	3%	4,429	(3,256)	-74%
643 SEWER-CAPITAL PROJECT	2,797,976	2,797,976	687,054	25%	603,312	83,743	14%
TOTAL SEWER FUNDS	18,516,587	18,516,587	5,015,131	27%	4,049,181	965,950	24%
650 WATER OPERATION							
Water Sales	12,435,000	12,435,000	3,765,975	30%	3,341,789	424,187	13%
Meter Install & Service	123,000	123,000	65,816	54%	75,728	(9,912)	-13%
Transfers-In / Interest Income	440,840	440,840	100,859	23%	106,603	(5,744)	-5%
Other Revenue/Current Charges	752,660	752,660	340,116	45%	289,835	50,282	17%
650 WATER OPERATION	13,751,500	13,751,500	4,272,766	31%	3,813,954	458,812	12%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	47,561	47,561	1,266	3%	5,489	(4,223)	-77%
Development Impact Fee	1,311,698	1,311,698	413,505	32%	218,739	194,766	89%
651 WATER EXPANSION	1,359,259	1,359,259	414,771	31%	224,228	190,543	85%
652 Water Rate Stabilization	8,223	8,223	251	3%	126,071	(125,820)	-100%
653 Water Capital Project	2,400,895	2,400,895	600,333	25%	338,404	261,929	77%
TOTAL WATER FUNDS	17,519,877	17,519,877	5,288,121	30%	4,502,658	785,463	17%
TOTAL ENTERPRISE FUNDS	36,036,464	36,036,464	10,303,252	29%	8,551,839	1,751,413	20%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,870,983	1,870,983	468,773	25%	401,875	66,898	17%
740 BUILDING MAINTENANCE	3,326,619	3,326,619	821,386	25%	772,296	49,091	6%
741 BUILDING REPLACEMENT	789,958	789,958	184,533	23%	121,743	62,790	52%
745 CIP ADMINISTRATION	1,780,750	1,780,750	325,434	18%	392,339	(66,905)	-17%
760 UNEMPLOYMENT INSURANCE	2,324	2,324	74	3%	287	(213)	-74%
770 WORKERS COMPENSATION	775,343	775,343	187,969	24%	203,447	(15,478)	-8%
790 EQUIPMENT REPLACEMENT	1,064,433	1,064,433	253,941	24%	244,958	8,983	4%
791 EMPLOYEE BENEFITS	1,171,099	1,171,099	338,512	29%	153,271	185,241	121%
793 CORPORATION YARD COMMISSION	-	-	1,100	0%	-	1,100	n/a
795 GENERAL LIABILITY INSURANCE	1,020,581	1,020,581	251,222	25%	236,197	15,026	6%
TOTAL INTERNAL SERVICE FUNDS	11,802,090	11,802,090	2,832,945	24%	2,526,413	306,533	12%
TOTAL FOR ALL FUNDS	\$ 146,597,297	\$ 147,640,297	\$ 27,823,604	19%	\$ 23,901,259	\$ 3,922,345	16%

Attachment: September 2018 Financial and Investment Report (2079 : September 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Three Months Ended September 30, 2018
 25% 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		\$ 11,802	\$ 337,607	\$ 71,909	\$ 91,633	\$ 163,542	48%	\$ 91,633
CITY ATTORNEY		45,173	768,318	147,344	121,756	269,100	35%	199,344
CITY MANAGER		40,604	383,799	161,552	-	161,552	42%	255,104
HUMAN RESOURCES		52,812	796,813	168,089	49,108	217,197	27%	200,089
COUNCIL SVCS & RECORDS MGMT								
Council Svcs & Records Mgmt		43,608	614,068	149,831	4,800	154,631	25%	144,031
Elections		1,486	322,533	4,852	-	4,852	2%	-
COUNCIL SVCS & RECORDS MGMT		45,094	936,601	154,683	4,800	159,483	17%	154,031
FINANCE		124,229	1,720,130	413,347	60,888	474,236	28%	404,349
TOTAL ADMINISTRATION		319,713	4,943,269	1,116,925	328,184	1,445,109	29%	1,300,014
II. COMMUNITY SERVICES								
Membership Services & Rec. Programs		348,913	6,255,009	1,609,140	1,367,894	2,977,034	48%	1,599,140
Recreation Facility Rentals		109,063	1,355,732	325,721	43,333	369,054	27%	335,721
Community Services		33,291	653,307	136,701	69,840	206,541	32%	196,701
Environmental Services		17,556	303,894	52,594	-	52,594	17%	41,291
Street Maintenance		152,473	2,362,851	452,620	210,261	662,881	28%	411,261
Downtown Maintenance		18,847	316,644	63,795	56,196	119,991	38%	56,196
Cable Television		1,620	21,581	5,065	-	5,065	23%	5,065
COMMUNITY SERVICES		681,763	11,269,018	2,645,635	1,747,524	4,393,159	39%	2,644,524
CODE COMPLIANCE		11,515	150,464	36,232	-	36,232	24%	21,515
CONGESTION MANAGEMENT		1,267	55,861	4,210	-	4,210	8%	11,267
ECONOMIC DEVELOPMENT PROGRAMS		84,261	720,295	171,979	184,113	356,092	49%	184,113
TOTAL COMMUNITY SERVICES		778,806	12,195,638	2,858,056	1,931,637	4,789,693	39%	2,690,125
III. PUBLIC SAFETY								
POLICE								
PD Administration		79,740	1,222,942	293,328	47,826	341,155	28%	245,528
Field Operations		547,809	9,196,103	1,737,075	975,634	2,712,709	29%	1,987,075
Support Services		179,419	2,272,707	548,972	3,571	552,544	24%	513,401
Emergency Services/Haz Mat		12,592	187,057	40,680	-	40,680	22%	40,680
Special Operations		146,959	2,748,496	482,537	-	482,537	18%	702,537
Dispatch Services		120,255	1,674,402	392,261	10,503	402,764	24%	423,261
POLICE		1,086,774	17,301,708	3,494,854	1,037,534	4,532,388	26%	3,911,524
FIRE		492,865	6,666,707	1,783,785	61,355	1,845,140	28%	1,631,785
TOTAL PUBLIC SAFETY		1,579,639	23,968,415	5,278,639	1,098,890	6,377,529	27%	5,553,309
IV. TRANSFERS								
Other		151,753	2,077,498	455,259	-	455,259	22%	600,259
TOTAL TRANSFERS		151,753	2,077,498	455,259	-	455,259	22%	600,259
TOTAL GENERAL FUND		2,829,912	43,184,819	9,708,879	3,358,711	13,067,590	30%	10,155,125

Attachment: September 2018 Financial and Investment Report (2019 : September 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Three Months Ended September 30, 2018
 25% 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	326	742,877	2,064	-	2,064	0%	12%
205	PUBLIC SAFETY/SUPP.LAW	545	106,536	1,635	-	1,635	2%	1%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	202,239	2,597,349	516,429	185,204	701,633	27%	44%
	Building	135,118	1,976,108	385,232	5,258	390,490	20%	44%
	Engineering	104,527	1,668,062	318,249	597,090	915,339	55%	28%
206	COMMUNITY DEVELOPMENT FUND	441,884	6,241,519	1,219,910	787,552	2,007,462	32%	1,18%
207	LONG RANGE PLANNING	38,917	1,383,881	126,804	624,641	751,444	54%	18%
215/216	CDBG	413	4,961	1,239	-	1,239	25%	
225	ASSET SEIZURE	-	-	-	-	-	0%	
229	LIGHTING AND LANDSCAPE	14,069	195,274	32,747	40,096	72,843	37%	4%
230	COMMUNITY FACILITIES DISTRICT	2,250	46,262	5,525	-	5,525	12%	
232	ENVIRONMENT PROGRAMS	27,645	406,727	88,441	14,810	103,251	25%	8%
234	MOBILE HOME PARK	34	405	102	-	102	25%	
236	HOUSING MITIGATION	219,574	3,323,394	1,405,306	259,343	1,664,649	50%	12%
240	EMPLOYEE ASSISTANCE	78	28,430	2,234	-	2,234	8%	
250	COMH-SUCCESSOR AGENCY-MHRDA	5,086,701	7,983,635	5,865,190	23,890	5,889,080	74%	5,09%
255	HOUSING SUCCESSOR AGENCY	112,774	3,679,973	658,859	1,017,813	1,676,672	46%	1,01%
TOTAL SPECIAL REVENUE FUNDS		5,945,210	24,143,874	9,410,056	2,768,144	12,178,200	50%	7,86%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	22,849	8,665,258	74,060	547,189	621,249	7%	1,63%
302	PARK MAINTENANCE	73,283	1,244,024	237,656	235,428	473,084	38%	21%
303	LOCAL DRAINAGE	13,460	518,362	32,917	1,361	34,278	7%	
304	LOCAL DRAIN. NON-AB1600	217	338,627	772	-	772	0%	
306	AGRICULTURE & OPEN SPACE PRESERVATION	1,447,703	4,245,295	1,822,115	62,981	1,885,096	44%	
308	STREET CIP	9,688	4,012,576	44,638	2,010,882	2,055,520	51%	1%
309	TRAFFIC IMPACT	894,537	19,893,433	946,935	248,119	1,195,054	6%	16%
311	POLICE IMPACT	2,739	228,096	7,862	1,361	9,224	4%	
313	FIRE IMPACT	1,865	172,227	2,793	1,361	4,154	2%	
346	PUBLIC FAC.NON AB1600	5,585	420,850	22,496	44,748	67,244	16%	22%
347	PUBLIC FACILITIES IMPACT	570	84,479	1,376	1,361	2,737	3%	
348	LIBRARY IMPACT	44,854	3,849,962	137,262	97,286	234,549	6%	9%
350	UNDERGROUNDING	85	1,024	255	-	255	25%	
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	504	1,830,740	8,965	16,578	25,544	1%	11%
360	COMM/REC CENTER IMPACT	3,150	2,184,177	20,687	143,355	164,042	0%	
TOTAL CAPITAL PROJECTS FUNDS		2,521,088	47,689,131	3,360,788	3,412,013	6,772,801	14%	2,47%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	799	308,656	2,397	-	2,397	1%	
441	POLICE FACILITY BOND DEBT	305	380,313	915	-	915	0%	
TOTAL DEBT SERVICE FUNDS		1,104	688,969	3,312	-	3,312	0%	



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Three Months Ended September 30, 2018
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,464,158	11,311,787	2,440,142	200,503	2,640,645	23%	2,461
641	SEWER CAPITAL EXPANSION	31,370	2,051,871	118,844	480,805	599,648	29%	241
642	SEWER RATE STABILIZATION	86	1,027	258	-	258	25%	101
643	SEWER-CAPITAL PROJECTS	2,021,193	10,683,664	2,161,284	2,140,117	4,301,401	40%	1,634
TOTAL SEWER FUND(S)		3,516,807	24,048,349	4,720,527	2,821,425	7,541,952	31%	4,347
WATER								
	Water Operations	869,701	12,440,123	2,450,445	1,020,751	3,471,196	28%	2,150
	Utility Billing	58,976	809,160	193,116	38,610	231,726	29%	201
	Water Conservation	5,728	210,082	25,416	50,000	75,416	36%	111
650	WATER OPERATIONS	934,404	13,459,365	2,668,977	1,109,361	3,778,338	28%	2,371
651	WATER CAPITAL EXPANSION	144,478	2,726,977	323,395	1,715,942	2,039,338	75%	511
652	WATER RATE STABILIZATION	28	335	84	-	84	25%	71
653	WATER-CAPITAL PROJECTS	17,339	2,494,078	96,554	156,092	252,646	10%	161
TOTAL WATER FUND(S)		1,096,249	18,680,755	3,089,010	2,981,395	6,070,405	32%	2,599
TOTAL ENTERPRISE FUNDS		4,613,056	42,729,104	7,809,537	5,802,820	13,612,357	32%	6,937
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	111,036	2,013,703	370,177	16,408	386,584	19%	661
740	BUILDING MAINTENANCE	221,675	3,376,986	677,955	356,863	1,034,818	31%	631
741	BUILDING REPLACEMENT	51,249	405,806	83,010	79,947	162,956	40%	101
745	CIP ADMINISTRATION	105,356	1,813,012	325,430	757	326,187	18%	391
760	UNEMPLOYMENT	-	10,000	-	-	-	n/a	-
770	WORKERS COMPENSATION	3,334	947,795	393,867	-	393,867	42%	791
790	EQUIPMENT REPLACEMENT	-	1,261,025	-	601,107	601,107	48%	711
791	EMPLOYEE BENEFITS FUND	51,273	600,000	205,546	-	205,546	34%	711
793	CORP YARD COMMISSION	910	1,903	1,117	1,096	2,213	0%	111
795	GEN. LIABILITY INSURANCE	17,008	1,010,346	736,307	-	736,307	73%	531
TOTAL INTERNAL SERVICE FUNDS		561,841	11,440,575	2,793,408	1,056,178	3,849,585	34%	3,281
REPORT TOTAL		\$ 16,472,211	\$ 169,876,472	\$ 33,085,980	\$ 16,397,867	\$ 49,483,846	29%	\$ 30,711

Attachment: September 2018 Financial and Investment Report (2019 : September 2018 Financial and Investment Report)

 City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Three Months Ended September 30, 2018 25% 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	\$ 6,789,406	17%	\$ 9,708,879	22%	\$ (2,919,473)	\$ 3,358,711	\$ 11,477,221
	TOTAL GENERAL FUND	\$ 17,755,405	\$ 6,789,406	17%	\$ 9,708,879	22%	\$ (2,919,473)	\$ 3,358,711	\$ 11,477,221
202	STREET MAINTENANCE	58,588	\$ 101,932	14%	\$ 2,064	19%	\$ 99,867	\$ -	\$ 158,455
205	PUBLIC SAFETY/SUPPL. LAW	50,367	23	0%	1,635	19%	(1,612)	-	48,755
206	COMMUNITY DEVELOPMENT	1,914,195	1,366,793	28%	1,219,910	20%	146,882	787,552	1,273,526
207	LONG RANGE PLANNING	1,188,449	204,782	28%	126,804	9%	77,978	624,641	641,787
215 / 216	CDBG	87,556	30	1%	1,239	0%	(1,209)	-	86,347
225	ASSET SEIZURE	138,184	1,286	77%	-	0%	1,286	-	139,470
229	LIGHTING AND LANDSCAPE	156,889	67	0%	32,747	17%	(32,680)	40,096	84,113
230	COMMUNITY FACILITIES DISTRICT	81,882	36	0%	5,525	0%	(5,488)	-	76,394
232	ENVIRONMENTAL PROGRAMS	235,909	121,665	31%	88,441	22%	33,224	14,810	254,323
234	MOBILE HOME PK RENT STAB.	43,240	20	3%	102	25%	(82)	-	43,158
235	SENIOR HOUSING	223,540	102	3%	-	0%	102	-	223,642
236	HOUSING MITIGATION	2,697,655	115,188	4%	1,405,306	42%	(1,290,118)	259,343	1,148,195
240	EMPLOYEE ASSISTANCE	38,845	5,700	20%	2,234	8%	3,466	-	42,311
247	ENVIRONMENT REMEDIATION	141,519	64	3%	-	0%	64	-	141,583
250	COMH-SUCCESSOR AGENCY-MHRDA	4,778,248	862,762	11%	5,865,190	73%	(5,002,428)	7,200,209	(7,424,389)
255	HOUSING SUCCESSOR AGENCY	3,346,204	7,415	0%	658,859	18%	(651,444)	1,338,427	1,356,333
	TOTAL SPECIAL REVENUE FUNDS	\$ 15,181,270	\$ 2,787,866	14%	\$ 9,410,056	39%	\$ (6,622,190)	\$ 10,265,077	\$ (1,705,998)
301	PARK DEV. IMPACT FUND	\$ 2,780,196	\$ 558,334	7%	\$ 74,060	1%	\$ 484,274	\$ 547,189	\$ 2,717,280
302	PARK MAINTENANCE	4,247,778	231,406	18%	237,656	19%	(6,250)	235,428	4,006,101
303	LOCAL DRAINAGE	10,380,973	311,757	22%	32,917	6%	278,840	1,361	10,658,452
304	LOCAL DRAINAGE/NON-AB1600	1,406,096	71,356	88%	772	0%	70,585	-	1,476,681
306	AGRICULTURE AND OPEN SPACE PRESERV	7,001,416	1,304,443	49%	1,822,115	43%	(517,672)	62,981	6,420,762
308	STREET CIP	2,329,489	856,029	22%	44,638	1%	811,392	2,010,882	1,129,998
309	TRAFFIC IMPACT FUND	3,262,550	722,952	4%	946,935	5%	(223,983)	248,119	2,790,448
311	POLICE IMPACT FUND	(737,015)	87,679	32%	7,862	3%	79,817	1,361	(658,560)
313	FIRE IMPACT FUND	3,903,828	77,713	22%	2,793	2%	74,920	1,361	3,977,387
346	PUBLIC FACILITIES NON-AB1600	664,143	93,952	16%	22,496	5%	71,456	1,361	734,238
347	PUBLIC FACILITIES IMPACT FUND	519,082	58,736	30%	1,376	2%	57,361	97,286	479,156
348	LIBRARY IMPACT FUND	2,365,817	226,659	25%	137,262	4%	89,396	-	2,455,213
350	UNDERGROUNDING	714,508	133,662	292%	255	25%	133,407	16,578	831,336
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,498,835	5,691	1%	8,965	0%	(3,274)	143,355	1,352,206
360	COMM/REC CTR IMPACT FUND	1,110,896	295,529	23%	20,687	0%	274,842	-	1,385,738
	TOTAL CAPITAL PROJECT FUNDS	\$ 41,448,592	\$ 5,035,898	13%	\$ 3,360,788	7%	\$ 1,675,110	\$ 3,367,265	\$ 39,756,437
420	CIVIC CENTER DEBT	\$ 171,329	\$ 74,236	25%	\$ 2,397	1%	\$ 71,839	\$ 55	\$ 243,114
441	POLICE FACILITY BOND DEBT	82,284	-	n/a	915	0%	(915)	70	81,299
	TOTAL DEBT SERVICE FUNDS	\$ 253,613	\$ 74,236	11%	\$ 3,312	0%	\$ 70,924	\$ 125	\$ 324,413

Fund No.	Fund	 City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Three Months Ended September 30, 2018 25% 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	\$ 2,698,180	25%	\$ 2,440,142	22%	\$ 258,038	200,503	2,684,182
641	SEWER IMPACT FUND*	15,848,324	1,628,724	33%	118,844	6%	1,509,880	480,805	16,877,400
642	SEWER RATE STABILIZATION	2,567,930	1,173	3%	258	25%	915	-	2,568,845
643	SEWER-CAPITAL PROJECTS	9,234,545	687,054	25%	2,161,284	20%	(1,474,229)	2,140,117	5,620,199
650	WATER OPERATIONS	2,691,489	4,272,766	31%	2,668,977	20%	1,603,790	1,109,361	3,185,918
651	WATER IMPACT FUND*	2,688,297	414,771	31%	323,395	12%	91,376	1,715,942	1,063,730
652	WATER RATE STABILIZATION	548,536	251	3%	84	25%	167	-	548,703
653	WATER -CAPITAL PROJECT	587,647	600,333	25%	96,554	4%	503,780	156,092	935,334
TOTAL ENTERPRISE FUNDS		\$ 36,793,415	\$ 10,303,252	29%	\$ 7,809,537	18%	\$ 2,493,715	\$ 5,802,820	\$ 33,484,310

730	INFORMATION SERVICES	\$ 535,283	\$ 468,773	25%	\$ 370,177	18%	\$ 98,597	\$ 16,408	\$ 617,472
740	BUILDING MAINTENANCE	62,368	821,386	25%	677,955	20%	143,431	356,863	(151,064)
741	BUILDING REPLACEMENT	2,076,341	184,533	23%	83,010	20%	101,523	79,947	2,097,917
745	CIP ENGINEERING	32,492	325,434	18%	325,430	18%	4	757	31,739
760	UNEMPLOYMENT	162,944	74	3%	-	-	74	-	163,018
770	WORKERS COMPENSATION	1,757,831	187,969	24%	393,867	42%	(205,897)	30,000	1,521,934
790	EQUIPMENT REPLACEMENT	4,430,908	253,941	24%	-	-	253,941	601,107	4,083,742
791	EMPLOYEE BENEFITS FUNDS	538,614	338,512	29%	205,546	34%	132,966	-	671,580
793	CORP YARD COMMISSION	(6,042)	1,100	0%	1,117	0%	(16)	1,096	(7,154)
795	GEN. LIABILITY INSURANCE	1,211,909	251,222	25%	736,307	73%	(485,085)	-	726,824
TOTAL INTERNAL SERVICE FUNDS		\$ 10,802,648	\$ 2,832,945	24%	\$ 2,793,408	24%	\$ 39,538	\$ 1,086,178	\$ 9,756,008

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,755,405	\$ 6,789,406	17%	\$ 9,708,879	22%	\$ (2,919,473)	\$ 3,358,711	\$ 11,477,221
SPECIAL REVENUE GROUP	15,181,270	2,787,866	14%	9,410,056	39%	(6,622,190)	10,265,077	(1,705,998)
DEBT SERVICE GROUP	253,613	74,236	11%	3,312	0%	70,924	125	324,413
CAPITAL PROJECTS GROUP	41,448,592	5,035,898	13%	3,360,788	7%	1,675,110	3,367,265	39,756,437
ENTERPRISE GROUP	36,793,415	10,303,252	29%	7,809,537	18%	2,493,715	5,802,820	33,484,310
INTERNAL SERVICE GROUP	10,802,648	2,832,945	24%	2,793,408	24%	39,538	1,086,178	9,756,008
TOTAL ALL GROUPS	\$ 122,234,943	\$ 27,823,604	19%	\$ 33,085,980	19%	\$ (5,262,376)	\$ 23,880,177	\$ 93,092,391

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.

1st Quarter FY2018-19 Financial Report





General Fund

- Revenues are tracking to slightly exceed budget
- Key GF revenues:

Category	Budget	YTD Actual	Prior YTD
Property Tax	\$11,813,532	\$ 103,321	\$ 24,641
Sales Tax	9,981,124	2,650,557	2,591,346
Svc Charges	9,993,089	2,688,112	2,545,615
Hotel Tax	2,754,000	510,945	526,234

- Expenditures including encumbrances:

Total Exp	\$43,184,819	\$13,067,590	\$12,883,574
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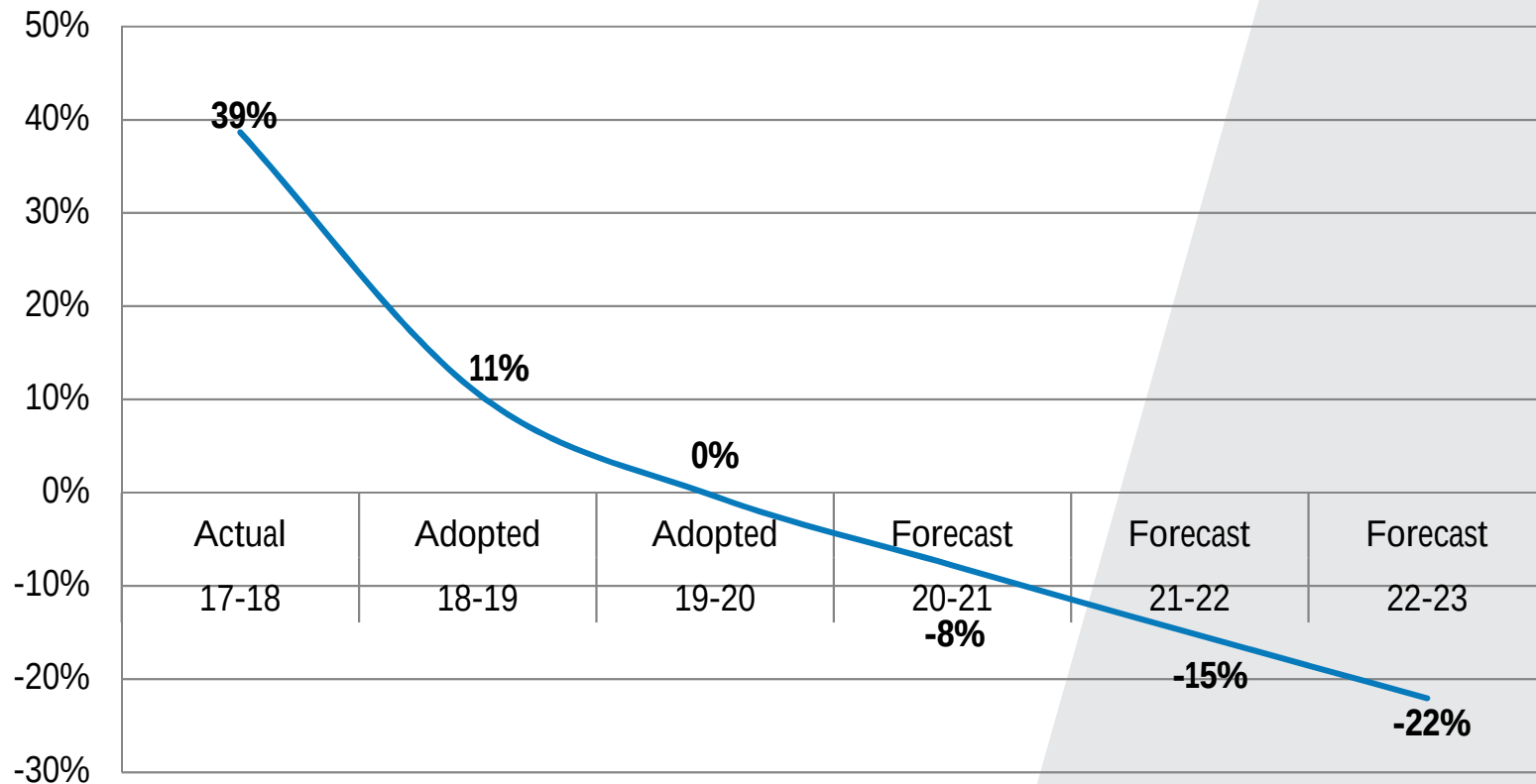


Development Services Fund

- Both revenues and expenditures are tracking within budget

Category	Budget	YTD Actual	Prior YTD
Revenues	\$4,879,768	\$1,366,793	\$1,001,972
Expenditures	6,241,519	2,007,462	1,831,025
Net	(\$1,361,751)	(\$640,669)	(\$829,053)

Development Services Fund (cont'd)





Enterprise Funds

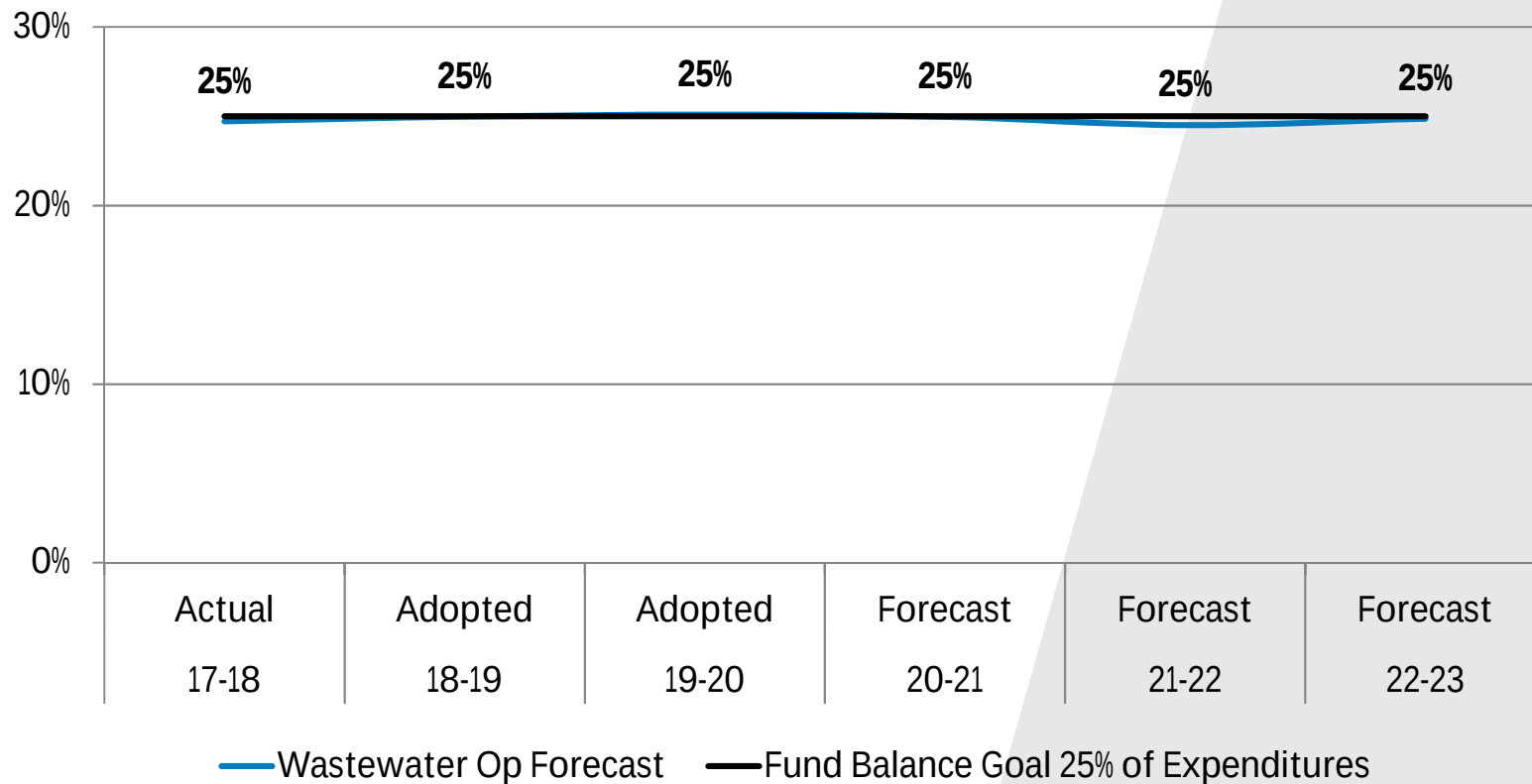
- Wastewater Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$10,746,851	\$2,698,180	\$2,557,249
Expenditures	11,311,787	2,640,645	2,573,443
Net	(\$564,936)	\$57,535	(\$16,194)



Enterprise Funds (cont'd)

- Wastewater operations fund balance forecast



Enterprise Funds (cont'd)

- Water operations

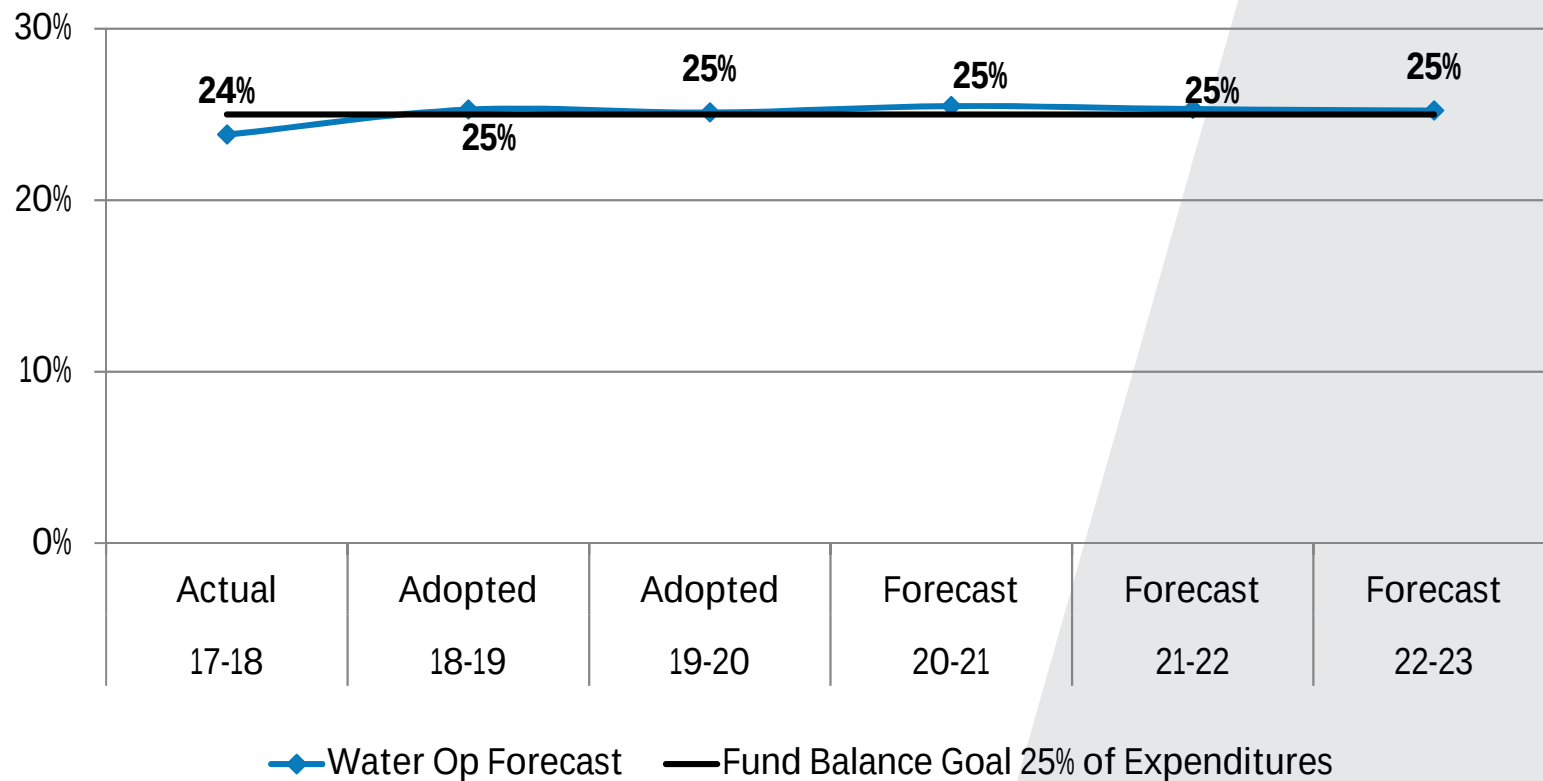
Category	Budget	YTD Actual	Prior YTD
Revenues	\$ 13,751,500	\$ 4,272,766	\$ 3,813,954
Expenditures	13,459,365	3,778,338	3,105,720
Net	\$292,135	\$494,428	\$708,234





Enterprise Funds (cont'd)

- Water operations fund balance forecast





CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

PREPARED BY: Harjot Sangha, Accounting Manager
APPROVED BY: City Manager

ADOPT AN ANNUAL REGULATORY FEE FOR MASSAGE ESTABLISHMENTS WITHIN THE CITY

RECOMMENDATION(S)

Adopt resolution establishing an Annual Regulatory Fee for Massage Establishments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The purpose of this report is for the City Council to consider adopting an annual regulatory fee for massage establishment businesses within the City. Staff is proposing to adopt an annual regulatory fee, to be assessed in conjunction with the business license application and/or renewal. See exhibit A to the attached resolution for proposed regulatory fee.

The City of Morgan Hill introduced its first ordinance regulating massage establishments and practitioners in 2001. At the time, there was no comprehensive oversight or regulation by the State of massage businesses, therapists, or practitioners.

In 2009, new state regulations took effect governing the certification of massage practitioners. The regulation created a quasi-state agency, the California Massage Therapy Council (CAMTC). The CAMTC was authorized to license and provide oversight of massage professionals in California. The regulation further preempted local permit and fee requirements.

In 2011, City staff amended the existing ordinance to become compliant with the state laws, including phasing out the City's massage permitting process, and requiring all practitioners to obtain state certifications.

In 2014, with the passage of SB 1147, the state updated and amended the Massage Therapy Act as codified in sections 4600-4621, of the Business and Professions Code. More recently, SB 2194 extended the operations of the provisions and CAMTC to January 1, 2021. Now, the code allows local governments to impose and enforce reasonable and necessary fees and regulations on massage businesses/establishments, in keeping with the requirements of existing law, of being

mindful of the need to protect legitimate business owners and professionals, particularly sole providers.

On October 3, 2018, the City Council adopted amendments to Chapter 5.32 of the Morgan Hill Municipal Code, to include provisions for additional regulations for Massage Establishment owners/operators and transfers of such businesses. The adoption of an annual regulatory fee was also recommended at the same meeting. However, Council requested additional analysis be performed on the proposed regulatory fees, within the County.

Staff has performed an analysis and the results are as follows:

City	Massage Establishment Initial Annual Fee	Massage Establishment Annual Renewal
Los Altos Hills	\$ -	\$ -
Milpitas	-	-
Monte Sereno	-	-
Mountain View	163	163
Gilroy	215	125
Los Altos	283	67
Cupertino	298	100
Los Gatos	325	160
Palo Alto	365	240
Campbell	536	235
Santa Clara	581	374
San Jose*	715	715
Saratoga	750	750
Sunnyvale	1,236	1,169
Average	\$ 497	\$ 373
Option A <i>Morgan Hill @100%</i>	\$ 843	\$ 663
Option B <i>Morgan Hill @75%</i>	632	497
Option C <i>Morgan Hill @50%</i>	422	332

*San Jose charges \$1,430.00 for 2 years. Illustrated as proration to per year.

Although staff recommends being 100% cost recovery in these efforts, alternatively, two additional options are 75% or 50% cost recovery.

COMMUNITY ENGAGEMENT: Inform

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.

ALTERNATIVE ACTIONS:

Staff has identified two alternative actions:

1. Adopt a reduced regulatory fee, at 75%, but no less than 50% of the actual cost.
2. Reject the adoption of a regulatory fee all together. The expanded monitoring services without offsetting cost recovery revenues would cause additional strain to the City's limited General Fund revenue.

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.

On October 17, 2018, City Council adopted an ordinance amending chapter 5.32 - Massage Establishment, of the Morgan Hill Municipal Code, to include provisions for additional regulations for Massage Establishment owners/operators and transfers of such businesses.

FISCAL AND RESOURCE IMPACT:

If approved, this additional revenue will be accounted for in the General Fund (010.37299), where the related monitoring expenditures will occur. No budget amendments are requested at this time. Currently, there are 18 licensed establishments within the City.

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. Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ESTABLISHING AN ANNUAL MASSAGE ESTABLISHMENT REGULATORY FEE

WHEREAS, Morgan Hill Municipal Code Chapter 3.50 establishes City policy as to the percentage of the City's costs reasonably borne in providing the regulation; and

WHEREAS, a new regulatory fee for massage establishments needs to be established; and

WHEREAS, state law explicitly authorizes cities to adopt, and the City has adopted, a business license ordinance and allows for the suspension or revocation of a license for violation of any state law and such local ordinance does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws; and

WHEREAS, the proposed establishment of an annual massage establishment regulatory fee that is the subject of this Resolution was agendized for consideration by the City Council of the City of Morgan Hill at a duly noticed public hearing of the Council held on September 5, 2018, furthered on December 5, 2018 at which hearing all interested persons were afforded an opportunity to be heard on said proposed fees; and

WHEREAS, the Council heard all relevant testimony and reviewed all written materials submitted in connection with its hearing on this Resolution.

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

1. The City Council finds and determines the fees calculations utilized, as shown in **Exhibit A**, to establish the annual regulatory fee for massage establishments will not cause the fee to exceed the estimated cost reasonably borne of providing the regulation for which the fees are levied.
2. The City Council finds and determines that it is reasonable to annually adjust the fees as set forth above based on the productive hourly rate of the said positions as set forth in Exhibit A and hereby instructs, authorizes and directs the City Manager to so annually adjust the applicable fees as of July 1 of each fiscal year based upon the factors set forth in the fee calculation.
3. The City Manager or his/her designee is hereby authorized and directed to amend the City Fee Schedule to reflect the fees as set forth in Exhibit A.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution (2078 : Massage Regulatory Fee)

EXHIBIT A

Process	Position	Productive Hourly Rate With OH	# of FTE	# of Hr per FTE	Total
Initial Application					
Application	Police Officer	\$ 133.21	1.00	1.00	\$ 133.21
Application	Accounting Assistant II	62.13	1.00	1.50	93.20
Annual Compliance Check	Police Officer - Corporal	154.17	2.00	2.00	616.68
Total Initial Fee					\$ 843.09
Renewal					
Renewal	Accounting Assistant II	\$ 62.13	1.00	0.75	\$ 46.60
Annual Compliance Check	Police Officer - Corporal	154.17	2.00	2.00	616.68
Total Renewal Fee					\$ 663.28

Council could elect to be 75% cost recovery, or 50% cost recovery.

	Initial Application Fee	Renewal
75% Cost Recovery	\$632.00	\$497.00
50% Cost Recovery	\$422.00	\$332.00



CITY COUNCIL STAFF REPORT

MEETING DATE: December 5, 2018

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

ADOPT RESOLUTION OF NECESSITY FOR THE ACQUISITION OF REAL PROPERTY CONSISTING OF A PORTION OF APN NO. 767-03-936 FOR HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Adopt resolution of necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Faridey Betpolice as identified in Exhibits A and B for the Hale Avenue Extension Project;
2. Authorize the City Attorney to file suit in eminent domain with respect to said property; and
3. Approve the expenditure of \$300,500 for said properties for deposit into the State Condemnation Deposit Fund.

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:

Background:

The Hale Avenue Extension project was formally known as the Santa Teresa "Gap Fill" project because when completed, it would fill a gap in the Santa Teresa corridor allowing for a north-south alternative to Monterey Road. The limits of the Hale Avenue Extension project are Main Avenue at the north end and Spring Avenue at the south end (see Project Location Map). 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.

The County's Measure B, a 30-year half cent countywide sales tax initiative, was passed in November 2016. Thus, the Santa Clara Valley Transportation Authority (VTA) has been generating tax revenue for local infrastructure projects. However, the initiative has been held up in litigation. The most current information from the VTA is that the

State of California Court of Appeal's upheld the validity of the Measure B, thus freeing up potential funding for constructing the Hale Avenue Extension Project in the near future. In order to position the project near the front of the line for funding potential, it is imperative that the City complete the acquisition of all required right of way and prepare the bid package for when the funds become available.

The project plans are currently 95% complete and the City Council has acquired, or is in the process of securing, all of the right of way needed for the project except the Betpolice property, which is the subject of this Staff Report.

Resolution of Necessity:

On October 23, 2018, a notice was sent to the owner of record, Farideh Betpolice, notifying her that a hearing is scheduled on December 5, 2018 before the City Council of Morgan Hill to consider the adoption of a Resolution of Necessity determining the following issues for the property:

1. Whether the public interest and necessity require the project.

Discussion: The Hale Avenue extension is identified in the City's General Plan Circulation Element, Goal 4 as a high priority project based on significant traffic congestion relief for the citizens of Morgan Hill. The project is also included in the County's "2008 Comprehensive County Expressway Planning Study" and the "2016 Measure B" program. The project itself allows for a continuous north/south arterial roadway on the west side of the City, which also reduces vehicle emissions by creating a more direct route while reducing traffic on local streets. The roadway also provides a regional benefit to our north and south neighboring communities. In addition to a roadway, the project will provide bike lanes, pedestrian pathway, and landscaping.

2. Whether the project is planned and located in a manner that would be most compatible with the greatest public good and the least private injury.

Discussion: The first plan line for the Santa Teresa corridor was recorded in 1964. A second plan line was subsequently developed in 1994 but was never officially adopted. More recently, the City adopted the Hale Avenue Plan Line and a Final Environmental Impact Report. The roadway alignment through the Betpolice parcel is such that it is located to the far northwest corner of the property, minimizing impacts to the parcel.

Thus, if the City desires to proceed with the Project, and maximize its ability to receive funding, it needs to authorize the acquisition by eminent domain.

3. Whether the property sought to be acquired is necessary for the project.

Discussion: The portion of property being sought is located within the Hale Avenue Plan Line alignment, which was adopted by City Council on August 23, 2017 along with the Final Environmental Impact Report. Without this portion of property, the

project cannot be constructed as designed and environmentally cleared. A small portion of the Betpolice property is needed for the actual roadway, however, most of the property is needed for slope stabilization.

4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners of record.

Discussion: The title report ordered from Old Republic Title Company, updated on August 15, 2018, shows the owner of record to be Farideh Betpolice, Trustee of the Farideh Betpolice Revocable Trust dated February 9, 2005. A written offer, in accordance with Section 7267.2 of the Government Code was made to the owner on September 26, 2018. The offer amount (\$300,500) was based on the September 21, 2018 appraisal, prepared by Associated Right of Way Services.

On February 17, 2017, Betpolice was first notified by the City that a portion of their property was needed for the Hale Avenue Extension project. On August 23, 2017, the City made a voluntary offer to Betpolice in the amount of \$462,500 based upon a MAI certified appraisal for 0.57 acres of land. After discussions, Betpolice agreed to sell a portion of their land for \$500,000, so an agreement was prepared and sent to Betpolice. The agreement was not signed and Betpolice proceeded to hire an appraiser. Subsequently, Betpolice submitted a counter offer in the amount of \$585,000 to the City in March 2018. Upon review of the counter offer, the City increased its offer to \$521,000. Betpolice felt the property in question was worth closer to \$600,000 and no settlement was reached.

Thus, the City proceeded to value engineer the project to reduce the take area by changing the design slope. The area now required for the project is 0.35 acres, resulting in an appraised value of \$300,500. On September 26, 2018, the City made a second offer to Betpolice for \$300,500 for 0.35 acres, but no response from Betpolice has been received to date.

Staff is therefore requesting that the City Council utilize its power of eminent domain under California Government Code sections 40404 and 37350.5 and Sections 1240.010-1240.050, 1240.110, 1240.120, 1240.125, 1240.150, and 1240.220 of the Code of Civil Procedure, all of which authorize the City of Morgan Hill to acquire said property.

The owner of interest has been notified of this hearing and her right to appear and be heard regarding items 1, 2, 3, and 5 in the findings of the attached Resolution. If a Resolution of Necessity is adopted, the City Attorney or Special Eminent Domain Counsel will then file the required documents with the court to commence the eminent domain action. The probable compensation amount of (\$300,500) would then be deposited with a request for an Order of Prejudgment Possession, which allows the City to take possession of the property even though the just compensation issue has not been resolved. The Resolution of Necessity must be adopted by a two-thirds Council majority. The City's goal is to begin construction of the project in the summer of 2019, assuming Measure B funds are available at that time.

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:

City Council could elect not to move forward with the Resolution of Necessity at this time and instead, direct staff to continue negotiations. This action would ultimately delay construction of the project, as negotiations have been unsuccessful thus far.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- January 18, 2017, City Council awarded a service agreement for design professionals for the Hale Avenue Extension Project to Mark Thomas & Associates to complete the design.
- August 23, 2017, City Council certified the Final EIR and adopted the Hale Avenue Plan Line.
- The Hale Avenue Extension Project is included in the adopted FY 2018-19 Capital Improvement Program.
- Over the past several years the City has acquired properties from Hosseinpour, Giancola, Tran, Howard, Kerr, and the County, for this Project.
- On October 3, 2018, the City Council approved a Possession and Use Agreement with Garcia for the Hale Avenue Extension project.
- On October 17, 2018, the City Council approved a revised Resolution of Necessity in order to acquire the PG&E parcels needed for the Hale Avenue Extension project.

FISCAL AND RESOURCE IMPACT:

Sufficient funds for the \$300,500 acquisition deposit have been budgeted for the project. The project is funded in the 2018-2019 Capital Improvement Program budget under CIP Projects #546007, Hale Avenue Extension Project, utilizing Traffic Impact Funds (309).

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 of Necessity - Betpolice
2. Exhibit A and B to Resolution
3. Project Location Map

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**

WHEREAS, it is desirable and necessary for the City of Morgan Hill (hereinafter the “City”) to acquire certain real property specifically one (1) fee take from property located on the North Side of East Dunne Avenue, Morgan Hill, CA, Assessor’s Parcel Numbers 767-03-036, 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 and 40404 of the California Government Code, and Sections 1240.010-1240.050, 1240.110, 1240.120, 1240.125, 1240.150 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 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 Farideh Betpolice, whose property is to be acquired by eminent domain and whose name and address appears on the Santa Clara County Equalized Assessment Roll, and she has been given a reasonable opportunity to appear and be heard before the City Council at the Resolution for Necessity hearing held on December 5, 2018 on the following matters:

- a. Whether the public interest and necessity require the Project;
- b. Whether said Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the fee take described and depicted in Exhibits A and B is necessary for the Project; and
- d. Whether the offer required by Government Code Section 7267.2 has been made to all owners of record.

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 compatible use under Code of Civil Procedure Section 1240.510 or alternatively 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 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.
8. 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 AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of December 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

Attachment: Resolution of Necessity - Betpolice (2059 : Betpolice Resolution of Necessity)

§ **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 December 5, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution of Necessity - Betpolice (2059 : Betpolice Resolution of Necessity)

EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Section 28, Township 9 South, Range 3 East, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 1, as shown on that certain PARCEL MAP, filed April 9, 1985 in Book 541 Page 29, Official Records of Santa Clara County, more particularly described as:

Beginning at the northwesterly corner of said LOT 1;
 Thence along the northerly line of said LOT 1, North 55°06'29" East, a distance of 37.01 feet;
 Thence leaving said northerly line, South 24°00'55" East, a distance of 33.65 feet;
 Thence South 26°38'05" East, a distance of 56.28 feet;
 Thence South 26°05'08" East, a distance of 58.55 feet;
 Thence South 22°35'35" East, a distance of 60.89 feet;
 Thence South 00°12'06" West, a distance of 59.04 feet;
 Thence South 12°53'36" West, a distance of 55.98 feet;
 Thence South 13°40'21" West, a distance of 14.14 feet to a point on the westerly line of said LOT 1, said point also being the beginning of a non-tangent curve to the left, concave to the west, with a radius of 828.86 feet and a chord bearing North 25°40'30" West, a distance of 25.41 feet;
 Thence along the westerly line of said LOT 1 and said curve, through a central angle of 01°45'23", a distance of 25.41 feet to the beginning of a non-tangent curve to the right, concave to the east, with a radius of 2004.94 feet and a chord bearing North 24°08'50" West, a distance of 102.27 feet;
 Thence continuing along said westerly line and said curve, through a central angle of 02°55'22", a distance of 102.28 feet;
 Thence continuing along said westerly line, North 15°24'14" West, a distance of 186.50 feet to the **Point of Beginning**.

Subject to a 50' ELECTRIC TRANSMISSION POLE LINE RIGHT OF WAY easement granted to COAST COUNTIES GAS AND ELECTRIC COMPANY, recorded August 18, 1947 Book 1496 Page 180, Official Records of Santa Clara County.

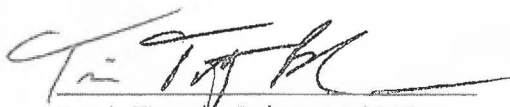
Subject to a 50' ELECTRIC TRANSMISSION LINE RIGHT OF WAY easement granted to COAST COUNTIES GAS AND ELECTRIC COMPANY, recorded February 4, 1952 Book 2359 Page 542, Official Records of Santa Clara County.

Containing 15,314 square feet or 0.35 acres, more or less.

Assessor's Parcel Number: 767-03-036

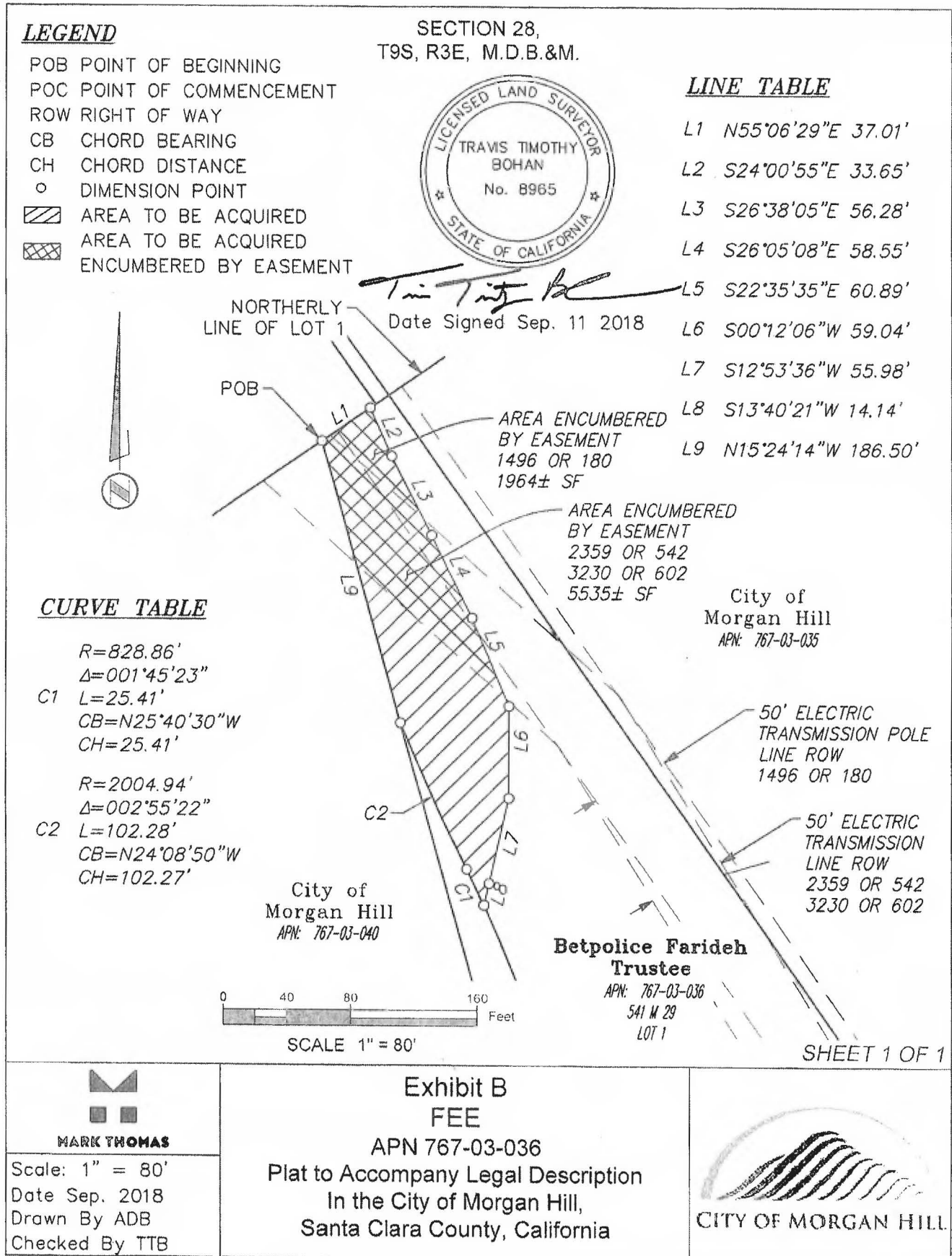
This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



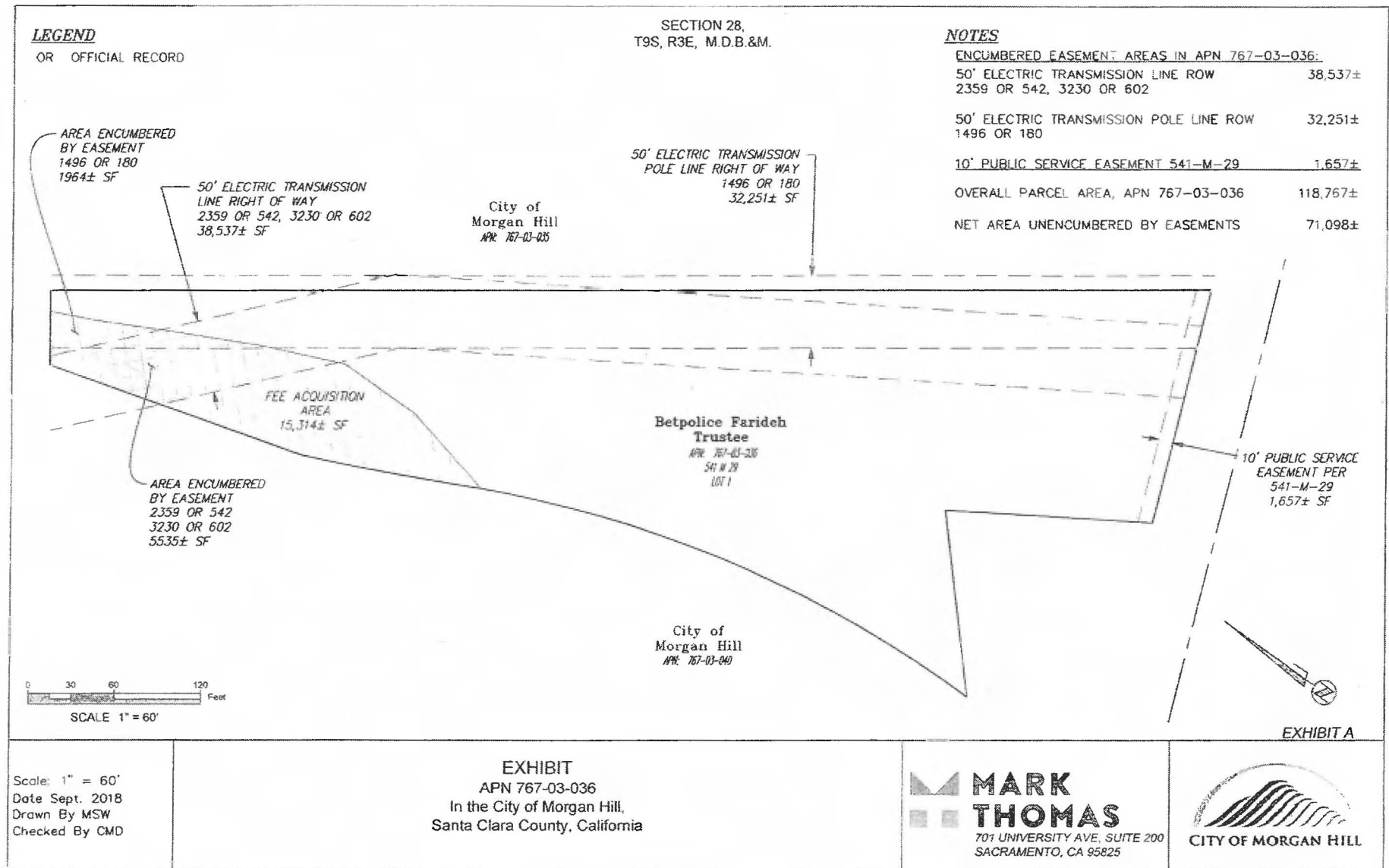

Travis Timothy Bohan, LS 8965

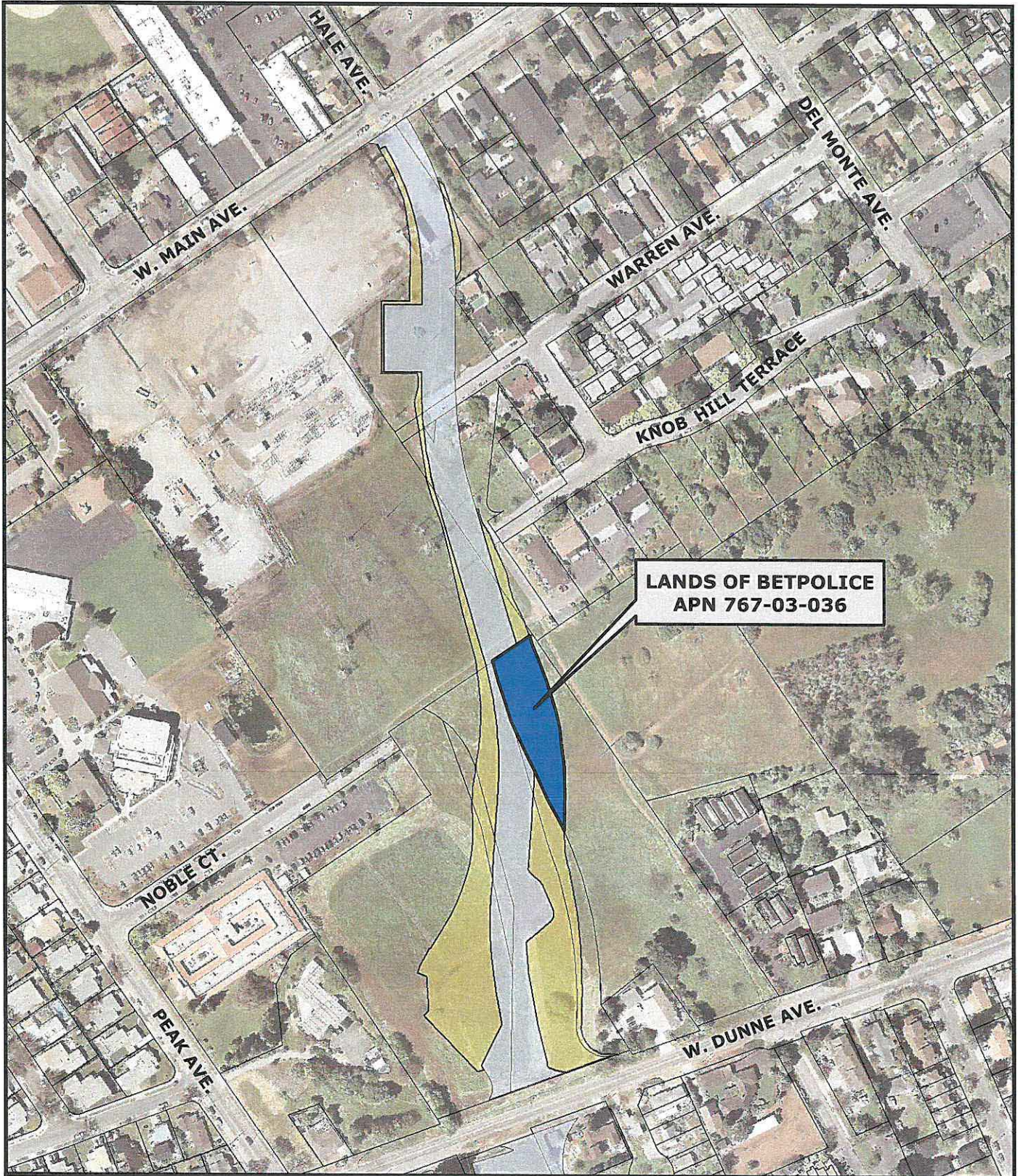
SEPT. 11, 2018
Date

Exhibit B



Attachment: Exhibit A and B to Resolution (2059 : Betpolice Resolution of Necessity)





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

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SITE MAP

LANDS OF BETPOLICE
APN 767-03-036



Attachment: Project Location Map (2059 : Betpolice Resolution of Necessity)

Item # 06

AGENDA DATE: 12/05/18
SUPPLEMENT # 1

From: [Chris Ghione](#)
To: [Christina Turner](#); [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: LCAC Recommendation for Council Item 6
Date: Tuesday, December 04, 2018 7:36:03 PM

At the December 4, 2018 Library, Culture and Arts Commission Meeting, the Commission formally recommended approving the funding for the South Valley Civic Theater included in item number 6 on the agenda.

Thank you,
Chris

Chris Ghione
Public Services Director
[Engage With Us!](#)

City of Morgan Hill
Community Services, Engineering and Utilities
17575 Peak Avenue, Morgan Hill, California, USA 95037

P: 408.782.9154 | **C:** 408.427.6196
chris.ghione@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

[Sign up to receive news updates from the City of Morgan Hill!](#)

From: [D. Muirhead](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: Morgan Hill City Council Meeting December 5, 2018 comments on Item #9 and #7
Date: Monday, December 03, 2018 11:22:14 AM

Dear Morgan Hill City Council,

Comments for the Public Record submitted by
Doug Muirhead, a resident of Morgan Hill, for:
Morgan Hill City Council
Meeting December 5, 2018
Item #9: additional \$50,000 for labor negotiations services
Item #7: MOU with AFSCME, CSOA, and POA

Thank you for your consideration.

-----+-----+-----+-----+-----+-----+-----+-----+
#9: Approve Amendment with Meyers Nave for additional \$50,000 to provide
labor negotiations services for a total not to exceed \$100,000

This item violates Ongoing Priorities
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

Of great concern is that the original agreement prevents this additional
amount from being billed and paid:

EXHIBIT "I" CONSULTANT AGREEMENT

This agreement is made this 14 day of June, 2018

4.. Compensation: CONSULTANT shall be compensated as follows:

4.1. Amount. Compensation for all services, fees and expenses
under this Agreement shall not exceed \$50,000. ... Services
or work performed in excess of the total compensation set forth
above shall be at no cost to CITY.

Since previous agenda item #7 claims that negotiations are complete,
and the original contract with Meyers Nave required detailed billing
by hour, you should know how much above the original \$50K the City
wants to pay the consultant and will reject this open-ended additional
\$50,000 which hides the overrun amount.

The original Consultant Agreement described the "Services to be Provided"
with the vague "labor contract negotiations" and "Compensation shall
be on an hourly billing rate". Staff claims that the negotiations
extended over a longer period than planned, requiring additional meetings.
So what was the original planned period and the participation by each of
the consultants, given different hourly billing rates?

-----+-----+-----+-----+-----+-----+-----+-----+
#7: Memorandum of Understanding (MOU) with AFSCME, CSOA, and POA

For Ongoing Priority: Fostering a Positive Organizational Culture

Our City employees will benefit from a three-year contract
(December 30, 2018 through December 31, 2021) which locks in
a minimum 3.25% salary increase each year. Management, Professional,

and Confidential employees receive a 3.5% salary increase for one year.

For Ongoing Priority: Maintaining Fiscal Responsibility

While neither you nor I can be certain of the state of the economy in the next three years, the ability to adjust City expenses in the case of a downturn is a requirement. You do not indicate having any flexibility in salaries and benefits with this three-year contract. I made similar comments to the Water District earlier this year. I suggested the old-fashioned approach of across-the-board percent reductions rather than layoffs based on seniority. Your approach is probably in the MOUs which though approved by the bargaining units you chose not to include in the packet.

--

"The net cost for the three-year term is estimated at \$518,000. Staff anticipates savings from vacancies, supplies and services will sufficiently cover the net cost through the term. Therefore, no budgetary appropriations are needed at this time."

--

You claim that you can save \$518,000 from vacancies, supplies and services. How about some documentation. How many vacancies exist now, how long have they been vacant, which are likely to be filled in the next year, and how will you then deal with reduced savings that you claim can offset the increased salaries? From a resident perspective, one-half million dollars is not an amount that you can casually dismiss.

For Ongoing Priority: Preserving and Cultivating Public Trust

The last time you presented MOUs to our residents, I complained that you provided no justification for the 3% increase. You repeat this lack of transparency with no information on the "twelve local comparator government employers in this region". You also fail to provide any justification for the 3.25%-4% rates. Are not our residents one of the parties benefiting from the Council-adopted "Employee Compensation Guiding Principles, May 2017":
guiding principle (6) transparency and accountability ?

Question

[CSOA] Bilingual Pay: For employees hired on or after July 1, 2013, bilingual monthly stipend increase from \$150 to \$200 per month. How do you determine fluency? Can an existing employee become fluent and be eligible for the special pay? More interestingly, what other positions in our local government would benefit from multiple language abilities and what are you doing to increase this capability?

-----+-----+-----+-----+-----+-----+-----+

MEMORANDUM OF UNDERSTANDING



Community Service Officers' Association

December 30, 2018 – December 31, 2021

CSOA
MEMORANDUM OF UNDERSTANDING
~~2015–2018~~December 30, 2018 – December 31, 2021
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~~Section 1.01~~ This Memorandum of Understanding ("MOU") has been executed by representatives of the MORGAN HILL CITY COUNCIL ("City") and representatives of the COMMUNITY SERVICE OFFICERS' ASSOCIATION ("Association").

~~Article II.~~ Article I. **TERM**

~~Section 2.01~~ The term of this MOU shall be ~~forty two (42) months commencing July 1, 2015, and ending December 31, 2018.~~ from December 30, 2018 through December 31, 2021.

~~Article III.~~ Article II. **REPRESENTATION**

~~Section 3.01~~ Section 2.01 Association is a recognized employee organization within the meaning of City's Employer-Employee Relations Resolution No. 4955.

~~Section 3.02~~ Section 2.02 Association represents all regular classified service full and part-time City employees in the classifications of ~~Multi-Service Officer ("MSO"), Police Cadet,~~ Police Records Specialist, Senior Police Records Specialist, Property/Evidence Technician, Public Safety Dispatcher, ~~and~~ Public Safety ~~Dispatcher~~ Supervisor, and Animal Services Officer (ASO).—

~~Section 3.03~~ Section 2.03 **Regular Part-Time Employees**

~~Section 3.04~~ Regular part-time employees in the classifications represented by Association who work at least twenty (20) hours per week shall receive insurance, educational incentive, tuition reimbursement, and paid leave benefits provided for in this MOU on a pro-rated basis as follows:

~~A.~~ (a) Part-time benefits (whether fifty percent (50%) or seventy five percent (75%) are assigned by City to employees who work in part-time positions when the regular position is authorized by City Council and those authorized benefits are the only benefits available to the individual filling the position.

~~B.~~ (b) At full staffing levels, part-time employees who work additional hours are not eligible for additional benefits beyond what has been authorized by City Council.

~~C.~~ (c) In the event that a part-time employee is assigned and actually works additional hours filling a vacancy in a regular position, the employee will be eligible to receive additional benefits as set forth by City's Temporary Employees Policy.

~~D.~~ (d) Any additional benefits will begin at the start of the assignment and continue to accrue until the employee is reassigned back to his/her regular part-time hours.

~~Section 3.05~~ Section 2.04 **Meet & Confer Process**

~~Section 3.06~~ (a) Association is the only employee organization which is entitled to meet and confer with City on behalf of represented employees as outlined in Item 2.02 above.

~~Section 3.07~~(b) Representatives of City and Association have met and conferred, pursuant to the provisions of the Meyers-Milias-Brown Act and Resolution No. 4955, for the purpose of reaching agreement concerning all matters within the scope of representation for City employees in Association during the term of this MOU.

~~Section 3.08~~(c) An agreement has been reached.

~~Section 3.09~~(d) Association agrees that it will not attempt to meet and confer on any items within the scope of representation, as defined by the Meyers-Milias-Brown Act and City Resolution No. 4955, during the term of the MOU except as provided in the MOU.

~~Section 3.10~~(e) No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto, unless made and executed in writing by all parties hereto, and, if required, approved and implemented by City and Association.

~~Section 3.11~~Section 2.05 Maintenance of Membership

~~Section 3.12~~(a) Each employee who, on ~~July 1, 2015~~December 30, 2018, is a member in good standing of Association shall ~~thereafter~~, as a condition of employment, maintain such membership for the duration of this ~~MOU~~, to the extent of paying the periodic dues uniformly required by Association as a condition ~~—~~of retaining membership.

~~Section 3.13~~(b) No employee who is not a member of Association shall be required to become a member of Association as a condition of employment. Any such employee who becomes a member of Association shall maintain such membership for the duration of this MOU.

~~Section 3.14~~(c) ~~—~~Any employee who, on ~~July 1, 2015~~December 30, 2018, was a member of Association and any employee who ~~—~~subsequently becomes a member may, during the period beginning Nov 30, 201~~8~~21 ~~through~~through December 31, 20~~21~~18, resign such membership and thereafter shall not be required to be a member ~~—~~of Association as a condition of employment. ~~Resignations shall be in writing addressed to the City's Human Resources Manager with a copy to Association.~~

Section 2.06 Membership Dues

(a) Payroll deductions for the periodic membership dues, initiation fees and general assessments of the Association shall be made by the City on behalf of the Association from the paycheck of each employee whom the Association certifies has affirmatively consented to such dues deduction. The City shall remit the deducted membership dues to the officer(s) of the Association designated in writing by the Association. By December 1st each year, the Association shall inform the City of the amount of the bi-weekly dues to be deducted for the following calendar year, and also notify the City of any changes to the amount of Association dues during a calendar year.

- (b) The Association will maintain individual employee authorizations for payroll deductions, signed by the individual from whose wages the deduction is to be made. The City shall rely upon written notification from the Association for any employee requests to cancel, initiate or change payroll deductions for dues. The Association will obtain and maintain voluntary written authorization for dues deductions. Dues deductions shall automatically renew unless written notice is provided by the Association.
- (c) Deduction notification will be provided to the City's Payroll Division. Change, cancellation and deduction requests received by the City prior to the 15th of the month will be processed the first full pay period of the following month. Change, cancellation and deduction requests received by the City on or after the 15th of the month will be processed the second full pay period of the following month.
- (d) The Association shall indemnify and hold the City and its agents and employees harmless from any cost, expense, fee or liability resulting from any threatened or actual claims, demands, lawsuits, or any other action arising from the operation of this Section 2.03 and from the use of such monies by the Association.

~~Section 3.15~~ Section 2.07 Use of City Equipment

- (a) Elected officers and members of Association may be granted limited privileges to utilize City owned equipment within the police facility ~~in return for an annual honorarium of one hundred dollars (\$100.00) due and payable on January 1st of each year to compensate for City costs to operate and maintain that equipment~~ as follows:

~~1.~~ (b) Elected officers of Association may utilize the Police Department ("Department") E-Mail system to post official notices to its membership or conduct necessary official business that cannot be conveniently conducted in another fashion. Likewise, members may utilize this system to reply to notices or other necessary business.

~~2. Elected officers of Association shall be allowed the use of the Police Department fax machine. Use of the machine is limited to routine communication/correspondence. Faxes outside the local area are permitted. However, mass statewide or nationwide faxes are prohibited.~~

~~3.~~ (c) Elected officers of Association or their designates may utilize City telephones within the police facility to conduct official Association business for local calls only. All long distance or message unit calls must be made collect or with the use of a private phone credit card.

~~4.~~ (d) Elected officers of Association or their designates may utilize City copy machines within the police facility to reproduce notices to its membership, other official correspondence using Association stationery, and copies of the MOU for distribution to its membership. Reproducing multiple copies of large documents or large quantities (more than twenty five (25) copies) of short documents may only be allowed with permission of the Chief of Police.

~~5.~~(e) Official business shall be defined as notifying members of Association meetings, Association activities, or other official communications such as preparing election ballots, correspondence, etc. Not included in official business are items such as actually voting on Association issues, lobbying or campaigning with respect to Association issues, expressing personal or political views, making statements which are injurious to individuals or the police organization, or other similar transmissions.

~~6.~~(f) The Chief or his/her designate shall monitor these privileges during the term of this MOU. Should the Chief or his/her designate detect an abuse of these privileges, he/she shall notify Association's Executive Board and allow Association to be heard. If additional abuses are detected after having placed Association on notice, the Chief, or his/her designate, may unconditionally revoke these privileges.

~~Article IV.~~Article III. **EMPLOYEE COMMITMENT**

~~Section 4.01~~Section 3.01 In consideration of the fair and reasonable provisions of this MOU, employees represented by Association, through their elected representatives, do hereby make the following pledges to City:

~~1.~~(a) Employees shall make every effort to minimize City costs on an on-going basis by encouraging optimum amount of work production from each of its members.

~~2.~~(b) Employees shall cooperate in every reasonable way to properly maintain and protect City property, equipment, and facilities.

~~3.~~(c) Employees shall adhere to all City Rules and Regulations. Specific attention shall be given to those regulations dealing with sick leave, time off, coffee breaks and punctuality. Every effort shall be made to maintain a good public image for each and all City employees. This is to be accomplished by maintaining good work habits and keeping busy at productive work during regular working hours.

~~4.~~(d) Employees shall use and follow safe working procedures in their day-to-day work routines. Each employee shall point out to his/her fellow workers any observed or unsafe condition or work procedure. Any observed unsafe condition or situation shall be immediately reported by employees to their supervisor. The intent is to protect fellow workers from any unnecessary injury and any potential liability for City.

~~5.~~Section 3.02 Employees shall make a special and continuing effort to maintain good and constructive relations with the general public, fellow employees, and City officials. Every effort will be made to be considerate and understanding of the other person's point of view, misunderstanding, or problem.

~~6.~~Section 3.03 Association shall assume a leadership role in carrying out the above pledges.

~~Article V.~~ Article IV. **MANAGEMENT RIGHTS**

~~Section 5.01~~ Section 4.01 The rights of City, as exercised by City Council and City administration, include, but are not limited to:

- ~~1.(a)~~ The exclusive right to determine the mission of its constituent departments, commissions, and boards,
- ~~2.(b)~~ Set standards of service, determine the procedures and standards of selection for employment,
- ~~3.(c)~~ Direct its employees,
- ~~4.(d)~~ Take disciplinary action,
- ~~5.(e)~~ Relieve its employees from duty because of lack of work or other legitimate reasons,
- ~~6.(f)~~ Maintain the efficiency of governmental operations,
- ~~7.(g)~~ Determine the methods, means, and personnel by which government operations are to be conducted,
- ~~8.(h)~~ Determine the content of job classifications, subject to any requirement to meet and confer or under current state law,
- ~~9.(i)~~ Require that employees work overtime, and
- ~~10.(j)~~ Exercise complete control and discretion over its organization and the technology of performing its work, except that any agreement between City and Association evidenced by a MOU pursuant Government Code § 3500 et.seq. shall take precedence over any of the above enumerated employee and management rights and that such MOU will be honored in good faith during the life of this MOU, subject to City's rights to determine when an emergency exists and to take all necessary action to carry out its mission in emergencies.

~~Section 5.02~~ (k) Nothing in this Article VII shall be construed to limit, amend, decrease, revoke, or otherwise modify the rights vested in City by any law regulating, authorizing, or empowering City to act or refrain from acting.

~~Article VI.~~ Article V. **DEFINITIONS**

~~Section 6.01~~ (a) The terms "Salaries", "Wages," or "Salary and Wages" shall mean the gross monthly base pay prior to any deductions.

~~Section 6.02~~ (b) The term "Personnel Rules" as used in this MOU means those regulations titled City of Morgan Hill Personnel Rules, enacted as Resolution No. 6150, and thereafter and hereafter amended. Copies are available from Human Resources.

~~Section 6.03~~Section 5.02 ~~Comprehensive~~ **Comprehensive MOU**

~~Section 6.04~~Section 5.03 During the term of this MOU, City intends to develop a more comprehensive MOU including the addition and/or modification of many items as found in the current Personnel Rules. It is ~~understood~~ City will meet and confer with Association regarding any proposed changes at the ~~_____~~ time these items are ready to be included in the MOU.

~~Section 6.05~~Section 5.04 In the event a conflict in interpretation between the Personnel Rules, as included by reference, ~~_____~~ and similar sections as contained in this MOU, the language in the MOU will be used for interpretation.

~~Article VII~~Article VI. **SALARIES, WAGES & PAID BENEFITS**

~~Section 7.01~~Section 6.01 The Salaries and Wages paid by the City to all employees ~~in~~ represented by the Association will be in accordance with ~~the~~ job classifications they hold with pay rates to be increased by ~~two~~ three and one half percent ~~_____~~ (~~32.5~~) effective ~~the first pay period~~ the pay period including following July 1, 2015 December 30, 2018. (Exhibit B).

~~Section 7.02~~Section 6.02 The Salaries and Wages paid by the City to all employees ~~in~~ represented by the Association will be in accordance with ~~the~~ job classifications they hold with pay rates to be increased by ~~two~~ three and one half percent ~~_____~~ (~~32.5~~) effective ~~the first pay period following July 1, 2016~~ the pay period including January 1, 2020. (Exhibit C).

~~Section 7.03~~Section 6.03 The Salaries and Wages paid by the City to all employees ~~in~~ represented by the Association will be in accordance with ~~the~~ job classifications they hold with pay rates to be increased by ~~two~~ three and ~~one half percent~~ one quarter percent (~~2.5~~ 3.25) effective ~~the first pay period following July 1, 2017~~ the pay period including January 1, 2021. (Exhibit D).

~~Section 7.04~~ ~~6.04~~ ~~_____~~ ~~The Salaries and Wages paid by City to all employees in Association will be in accordance with _____ the job classifications they hold with pay rates to be increased by one half percent (0.5%) effective the first pay period following July 1, 2018. (Exhibit E).~~

~~Section 7.05~~Section 6.04 **Holiday Pay**

~~Section 7.06~~(a) Holiday Pay shall be six and one half percent (6.5%) of an employee's base hourly salary for ~~_____~~ those employees with the classification of ~~_____~~ Public Safety Dispatcher ~~and MSO~~. With the ~~_____~~ exception of the classifications of Public Safety Dispatcher ~~and MSO~~ who receive Holiday Pay, ~~_____~~ City will observe the following holidays: New Year's Day, Martin Luther King Day, President's ~~_____~~ Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day after ~~_____~~ Thanksgiving, Christmas Eve and Christmas Day.

~~A.~~(b) Employees will receive one (1) half (.5) day holiday to be used during the City furlough period. City will maintain minimum staffing levels on these days and the Chief or his/her designee will determine which half (.5) day the employee may take off.

~~B.~~(c) Each employee not eligible to receive holiday pay will receive two (2) floating holidays each fiscal year to be used during the fiscal year and to be approved by the Chief or his/her designee.

~~Section 7.07~~Section 6.05 Other Pay

~~Section 7.08~~(a) Full-time employees called back to work outside their regular work shift shall be compensated for a minimum of two (2) hours at time and one half (1.5) of their regular pay rate. Part-time employees called back to work outside their regular work shift shall be compensated for a minimum of two (2) hours at their regular pay rate.

Section 6.06 Out of Class Pay

(a) Whenever an employee is temporarily assigned by their supervisor to work in a higher _____classification and ~~performs substantially all~~assumes the full range of the duties of the higher classification for a period _____of more than one hundred twenty (120) hours, the employee shall be entitled to ~~out of class~~Out Of Class pay ~~on~~ the one hundred twenty first (121st) hour of assignment if:

(i) the assignment is for a limited duration,

(ii) will not and does not exceed 960 hours in a fiscal year and

(iii) is to a position in a higher class that is vacant during recruitment for a permanent employee (i.e. does not include a vacancy due to an employee on leave). Out of Class Pay shall be at the pay step in the higher class closest to but no less than five percent (5.0%) higher than the employee's base pay and is intended to be PERSable compensation under Government Code section 20480. To qualify as Out of Class Pay rather than Higher Class Assignment Pay (see section 6.09), the assignment must be approved by the Department Head's designee and the Human Resources Division.-

(b) Having once satisfied the one _____hundred twenty (120) hour qualifying requirement, any subsequent qualifying Out of Class ~~such~~ assignment to the same higher classification during the _____employee's employment with the City shall be compensated ~~with five percent (5%) out-of-class pay~~at the pay step in the higher classification closest to but not less than five percent (5.0%) higher than the employee's base pay _____beginning with the first hour of that reassignment.

(c) Once an employee has worked Out of Class for three hundred twenty (320) hours in a fiscal year, any subsequent Out of Class hours worked in the same higher classification during that fiscal year will result in the employee being paid seven and a half percent (7.5%) Out of Class pay for each hour worked over 320.

~~Section 7.09~~(d) Hours worked in a Higher-Class Assignment under Section 6.07 shall qualify as hours worked toward qualifying for Out of Class pay under this Section 6.06.

~~6.10 Once an employee has worked out of class for three hundred twenty (320) hours in a fiscal year, any subsequent out of class assignments during that fiscal year will result in the employee being paid seven and a half percent (7.5%) out of class pay for each hour worked.~~

Section 6.07 Higher Class Assignment Pay

(a) A supervisor may assign in writing an employee to work in a higher class and receive “Higher Class Assignment Pay” if the employee will assume the full range of duties of the higher classification for more than one hundred twenty (120) hours and does not qualify for Out of Class Pay. The employee will be eligible for Higher Class Assignment Pay starting with the one hundred twenty first (121st) hour of the assignment at the pay step in the higher class closest to but no less than five percent (5.0%) higher than the employee’s base pay. Higher Class Assignment Pay is not PERSable compensation under Government Code section 20480.

(b) Having once satisfied the one hundred twenty (120) hour qualifying requirement, any subsequent qualifying Higher-Class Assignment to the same higher classification during the employee’s employment with the City shall be compensated at the pay step in the higher class closest to but no less than five percent (5.0%) higher than the employee’s base pay beginning with the first hour of that reassignment.

(c) Once an employee has worked in a Higher Class Assignment for three hundred twenty (320) hours in a fiscal year, any subsequent Higher Class Assignment hours worked in the same higher classification during that fiscal year will result in the employee being paid seven and a half percent (7.5%) Higher Class Assignment Pay for each hour worked over 320.

~~Section 7.10~~(d) Hours worked in an Out of Class Assignment under Section 6.06 shall qualify as hours worked toward qualifying for Higher Class Assignment Pay under Section 6.07.

Section 7.11Section 6.08 Breaks and Meal Periods

(a) ——— Except in the case of emergencies, employees shall receive a meal period after four (4) hours of time worked. Employees working less than a twelve (12) hour shift shall be entitled to two (2) ——— fifteen (15) minute breaks and one (1) thirty (30) minute meal period during the

shift. The thirty ~~———~~(30) minute meal period for Public Safety Dispatchers and ~~MSOs ASOs~~ shall be a paid meal period, ~~———~~during which time they shall be available for duty. Public Safety Dispatchers are required to ~~—~~request coverage from the appropriate supervisor twice per shift for their fifteen (15) minute ~~—~~breaks. Employees may be entitled to three (3) fifteen (15) minute breaks when working a ~~———~~twelve (12) hour shift. Employees not receiving paid meal periods may request to take the fifteen ~~———~~(15) minute breaks in conjunction with the thirty (30) meal period, workload permitting, at the ~~—~~discretion of the supervisor.

Section 7.12(b) Any employee required to work more than sixteen (16) hours within a twenty four (24) hour period shall be entitled to an eight (8) hour rest period prior to returning to work. If any portion of the eight (8) hour rest period occurs during the employee's regular scheduled work hours, the employee shall receive normal compensation for that time. This section shall not apply in the case of emergencies.

~~Section 7.13~~**Section 6.09** Bilingual Pay

(a) Association employees identified by the Chief or his/her designee to use Spanish or American Sign Language in their work and who are certified shall receive the following compensation:

~~A.(i)~~ Employees hired prior to June 30, 2013 shall receive five percent (5%) of their base salary. On July 1, 2013, that amount will be calculated and converted to a fixed amount or one hundred and fifty dollars (\$150.00), whichever is greater.

~~B.(ii)~~ Should there be subsequent adjustments to base salaries, the amount determined on July 1, 2013 shall remain the fixed in perpetuity.

~~C.(iii)~~ Employees hired on or after July 1, 2013 shall receive a monthly stipend of ~~one hundred fifty two~~ hundred dollars (~~\$150~~200.00).

~~D.(b)~~ The certification process shall be completed by a provider contracted by Human Resources or a three (3) person panel established by Human Resources to determine conversational competence. ~~—~~Employees shall be subject to recertification every two (2) years unless the certification is waived by City.

~~E.(c)~~ An eligible employee may request to be tested for bilingual certification at any time.

~~Section 7.14~~**Section 6.10** Training Pay

~~(a)~~ Individuals in the classification of Public Safety Dispatcher who are assigned to train new employees in that classification shall receive additional compensation of five percent (5%) of base pay during the hours that a Public Safety Dispatcher is training a new Public Safety Dispatcher.

(a)

~~Section 7.15~~ **Section 6.11** **Shift Differential**

- (a) A five percent (5%) solo shift differential will be paid to the Public Safety Dispatcher classification during the hours that a Public Safety Dispatcher is working alone. Solo Public Safety Dispatcher is defined as Public Safety Dispatchers who are not working with another employee who has been signed-off to work independently in the Communications Center.

~~Section 7.16~~ **Section 6.12** **Court Pay**

~~Section 7.17~~ (a) Court ~~pay~~ **Pay** is paid at a four (4) hour minimum at the employee's overtime hourly rate. Such pay is recognized as any court assignment worked which is not contiguous with a regular shift.

~~A.~~ (b) The minimum an employee can receive for a court appearance cannot cause the employee to receive a rate of pay which overlaps into their regular shift. The time between the start of the court appearance and the start of the scheduled shift shall be paid as governed under the City's overtime policy and the employee will be required to report to work. The same overlap rule applies for a court appearance which begins within thirty (30) minutes time of the end of a regular shift.

~~B.~~ (c) Employees shall be compensated for travel time. Travel time is any time in excess of the time the employee spends going to and from a court appearance. If the sum of the travel time and the court appearance does not exceed the four (4) hour minimum paid for court appearances or if the time overlaps into the employee's regular shift, no additional overtime compensation will be paid. Normal commute is defined as the time necessary for an employee to travel from their residence to the Morgan Hill Police Department based on the distance, prevailing commuter speeds, and congestion. Employees are not required to drive a City vehicle to court, but may be provided a City vehicle for out of County travel, if available. Employees will be reimbursed at the current IRS rate for use of their personal vehicle when making in-County or out-of-County court appearances.

~~C.~~ (d) Except as provided herein, employees receiving overtime ~~court~~ **Court pay** ~~Pay~~ shall not receive reimbursement for meals nor will they receive ~~overtime~~ **Overtime pay** ~~Pay~~ for court meal recesses. Employees held over through a court lunch recess, but then released from court immediately following the recess, shall receive overtime pay for the lunch recess, not to exceed one (1) hour.

~~D.~~ (e) Only one (1) four (4) hour minimum compensation for an off duty court appearance will be paid per day. If additional off duty court appearances are required beyond the time covered by the four (4) hour minimum, the employee shall be paid at the overtime rate for actual hours worked as governed by the City's overtime policy.

~~E.(f)~~ In the event that employees are assigned by the Police Chief or his/her designee to remain on call for the purposes of court standby, the employees shall receive one quarter (1/4) straight time pay for every hour on standby with a two (2) hour minimum and an eight (8) hour maximum per court day.

~~F.(g)~~ As referred to in this MOU, court standby is defined as time in which the off duty activity of an employee covered by this MOU is restricted due to the inevitability of the employee having to respond to court within the succeeding twenty four (24) hours.

~~G.(h)~~ The Police Chief or his/her designee shall be responsible for informing appropriate court officials of the above stated court standby procedure and any conflicts resulting from the procedure.

~~Article VIII~~ Article VII. ~~Hours of Work and Overtime~~ HOURS OF WORK AND OVERTIME

~~Section 8.01~~ Section 7.01 Hours of Work

~~Section 8.02(a)~~ For the purposes of calculating overtime, compensatory time off ("CTO"), and defining payroll periods, the established work week is 12:01 a.m. Sunday morning to 12:00 midnight the following Saturday night.

~~Section 8.03(b)~~ The work day, for pay purposes, shall be a twenty four (24) hour period commencing with the beginning of the employee's regularly scheduled shift. For regular employees in the full-time classifications represented by this bargaining group, except Public Safety Dispatcher and ~~MSO~~ ASO, the normal work schedule shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday.

~~Section 8.04(c)~~ Alternative work schedules for Association employees may be approved pursuant to City's Alternate Works Schedules Policy. For employees in the full-time classification of Public Safety Dispatcher, the normal work schedule shall be forty (40) hours consisting of four (4) consecutive days of ten (10) hours each. Regular part-time employees shall work half of the weekly full-time schedule as defined for their classification. Should the normal work schedule need to be modified in terms of days or shift hours by the Chief to facilitate the needs of City, such modification in normal work schedules will be discussed with Association representatives as to methods for changing or rotating assignments prior to any change. The affected employee shall be notified at least fourteen (14) full working days prior to any change.

~~A. For purposes of calculating overtime, CTO, and defining payroll periods under 29 CFR 553.211, Section 7(k), the established work period is a fourteen (14) day period, recurring every fourteen (14) days beginning at 12:01 a.m. every other Sunday and ending every other Saturday 14 days later at 12:00 midnight.~~

~~B. The work day, for pay purposes, shall be a twenty four (24) hour period within which the employee's regularly scheduled shift begins.~~

~~C. MSOs may be assigned to work a rotation of either eight (8), nine (9), ten (10), or twelve (12) hour shifts, to equal eighty (80) hours per pay period.~~

~~D. The sign-up period for MSO shift selection will be on the same time schedule as the sworn members of the Police Officers' Association and will be completed by seniority.~~

~~E. The Operations Division Captain may elect to administratively assign an MSO to a specific shift for the good of the organization. Examples may include, but are not limited to, long term personnel shortage or career enhancement of probationary employees. Any bumping of personnel done in order to accomplish this shall be done by seniority.~~

~~F. Section 7.02 Overtime MSOs shall not be required to rotate shifts during the term of this MOU.~~

Section 8.05(a) — The Chief retains the right to make any special exceptions to the above schedules. If at any time it becomes evident to the Chief that the most efficient use of staffing to meet the workload demands of the community is not being met, the Chief reserves the right to modify work schedules on a temporary or permanent basis. City will attempt to give the affected employee as much notice as possible, but at least three (3) full working days, notice prior to the effective date of any schedule change, except in cases of emergencies.

Section 8.06(b) — Overtime/CTO is defined as one and a half (1.5) times an employee's total hourly salary. Overtime/CTO is paid in fifteen (15) minute increments for time exceeding seven and a half (7.5) minutes more than the employee's normal work shift, provided the employee has worked an eight (8) hour or more work shift or any work time in excess of the forty (40) hour work week, unless additional hours are worked as a result of a shift change.

Section 8.07(c) — All such time must be approved in advance by the employee's supervisor or the Chief. Time spent on paid sick leave, disability leave, vacation leave, military leave, CTO, or other authorized paid leave shall be deemed time worked for the purposes of this MOU.

Section 8.08(d) The priority of overtime selection for both the Public Safety Dispatcher classification and the Public Safety Dispatcher Supervisor classification shall be:

1.(i) Regular Full-time employees

2.(ii) Regular Part-time employees

3.(iii) Temporary ("Temp") employees (either working in a non-budgeted position or working on an hourly basis with no benefits).

~~Section 8.09~~(e) Employees will have the option of receiving either paid overtime or CTO. The CTO accrual limit shall be one hundred sixty (160) hours.

~~Section 8.10~~(f) During emergency situations that require Emergency Operation Center ("EOC") activation (floods, earthquakes, severe storms, etc.), City reserves the right to require that all overtime be compensated in pay and not CTO.

~~Section 8.11~~(g) Employees may elect to ~~make contributions~~ contribute via payroll deduction to ~~one of the~~ City's deferred compensation plans ~~in a given pay period in lieu of receiving paid overtime. These Employees' contributions can be one time, a lump sum contributions or employees can temporarily increase the amount of their established deferral ten (10) times in a given fiscal year. For example, if an employee works overtime in a given pay period, he/she may temporarily increase the amount of their deferred compensation contribution for that pay period. or a percentage of base wages.~~ Employees must submit a completed deferred compensation enrollment/change form to the Human Resources Office for changes in their deferred compensation contributions. prior to the end of the pay period for which they wish to have the change be effective. Changes shall be effective the second full pay period following receipt by Human Resources of the applicable deferred compensation enrollment/change form.

~~Section 8.12~~Section 7.03 Temporary or Alternate Work Schedule

(a) For those employees classified as Public Safety classification, a temporary alternate work schedule may be invoked based upon staffing vacancies and needs of the City.

~~A.~~(b) Prior to invoking a temporary work schedule, all Public Safety Dispatchers shall be given the opportunity to review alternatives and provide input with respect to a preferred schedule.

~~B.~~(c) While a mutually agreeable schedule is the goal, the Chief, upon approval of the City Manager, shall have the final authority to make the determination of the actual temporary work schedule to be implemented.

~~C.~~(d) Temporary work schedules may be non-traditional in form, such as a twelve (12) hour work day with more than two (2) days off each calendar week. However, all hours worked in excess of forty (40) hours per week shall be compensated at the current overtime rate (either with paid overtime or CTO). Hours worked forty (40) hours or less shall be compensated at the employee's normal straight time hourly rate.

~~D.~~(e) Upon mutual agreement of City, the Chief and employees in the classification of Public Safety Dispatcher, the recommended fourteen day (14) notice prior to implementation of a temporary alternate work schedule may be waived.

~~E.(f)~~ If Association wishes to meet and confer regarding the termination and/or possible continuation of the temporary alternate work schedule at the time City is considering reverting back to the normal schedule, City agrees to meet and confer to discuss Association's concerns prior to reverting back to the normal work schedule.

~~Section 8.13~~ Section 7.04 Shifts

(a) ~~Regular s~~Shifts for employees in the classification of Public Safety Dispatcher shall be as follows:

~~Section 8.14~~(i) Shift A: any shift beginning 5AM to 10AM

~~Section 8.15~~(ii) Shift B: any shift beginning 11AM to 4PM

~~Section 8.16~~(iii) Shift C: any shift beginning 5PM to 9PM

(b) ~~6.32~~At no time will any regular shift begin between the hours of 10 PM and 5AM. The City may, in the case of emergency or staff shortage or challenges, require employees to work a regular shift starting at a time other than as set forth in this section 7.04.

~~Section 8.17~~(c) Shift selection for those ~~full-time~~ employees in the classification of Public Safety Dispatcher shall be by seniority as ~~follows~~:

~~A.(i)~~ Public Safety Dispatchers shall select two (2) shifts. Each shift shall be for a six (6) month period, beginning the second pay period of January and July, respectively.

~~B.(ii)~~ In October, the Police Support Services Manager shall publish a blank schedule indicating the available shifts to be selected for the following calendar year. At least twenty (20) days prior to becoming effective, the approved schedule shall be posted.

~~C.(iii)~~ For the purpose of Public Safety Dispatcher shift selection, seniority is based on date of hire as a regular employee in the Public Safety Dispatcher job classification. Seniority shall ~~be~~ take precedence in resolving scheduling selections.

~~D.(d)~~ Public Safety Dispatchers shall not be required to rotate shifts during the term of this MOU.

~~E.(e)~~ The Police Support Services Manager, or designee, may elect to administratively assign a Public Safety Dispatcher to a specific shift for the good of the organization. Examples may include, but are not limited to, long-term personnel shortage, career enhancement of probationary employee, or special assignments.

~~Section 8.18~~ Article VIII. ~~Health Benefits~~ HEALTH BENEFITS

~~Section 8.19~~ Section 8.01 City will contribute to the premiums of the City's medical, dental and vision health plans as follows:

~~A.(a)~~ For employees with family coverage, up to ~~n~~Ninety percent (90%) of the ~~lowest-cost~~Kaiser medical health plan plus the full cost of Delta Dental and VSP (Vision). ~~and vision for employees with family coverage.~~

~~B.(b)~~ For Employees with employee plus one coverage, up to ~~n~~Ninety six and one half percent (96.5%) of the ~~lowest-cost~~Kaiser medical health plan plus the full cost of Delta Dental and VSP (Vision). ~~dental and vision for employees with employee plus one coverage.~~

~~(a)(c)~~ For ~~those~~ employees with who waive medical and/or dental coverage or who have employee only coverage, the City's contribution for Medical, Delta Dental and VSP (Vision) shall be eight hundred dollars (\$800.00).

~~C.(d)~~ The monthly health allowance contribution will be seven hundred fifteen dollars (\$715.00). Employees not using the entire benefit amount shall be entitled to use one hundred percent (100%) of the surplus amount for optional benefits or for participating in medical reimbursement or dependent care expense accounts. If employees do not use their one hundred percent (100%) surplus for optional benefits, it will be added to their salary as taxable income.

(e) Employees whom annually provide proof of alternative coverage may waive enrollment in City medical, dental and vision insurance programs and receive a taxable cash in lieu payment of \$715 a month. by providing proof of alternate coverage. Amounts received as cash in lieu shall be included in the employee's overtime rate only so long as, and to the extent, required by law.

(f) Effective in December 31, 2021, the amounts the City is obligated to contribute shall be converted to the identical flat dollar amounts and the formulaic approach used to determine the City's contribution obligations in 2019, 2020 and 2021 shall be null and void and no longer in effect for subsequent plan years. Effective starting in December 2021, employees enrolled in the employee only category shall no longer be eligible to use any surplus amounts in excess of their premium amounts (if less than \$715800). Any change to these flat dollar City contribution obligations in years after 2021 shall occur only via negotiated agreement of the City and CSOA.

(g) The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs A-F above.

~~D.~~—

~~Section 8.20~~ Section 8.02 Employee Assistance Program

~~Section 8.21~~(a) City agrees to provide, at its expense, one hundred percent (100%) of the premium cost per employee for enrollment in the Employee Assistance Program as presently constituted.

~~Section 8.22~~**Section 8.03 Retirement Medical**

(a) All employees shall have the option of continuing their current medical insurance at the employee's own cost after retirement. This option can continue as long as there is no lapse in coverage and so long as the employee pays the monthly premium to the California Public Employees Retirement System ("CalPERS") or to the Finance Department as per their billing requirements.

~~Section 8.23~~**Section 8.04** The CalPERS Health Benefits Program shall remain in effect for the term of this MOU.

~~Section 8.24~~**Section 8.05 Long Term Medical Care Program**

~~Section 8.25~~(a) City agrees to provide, at its expense, one hundred percent (100%) of the premium cost per employee for enrollment in the basic Long Term Medical Care Program.

~~Section 8.26~~**Section 8.06 Short Term Disability Program**

~~Section 8.27~~(a) For the term of this MOU, City will maintain a short term disability program for all employees represented by Association. The coverage for the short term disability program will be sixty six and two thirds percent (66-2/3%) of salary up to a maximum of nine hundred eighty three dollars (\$983.00) per week with duration of eight (8) weeks and the elimination period of eight (8) days. The employee must be totally disabled to qualify for benefits. Per program requirements, maternity benefits are included in the short-term disability coverage. City will continue to pay one hundred percent (100%) of the costs involved with this program.

~~Section 8.28~~**Section 8.07 Long Term Disability Program**

~~Section 8.29~~(a) For the term of this MOU, City will maintain a long term disability program for all employees represented by Association. The amount of monthly coverage for the long term disability will be sixty six and two thirds percent (66-2/3%) of the first six thousand dollars (\$6,000.00), or a maximum benefit paid of four thousand dollars (\$4,000.00) per month, of the employee's monthly earnings reduced by any deductive benefits. The maximum benefit period is to age sixty -five (65) or twelve (12) months, whichever is longer. The elimination period is sixty (60) days of total disability. Employees may be eligible for some benefits for partial disability as outlined in the plan documents. City will continue to pay one hundred percent (100%) of the costs involved with this program.

~~Section 8.30~~**Section 8.08 Life Insurance**

~~Section 8.31~~(a) For the term of this MOU, City will maintain a life insurance program for each employee represented by Association in the amount of one hundred thousand dollars (\$100,000.00). This amount decreases when the employee reaches ages sixty five (65), seventy (70), and seventy five (75). This amount will be paid to the employee's beneficiary upon the death of the employee as outlined in the program documents. The City will continue to pay one hundred percent (100%) of the cost involved with this program. The City will provide the ability for employees to buy additional life insurance through the flexible benefits program.

~~Section 8.32~~Section 8.09 Hepatitis-B Shots

~~Section 8.33~~(a) City agrees to provide Hepatitis-B shots for represented employees.

~~A.(b)~~ If the employee selects a medical plan which provides this benefit, employees in these classifications must get the shots through their medical plan.

~~B.(c)~~ If not covered by their group medical plan, employees wishing to receive the ~~—~~Hepatitis-B shots must submit a written request to the Human Resources Office. The Human Resources Office will contact the medical office currently being used for City medical examinations to set up the first appointment.

~~C.(d)~~ Charges for Hepatitis-B shots for these employees pursuant to 6.47B above will be paid by City.

~~Section 8.34~~Article IX. ~~Uniforms~~UNIFORMS

~~Section 8.35~~Section 9.01 Uniform Allowance

(a) ~~Effective July 1, 2015,~~The City shall pay an annual uniform allowance to employees in the Police Records Specialist, Senior Records Specialist, Animal Services Officer, Police Cadet, Property/Evidence Technician, Public Safety Dispatcher Supervisor, and ~~—Public~~ —Safety Dispatcher, classifications of eight hundred ten dollars (\$810.00) and to employees in the ~~MSO~~ Animal Services Officer classification of one thousand one hundred sixty dollars (\$1,160.00) payable in one ~~—~~payment on or about July 1st. The City will pay a one-time allowance of eight hundred ten dollars (\$810.00) (one thousand one hundred sixty dollars (\$1,160.00) for ~~MSOs~~ Animal Services Officer) at the time of ~~—~~hiring ~~—~~for ~~—~~the purposes of purchasing the necessary uniforms. If personnel are assigned to a ~~—~~special ~~—~~assignment, City agrees to provide necessary uniforms. Regular part-time employees ~~—~~shall ~~—~~receive one half ~~(.5)~~ of the uniform allowance amounts listed herein, including the ~~one-time~~ one-time allowance ~~—~~upon ~~—~~hire. Regular part-time employees regularly working three (3) or more days per week will receive the full uniform allowance.

~~Section 8.36~~Section 9.02 Replacement Schedule

- (a) City shall pay for the replacement of uniforms damaged due to the performance of job duties on a prorated basis, based on the age of the uniform and upon recommendation of the Chief or his/her designee. The useful life of uniform items for the purpose of this section shall be assumed as follows:

~~Section 8.37~~(i) Uniform shirts/pants - Two (2) years

~~Section 8.38~~(ii) Uniform jackets - Five (5) years

~~Section 8.39~~(iii) Uniform hats (~~MSO~~Animal Services Officer) - Five (5) years

~~A.~~(b) If available, employees shall provide receipts establishing the date of purchase. Authorized personal property such as watches, glasses, etc. damaged due to the performance of job duties shall be replaced up to a seventy five dollar (\$75.00) (one hundred twenty five dollar (\$125.00) for prescription glasses) limit upon the recommendation of the Chief or his/her designee. However, no reimbursement shall be made for personal property which the employee is using on a voluntary basis in lieu of an item which has been provided by City.

~~Section 8.40~~Section 9.03 City shall provide safety equipment that meets Department standards as outlined in the Police Department Policy Manual.

~~Section 8.41~~(a) City will continue to provide pepper spray training and equipment for employees assigned to ~~—~~field duties.

~~Section 8.42~~(b) Newly hired uniformed personnel, at time of hire, will have their safety equipment including (where applicable) gun, baton, handcuffs, flashlight, rain gear, leather, and related equipment furnished by City as per Department specifications. City will repair or replace existing safety equipment owned by personnel hired before July 1, 1997 as they are damaged, worn out, or as Department specifications change, not to exceed the cost of City provided safety equipment.

~~Section 8.43~~(c) City shall provide a Threat Level III protective vest, including shock plate, to all ~~MSOs~~Animal Services Officers. City shall replace a vest after it has been in service for five (5) years, has been compromised, or is otherwise unserviceable per industry standards. ~~MSO's~~Animal Services Officers in an assignment that requires them to ~~—~~wear a uniform must wear the City issued protective vest at all times. ~~MSO's~~Animal Services Officers in a non-uniform ~~—~~assignment are not required to wear a vest at all times while on duty, but shall maintain the vest ~~—~~in an accessible location and should wear the vest when engaged in planned, high risk events. ~~—This provision applies only to vests purchased by City after March 4, 1990.~~

~~Article IX~~Article X. ~~Watch Swaps~~WATCH SWAP

A "Watch Swap" is a voluntary agreement between two (2) employees to trade a specific and equal number of work shifts. When one employee agrees to work for another, the second employee must

reciprocate by working an equal amount of time for the first employee. When a trade is agreed upon and reciprocated, both involved employees will have accounted for two thousand eighty (2080) base work hours per year.

~~Section 9.01~~Section 10.01 Employees may negotiate Watch Swaps among their peers provided that:

~~A. (a)~~ The involved employees complete the Watch Swap Request at the bottom of the overtime form at least one (1) working day prior to the swap,

~~B. (b)~~ The Supervisor for the affected shift approves the request, and

~~C. (c)~~ The trade is among employees of a same job classification.

~~D. (d)~~ The regularly scheduled employee shall code his/her time sheet as if he/she had worked.

~~Section 9.02~~(e) The reverse portion of the Watch Swap may occur at any time at the employee's discretion provided that the steps listed above are also followed for the reverse portion of the Watch Swap. The reverse portion of the Watch Swap is the sole responsibility of the two involved employees. No employee shall have any recourse with the Department for failure to pay back a shift or for working in excess of eighty (80) hours per pay period without overtime in which a Watch Swap was negotiated.

~~Section 9.03~~(f) Watch Swaps are intended to be a convenience for the regularly scheduled employee and it is the sole responsibility of the regularly scheduled employee to ensure that his/her replacement reports to work. If, for any reason, the replacement employee fails to appear for duty, the regularly scheduled employee will be ordered back to work or, if that is not possible, will be considered to have taken the day off without pay. Since Watch Swaps are usually the result of inadequate staffing to allow the employee to take time off by other means, the regularly scheduled employee may not account for the missing time by use of sick leave, CTO, or the like.

~~Section 9.04~~(g) The supervisor shall not approve a Watch Swap for the purposes of allowing the regularly scheduled employee to work an overtime assignment the same day. The supervisor may disapprove Watch Swap requests due to operational needs. Examples may include days on which there are planned special events that require maximum available staffing, etc.

~~Section 9.05~~(h) The Chief may evaluate this process from time to time and may suspend this process if it becomes apparent that employees are failing to honor Watch Swap commitments.

~~Article X~~Article XI. **EDUCATION AND TUITION BENEFITS**

~~Section 10.01~~Section 11.01 Educational Incentive Pay Program (For Employees Hired Before July 1, 2009)

~~Section 10.02(a)~~ See Exhibit A.

~~Section 10.03~~**Section 11.02 Tuition Reimbursement**

~~Section 10.04(a)~~ City shall provide a tuition reimbursement program of up to one thousand five hundred dollars (\$1,500.00) per fiscal year (July 1 through June 30) for the cost of books and tuition for classes beneficial to the employee's career development. All classes must be approved in advance by the Chief. Reimbursement will take place upon a successful completion or passing of the course.

~~Article XI~~**Article XII. TYPES OF LEAVE**

~~Section 11.01~~**Section 12.01 Sick Leave Accrual**

~~Section 11.02(a)~~ Sick Leave credit shall be accumulated on the basis of eight (8) hours per month. The employee's accumulated sick leave is unlimited.

~~Section 11.03(b)~~ City will pay twenty five percent (25%) of unused sick leave at the end of each calendar year. This payment will be based on semi-annual calculations, made on June 1 and December 1 of each year. The balance of sick leave will be added to the employee's accumulated sick leave.

~~A.(c)~~ The twenty five percent (25%) payout will not be calculated or paid to any employee absent from work on a work related injury which is being covered by workers' compensation.

~~Section 11.04(d)~~ Upon retirement, one hundred percent (100%) of the employee's unused sick leave balance will be credited to the employee's retirement eligibility. This amount would then be converted into time in service and added to the employee's retirement eligibility. (Reference - City contract with CalPERS, Section 20862.8).

~~Section 11.05(e)~~ Employees shall be allowed to utilize two (2) complete shifts of personal leave per fiscal year chargeable to sick leave. Use of these two (2) personal leave days cannot be unreasonably denied as long as two (2) employees have not already been granted leave. Employees shall be credited with personal leave hours, however, only two (2) shifts of personal leave days may be taken and any remaining hours will not carry over into the next fiscal year.

~~Section 11.06~~**Section 12.02 Extended Leave Policy**

~~Section 11.07(a)~~ In the event an employee is absent from work for illness or injury, unless notified otherwise, prior to the end of the affected pay period, the time off will be coded and deducted from accumulated sick leave, accumulated comp time, and accumulated vacation time, in that order. If a determination is subsequently made by City that the injury was job related all sick leave, CTO, and vacation time used to cover the leave will be credited back to the employee in an amount up to the workers' compensation determination. The amount of compensation from

City may need to be offset by payments received from workers' compensation. At no time shall the employee receive compensation and workers' compensation payment in excess of their normal pay. Employees with non-sufficient time off credited to them will be coded on payroll as absent without pay.

~~Section 11.08~~

~~Section 11.09~~Section 12.03 Bereavement Leave

~~Section 11.10~~(a) Employees shall, per occurrence, be allowed time off in the event of a death in their immediate family, as that term is defined in the Personnel Rules. Up to three (3) days of such leave shall be allowed where the death and service are within the state of California and up to five (5) days where the death or service is outside the state. Usage of this leave shall not be charged against the employee's sick leave or vacation. An additional two (2) days of leave may be taken at the same time and deducted from the employee's accumulated sick leave. This leave will not affect the twenty five percent (25%) cash out of sick leave for the same calendar year.

~~Section 11.11~~Section 12.04 Release Time

~~Section 11.12~~(a) City shall provide release time for any one (1) Association officer of the employee's choosing for grievance procedures only.

~~Section 11.13~~(b) City shall provide release time for three (3) Association employees for attendance at formal meet and confer sessions.

~~Section 11.14~~(c) Employees requesting release time shall make the request to their supervisor at least five (5) business days prior to the time requested (Monday through Friday).

~~Section 11.15~~Section 12.05 Vacation and Compensatory Time Off Accrual as follows:

~~A.~~(a) Eighty (80) hours per year from the date of hire through the second (2nd) year of employment.

~~B.~~(b) Eighty eight (88) hours vacation during the third (3rd) year of employment.

~~C.~~(c) One hundred four (104) hours vacation during the fourth (4th) year of employment.

~~D.~~(d) One hundred twelve (112) hours vacation during the fifth (5th) year of employment.

~~E.~~(e) One hundred twenty (120) hours vacation during the sixth (6th) year of employment.

~~F.~~(f) One hundred twenty eight (128) hours vacation during the seventh (7th) year of employment.

~~G.~~(g) One hundred thirty six (136) hours vacation during the eighth (8th) year of employment.

~~H.~~(h) One hundred forty four (144) hours vacation during the ninth (9th) year of employment.

~~I.(i)~~ One hundred fifty two (152) hours vacation during the tenth (10th) year of employment.

~~J.(j)~~ One hundred sixty (160) hours vacation after the tenth (10-th) year of service.

~~Section 11.16(k)~~ Maximum accumulation of vacation shall be no more than that earned for two (2) years. This vacation accumulation maximum shall be enforceable on June 30th of each year. Employees may exceed the maximum prior to June 30th.

~~Section 11.17(l)~~ Any employee who has more than two (2) years annual accrual on the books on July 1st shall have their vacation accrual subsequently reduced until vacation usage drops the maximum accrual below two (2) years accrual maximum.

~~Section 11.18(m)~~ City guarantees that during the term of the contract that no employee will lose vacation accrued if the employee follows Departmental guidelines for requesting time off.

(n) An employee may submit an Irrevocable Cash-Out Declaration Form to cash out up to eighty (80) hours of accrued vacation and/or comp time in the following calendar year. To be effective, the Form must be received by payroll no later than December 1st of the year prior to the calendar year in which the employee wishes to cash-out vacation and/or comp time. It is understood that an employee using vacation or comp time shall always use vacation or comp time earned in prior years first before using vacation or comp time earned in the current year.

(i) The employee shall specify the pay period in the following calendar year in which the employee wishes the cash-out to occur. If no pay period is specified, the City shall process and pay the cash-out request in the pay period including November 1st. Employees are responsible for ensuring a sufficient balance of available accrued vacation and/or comp time on the date of the requested cash-out. Accrued comp time shall be cashed out first and then accrued vacation once an accrued comp balance is exhausted. If there is an insufficient balance, the maximum available up to eighty (80) hours will be cashed out.

~~Section 11.19(o)~~ As part of the City's open enrollment packet each year, the City will provide all employees with a copy of the Irrevocable Cash-Out Declaration form and a reminder of the deadline for submission of the Form.

~~Section 11.20~~Article XIII. ~~Vacation/Time Off Requests~~VACATION/TIME OFF REQUESTS

~~Section 11.21~~Section 13.01 Preferred Vacation for Public Safety Dispatchers

~~Section 11.22(a)~~ All Public Safety Dispatchers may submit a request once a year for consideration of approval of an annual preferred/secondary vacation. All vacation sign-ups will be completed in order of seniority. The preferred vacation request sign-up shall begin immediately after the completion of shift selection, for vacation time during the next calendar year.

~~A.(b)~~ Each Public Safety Dispatcher will have ~~forty-eight~~forty-eight (48) hours in order to sign-up for preferred vacation.

~~B.(c)~~ Only one (1) Public Safety Dispatcher at a time may be on vacation time off unless it does not adversely affect staffing.

~~C.(d)~~ Vacation sign up shall not exceed four (4) consecutive weeks unless specifically authorized by the Chief.

~~D.(e)~~ Once all ~~primary-Preferred V~~vacation sign ups have been completed, a secondary sign-up will be posted, displaying only the remaining available time slots.

~~E.~~Section 13.02 A schedule of approved preferred vacation requests will be posted by December 15th.

~~Section 11.23~~ ~~8.24~~ ~~Preferred Vacation for Multi-Service Officers~~[HS1]

~~Section 11.24~~ ~~8.25~~ The sign-up period for preferred vacation for MSOs begins on February 1st of each year. ~~Department wide seniority shall be used to determine the schedule for vacation selection. Seniority within a classification is used for shift selection within Department Divisions. If a conflict between these two methods of establishing seniority arises in the process of shift selection, seniority within a classification shall prevail.~~

~~A.~~ Each MSO may sign up for only one preferred vacation period of thirty four (34) hours or more. Following the first rotation of preferred vacation sign up, there will be a second rotation of preferred sign up, not to exceed four (4) consecutive weeks of preferred vacation per fiscal year unless specifically authorized by the Chief.

~~B.~~ Only one (1) MSO may request preferred vacation during the same week, provided that the MSO with the least seniority must select a patrol shift slot with different days off from the senior MSO for the shift rotation period during which the vacation will occur.

~~C.~~ Preferred vacations which are in compliance with this section 8.24 above will be approved and posted by March 15th, following the sign-up period.

~~D.~~ A MSO who fails to request a preferred vacation or who does not take a preferred vacation which has been approved shall lose any right to a preferred vacation until the next sign-up period.

~~E.~~ Every MSO covered by this MOU shall be included in the sign-up for the preferred vacation schedule.

~~F.~~ The sign-up period for shift selection begins at least forty five (45) days prior to the next shift rotation. MSOs shall work the same shift rotations as sworn officers.

~~G. — The approved schedule will be posted at least twenty (20) days prior to the date the schedule is to become effective.~~

~~H. — MSOs may only select the same shift for two (2) consecutive watch rotations. MSOs are required to select another shift for a minimum of one (1) four (4) month period. City shifts are designated as the Day, Evening, and Overlap watches. Different days off do not constitute a different watch.~~

~~I. — If, due to this seniority-based selection process, a MSO has no choice but to select a shift for the third time, the Division Captain may assign that MSO to another shift. If this assignment requires placing the MSO in an occupied slot, the assignment shall be by seniority from those who have not worked the third term shift the previous period.~~

~~J. — MSOs who have been assigned to the Patrol Division for three (3) or more consecutive years are required to select a specific watch if that MSO has not selected that watch during the past three (3) years. For example, a MSO must select to work a Day watch if, during that past three (3) consecutive years, that MSO has been assigned to the Patrol Division and has rotated between the Evening and Overlap Watch. A MSO who is reassigned to the Patrol Division after spending a minimum of two (2) years in another Division must work each watch for at least one (1) rotation during the next three (3) years.~~

~~K. — The Operations Division Captain may elect to administratively assign a MSO to a specific shift for the good of the organization. Examples may include, but are not limited to, long term personnel shortage or career enhancement of probationary employees. Any bumping of personnel done in order to accomplish this shall be done by seniority.~~

~~L. — Once a shift schedule has been finalized for the period, MSOs may mutually swap shift assignments only upon the recommendation of both the affected supervisors and with the approval of the Operations Division Captain.~~

~~M. — Only MSOs who are assigned to the Patrol Division, or who, prior to the start of the sign up period, have received an order assigning them to the Patrol Division during the subject shift rotation, shall be assigned a sign up due date for shift selection.~~

~~8.26 — At least three (3) weeks prior to the beginning of the sign up period for either a preferred vacation or shift selection, every affected MSO assigned to the Patrol Division, or who has been issued an order assigning them to the Patrol Division, will be assigned a sign up due date for shift selection.~~

~~1. — Each affected MSO is solely responsible for preferred vacation or shift selection sign up on their assigned date. They may be done using one (1) of four (4) methods:~~

~~_____~~
~~_____ a. _____ Coming to the station and physically sign up for an available vacation _____~~
~~_____ or shift slot;~~

~~_____~~
~~_____ b. _____ Phoning the Watch Commander and verbally selecting an available _____~~
~~_____ vacation or shift slot. If the Watch Commander is not in the office, the _____~~
~~_____ MSO is responsible for leaving the Watch Commander a return _____ phone,~~
~~or pager number where the MSO can be contacted at the _____ Watch Commander's~~
~~earliest convenience;~~

~~_____ c. _____ Leaving a message for the Watch Commander, in advance of the _____~~
~~_____ assigned sign up date, listing desired shift selection(s) and a phone _____~~
~~_____ number where the MSO can be reached on the sign up date in order to _____ resolve~~
~~any conflicts; or~~

~~_____ d. _____ Notifying the Watch Commander in advance that no selection is _____~~
~~_____ desired.~~

~~_____ 2 _____ If a MSO fails to sign up on the assigned date, that MSO forfeits his/her _____~~
~~_____ seniority benefit and his/her name will be placed in a pool at the bottom of _____ the list.~~
~~When the assigned dates have been passed, a preferred vacation or _____ shift _____ selection~~
~~schedule will be posted. MSOs listed in the pool will have until _____ the end of the sign up period~~
~~to submit a request of available slots. For _____ preferred vacations, this period will end on~~
~~March 1st of each year. For patrol _____ shift selection, this period will end twenty (20) days before~~
~~the next shift _____ rotation. Requests from MSOs in the pool will be granted on an as-~~
~~available _____ basis in seniority order. If no request is made or if a request conflicts with _____~~
~~_____ other previous sign ups, vacations will be approved on a first come/first _____~~
~~_____ serve basis and shifts will be administratively assigned.~~

~~3. _____ Sign ups will be on the MSO's own time if the assigned sign up date falls outside of _____ regular~~
~~work time.~~

~~Section 11.25~~ Section 13.03 Other Requests for Vacation/Compensatory Time Off

~~Section 11.26~~(a) Requests may be submitted at any time within one (1) year of the date to be taken off. Requests that are not initially approved may be resubmitted within four (4) months or less of the start date for the time off request for consideration of approval. The Department shall review these requests and either approve or disapprove them within five (5) business days from the date submitted. Once approved, the vacation/CTO will be posted on the vacation schedule.

~~A:~~(b) The Department will review requests for vacation/CTO other than preferred vacation with the intent of granting time off whenever practical, based on operational efficiency.

~~B:~~(c) If a vacation/CTO request has been approved more than fourteen (14) days prior to the start of the time off, the Public Safety Dispatcher Supervisor will post a voluntary overtime sign up to fill any vacancies on the schedule created by the approved time off.

~~C:~~(d) If unfilled vacancies exist seven (7) days prior to the commencement of the approved time off, the Public Safety Dispatcher Supervisor will assign employees using reverse seniority to work overtime to cover the unfilled vacancies which result from the approved time off.

~~D:~~(e) Any employee assigned an overtime shift to fill a vacancy is responsible for that shift - not the employee whom normally would work that shift but was granted time off.

~~Article XII~~**Article XIV. MISCELLANEOUS BENEFITS**

~~Section 12.01~~**Section 14.01 Pension**

(a) For employees hired on or before January 1, 2013 and "Classic Employees" as defined in Government Code section 7522.02(c) of the Public Employees Pension Reform Act ("PEPRA"), hired on or after January 1, 2013, City agrees to continue its miscellaneous contract with CalPERS for all applicable retirement benefits in effect on July 1, 2007 which will provide the single highest year and the "2.5% @ 55" basic retirement formula.

~~Section 12.02~~(b) For employees that are considered "New Members," as defined in Government Code section 7522.04(f) of PEPRA, hired on or after January 1, 2013, the miscellaneous contract will provide for the three (3) highest years -compensation average and the "2.0% @ 62" retirement formula.

~~Section 12.03~~(c) Beginning with CalPERS rates effective July 1, 2014, City and Association agree to split future rate increases at a fifty/fifty (50/50) ratio. For example, in FY 13-14, City's miscellaneous contribution rate was sixteen point thirty eight percent (16.38%). On July 1, 2014, City's rate increased to seventeen point thirty percent (17.30%) and thus Association members will contribute fifty percent (50%) of the increase ($17.30\% - 16.38\% = .92\% * 50\% = .46\%$). This methodology will be used in subsequent years should CalPERS increase the miscellaneous contribution rate.

~~Section 12.04~~(d) City will continue to offer the CalPERS “2.5% @ 55” retirement program for “Classic Employees.” The retirement plan shall continue all present options for “Classic Employees” including Credit for Unused Sick Leave (Government Code § 20965), the Fourth Level of 1959 Survivor Benefit (Government Code § 21574), Two Years Additional Service Credit (Government Code § 20903), and the One-Year Final Compensation (Government Code § 20042). The employee’s base salary includes the eight percent (8%) CalPERS employee contribution and will be deducted from the employee’s gross earnings pursuant to IRS § 414 (h)(2). Two dollars (\$2.00) per month will be deducted from employees’ paychecks pursuant to the 1959 Survivor Benefit (ninety three cents (\$0.93) per pay period). Any provision above may not conflict with the terms and conditions in Government Code § 7522.02(c).

~~Section 12.05~~**Section 14.02 IRS 125 Program**

~~Section 12.06~~(a) City shall maintain in effect the Section IRS-125 Reimbursement.

~~Article XIII~~**Article XV. MISC POLICIES AND PROCEDURES**

~~Section 13.01~~**Section 15.01 Work Stoppage, Any Job Action, Slowdown**

~~Section 13.02~~(a) During the life of this MOU, no work stoppage, strikes, or picketing shall be caused or sanctioned by Association and no lockouts shall be made by City.

~~Section 13.03~~(b) In the event that any employee covered by this MOU, individually or collectively, violates the provisions of this MOU and Association fails to exercise good faith in halting the work interruption, Association and the employees involved shall be deemed in violation of this Article X and City shall be entitled to seek all remedies available to it under applicable law.

~~Section 13.04~~**Section 15.02 Light Duty Determination**

~~Section 13.05~~(a) In the event an employee is injured and off the job for ten (10) working days or more and may be able to return to work but not able to perform all their normal job duty assignments, a temporary light duty assignment may be made by City. To be eligible for such a modified assignment, City may require the employee to provide the Human Resources Office with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. City may require a second or third doctor’s determination at City’s expense. All light duty work requests shall be coordinated through the Human Resources Office. The Human Resources Office will notify the employee of their light duty assignment status.

~~Section 13.06~~(b) An employee receiving such a light duty determination could be reassigned to another assignment or other reduced work schedule up to a forty (40) hour work week upon the determination of the Chief. Once the employee is certified by their treating physician or a City doctor as no longer in need of light duty, they will be reassigned to their normal work assignment.

~~Section 13.07~~ **Section 15.03 Substance Abuse Policy**

~~Section 13.08~~(a) City's Substance Abuse Policy shall continue in effect for the term of this MOU.

~~Section 13.09~~ **Section 15.04 Layoff Procedure**

~~Section 13.10~~ **Section 15.05** The City Council may abolish any position in the Classified Service due to lack of funds, work, or need.

~~Section 13.11~~ **Section 15.06** The layoff of employees resulting from the elimination of positions shall be governed by the following procedure:

(a) Layoffs shall be made from within the affected job classification in reverse order of total time in that classification, including any period of probation, paid leave or active military leave. Except as regards to military leave, no service credits shall be earned during any leave of absence without pay in excess of thirty (30) days. Where time in class is equal between two or more affected employees, the order of layoff shall be determined by the following means, in order:

(i) placement on the eligibility list at time of hire in the class with the highest ranking employee(s) being determined to have more time in service, if the list or reasonable evidence of the list is available,

(ii) total service time in the Classified Service,

~~A. (iii)~~ if neither (i) or (ii) above breaks the tie(s), seniority will be determined by an appropriate random means of selection (lottery, coin flip, etc.).

~~B. (b)~~ The order of layoff in the affected classification or classifications shall be:

~~1. (i)~~ Temporary employees.

~~2. (ii)~~ Probationary employees.

~~3. (iii)~~ Regular employees.

~~C. (c)~~ The treatment of personnel employed by means of state or federal grant monies shall be in accordance with regulations for retention as established by the grantor. In the absence of such regulations, the type of position (Classified or Exempt) shall govern treatment of such personnel.

~~D. (d)~~ Probationary and regular employees in the Classified Service who are scheduled to be laid off shall receive at least a twenty one (21) days written notice to this effect.

~~E. (e)~~ In lieu of layoff, an employee may elect transfer or demotion to a vacant position in the Classified Service which City intends to fill and for which the employee is qualified. Such actions shall be governed by the terms of Section 10 of the Personnel Rules and in no event shall result in an employee being placed in a classification carrying a higher maximum rate of pay. If two (2)

or more employees have requested transfer or demotion to the same vacant position and City has determined they are both qualified to fill it, the more senior employee shall receive preference. For purposes of this section, total time in the Classified Service shall be utilized in determining seniority.

~~F.~~(f) Within ten (10) days from the date layoff notices are issued, an employee who would otherwise be laid off may elect to displace an employee in a classification carrying a lower or the same maximum rate of pay provided, however, that the displacing employee must have held regular status in such classification and have greater time in the classification and directly related higher classifications combined than the employee being displaced. For example, related classifications would mean Police Officer/Police Sergeant, etc.

~~G.~~(g) A probationary or regular employee displaced in accordance with this Section 10.09 shall, in turn, be provided the same notice and bumping privilege as set forth in this Section 10.09.

~~H.~~(h) Regular and probationary personnel laid off in accordance with this MOU shall, unless they request otherwise, be placed on a reemployment list as provided by Personnel Rule 10.12. If an employee is reemployed from such a list, all service credits and sick leave accrued to the date of layoff shall be restored. In no event, however, shall City be required to restore credits for vacation and sick leave paid out at the time of layoff.

~~I.~~(i) At the time of layoff, the employee's name shall be removed from all promotional eligible lists, but, at the employee's request, shall be retained on open-competitive lists subject to the provisions of Personnel Rule 10. If the employee is reemployed prior to the expiration of a promotional list, they shall be reinstated to the list.

~~J.~~(j) Prior to the effective date of layoff, the Police Chief or the Police Support Services Manager shall furnish the City Manager with a final evaluation of the employee's performance.

~~Section 13.12~~Section 15.07 City and Association acknowledge that the prospect of contracting police services functions to another public agency may potentially be considered during the term of this MOU. Therefore, should the City Council decide to contract out police services to another agency during the term of this MOU, City will meet and confer with Association regarding the impact of such contracting out and, during the negotiations for a contract with the contracting agency, make a good faith effort to negotiate to transfer represented employees to employment with the contracting agency, provided that such transfer and the implementation thereof are consistent with the public policy goals established by the City Council in the contracting out of out the police services.

~~Article XIV~~Article XVI. **GRIEVANCE PROCEDURE**

~~Section 14.01~~Section 16.01 The following grievance procedure will be in effect:

~~Section 14.02~~(a) A grievance is defined as any dispute involving the interpretation, application or alleged violation of:

~~A.(i)~~ A current MOU between City and Association, or

~~B.(ii)~~ The City's Personnel Rules where the provision in dispute is within the scope of representation.

~~Section 14.03~~(b) Should any dispute concern an agreement, rule or action which prescribes a separate appeal procedure, that dispute shall be excluded from the procedure contained herein.

~~Section 14.04~~**Section 16.02** Informal and Formal Grievances

~~Section 14.05~~(a) **Step 1.** An employee who has a grievance shall bring it to the attention of his/her immediate supervisor within five (5) working days of the occurrence of the act which is the basis for the dispute. If the employee and the immediate supervisor are unable to resolve the grievance within five (5) working days of the date it is raised with the immediate supervisor, the employee shall have the right to submit a formal grievance which shall contain the following information:

~~A.(i)~~ The name of the grievant,

~~B.(ii)~~ The grievant's department and specific work site,

~~C.(iii)~~ The name of the grievant's immediate supervisor,

~~D.(iv)~~ A statement of the nature of the grievance, including the date and place of occurrence,

~~E.(v)~~ The specific provision, policy, or procedure alleged to have been violated,

~~F.(vi)~~ The remedies sought by the grievant, and

~~G.(vii)~~ The name of the individual or organization, if any, designated by the grievant to represent him/her in the processing of the grievance. However, in no event, shall an employee organization other than the one which formally represents the position occupied by the grievant be designated as the grievant's representative.

~~Section 14.06~~(b) **Step 2.** An employee dissatisfied with the decision of the immediate supervisor in Step 1 may —submit the grievance to the Chief within seven (7) working days from the date of the immediate supervisor's decision. The Chief shall respond to the grievance in writing within seven (7) working days from the date of its receipt.

~~Section 14.07~~(c) **Step 3.** If the employee is dissatisfied with the decision of the Chief in Step 2, he/she may submit the grievance to the City Manager within ten (10) working days from receipt of the Chief's response. The City Manager or his/her designated representative shall respond to

the grievance in writing within ten (10) working days of its receipt. Within this period the City Manager, or his/her designate, at his/her discretion, may conduct an informal hearing involving the parties to the dispute.

~~Section 14.08~~(d) Step 4. If the employee is dissatisfied with the decision of the City Manager, or his/her designate, he/she may submit the grievance to an Employee Relations Panel as provided in Section 11.09, listed below. Notice of such appeal must be filed in writing by the employee with the City Manager within fifteen (15) working days of receipt of that the City Manager, or his/her designee's decision.

~~Section 14.09~~Section 16.03 **Employee Relations Panel**

~~Section 14.10~~(a) The Employee Relations Panel ("Panel") shall consist of three (3) members selected as follows:

~~A.~~(i) A City Management official selected by the City Manager,

~~B.~~(ii) A City employee selected by the grievant, provided, however, that the participation of the employee so selected shall not constitute a conflict of interest nor subject that employee to any recriminations as a result of his/her participation, and

~~C.~~(iii) A representative of the California State Mediation and Conciliation Service or an individual, other than a State Representative, chosen by the parties knowledgeable in public sector labor relations from any source reasonably likely to produce such an individual, including, but not limited to, a labor organization or management organization. This person shall serve as Chairperson.

~~1.~~(b) The Chairperson shall serve without compensation unless it can be demonstrated that the individual was obliged to use accrued leave benefits or leave without pay to serve on the Panel. Where provided compensation, the compensation shall be shared by City and the grievant or his/her employee organization.

~~2.~~(c) The Panel shall be constituted and hear the grievance within thirty (30) working days from the filing of the appeal with the City Manager. The Panel's decision shall be rendered within fifteen (15) working days from the conclusion of the hearing.

~~3.~~(d) The majority decision of the Panel shall be final and binding, subject only to ratification by the City Council if the decision mandates a capital expenditure or significant, unbudgeted expenditures. In those instances the ruling shall be submitted to the City Council for action which may include modification or reversal.

~~Section 14.11~~(e) The conduct of the Panel's hearing shall be governed by the following ground rules:

~~A.~~(i) All hearings shall be convened during regular established City hours to the extent feasible. The grievant and City employees serving on the Panel, or whose participation in the hearing is required by the Panel, shall not suffer loss of wages for time devoted to this purpose. No compensation shall be provided for hearing convened during times other than the employee's regularly scheduled work period.

~~B.~~(ii) All hearings shall be conducted in an expeditious manner, with the Chairperson retaining final authority to the rule on procedural matters or on other points affecting the length and conduct of the hearing. Legal counsel, court reporters and briefs shall only be utilized upon agreement between City and the grievant and shall not serve to delay the Panel's decision beyond the prescribed time limit, except by mutual agreement.

~~C.~~(iii) The Panel shall be committed to resolving the grievance in an objective, timely and equitable fashion and shall not permit either party to engage in any presentation or line of an argument which detracts from this purpose. Moreover, the Panel shall not accept evidence not presented in Step 3.

~~D.~~(iv) No hearing shall be convened unless both parties have stipulated in writing to the issue or issues to be heard by the Panel.

~~Section 14.12~~Section 16.04 General Conditions

~~Section 14.13~~(a) Any time limit set forth above of this procedure may be extended by written agreement between City and the grievant or Association.

~~A.~~(b) Failure on the part of the grievant or their designated representative to comply with the time limits of this procedure or any extension thereto shall constitute a withdrawal of the grievance without further recourse to re-submittal under this procedure. Failure on the part of City to comply with prescribed time limits or extension thereto shall result in the grievance being moved to the next step of the procedure.

~~B.~~(c) The grievant shall be entitled to have a representative of his/her own choosing, except as provided above, present at any grievance meeting with City.

~~C.~~(d) A representative of Association which represents the grievant's position shall be entitled to be present at any hearing held in conjunction with Step 3 and Step 4 of Section 16.02.

~~D.~~(e) The City Manager or his/her designated representative shall serve as the central repository for all grievance records.

~~Article XV~~Article XVII. RATIFICATION

~~Section 15.01~~Section 17.01 This MOU shall become effective ~~July 1, 2015~~ December 30, 2018.

Section 15.02(a) Unless mutually agreed otherwise by City and Association, Association shall provide City with _____its written requests on terms within the scope of representation for the period beginning January____1, 2022~~19~~ between ~~March-August~~ 1 and ~~March-August 30~~1, 2021~~18~~. City and Association shall begin to meet and____confer on or before ~~April-September~~ 1, 2021~~18~~, unless mutually agreed otherwise.

FOR THE CITY OF MORGAN HILL:

Michelle Katsuyoshi Date
Human Resources ~~Manager~~Director

~~Steve Rymer~~Christina Turner
____Date

City Manager

Patti Yinger Date
Police Support Services Manager

Cindy Murphy Date

Assistant City Manager for Administrative Services

~~Joni Evans~~Michael Horta Date
Senior Human Resources Analyst

~~Allyson Hauck~~Edward Kreisberg

Date

~~Senior Legal Counsel~~Lead Negotiator

~~Renne Sloan Holtzman Sakai~~Meyers Nave

FOR MORGAN HILL COMMUNITY SERVICE OFFICERS' ASSOCIATION:

~~Donna MacKnight~~Idalia Echegoyen-Young-

_____ Date

CSOA President

Larry Katz

Date

Lead Negotiator and

Legal Counsel

Silver & Katz

~~Idalia Echegoyen-Young~~Donna MacKnight-

_____ Date

CSOA Negotiator

Paula Rodriguez _____ Date

CSOA Negotiator

EXHIBIT A

EDUCATIONAL INCENTIVE PAY PROGRAM

Morgan Hill Community Services Officers' Association

(For Employees Hired Before July 1, 2009)

I. INTRODUCTION

Educational Incentive Pay ("EIP") shall be paid in addition to regular pay when education is in addition to the regular requirements of their job as stated in City's adopted job descriptions and the education is job-related. An employee may not receive more than a seven and one half percent (7.5%) increase above the employee's base monthly salary.

II. PROGRAM GOALS

The goals of the EIP Program ("Program") are:

- A. To encourage employees to pursue education and programs which would enhance their job performance and understanding.
- B. To prepare employees for possible promotions to other positions or future openings within the City.
- C. To reward employees for their own initiative demonstrated through their participation in this Program.
- D. Any evaluation or decision regarding this Program or an employee's participation in the Program will be made based on the intent of the above stated goals.

III. DEFINITIONS

- A. Job-Related - A course or training program that directly relates to or enhances the employee's ability to perform the duties of their classification. Courses which are directly related to the job would be in criminal justice, public administration, law, supervision or management, or computer science and information systems. Course work that may enhance an employee's ability to perform their duties may include topics such as social science, human resources, or liberal arts programs at accredited universities or colleges.
- B. -Degree Program - A series of college level courses that when completed results in an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, or Master of Science degree. Courses that qualify for a degree program are those courses identified by the college or university that count toward the specific degree program the employee has selected.
- C. Minimum job requirements - The minimum job qualifications listed on the job description for each job classification.

IV. RATES OF PAY FOR EDUCATION ABOVE STATED JOB REQUIREMENTS

A. For classifications that have a minimum education requirement of high school diploma or the equivalent (GED), the following steps are available for attainment of up to seven and a half percent (7.5%) EIP:

1. One and a quarter percent (1.25%) = fifteen (15) recognized semester college units, two hundred forty (240) hours of job-related training, or the equivalent.
2. One and a quarter percent (1.25%) = thirty (30) recognized semester college units, four hundred eighty (480) hours of job-related training, or the equivalent.
3. One and a quarter percent (1.25%) = forty five (45) recognized semester college units, seven hundred twenty (720) hours of job-related training, or the equivalent.
4. One and a quarter percent (1.25%) = sixty (60) recognized semester college units, nine hundred sixty (960) hours of job-related training, attainment of an Associate of Arts degree or Associate of Science degree, or the equivalent.
5. One and a quarter percent (1.25%) = ninety (90) recognized semester college units, one thousand four hundred forty (1440) hours of job-related training, or the equivalent.
6. One and a quarter percent (1.25%) = one hundred twenty (120) recognized semester college units, one thousand nine hundred twenty (1920) hours of job-related training, attainment of a Bachelors of Arts degree or Bachelors of Science degree, or the equivalent.

A. For classifications that have a minimum education requirement of an Associate of Arts or Associate of Science degree or two (2) years of job-related college course work, the following steps are available for attainment of up to seven and a half percent (7.5%) EIP:

1. One and a quarter percent (1.25%) = fifteen (15) recognized semester college units toward attainment of a Bachelor's degree, four hundred twenty (420) hours of job-related education or training, or the equivalent.
2. One and a quarter percent (1.25%) = thirty (30) recognized semester college units toward attainment of a Bachelor's degree, four hundred eighty (480) hours of job-related education or training, or the equivalent.
3. One and a quarter percent (1.25%) = Attainment of a Bachelor of Arts or Bachelor of Science degree, nine hundred sixty (960) hours of job-related education or training, or the equivalent.
4. One and a quarter percent (1.25%) = Following the attainment of a Bachelor's degree, fifteen (15) hours semester units that qualify toward attainment of a Master of Arts or Master of Science degree, or the equivalent.
5. One and a quarter percent (1.25%) = Attainment of a Master of Arts or Master of Science degree or the equivalent.

6. One and a quarter percent (1.25%) = Following the attainment of a Bachelor's degree or a Master's degree, an additional two hundred forty (240) hours of job-related education or training.

A. For classifications that have a minimum education requirement of a Bachelor of Arts or Bachelor of Science degree, the following steps are available for attainment of up to seven and a half percent (7.5%) EIP.

1. One and a quarter percent (1.25%) = fifteen (15) recognized semester units that qualify toward attainment of a Master of Arts or Master of Science degree, or the equivalent.

2. One and a quarter percent (1.25%) = attainment of a Master of Arts or Master of Science degree or the equivalent.

3. One and a quarter percent (1.25%) = following attainment of a Bachelor's degree or Master's degree, an additional two hundred forty (240) hours of job-related education or training, or the equivalent.

4. One and a quarter percent (1.25%) = following attainment of a Bachelor's degree or Master's degree, an additional four hundred eighty (480) hours of job-related education or training, or the equivalent.

5. One and a quarter percent (1.25%) = following attainment of a Master's degree, seven hundred twenty (720) hours of job-related education or training, or the equivalent.

6. One and a quarter percent (1.25%) = -following attainment of a Bachelor's degree or Master's degree, nine hundred sixty (960) hours of job-related education or training, or the equivalent.

7. -Equivalents are defined in the requalification section of this Policy.

8. Different certificates will qualify towards EIP based on the certificate's degree of difficulty, hours required for completion and the recommendation of the Chief. Attachment A lists specific certificates and licenses, and the respective EIP points that qualify for EIP.

V. REVIEW PROCESS FOR CERTIFICATIONS

The following review process will be used for assessing how a certification, other than a college course, will count towards EIP:

A. Where possible, the formula found in the Equivalents other than college units section of this article will be used to evaluate the degree to which the certificate counts towards educational incentive pay.

B. If it is possible to obtain, the Human Resources Manager will contact the agency awarding the certificate and request a statement describing the number of preparation and/or course hours needed to obtain the certificate. This statement will then be converted to formula hours.

C. In the event a determination cannot be made using paragraphs A and B listed above, the employee will make a recommendation to the Chief and to the Association President or, in the absence of the

Association President, the Association Vice President. This Recommendation by the employee shall be in writing and shall include the degree to which the employee feels the certificate should count towards EIP and the justification for such.

- D. If these two (2) individuals agree with the employee's recommendation or, if they both agree with a modified recommendation, they will present such to the Human Resources Manager for final determination.
- E. If the Human Resources Manager concurs with the recommendation, he/she will see that such certification is counted towards the employee's EIP.
- F. If the Chief and Association President cannot agree on a recommendation, the Human Resources Manager will, with both parties present, conduct an informal hearing and allow both individuals to state their recommendation along with appropriate justification. The Human Resources Manager may decide to choose one (1) of the recommendations presented or a modification of such. The decision of the Human Resources Manager will be final.
- G. If both the Chief and the Association President agree on a recommendation which the Human Resources Manager cannot endorse, the Human Resources Manager will explain his/her justifications and attempt to get the parties to modify their recommendation. If agreement cannot be reached the issue will be presented to the City Manager for determination.
- H. If the employee is not satisfied with the decision of the City Manager, the employee may file a grievance pursuant to the grievance procedure contained in the MOU. The grievance will be advanced to the final step in the grievance process as the City Manager review has already taken place.

VI. PROGRAM QUALIFICATIONS AND GUIDELINES

The following qualifications and guidelines exist to help administer this program:

- A. An employee must have completed their initial probation before eligible for this Program. Employees on probationary status as a result of promotions shall be deemed eligible under this Program.
- B. The employee must demonstrate that the course or degree being sought and being considered for EIP pay will be directly related towards enhancing the employee's present job skills or future promotional opportunities within the City. The Human Resources Manager will make this determination after discussions with the employee and the Chief. The burden of proof as to job relatedness of specific educational levels shall be upon the employee. In addition, courses required as part of a degree program will also be considered.
- C. Employees should contact the Chief prior to enrollment in a course or class to receive confirmation that such a class would qualify for this program. The Chief will contact the Human Resources Office to receive confirmation that a specific course or certification qualifies for EIP.
- D. Upon approval from the Chief, City will make every effort to reasonably accommodate employee course schedules provided employee workload, overtime budgets, etc. are not adversely impacted.

- E. All attendance and participation in this program will be on the employee's own time and at their own expense.
- F. The tuition reimbursement program is a separate benefit contained in the MOU and employees may have the option of using the tuition reimbursement program towards the attainment of their education or professional development goals. Use of the tuition reimbursement program by the employee will not violate any provisions of this Program.
- G. To qualify for this Program, the employee must complete the course(es) with a passing grade of C or better. If grades are not assigned, the employee must provide other written certification which demonstrates that he/she has successfully passed course or obtained certification.
- H. Payment of EIP will be effective on the first day of the payroll period following the date of the college degree, course certification, etc., provided the employee has made a timely request to the Human Resources Manager for such pay. In no circumstances will payroll periods be split to match the exact date appearing on the degree or certificate.
- I. EIP period is based upon education which is in addition to the regular requirements of the job as stated on 9City's adopted job description. Please refer to each specific job description for the minimum educational requirements. These educational requirements are used as the starting point for the EIP calculations.

VII. DOCUMENTATION OF EDUCATIONAL ACHIEVEMENT

- A. City will provide an EIP Program form to be kept in the employee's personnel file to track the employee's participation in this Program.
- B. Evidence of successful completion of a degree, course, or certificate shall consist of a diploma or certificate indicating the major field of study along with a copy of college transcripts.
- C. The employee is responsible to furnish in a timely fashion all necessary documentation.

VIII. DOCUMENTATION OF EDUCATIONAL INCENTIVE PAY

- A. EIP shall be terminated at such time as the employee receiving EIP is promoted to or otherwise placed in a position requiring the educational level which the employee possesses or a higher educational level.
- B. In cases where a promotion would cause an employee to lose EIP due to a reclassification, the employee will receive a new base salary equal to or greater than an amount five percent (5%) above their old base salary and EIP total.

IX. EMPLOYEES PREVIOUSLY ON LONGEVITY

A. Effective October 1, 1989, City's Longevity Pay Program will be placed entirely with a special EIP program for only those employees still on the Longevity Pay Program as of that date. The terms of this special program will be as follows:

1. All eligible employees shall be converted to the special EIP program at the same pay as they enjoyed under the Longevity Pay Program. No employee will be allowed to begin receiving longevity pay who is not already receiving such pay prior to October 1, 1989. This special educational incentive program assumes that these employees will continue to re-qualify under the City's existing EIP program guidelines for continued receipt of EIP.
2. An employee previously on the longevity pay program may use this special EIP program or they may convert at any time they choose to the regular EIP program outlined in this article. This is a one-way conversion. Once an employee elects the regular EIP program, he/she may not return to this special EIP program.
3. Employees covered under the previous longevity program may advance on their anniversary date to the various pay levels of five percent (5%) after ten (10) years service, seven and one half percent (7.5%) after fifteen (15) years of service, and ten percent (10%) after twenty (20) years of service.

EXHIBIT B

COMMUNITY SERVICE OFFICERS ASSOCIATION SALARY SCHEDULES
December 30, 2018 - December 31, 2019

Effective 12/30/18

3.5% Increase for All Classifications

Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Animal Services Officer	\$4,652.42	\$26.84	\$4,885.04	\$28.18	\$5,129.30	\$29.59	\$5,385.76	\$31.07	\$5,655.05	\$32.63	\$5,937.80	\$34.26
Police Records Specialist	\$5,031.14	\$29.03	\$5,282.70	\$30.48	\$5,546.83	\$32.00	\$5,824.17	\$33.60	\$6,115.38	\$35.28	\$6,421.15	\$37.05
Property/Evidence Tech	\$5,573.39	\$32.15	\$5,852.05	\$33.76	\$6,144.66	\$35.45	\$6,451.89	\$37.22	\$6,774.48	\$39.08	\$7,113.21	\$41.04
Public Safety Dispatcher	\$6,695.91	\$38.63	\$7,030.71	\$40.56	\$7,382.25	\$42.59	\$7,751.36	\$44.72	\$8,138.93	\$46.96	\$8,545.87	\$49.30
PSD Supervisor	\$7,929.65	\$45.75	\$8,326.13	\$48.04	\$8,742.44	\$50.44	\$9,179.56	\$52.96	\$9,638.54	\$55.61	\$10,120.46	\$58.39
Sr Police Records Specialist	\$5,408.48	\$31.20	\$5,678.90	\$32.76	\$5,962.85	\$34.40	\$6,260.99	\$36.12	\$6,574.04	\$37.93	\$6,902.74	\$39.82

EXHIBIT C

COMMUNITY SERVICE OFFICERS ASSOCIATION SALARY SCHEDULES
January 1, 2020 - December 31, 2020

Effective 1/1/20

3.5% Increase for All Classifications

Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Animal Services Officer	\$4,815.26	\$27.78	\$5,056.02	\$29.17	\$5,308.82	\$30.63	\$5,574.26	\$32.16	\$5,852.97	\$33.77	\$6,145.62	\$35.46
Police Records Specialist	\$5,207.23	\$30.04	\$5,467.59	\$31.54	\$5,740.97	\$33.12	\$6,028.02	\$34.78	\$6,329.42	\$36.52	\$6,645.89	\$38.34
Property/Evidence Tech	\$5,768.45	\$33.28	\$6,056.88	\$34.94	\$6,359.72	\$36.69	\$6,677.71	\$38.53	\$7,011.59	\$40.45	\$7,362.17	\$42.47
Public Safety Dispatcher	\$6,930.27	\$39.98	\$7,276.78	\$41.98	\$7,640.62	\$44.08	\$8,022.66	\$46.28	\$8,423.79	\$48.60	\$8,844.98	\$51.03
PSD Supervisor	\$8,207.19	\$47.35	\$8,617.55	\$49.72	\$9,048.42	\$52.20	\$9,500.84	\$54.81	\$9,975.89	\$57.55	\$10,474.68	\$60.43
Sr Police Records Specialist	\$5,597.77	\$32.29	\$5,877.66	\$33.91	\$6,171.55	\$35.61	\$6,480.12	\$37.39	\$6,804.13	\$39.25	\$7,144.33	\$41.22

EXHIBIT D

COMMUNITY SERVICE OFFICERS ASSOCIATION SALARY SCHEDULES
January 1, 2021 - December 31, 2021

Effective 1/1/21

3.25% Increase for All Classifications

Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Animal Services Officer	\$4,971.75	\$28.68	\$5,220.34	\$30.12	\$5,481.36	\$31.62	\$5,755.43	\$33.20	\$6,043.20	\$34.86	\$6,345.36	\$36.61
Police Records Specialist	\$5,376.46	\$31.02	\$5,645.29	\$32.57	\$5,927.55	\$34.20	\$6,223.93	\$35.91	\$6,535.13	\$37.70	\$6,861.88	\$39.59
Property/Evidence Tech	\$5,955.93	\$34.36	\$6,253.73	\$36.08	\$6,566.41	\$37.88	\$6,894.73	\$39.78	\$7,239.47	\$41.77	\$7,601.44	\$43.85
Public Safety Dispatcher	\$7,155.51	\$41.28	\$7,513.28	\$43.35	\$7,888.94	\$45.51	\$8,283.39	\$47.79	\$8,697.56	\$50.18	\$9,132.44	\$52.69
PSD Supervisor	\$8,473.92	\$48.89	\$8,897.62	\$51.33	\$9,342.50	\$53.90	\$9,809.62	\$56.59	\$10,300.10	\$59.42	\$10,815.11	\$62.39
Sr Police Records Specialist	\$5,779.70	\$33.34	\$6,068.69	\$35.01	\$6,372.12	\$36.76	\$6,690.73	\$38.60	\$7,025.26	\$40.53	\$7,376.53	\$42.56

~~EXHIBIT B~~

~~COMMUNITY SERVICE OFFICERS' ASSOCIATION SALARY SCHEDULE~~

~~July 1, 2015 – July 1, 2016~~

~~Effective-
7/5/2015~~

~~2.5% Increase-~~

~~For All
Classifications~~

-

Position	A Mont hly	A Hourly	B Mont hly	B Hourly	C Mont hly	C Hourly	D Mont hly	D Hourly	E Mont hly	E Hourly	F Mont hly	F Hourly
Communi- Service Officer	\$4,741.80	\$27.36	\$4,978.89	\$28.72	\$5,227.84	\$30.16	\$5,489.23	\$31.67	\$5,763.69	\$33.25	\$6,051.88	\$34.91
Multi- Service- Officer	\$5,677.56	\$32.76	\$5,961.43	\$34.39	\$6,259.51	\$36.11	\$6,572.48	\$37.92	\$6,901.11	\$39.81	\$7,246.16	\$41.80
Police- Records- Specialist	\$4,603.75	\$26.56	\$4,833.94	\$27.89	\$5,075.64	\$29.28	\$5,329.42	\$30.75	\$5,595.89	\$32.28	\$5,875.69	\$33.90
Property / Evidence Tech	\$5,099.94	\$29.42	\$5,354.94	\$30.89	\$5,622.68	\$32.44	\$5,903.82	\$34.06	\$6,199.01	\$35.76	\$6,508.96	\$37.55

Public Safety												
Dispatcher	\$6,127.11	\$35.35	\$6,433.47	\$37.12	\$6,755.14	\$38.97	\$7,092.90	\$40.92	\$7,447.54	\$42.97	\$7,819.92	\$45.11
PSD-Supervisor	\$7,256.04	\$41.86	\$7,618.84	\$43.95	\$7,999.79	\$46.15	\$8,399.78	\$48.46	\$8,819.76	\$50.88	\$9,260.75	\$53.43
Sr Police-Records-Specialist	\$4,949.04	\$28.55	\$5,196.49	\$29.98	\$5,456.31	\$31.48	\$5,729.13	\$33.05	\$6,015.59	\$34.71	\$6,316.37	\$36.44
Police-Cadet*												
High-School	-	\$11.77	-	\$12.36	-	\$12.98	-	\$13.63	-	-	-	-
Police-Cadet*												
Jr.-College	-	\$15.10	-	\$15.85	-	\$16.64	-	\$17.48	-	-	-	-
Police-Cadet*												
College	-	\$17.21	-	\$18.07	-	\$18.97	-	\$19.92	-	-	-	-

*Note: The Police Cadet position is a student internship.

Therefore, this position has a four-step hourly range

EXHIBIT C

~~COMMUNITY SERVICE OFFICERS' ASSOCIATION SALARY SCHEDULE~~

~~July 1, 2016 – July 1, 2017~~

~~Effective-~~

~~7/3/2016~~

~~2.5% Increase~~

~~For All~~

~~Classifications~~

-

Position	A- Mont hly	A- Hourl y	B- Mont hly	B- Hourl y	C- Mont hly	C- Hourl y	D- Mont hly	D- Hourl y	E- Mont hly	E- Hourl y	F- Mont hly	F- Hourl y
Commu- nity- Service- Officer	\$4,860.35	\$28.04	\$5,103.36	\$29.44	\$5,358.53	\$30.91	\$5,626.46	\$32.46	\$5,907.78	\$34.08	\$6,203.17	\$35.79
Multi- Service- Officer	\$5,819.50	\$33.57	\$6,110.47	\$35.25	\$6,415.99	\$37.02	\$6,736.79	\$38.87	\$7,073.63	\$40.81	\$7,427.31	\$42.85
Police- Records- Specialis- t	\$4,718.85	\$27.22	\$4,954.79	\$28.59	\$5,202.53	\$30.01	\$5,462.66	\$31.52	\$5,735.79	\$33.09	\$6,022.58	\$34.75
Property / Evidenc- e-Tech	\$5,227.44	\$30.16	\$5,488.81	\$31.67	\$5,763.25	\$33.25	\$6,051.41	\$34.91	\$6,353.98	\$36.66	\$6,671.68	\$38.49
Public- Safety- Dispatch- er	\$6,280.29	\$36.23	\$6,594.30	\$38.04	\$6,924.02	\$39.95	\$7,270.22	\$41.94	\$7,633.73	\$44.04	\$8,015.42	\$46.24

PSD-Supervisor	\$7,437.44	\$42.91	\$7,809.32	\$45.05	\$8,199.78	\$47.31	\$8,609.77	\$49.67	\$9,040.26	\$52.16	\$9,492.27	\$54.76
Sr Police-Records-Specialist	\$5,072.76	\$29.27	\$5,326.40	\$30.73	\$5,592.72	\$32.27	\$5,872.36	\$33.88	\$6,165.98	\$35.57	\$6,474.28	\$37.35
Police-Cadet*-High-School	-	\$12.07	-	\$12.67	-	\$13.30	-	\$13.97	-	-	-	-
Police-Cadet*-Jr.-College	-	\$15.47	-	\$16.25	-	\$17.06	-	\$17.91	-	-	-	-
Police-Cadet*-College	-	\$17.64	-	\$18.52	-	\$19.45	-	\$20.42	-	-	-	-

~~*Note: The Police Cadet position is a student internship.~~

~~Therefore, this position has a four-step hourly range~~

~~EXHIBIT D~~

~~COMMUNITY SERVICE OFFICERS' ASSOCIATION SALARY SCHEDULE~~

~~July 1, 2017 – July 1, 2018~~

~~Effective 7/2/2017~~

~~2.5% Increase~~

~~For All~~

~~Classifications~~

-

Position	A Mont hly	A Hourl y	B Mont hly	B Hourl y	C Mont hly	C Hourl y	D Mont hly	D Hourl y	E Mont hly	E Hourl y	F Mont hly	F Hourl y
Commu nity- Service- Officer	\$4,981.86	\$28.74	\$5,230.95	\$30.18	\$5,492.50	\$31.69	\$5,767.12	\$33.27	\$6,055.48	\$34.94	\$6,358.25	\$36.68
Multi- Service- Officer	\$5,964.98	\$34.41	\$6,263.23	\$36.13	\$6,576.39	\$37.94	\$6,905.21	\$39.84	\$7,250.47	\$41.83	\$7,613.00	\$43.92
Police- Records- Specialis t	\$4,836.82	\$27.90	\$5,078.66	\$29.30	\$5,332.59	\$30.76	\$5,599.22	\$32.30	\$5,879.18	\$33.92	\$6,173.14	\$35.61
Property / Evidenc e-Tech	\$5,358.12	\$30.91	\$5,626.03	\$32.46	\$5,907.33	\$34.08	\$6,202.70	\$35.78	\$6,512.83	\$37.57	\$6,838.47	\$39.45
Public- Safety- Dispatch er	\$6,437.30	\$37.14	\$6,759.16	\$39.00	\$7,097.12	\$40.94	\$7,451.97	\$42.99	\$7,824.57	\$45.14	\$8,215.80	\$47.40

PSD- Supervisor	\$7,623.38	\$43.98	\$8,004.55	\$46.18	\$8,404.78	\$48.49	\$8,825.01	\$50.91	\$9,266.26	\$53.46	\$9,729.58	\$56.13
Sr-Police- Records- Specialist	\$5,199.58	\$30.00	\$5,459.56	\$31.50	\$5,732.54	\$33.07	\$6,019.17	\$34.73	\$6,320.13	\$36.46	\$6,636.13	\$38.29
Police- Cadet* High- School-	-	\$12.37	-	\$12.99	-	\$13.64	-	\$14.32	-	-	-	-
Police- Cadet* Jr.- College-	-	\$15.86	-	\$16.65	-	\$17.49	-	\$18.36	-	-	-	-
Police- Cadet* College	-	\$18.08	-	\$18.98	-	\$19.93	-	\$20.93	-	-	-	-

~~*Note: The Police Cadet position is a student internship.~~

~~Therefore, this position has a four-step hourly range~~

~~EXHIBIT E~~

~~COMMUNITY SERVICE OFFICERS' ASSOCIATION SALARY SCHEDULE~~

~~July 1, 2018 – December 31, 2018~~

~~Effective 7/1/2018~~

~~0.5% Increase-~~

~~for All~~

~~Classifications~~

-

Position	A- Mont hly	A- Hourly	B- Mont hly	B- Hourly	C- Mont hly	C- Hourly	D- Mont hly	D- Hourly	E- Mont hly	E- Hourly	F- Mont hly	F- Hourly
Commu- nity- Service- Officer	\$5,006.77	\$28.89	\$5,257.10	\$30.33	\$5,519.96	\$31.85	\$5,795.96	\$33.44	\$6,085.75	\$35.11	\$6,390.04	\$36.87
Multi- Service- Officer	\$5,994.81	\$34.59	\$6,294.55	\$36.31	\$6,609.28	\$38.13	\$6,939.74	\$40.04	\$7,286.73	\$42.04	\$7,651.06	\$44.14
Police- Records- Specialis- t	\$4,861.00	\$28.04	\$5,104.05	\$29.45	\$5,359.26	\$30.92	\$5,627.22	\$32.46	\$5,908.58	\$34.09	\$6,204.01	\$35.79
Property /												
Evidenc- e-Tech	\$5,384.91	\$31.07	\$5,654.16	\$32.62	\$5,936.87	\$34.25	\$6,233.71	\$35.96	\$6,545.40	\$37.76	\$6,872.67	\$39.65
Public- Safety- Dispatch- er	\$6,469.48	\$37.32	\$6,792.96	\$39.19	\$7,132.60	\$41.15	\$7,489.23	\$43.21	\$7,863.70	\$45.37	\$8,256.88	\$47.64

PSD- Supervisor	\$7,661.50	\$44.20	\$8,044.57	\$46.41	\$8,446.80	\$48.73	\$8,869.14	\$51.17	\$9,312.60	\$53.73	\$9,778.23	\$56.41
Sr-Police- Records- Specialist	\$5,225.58	\$30.15	\$5,486.86	\$31.65	\$5,761.20	\$33.24	\$6,049.26	\$34.90	\$6,351.73	\$36.64	\$6,669.31	\$38.48
Police- Cadet*- High- School-	-	\$12.43	-	\$13.05	-	\$13.70	-	\$14.39	-	-	-	-
Police- Cadet*- Jr.- College-	-	\$15.94	-	\$16.74	-	\$17.57	-	\$18.45	-	-	-	-
Police- Cadet*- College	-	\$18.17	-	\$19.08	-	\$20.03	-	\$21.03	-	-	-	-

~~*Note: The Police Cadet position is a student internship.~~

~~Therefore, this position has a four-step hourly range~~

MEMORANDUM OF UNDERSTANDING

Item # 07

AGENDA DATE: 12/05/18

SUPPLEMENT # 3



American Federation of State, County, and Municipal Employees Local 101, District Council 57

July 1, 2015 December 30, 2018 - December 31, 2018 2021

AFSCME
MEMORANDUM OF UNDERSTANDING
2015-December 30, 2018 -- 2018-December 31, 2021
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This Memorandum of Understanding (“MOU”) has been executed by representatives of the Morgan Hill City Council (“City”) and representatives of the American Federation of State, County and Municipal Employees Local 101 (“Union”).

ARTICLE I. – TERM

- 1.01 The term of this Agreement shall commence ~~July 1, 2015~~December 30, 2018, and end on December 31, ~~2018~~2021.

ARTICLE II. – REPRESENTATION

- 2.1 Union is a recognized employee organization within the meaning of City’s Employer-Employee Relations Resolution No. 4955.
- 2.2 Union represents all regular full and part-time City employees excluding positions represented by the Police Officers’ Association (“POA”), the Community Service Officers’ Association (“CSOA”), and those identified in the Management/Confidential Resolution.
- 2.3 Regular Part-Time Employees – Regular part-time employees in Union represented classifications who work at least twenty (20) hours per week shall receive insurance, educational incentive, tuition reimbursement, and paid leave benefits provided for in this agreement on a pro-rated basis, according to the number of hours worked per week.
- 2.4 **Meet & Confer Process**
- 2.4.01 Union is the only employee organization which is entitled to meet and confer with City on behalf of represented employees as outlined in Item 2.~~9~~2 above.
- 2.4.02 No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto, unless made and executed in writing by all parties hereto, and, if required, approved and implemented by City and Union.
- 2.5 **Release Time**
- 2.5.1 The Union President, Steward, or designee shall be allowed release time with pay on an as-needed basis to participate in meetings related to employee discipline as set forth in Section 11 of the City of Morgan Hill Personnel Rules. This includes meetings with City management which may lead to discipline of an employee, when the employee has requested representation by Union and the employee has a legal right to be represented. No notation is required on the Union President, Steward, or designee’s timecard when using release time for the purposes described in this Section.
- 2.5.2 A total of up to forty (40) hours each fiscal year of release time with pay may be used by the Union President, Steward, or designee for the following purposes when representation is requested by the employee and the employee has a legal right to be represented:
- A. Preparation for pre-disciplinary or disciplinary meetings;
 - B. Processing formal grievances in accordance with the formal grievance procedure

set forth in Section X of this MOU;

- C. Meeting with employees regarding informal grievances and presenting informal grievance issues to City management; and
- D. Attending Union sponsored trainings, meetings, conferences, or other functions. The forty (40) hours of release time are cumulative - the Union President, Steward, or designee together are allowed a total of forty (40) hours under this provision. The Union President, Steward, or designee shall note "Release Time" on their timecard when using release time for the purposes described in this Section.

2.05.03 The Union President, Steward, or designee shall be allowed release time with pay on an as-needed basis to participate in City-initiated meetings to discuss issues within the scope of representation. No notation is required on the Union President, Steward, or designee's timecard when using release time for the purpose described in this Section.

2.05.04 The Union President, Steward, or designee shall first obtain permission from his or her supervisor or other appropriate management personnel before using release time, regardless of the purpose for which release time is needed. Permission to use release time may be delayed in circumstances when City work would be seriously compromised by the Union President, Steward, or designee stopping work. However, permission will be granted within a reasonable time frame and will not be unreasonably denied.

2.05.05 Union general membership meetings will continue to be held during lunch or after work.

2.05.06 City shall provide release time for three (3) Union employees selected by Union for attendance at formal meet and confer sessions.

2.06 **Dues Deduction Process**

2.07 **Voluntary Union Dues Deduction**

2.07.01 City shall deduct Union dues from the pay checks of members if Union follows the requirements of this paragraph. Union dues are the dues that Union charges members for membership in the Union, representation in collective bargaining and other employment related matters within the scope of representation and Union political activity.

2.07.02 City shall only deduct Union dues from an employee's pay check if the employee has submitted a signed authorization card to City clearly stating the employee's desire for City to deduct Union dues. It is understood and agreed by both City and Union that Union accepts responsibility for submitting authorization cards to City and for informing City whenever an employee withdraws his or her authorization. Such deductions shall be made from each authorizing employee's pay check and remitted to Union each month.

2.08 ~~Voluntary Agency Fee Deductions~~

2.08.01 ~~City shall deduct agency fees from the pay checks of members if Union follows the requirements of this paragraph. Agency fees represent the percentage of Union dues used for representing members in their employment with City and other categories of chargeable expenses recognized by federal court decisions. Agency fees do not include amounts used for Union political activity or other categories of expenses deemed non-chargeable to Union members by federal court decisions.~~

2.08.02 ~~It is understood and agreed by both City and Union that Union accepts responsibility for submitting authorization cards to City and for informing City whenever an employee withdraws his or her authorization. Such deductions shall be made from each authorizing employee's pay check and remitted to Union each month.~~

2.09 ~~Involuntary Deduction Process~~

2.09.01 ~~Union and City agree to conduct involuntary agency fee deductions in accordance with state and federal law as follows:~~

A. ~~Fee Amount: During the term of this Agreement, every employee covered by the MOU shall 1) remain a member in good standing of Union 2) pay to Union a monthly agency fee not greater than the amount chargeable to non-members for representation and bargaining services, or 3) in the case of an employee who certifies that he/she is a member of a recognized religion, body or sect which has historically held conscientious objection to joining or financially supporting public employee organizations, pay a sum equal to agency fees to one of the following organizations: Community Solutions, El Toro Youth Center, Morgan Hill Community Foundation, Morgan Hill Community Health Foundation, United Way, or Mt. Madonna YMCA.~~

B. ~~New Employee Compliance: Newly hired employees shall comply with one of these requirements within thirty (30) days of starting employment with City.~~

C. ~~Non-Deduction Periods: The deductions in this subsection shall not apply during any period where an employee is in an unpaid status or does not have enough earnings to pay the dues or fees.~~

D. ~~Excluded Employees: This involuntary deduction provision shall not apply to management employees.~~

E. ~~Involuntary Agency Fee Deduction Process: The involuntary agency fee deduction process will operate as follows:~~

a. ~~Union represents that it has consulted with knowledgeable legal counsel and has developed a plan, including, but not limited to, current audits, accuracy of agency fee calculation, and legal sufficiency of employee challenge procedures and certifies that this plan satisfies all constitutional and statutory requirements for involuntary agency fee deductions.~~

b. ~~In the absence of a written authorization within 30 days of employment or renewed active status, the City shall deduct the Agency Fee from the employees paycheck.~~

F. ~~Indemnification, Defense and Hold Harmless for Dues Deduction: Union agrees that City undertakes these deductions as a convenience and courtesy and that~~

~~City shall incur no liability for providing this courtesy service. Union further agrees to indemnify, defend and hold City harmless against any and all claims, suits, orders, judgments, costs or attorney's fees, including, but not limited to, pre-litigation, administrative staff, retained outside counsel costs and any other matters for which City may seek indemnification under Government Code section 3502.5, brought or issued against City as a result of the action taken or not taken by City under the provisions of this Agency Shop agreement~~

Union agrees that City undertakes these deductions as a convenience and courtesy and that City shall incur no liability for providing this courtesy service. Union further agrees to indemnify, defend and hold City harmless against any and all claims, suits, orders, judgments, costs or attorney's fees, including, but not limited to, pre-litigation, administrative staff, retained outside counsel costs and any other matters for which City may seek indemnification for as a result of the action taken or not taken by City for any dues deduction.

2.10 Maintenance of Membership

2.10.01 Any Member who is tendering Union Dues through payroll deduction as of the date of execution of this MOU, or who becomes a Member during the term of this MOU, shall remain a Member and continue to have Union Dues deducted for the duration of this MOU and each subsequent MOU thereafter. For the period of ninety to seventy (90-70) days prior to the expiration of this or any subsequent MOU, a Member shall have the right to withdraw from Union by discontinuing the Union Dues deduction. Such withdrawal shall be communicated in writing by the Member to Union ~~and City~~ during the aforementioned ninety to seventy (90-70) day period, ~~so long as Union has provided advance written notice to all Members prior to the commencement of the ninety to seventy (90-70) day period.~~ Members may also withdraw from Union once this MOU has expired if a subsequent MOU has not been executed. A Member who moves to a position outside Union's bargaining unit shall not be required to continue Union Dues deduction.

2.11 Agreement to Meet and Confer

Should City change the terms and conditions of employment of any job classification(s) represented herein, City will meet and confer with Union no later than thirty (30) days before effective date of such change or changes for the purpose of negotiating appropriate salary adjustment(s) for the so changed classification(s) at a level appropriate to compensate for the increased duties, requirements or safety hazards.

2.12 Printing of MOU

2.12.01 City and Union will split the printing cost of the Agreement equally. Union will choose the printer.

ARTICLE III. – MANAGEMENT RIGHTS

- 3.01 The rights of City, as exercised by the City Council and the City administration include, but are not limited to, 1) the exclusive right to determine the mission of its constituent departments, commissions and boards, 2) set standards of service, 3) determine the procedures and standards of selection for employment, 4) direct its employees, 5) take disciplinary action, 6) relieve its employees from duty because of lack of work or other legitimate reasons, 7) maintain the efficiency of governmental operations, 8) determine the methods, means, and personnel by which government operations are to be conducted, 9) determine the content of job classifications, subject to any requirement to meet and confer or under current state law, 10) require that employees work overtime, and 11) exercise complete control and discretion over its organization and the technology of performing its work, except that any agreement between City and Union evidenced by a MOU pursuant to Government Code 3500 et. seq. shall take precedence over any of the above enumerated employee and management rights and that such MOU will be honored in good faith during the life of this contract, subject to City's rights to determine when an emergency exists and to take all necessary action to carry out its mission in emergencies.
- 3.02 Nothing in this article shall be construed to limit, amend, decrease, revoke, or otherwise modify the rights vested in City by any law regulating, authorizing, or empowering City to act or refrain from acting.

ARTICLE IV. – DEFINITIONS

4.01 Salaries, Wages, and Salary and Wages

- 4.01.01 The terms "Salaries", "Wages" or "Salary and Wages" shall mean the gross monthly base pay prior to any deductions.

4.02 Personnel Rules

- 4.02.01 The term "Personnel Rules" as used in this Agreement means those regulations titled "City of Morgan Hill Personnel Rules" enacted as Resolution No. 6150 and thereafter and hereafter amended. In the event a conflict in interpretation between these Personnel Rules as included by reference and similar sections as contained in this MOU, the language in the MOU will be used for interpretation.

ARTICLE V. – SALARIES, WAGES & PAID BENEFITS

- 5.01 The Salaries and Wages paid by the City to employees in-represented by Union, as shown in Exhibit A, will be in accordance with the job classifications they hold with pay rates to be increased by two and a half ~~three and one half~~ percent (23.5%) ~~on the first pay period following August 1, 2015.~~effective December 30, 2018 (Exhibit B)
- 5.02 The Salaries and Wages paid by City to employees in-represented by Union, as shown in Exhibit B, will be in accordance with the job classifications they hold with pay rates to be increased by two-three and a half-quarter percent (23.25%) ~~on the first pay period following July 1, 2016.~~effective the pay period including January 1, 2020 (Exhibit C).

5.03 The Salaries and Wages paid by City to employees ~~in-represented by Union, as shown in Exhibit C, will~~ Union will be in accordance with the job classifications they hold with pay rates to be increased by ~~two-three~~ and a ~~half-quarter~~ percent (~~23.25%~~) ~~on the first pay period following July 1, 2017~~ effective the pay period including January 1, 2021 (Exhibit D).

5.04 ~~The Salaries and Wages paid by City to employees in Union, as shown in Exhibit D, will be in accordance with the job classifications they hold with pay rates to be increased by one half percent (0.5%) on the first pay period following July 1, 2018.~~

5.05 **Holiday Pay**

5.05.01 City will observe the following holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas. Employees will receive one (1) half (1/2) day holiday to be used during the furlough period or on the last work day before the furlough. City will maintain minimum staffing levels on these days and the Department Director will determine which half day the employee may take off.

a. Each employee will receive two (2) floating holidays each fiscal year to be used during that fiscal year with the approval of the employee's supervisor.

b. Recognized holidays of City will be aligned to coincide with school holidays in the Morgan Hill Unified School District.

c. Any hours worked on a holiday shall be compensated at double time. If a holiday falls on a Friday or a Monday, any hours worked on the weekend (Saturday or Sunday) connected to the holiday will be compensated at the holiday pay rate.

d. Holiday standby shall be compensated at the rate of three (3) hours at double time.

5.06 **Work Furlough**

5.06.01 City shall annually implement an end of year furlough that includes the time period of December 24 through January 1st of each year. The specific furlough dates and staffing requirements shall be determined by City. Furlough dates shall be provided to Union by November 1st of each year, and staffing requirements shall be finalized and published by December 1st of each year.

5.07 **Other Pay**

5.08 **Water Certification Pay**

5.08.01 All employees in classifications that are required by the State of California to have Water Distribution Certificates to perform their jobs, and who in fact possess the appropriate current certificate, will be entitled to receive the following compensation:

- a. Employees who possess a Water Distribution Certificate as of June 30, 2015 shall receive either the fixed amount of two and a half percent (2.5%) of base salary as of July 1, 2015 or one hundred and sixty dollars (\$160.00) per month, whichever is greater.
- b. Should there be subsequent adjustments to base salaries, the amount determined on June 30, 2015 shall remain the fixed amount in perpetuity.
- c. Employees who do not possess a Water Distribution Certificate as of June 30, 2015 and who subsequently receive one shall receive a monthly stipend of one hundred and sixty dollars (\$160.00).

5.08.02 If a Maintenance Worker has the required current Water Distribution certification Certification and is assigned to work in a position that requires ~~the-that~~ certification, he/she will receive certification pay. For employees hired after June 30, 2015, certification pay is one hundred and sixty dollars (\$160.00) per month. For employees hired on or before June 30, 2015, certification pay will be a flat amount equal to two and a half percent (2.5%) of their base salary on June 30, 2015. the two and a half percent (2.5%) certification pay for those hours worked in that assignment.

5.09 **Weekend and Week Night Standby Pay**

5.09.01 Weekend Standby (Saturday or Sunday) shall be compensated at the rate of ~~three~~ (3)-four (4) hours at time and one-half (1/2) for each ~~twenty four~~ twenty-four (24) hour period covered. Each weeknight (Monday – Friday) of standby shall be compensated at the rate of one and a ~~quarter-half~~ (1.2550) hours at time and one-half (1/2) for each week-night of standby. The week-night standby period shall begin at the end of the regular work shift and end with the commencement of the regular work shift the following morning. Employees assigned standby must be able to report to the Corporation Yard within thirty (30) minutes from the time they are called.

5.10 **Out of Class Pay**

5.10.01 Whenever an employee is temporarily assigned in writing by their supervisor to work in a higher vacant classification ~~and performs substantially all of the duties of the higher classification~~ to perform all of the duties of the higher classification for a period of more than ten (10) cumulative working days, the employee shall be entitled to out of class pay on the eleventh (11th) day of assignment. Having once satisfied the ten (10) day qualifying requirement, any subsequent such assignment shall be so compensated an additional five percent (5%) beginning with the first day of reassignment. Any out of class assignment must meet CalPERS guidelines in order to be considered pensionable compensation. Out of class assignment are of a limited curation and shall not exceed 960 hours in any fiscal year.

5.10.02 Should the assignment last more than sixty (60) consecutive calendar days, the employee shall be compensated at a step within the normal range which is at least an additional five percent (5%) higher than that received in accordance with 5.10.01.

5.10.03 Special Assignment Pay

Special assignment pay may be granted to employees who have assumed, for an extended period, significant additional responsibilities outside their current classification. The request for special assignment pay shall describe the assignment, justify why it is to be performed by the designated employee, and give a specific duration for completion of the assignment with a start and end date. Special assignment pay is up to 10% above the employee's normal pay rate. The special assignment and related compensation may be revoked at any time at the discretion of the Department Director, or the City Manager (or designee). Special assignment pay will be requested in advance by the Department Director and authorized by the City Manager or designee, and then processed by the Human Resources Division. Special assignment pay shall be discontinued on the date originally identified for completion of the assignment, unless an extension of specific duration is approved by the City Manager or designee prior to the end of the original assignment end date. Special assignment pay is not be considered pensionable compensation as defined by CalPERS.

5.11 Bilingual Pay

- 5.11.01 Union employees identified by a Department Director to use Spanish or American Sign Language in their work and who are certified by the process described below shall receive the following compensation:
- a. Employees hired prior to June 30, 2013 shall receive five percent (5%) of base salary. On July 1, 2013, that amount will be calculated and converted to a fixed amount, or one hundred and fifty dollars (\$150.00) per month, whichever is greater.
 - b. Should there be subsequent adjustments to base salaries, the amount determined on July 1, 2013 shall remain the fixed amount in perpetuity.
 - c. Employees hired on or after July 1, 2013 shall receive a monthly stipend of one hundred and fifty dollars (\$150.00).
 - d. The Certification process shall be completed by a provider contracted by Human Resources or a three (3) person panel (established by Human Resources) to determine conversational competence. Employees shall be subject to recertification every two (2) years unless waived by City.
 - e. An eligible employee may request to be tested for bilingual certification at any time and the test shall occur within a reasonable amount of time.

5.12 Overtime/Compensatory Time

- 5.12.01 Overtime/Compensatory time is defined as one-and-a-half (1.5) times an employee's total hourly salary. Overtime/Comp time is paid for any amount of time exceeding fifteen (15) minutes more than the employee's normal work shift, provided the employee is working

an eight (8) hour or more work shift or any work time in excess of the forty (40) hour work week unless additional hours are worked as a result of a shift change. Overtime/Compensatory time for a regular part-time employee who works over his/her normal work schedule will accrue compensatory time at the employee's normal rate of hourly salary for hours under forty (40) per week, and one-and-a-half (1.5) times for hours over forty (40) per week. All such time must be approved in advance with the employee's supervisor or Department Director. Overtime is paid on completed fifteen (15) minute increments above the half (1/2) hour minimum. Time spent on paid sick leave, disability leave, vacation leave, military leave, compensatory time off, or other authorized paid leave shall be deemed time worked for the purposes of this Article.

5.12.02 Employees called back to work outside their regular work shift shall be compensated for a minimum of two (2) hours at time and one half (1/2) of their regular pay rate. For purposes of this provision, the job shall commence once an employee arrives on-site and shall be considered completed when either management or police dispatch is notified. City reserves the right to assign additional work within the two (2) hour period and subsequent call outs within the original two (2) hour call out do not receive an additional two (2) hour call out minimum. Consecutive work time which is past a two (2) hour call out shall be at time and one half (1/2) pay. Additional call-outs during the course of the day (once a two (2) hour call out is completed), and outside of a completed two (2) hour call out period, shall restart the two (2) hour call out time.

5.12.03 Union personnel will have the option of receiving either paid overtime or compensatory time off. In the event that overtime pay is not available or authorized, the employee can either choose compensatory time off or decline working overtime. The compensatory time accrual limit shall be one hundred sixty (160) hours maximum. ~~Union personnel may elect to make contributions to one of City's deferred compensation plans in a given pay period in lieu of receiving paid overtime or accruing compensatory time. In addition, Union personnel have the option of converting accrued compensatory time and/or vacation time to one of City's deferred compensation plans. These contributions can be one time, lump sum contributions or Union personnel can temporarily increase the amount of their established deferral. For example, if an employee works overtime in a given pay period, he/she may temporarily increase the amount of their deferred compensation contribution for that pay period. Union personnel must submit a completed deferred compensation enrollment/change form to Payroll and the Human Resources Office prior to the end of the pay period for which they wish to have the change be effective.~~

5.12.04 During emergency situations (EOC activation) such as floods, earthquakes, severe storms, etc., City reserves the right to require that all overtime be compensated in pay, not compensatory time.

5.12.05 Employees working more than twelve (12) hours in a day shall receive double time for hours worked beginning with the thirteenth (13th) hour of work.

- 5.12.06 Employees who are contacted and consulted by telephone about a work-related problem outside their regular work shift, and who provide advice or direction, shall be compensated at an overtime rate for the actual time spent on the telephone, rounded up to the nearest thirty (30) minutes. The time will be recorded on timesheets as overtime.

5.13 Base Work Schedules

- 5.13.01 The work day, for pay purposes, shall be a twenty-four (24) hour period commencing with the beginning of the employee's regularly scheduled shift.
- 5.13.02 The normal work schedule shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday or any schedule identified in Administrative Policy VI-001 Section 4.
- 5.13.03 Should the normal work schedule need to be modified in terms of days or shift hours by the Department Director to facilitate the needs of City, such modification in normal work schedules will be discussed with Union representatives as to methods for changing or rotating assignments fifteen (15) days prior to any change, except in cases of emergencies.
- A. The affected employee should be notified at least ten (10) full working days prior to any change. Such modification cannot exceed a forty (40) hour work week unless additional hours are worked as a result of a shift change or in cases of emergencies.
 - B. Recreation employees may choose to request schedule changes as needed rather than work overtime.
- 5.13.03 For the purposes of calculating overtime, compensatory time and defining payroll periods, the aforementioned schedules will apply.
- 5.13.04 Reporting for Duty
- A. Employees who are unable to report for work at the beginning of their established shift shall notify their immediate supervisor at least thirty (30) minutes prior to the commencement of that shift. Employees shall follow departmental procedures for providing notice of their absence.
 - B. Failure to report to work for three (3) consecutive days (or shifts if applicable for which the employee is scheduled to work) without giving proper notice to City will be considered a voluntary resignation of employment even if a co-worker or supervisor covers the shift or otherwise arranges for coverage of the shift. Such employee shall, however, be reinstated provided the employee satisfactorily shows that his/her failure to report was the result of reasonable extenuating circumstances beyond the employee's control.
- 5.13.05 Except in the case of emergencies, employees shall receive a lunch break after four (4) hours of overtime worked.

5.13.06 Any employee working eight (8) or more hours at the overtime rate during the sixteen (16) hour period immediately preceding the beginning of his/her regular work shift shall be entitled to a rest period of eight (8) consecutive hours on the completion of such overtime work with the following provisions:

- A. No employee shall be required to work in excess of sixteen (16) hours without rest unless an emergency is investigated and continued work is deemed necessary to prevent extreme property damage or to preserve human life.
- B. If the eight (8) hour rest period overlaps his/her regular work shift in whole or in part, he/she will be paid at the straight-time rate for the time that falls within his/her regular work shift.
- C. If the eight (8) hour rest period overlaps a portion of the first half of his/her work shift, the employee may be excused from work until the beginning of the second half of said shift. If the eight (8) hour rest period overlaps a portion of the second half of his/her work shift, he/she may be excused from work until the following work shift. He/she will be paid, however, for that portion of the rest period that overlaps his/her normal working shift. He/she will not be paid for the time between expiration of the rest period and his/her reporting for work.
- D. Hours worked prior to an eight (8) hour rest period shall not be included in determining another rest period.
- E. If the employee is called back to work during his/her eight (8) hour rest period, a new rest period will commence at the conclusion of such work.

5.14 Health Benefits

5.14.01 The City will contribute to the City's medical and dental health plans as follows:

- A. ~~Ninety percent (90%) of the lowest cost medical plans plus dental for employees' with family coverage.~~
- B. ~~Ninety six and one half percent (96.5%) of the lowest medical health plan, plus dental for employees with employee plus one coverage.~~
- C. ~~For those employees who waive medical and/or dental coverage, or who have employee only coverage:~~
 - i. ~~The health allowance contribution will be five hundred seventy five dollars (\$575.00) per month. Employees not using the entire benefit amount shall be entitled to use fifty (50%) percent of the surplus amount for optional benefits or for participating in medical reimbursement or dependent care expense accounts. If employees do not use their fifty percent (50%) surplus for optional benefits, it will be~~

~~added to their salary as taxable income.~~

~~ii. — At the time when the lowest cost medical plan plus dental coverage exceeds the five hundred seventy five dollars (\$575.00) per month health care allowance, City shall provide one hundred percent (100%) of the lowest cost medical health plan plus dental.~~

~~iii. — Employees who waive medical coverage shall be entitled to two hundred fifty dollars (\$250.00) per month. Employees who waive dental coverage shall be entitled to forty dollars (\$40.00) per month.~~

A. For employees with family coverage, up to \$1,900/month in 2019, up to \$1,976/month in 2020, and up to \$2,055 in 2021.

B. For employees with employee plus one coverage, up to \$1,450/month in 2019, up to \$1,508/month in 2020, and up to \$1,568/month in 2021.

C. For employees with employee only coverage, up to \$725/month in 2019, up to \$754 in 2020, and up to \$784 in 2021.

D. Employees enrolling in City health but not using the maximum amount available from the City for their premium category (ee only, ee+1, ee+family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City for their premium category shall have the difference deducted on a pre-tax basis from their paycheck.

E. Employees who waive medical coverage and annually provide proof of alternative medical coverage shall be entitled to a taxable cash in lieu payment of two hundred fifty dollars (\$250.00) per month. Employees who waive dental coverage and annually provide proof of alternative dental coverage shall be entitled to a taxable cash in lieu payment of forty dollars (\$40.00) per month.

F. The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs A-D above.

5.14.02 City agrees to provide, at City's expense, up to 100 percent (100%) of the premium cost per employee for the Employee Assistance Program, as presently constituted.

5.14.03 All members shall have the option of continuing their current medical insurance at the employee's own cost after retirement. This option can continue as long as there is no lapse in coverage and so long as the employee pays the monthly premium to the California Public Employees Retirement System (CalPERS) or to the Finance Department as per their billing requirements.

- 5.14.04 The CalPERS Medical insurance program shall remain in effect for the term of this agreement or unless the parties agree to terminate the agreement with CalPERS.

ARTICLE VI. – EDUCATIONAL INCENTIVE PROGRAM

6.01 Educational Incentive Pay Program (for employees hired before July 1, 2008)

6.01.01 See Exhibit E

6.02 Tuition Reimbursement

6.02.01 City shall provide a tuition reimbursement program of up to fifteen hundred dollars (\$1,500) per fiscal year for the cost of books and tuition for classes beneficial to the employee's career development. Mandatory fees required to attend classes and parking fees also may be reimbursed through tuition reimbursement. All classes must be approved in advance by the Department Director. Reimbursement will take place upon a successful completion or passing of the course.

ARTICLE VII. - TYPES OF LEAVE

7.01 Sick Leave

7.01.01 Sick Leave credit shall be accumulated on the basis of eight (8) hours per month. The employee's accumulated sick leave is unlimited.

7.01.02 City will pay twenty-five percent (25%) of unused sick leave at the end of each calendar year. This payment will be based on semi-annual calculations, made on June 1 and December 1 of each year. Employees who have a balance of at least one hundred sixty (160) hours of sick leave may receive fifty percent (50%) of the unused sick leave earned that year. The balance of sick leave will be added to the employee's accumulated sick leave.

A. The twenty five percent (25%) payout will not be calculated or paid to any employee absent from work on a work related injury which is being covered by worker's compensation.

7.01.03 Upon retirement, one hundred percent (100%) of the employees' unused sick leave balance will be credited to the employees' retirement eligibility. This amount would then be converted into time in service and added to the employee's retirement eligibility. (Reference - City contract with CalPERS, Section 20862.8)

7.01.04 Union employees shall be allowed to utilize two (2) Personal Leave Days totaling sixteen (16) hours per fiscal year chargeable to sick leave.

7.01.05 Employees may use up to twenty four (24) hours of compensatory time when ill or to attend a medical/dental appointment. All other time missed in a fiscal year due to illness or medical/dental appointments requires the use of sick leave. If the employee does not have sick leave and is not on an approved extended leave, the employee ~~must~~may choose to use vacation or compensation leave or may take that time off without pay. Vacation or

compensatory time will not substitute for sick leave when the employee ~~calls in sick or must attend a medical/dental appointment the same day they were scheduled to work~~ has available sick leave, with the exception of twenty four (24) hours of compensatory time per fiscal year as noted above. Per Section 7.01.04, employees may use sixteen (16) hours of personal time, which is charged to sick leave, for unforeseen appointments and unexpected absences.

7.02 Vacation Accrual

7.02.01 Vacation Accrual shall be as follows:

- a. Eighty (80) hours per year from the date of hire through the second (2nd) year of employment.
- b. Eighty eight (88) hours vacation during the third (3rd) year of employment.
- c. One hundred and four (104) hours vacation during the fourth (4th) year of employment.
- d. One hundred and twelve (112) hours vacation during the fifth (5th) year of employment.
- e. One hundred and twenty (120) hours vacation during the sixth (6th) year of employment.
- f. One hundred and twenty eight (128) hours vacation during the seventh (7th) year of employment.
- g. One hundred and thirty six (136) hours vacation during the eighth (8th) year of employment.
- h. One hundred and forty four (144) hours vacation during the ninth (9th) year of employment.
- i. One hundred and fifty two (152) hours vacation during the tenth (10th) year of employment.
- j. One hundred and sixty (160) hours vacation after the tenth (10th) year of service.

7.02.02 Maximum accumulation of vacation shall be no more than that earned for two (2) years. This vacation accumulation maximum shall be enforceable on June 30th of each year. Employees may exceed the maximum prior to June 30th. Any employee who has more than two (2) years annual accrual on the books on July 1st shall not accrue additional vacation until vacation usage drops below the two (2) years allowable accrual.

7.02.03 City guarantees during the term of the MOU, that no employee will lose vacation accrued if the employee follows departmental guidelines for requesting time off.

7.02.04 Employees who have vacation or compensatory time off at least equal to two (2) weeks shall have the option, twice per fiscal year, of receiving pay in lieu of time off for a total of eighty (80) hours of the accrued time per fiscal year. Employees may elect this option by December 1 of ~~the~~ each year for the cash-out of the following calendar year. The cash out election is irrevocable. City will follow IRS regulations regarding cash-out of leave and communicate the procedures for cashing-out to Association.

7.03 Extended Leave Policy

7.03.01 In the event an employee is absent from work for illness or injury, unless notified otherwise, prior to the end of the affected pay period, the time off will be coded and deducted from (1) accumulated sick leave, (2) accumulated comp time, and (3) accumulated vacation time, in that order. If a determination is subsequently made by City that the injury was job related, all sick leave, comp time and vacation time used to cover the leave will be credited back to the employee in an amount up to the worker's compensation determination. The amount of compensation from City may need to be offset by payments received from worker's compensation. At no time shall the employee receive compensation and worker's compensation payment in excess of their normal pay. Employees with insufficient time off credited to them will be coded on payroll as absent without pay. Extended leave is defined as two (2) weeks or more of consecutive time off due to illness or injury.

7.04 Bereavement Leave

7.04.01 Union members shall, per occurrence, be granted Bereavement Leave when a death occurs in the employee's or the employee's spouse's immediate family. For the purpose of this section, "immediate family" is defined as father, mother, brother, sister, spouse, natural or legally adopted child, step-child, in-laws, grandparents, and grandchildren. Up to three (3) days of Bereavement Leave shall be granted when the death and service are within the State of California and up to five (5) days when the death or service is outside the State. Bereavement Leave usage shall not be charged against the employee's Sick Leave or Vacation Time. Employees may also use up to two (2) additional days of Sick Leave to supplement their allotted Bereavement Leave if other circumstances require absence during that time.

7.04.02 Requests for additional Bereavement Leave beyond the allotted three (3) or five (5) days shall be subject to the approval of the employee's supervisor and deducted from the employee's accumulated Comp Time, Personal Leave, or Vacation Time. Special circumstances beyond this definition may be considered on a case-by-case basis and must be approved by the City Manager.

7.04.03 This leave will not affect the twenty-five percent (25%) or fifty percent (50%) cash out of sick leave for the same calendar year.

ARTICLE VIII. – MISCELLANEOUS BENEFITS

8.01 CalPERS Retirement Contributions

- 8.01.01 For employees hired on or before January 1, 2013, and “Classic Employees” as defined in Government Code section 7522.02(c) of the California Public Employees’ Pension Reform Act of 2012 (“PEPRA”) hired on or after January 1, 2013, City agrees to continue its CalPERS miscellaneous contract with for all applicable retirement benefits in effect on July 1, 2007 which will provide the single highest year and the 2.5% @ 55 basic retirement formula.
- 8.01.02 For employees that are considered “New Members” as defined in Government Code section 7522.04(f) of PEPRA hired on or after January 1, 2013, the PERS miscellaneous contract will provide for the three (3) highest years compensation average and the 2.0% @ 62 retirement formula.
- 8.01.03 Beginning with CalPERS rates effective July 1, 2014, City and Union members agree to split any rate differences at a 50/50 ratio.
- 8.01.04 Effective July 1, 2013, Union members will pay the full employee contribution rate of eight percent (8%).

8.02 **Deferred Compensation Plan**

- 8.02.1 City shall continue to contribute two percent (2%) of an employee’s base salary to a 457 Deferred Compensation plan per pay period. [Employees may elect to contribute via payroll deduction to the City’s deferred compensation plans. Employees’ contributions can be a lump sum contribution or a percentage of base wages. Employees must submit a completed deferred compensation enrollment/change form to the Human Resources Division for changes in their deferred compensation contributions. Changes shall be effective consistent with the Human Resources submittal deadlines and effective dates.](#)

8.03 **Life Insurance Program**

- 8.03.01 For the term of this agreement, City will maintain a Life Insurance Program for each employee represented by Union in the amount of one hundred thousand dollars (\$100,000.00) effective August 1, 2008. This amount decreases when the employee reaches age 65, 70, and 75. The Life Insurance benefit will be paid to the employee’s beneficiary upon the death of the employee as outlined in the program documents. City will continue to pay 100 percent (100%) of the cost involved with this program. Any employee currently purchasing additional life insurance through the flexible benefits plan may continue to do so.

8.04 **Long Term Disability Program**

- 8.04.01 For the term of this agreement, City will maintain a Long Term Disability Program on all employees represented by Union. The amount of monthly coverage for the Long Term Disability will be sixty six and two thirds percent (66 2/3%) of the employee’s monthly

earnings or a maximum benefit paid of four thousand dollars (\$4,000.00) per month, reduced by any deductive benefits. The maximum benefit period is to age sixty five (65) or twelve (12) months, whichever is longer. The elimination period is the sixty (60) days of total disability. Employees may be eligible for some benefits for partial disability as outlined in the Plan documents. City will continue to pay one hundred percent (100%) of the costs involved with this Long Term Disability Program.

8.05 Short Term Disability Program

8.05.01 For the term of this agreement, City will maintain a Short Term Disability Program on all employees represented by Union. The amount of weekly coverage for the Short Term Disability will be sixty six and two thirds percent (66 2/3%) of the employee's weekly earnings or a maximum of nine hundred eighty three (\$983.00.00) per week with a duration of eight (8) weeks and the elimination period of eight (8) days. The employee must be totally disabled to qualify for benefits. Per Plan requirements, maternity benefits are included in the Short-Term Disability coverage. City will continue to pay 100 percent (100%) of the costs involved with this program.

8.06 IRS 125 Program

8.06.01 City shall maintain in effect the IRS-125 Program.

ARTICLE IX. – MISCELLANEOUS POLICIES AND PROCEDURES

9.01 Hepatitis B Vaccines

9.01.01 City agrees to provide Hepatitis-B shots for those employees represented by Union who regularly or occasionally perform field duties.

9.02 Uniforms

9.02.01 City will provide uniforms for those employees in the Parks, Streets and Utility Divisions required to wear uniforms as a condition of employment. All divisions will be provided soft caps with the City logo attached. With the exception of City provided soft cap or safety helmet, no other caps, head gear, or hats are to be worn. City will also provide regular uniform cleaning. Employees assigned uniforms are to report to work in uniforms that are neat and clean.

9.02.02 ~~City will reimburse employees who regularly or occasionally perform field duties up to two hundred dollars (\$200.00) per year towards the purchase of Safety Shoes. Proof of purchase is required; once purchased, shoes must be worn during all working hours.~~

City will pay a safety shoe allowance of two hundred and fifty (\$250.00) per fiscal year to be used for the purchase of safety shoes and any related accessories, to include shoe protectant spray, shoelaces, and insoles, to employees who regularly or occasionally perform field duties. Newly hired employees shall receive an initial safety shoe allowance of two hundred and fifty (\$250) dollars. If a new employee receives their initial safety shoe allowance between the months of January – July, their next safety shoe allowance will be paid the following July. Employees must purchase at least one pair of safety shoes each fiscal year and provide proof of purchase at time of purchase to their

Department. The employee is required to wear the shoes at all times when applicable duties are performed.

It is the employee's responsibility to maintain safety shoes in proper working condition and replace them if necessary if they are damaged, worn, or unsafe. At any time an employee's supervisor or manager may determine that shoes are unsafe and require replacement.

9.03 Light Duty Determination

9.03.01 In the event an employee is injured and off the job for ten (10) working days or more and may be able to return to work but not able to perform all her/his normal job duty assignments, a temporary "light duty" assignment may be made by City. To be eligible for such a modified assignment, City may require the employee to provide the Human Resources Office with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. City may require a second or third doctor's determination at City expense. All light duty work requests shall be coordinated through the Human Resources Office. Light duty may be granted provide that:

- a. A temporary modified work assignment is available and may be accommodated without adverse consequences to City or disruption in services or operations,
- b. City may change regular days off and work hours while the employee is assigned to the temporary modified work assignment,
- c. No temporary modified work assignment shall extend for more than ninety (90) days with the approval of the City Manager, and
- d. No temporary modified work assignment creates any employee entitlement to an assignment in a light duty position.

9.03.02 An employee receiving such a light duty determination could be reassigned to another assignment or other reduced work schedule up to a forty (40) hour work week upon the determination of the Department Director. Once the employee is certified by his/her treating physician or City doctor as no longer in need of light duty, he/she will be reassigned to their normal work assignment.

9.04 Substance Abuse Policy

9.04.01 City's Substance Abuse Policy (Administrative Policy VI018) shall continue in effect for the term of this agreement.

9.05 Class "A" License

9.05.01 All Utility Worker and Maintenance Worker employees are required to maintain a Class "A" license. Pursuant to the Department of Transportation regulations, such employees

are subject to the Department of Transportation Drug Policy. A copy of the Drug and Alcohol Testing Policy as agreed to by City and Union is attached Exhibit F).

9.06 City-Wide Safety Committee

9.06.01 City shall maintain a City-wide Safety Committee with Union appointing up to two (2) members. The Committee shall meet at least quarterly and shall review all accident reports and make recommendations thereon, review departmental safety programs and make recommendations thereon, and assist in planning and presenting safety programs. Responsibility for and authority over safety continues to be vested in City Management.

9.07 Lay Off Procedure

9.07.01 The City Council may abolish any position in the Classified Service due to lack of funds, work or need.

9.07.02 If City implements a reduction in work force, City will administer the lay-off policy consistent with the following concepts:

1) ORDER: The order of lay-off shall be as follows:

- a. Temporary (as-needed) employees;
- b. Probationary employees; and
- c. Permanent employees in inverse order of seniority within the classification series being reduced.

2) SENIORITY: Seniority shall be determined by the length of current continuous permanent service with City regardless of classification in which employed. Continuous service shall be defined as that which has not been interrupted by separation of service from City. Seniority shall be retained, but shall not accrue, during any period of authorized leave without pay (more than thirty (30) days), except for military leave. The treatment of personnel employed by means of State or Federal grant monies shall be in accordance with regulations for retention as established by the grantor. In the absence of such regulations, the type of position (Classified or Exempt) shall govern treatment of such personnel. Part time employees shall only receive their total hours of credit and are only subject to combine their total hours for bumping another part-time employee. At no time shall a part time employee be eligible to bump a ~~full time~~full-time employee, regardless of seniority. Should a ~~full time~~full-time employee who is subject to lay off, be eligible or certified to work in a part time position, the ~~full time~~full-time employee may bump into that position beginning with the least senior part time employee first.

3) NOTICE: Probationary and regular employees in the Classified Service, who are scheduled to be laid off, shall receive at least a twenty-one (21) day notice. When City determines that it must implement a reduction in work force, notice to the employee shall be in writing and the bargaining unit shall receive the following information, in addition to the opportunity to discuss with a representative of management:

- a. Reason for layoff,
- b. Effective date of layoff,
- c. Conditions governing re-employment, and
- d. Information regarding unemployment insurance.

- 9.07.03 In lieu of layoff, an employee may elect transfer or demotion to a vacant position in the Classified Service which City intends to fill and for which the employee is qualified. Such actions shall be governed by the terms of Section 10 of the Personnel Rules and in no event shall result in an employee being placed in a classification carrying a higher maximum rate of pay. If two (2) or more employees have requested transfer or demotion to the same vacant position and City has determined they are both qualified to fill it, the more senior employee shall receive preference. For purposes of this section, total time in the Classified Service shall be utilized in determining seniority.
- 9.07.04 Within ten (10) days from the date layoff notices are issued, an employee who would otherwise be laid off may elect to displace an employee in a classification carrying a lower or the same maximum rate of pay, provided that the displacing employee must have held regular status in such classification and have greater time in the classification and directly related higher classifications combined than the employee being displaced. For example, related classifications would mean Utility Worker I, Utility Worker II, Senior Utility Worker, etc.
- 9.07.05 A probationary or regular employee displaced in accordance with this paragraph shall, in turn, be provided the same notice and “bumping” privilege as set forth in that paragraph.
- 9.07.06 Regular and probationary personnel laid off in accordance with this Section shall, unless they request otherwise, be placed on a re-employment list for three (3) years. If an employee is re-employed from such a list, all service credits and sick leave accrued to the date of layoff shall be restored. In no event, however, shall City be required to restore credits for vacation and sick leave paid out at the time of layoff.
- 9.07.07 At the time of layoff, the employee’s name shall be removed from all promotional eligible lists, but, at the employee’s request, shall be retained on open-competitive lists subject to the provisions of Section 10 of the City’s Personnel Rules. If the employee is re-employed prior to the expiration of a promotional list, they shall be reinstated to the list.
- 9.07.08 Prior to the effective date of layoff, the Department Director shall furnish the City Manager a final evaluation of the employee’s performance.
- 9.07.09 Management employees are not eligible to “bump down” into a Union represented position regardless of their previous seniority or status.

9.08 Work Stoppage, Any Job Action, Slowdown

- 9.08.01 During the life of this MOU, no work stoppage, strikes, or picketing shall be caused or sanctioned by Union and no lockouts shall be made by City.
- 9.08.02 In the event that any employee covered by this Agreement, individually or collectively, violates the provisions of this article and Union fails to exercise good faith in halting the work interruption, Union and the employees involved shall be deemed in violation of this article and City shall be entitled to seek all remedies available to it under applicable law.
- 9.08.03 Should City change or increase the duties, requirements, or safety hazards of any job classification(s) represented herein, City will meet and confer with Union no later than thirty (30) days before effective date of such change or changes for the purpose of negotiating appropriate salary adjustment(s) for the so changed classification(s) at a level appropriate to compensate for the increased duties, requirements or safety hazards.

ARTICLE X. – GRIEVANCE PROCEDURE

- 10.01 The following grievance procedure will be in effect:
- 10.02 A grievance is defined as any dispute involving the interpretation, application or alleged violation of:
- a. A current Memorandum of Understanding between City and Union.
 - b. City's Personnel Rules where the provision in dispute is within the scope of representation.
- 10.03 Disciplinary appeals are subject to the provisions of City's Personnel Rules: Disciplinary appeals are subject to the provisions of City's Personnel Rules.
- 10.04 **Informal and Formal Grievances**
- 10.04.01 Step 1. Union or an employee who has a grievance shall bring it to the attention of his/her immediate supervisor within **twenty (20)** working days of the occurrence of the act which is the basis for the dispute. If the employee and the immediate supervisor are unable to resolve the grievance within ten (10) working days of the date it is raised with the immediate supervisor, the employee shall have the right to submit a formal grievance which shall contain the following information:
- a. The name of the grievant;
 - b. The grievant's department and specific work site;
 - c. The name of the grievant's immediate supervisor;
 - d. A statement of the nature of the grievance including the date and place of occurrence;
 - e. The specific provision, policy, or procedure alleged to have been violated;

- f. The remedies sought by the grievant; and
- g. The name of the individual or organization, if any, designated by the grievant to represent him/her in the processing of the grievance. However, in no event, shall an employee organization other than the one which formally represents the position occupied by the grievant be designated as the grievant's representative.

10.04.02 Step 2. If Union or an employee is dissatisfied with the decision of the immediate supervisor in Step 1, they may submit the grievance to the appropriate Department Director within ten (10) working days from the date of the immediate supervisor's decision. The Department Director shall respond to the Grievance in writing within seven (7) working days from the date of its receipt.

10.04.03 Step 3. If the employee is dissatisfied with the decision of the Department Director in Step 2, he/she may submit the grievance to the City Manager within ten (10) working days from receipt of the Department Director's response. The City Manager or his/her designated representative shall respond to the Grievance in writing within the ten (10) working days of its receipt. Within this period, the City Manager or his/her designee, at his/her discretion, may conduct an informal hearing involving the parties to the dispute.

10.04.04 Step 4. If Union or the employee is dissatisfied with the decision of the City Manager, he/she may submit the grievance to an Employee Relations Panel as provided in Part C, listed below. Notice of such appeal must be filed in writing by the employee with the City Manager within fifteen (15) working days of receipt of the City Manager or his/her designee's decision.

10.05 Employee Relations Panel

10.05.01 The Employee Relations Panel shall consist of three (3) members selected as follows:

- A. A City Management official selected by the City Manager;
- B. A City employee selected by the grievant provided, however, that the participation of the employee so selected shall not constitute a conflict of interest nor subject that employee to any recriminations as a result of his/her participation; and
- C. A representative of the California State Mediation and Conciliation Service, or an individual chosen by the parties knowledgeable in public sector labor relations from any source reasonably likely to produce such an individual, including, but not limited to, a labor organization or management organization. This person shall serve as chairperson.
 - i. Where provided compensation, pay shall be shared by City and the grievant or Union.
 - ii. The majority decision of the panel shall be final and binding, subject only to ratification by the City Council if said decision mandates a capital

expenditure or significant, unbudgeted expenditures. In those ~~instances~~instances, the ruling shall be submitted to the City Council for action which may include modification or reversal. Denial of an award by the City Council does not constitute a waiver of Union's right to seek enforcement of the Award in the Courts.

10.05.02 The conduct of the Panel's hearing shall be governed by the following ground rules.

- A. All hearings shall be convened during regular established City hours to the participation in the hearing is required by the Panel, shall not suffer loss of wages for time devoted to this purpose.
- B. All hearings shall be conducted in an expeditious manner, with the Chairperson retaining final authority to rule on procedural matters or on other points affecting the length and conduct of the hearing. Legal counsel, court reporters and briefs shall only be utilized upon agreement between City and Union or grievant and shall not serve to delay the Panel's decision, except by mutual agreement.
- C. The Panel shall be committed to resolving the grievance in an objective, timely and equitable fashion and shall not permit either party to engage in any presentation or line of an argument which detracts from this purpose. Moreover, the Panel shall not accept evidence not presented in Step 3 of this procedure.
- D. No hearing shall be convened unless both parties have stipulated in writing to the issue or issues to be heard by the panel.

10.05.03 **General Conditions**

- A. Any time limit set forth in this procedure may be extended by written agreement between City and the grievant or Union
- B. Failure on the part of the grievant or their designated representative to comply with the time limits of this procedure or any extension thereto shall constitute a withdrawal of the grievance without further recourse for re-submittal under this procedure. Failure on the part of City to comply with prescribed time limits or extension thereto shall result in the grievance being moved to the next step of the procedure.
- C. The grievant shall be entitled to have a representative of his own choosing, except as provided in Step 1, B-G., present at any grievance meeting with City.
- D. A representative of a recognized employee organization which represents the grievant's position shall be entitled to be present at any hearing held in conjunction with Step 3 and Step 4 of this procedure.

- E. The City Manager or his/her designated representative shall serve as the central repository for all grievance records.

ARTICLE XI. – MISCELLANEOUS

- 11.01 City and Union consent to form a committee whose task shall be to create a program that provides for certain positions within City's classifications to be designated as "flexibly staffed." Flexibly staffed positions will afford City the opportunity to increase the capacity of the work force to deliver quality services to citizens and provides City employees with advancement opportunities within their job classification. Once the program is established, Human Resources shall be responsible for its oversight.

ARTICLE XII. – RATIFICATION

- 12.01 This MOU shall become effective July 1, 2015.
- 12.02 Unless mutually agreed otherwise by City and Union, Union shall provide City with its written requests on terms within the scope of representation for the period beginning January 1, 2019 no later than two (2) weeks prior to the start of negotiations. City and Union shall begin to meet and confer on or before August 1, 2018 and endeavor to complete negotiations on a successor MOU by the end of November 2018.

FOR THE CITY OF MORGAN HILL

FOR AFSCME, LOCAL 101

Steve RymerChristina Turner _____

Date
City Manager

Carol McEwan
AFSCME Chief Negotiator

Cindy Murphy _____
Date
Assistant City Manager
for Administrative Services

Date
Osbaldo Esquivel
~~President~~ Utility Worker I
~~President~~

Michelle Katsuyoshi _____
Date

~~Human Resources Director~~

Vice-President
~~Human Resources Manager~~Director

Clint Byrum Adam Galloway

~~Joni Evans~~Michael Horta Date _____ John Henry _____

Date
Sr. Human Resources Analyst _____
~~Treasurer~~ ~~Engineering Aide II~~
~~Secretary/Treasurer~~

~~Chris Ghione~~Harjot Sangha Date _____ Lisa Cvitanich _____
Date
Accounting Manager Date _____ ~~Angela Rivera~~Lisa Cvitanich Date _____
Secretary

~~Secretary~~
~~Community Services Director~~ Accounting Assistant II

Dan Repp Date _____
Deputy Director for Utilities Services

~~Allyson Hauck~~Jesse Lad Date _____
~~Senior Counsel~~Negotiator
~~Renne Sloan Holtzman Sakai LLP~~Myers Nave

EXHIBIT GD

AFSCME, LOCAL 101 EDUCATIONAL INCENTIVE PAY PROGRAM

Effective: July 2, 1995

(Employees hired prior to July 1, 2008 are eligible for EIP)

I. INTRODUCTION

Educational Incentive Pay (EIP) shall be paid in addition to regular pay when education is in addition to the regular requirements of their job as stated in City's adopted job descriptions and said education is job-related. An employee may not receive more than a ~~seven and one half~~seven- and one-half percent

(7.5%) increase above the employee's base monthly salary.

II. PROGRAM GOALS

The goals of this program are:

- A. To encourage employees to pursue education and programs which enhance their job performance and understanding.
- B. To prepare employees for possible promotions to other positions or future openings within City.
- C. To reward employees for their own initiative demonstrated through their participation in this program.

Any evaluation or decision regarding this program or an employee's participation in the program will be made based on the intent of the above stated goals.

III. DEFINITIONS

- A. "Job-Related" - A course or training program that directly relates to or enhances the employee's ability to perform the duties of their classification.
- B. "Degree Program" - A series of college level courses that when completed results in an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, or Master of Science degree. Courses that qualify for a degree program are those courses identified by the college or university that count toward the specific degree program the employee has selected.
- C. "Requalification" - The annual process that an employee must complete in order to continue receiving EIP for the following fiscal year.
- D. "Minimum job requirements" - The minimum job qualifications listed on the job description for each job classification.

IV. RATES OF PAY FOR EDUCATION ABOVE STATED JOB REQUIREMENTS

A. For classifications that have a minimum education requirement of high school diploma or the equivalent (GED), the following steps are available for attainment of up to ~~seven and one-half~~~~seven- and one-half~~ percent (7.5%) EIP:

- (1) One and a quarter percent (1.25%) = fifteen (15) recognized semester college units, two hundred forty (240) hours of job-related training, or the equivalent.
- (2) One and a quarter percent (1.25%) = thirty (30) recognized semester college units, four hundred eighty (480) hours of job-related training, or the equivalent.
- (3) One and a quarter percent (1.25%) = ~~forty-five~~~~forty-five~~ (45) recognized semester college units, seven hundred twenty (720) hours of job-related training, or the equivalent.
- (4) One and a quarter percent (1.25%) = sixty (60) recognized semester college units, nine hundred sixty (960) hours of job-related training, attainment of an Associate of Arts degree or Associate of Science degree, or the equivalent.
- (5) One and a quarter percent (1.25%) = ninety (90) recognized semester college units, one thousand four hundred forty (1440) hours of job-related training, or the equivalent.
- (6) One and a quarter percent (1.25%) = one hundred twenty (120) recognized semester college units, one thousand nine hundred twenty (1920) hours of job-related training, attainment of a Bachelor of Arts degree or Bachelor of Science degree, or the equivalent.

B. For classifications that have a minimum education requirement of an Associate of Arts or Associate of Science degree or two (2) years of job-related college course work, the following steps are available for attainment of up to seven and a half percent (7.5%) EIP:

- (1) One and a quarter percent (1.25%) = fifteen (15) recognized semester college units toward attainment of a Bachelor's degree, two hundred forty (240) hours of job-related education or training, or the equivalent.
- (2) One and a quarter percent (1.25%) = thirty (30) recognized semester college units toward attainment of a Bachelor's degree, four hundred eighty (480) hours of job-related education or training, or the equivalent.
- (3) One and a quarter percent (1.25%) = Attainment of a Bachelor of Arts or Bachelor of Science degree, nine hundred sixty (960) hours of job-related education or training, or the equivalent.
- (4) One and a quarter percent (1.25%) = Following attainment of a Bachelor's degree, fifteen (15) recognized semester units that qualify toward attainment of a Master of Arts or Master of Science degree, or the equivalent.
- (5) One and a quarter percent (1.25%) = Attainment of a Master of Arts or Master of Science degree or the equivalent.
- (6) One and a quarter percent (1.25%) = Following attainment of a Bachelor's degree or Master's degree, an additional two hundred forty (240) hours of job-related education or training.

- C. For classifications that have a minimum education requirement of a Bachelor of Arts or Bachelor of Science degree, the following steps are available for attainment of up to seven and a half percent (7.5%) EIP:
 - (1) One and a quarter percent (1.25%) = fifteen (15) recognized semester units that qualify toward attainment of a Master of Arts or Master of Science degree, or the equivalent.
 - (2) One and a quarter percent (1.25%) = Attainment of a Master of Arts or Master of Science degree or the equivalent.
 - (3) One and a quarter percent (1.25%) = Following attainment of a Bachelor's degree or Master's degree, an additional two hundred forty (240) hours of job-related education or training, or the equivalent.
 - (4) One and a quarter percent (1.25%) = Following attainment of a Bachelor's degree or Master's degree, four hundred eighty (480) hours of job-related education or training, or the equivalent.
 - (5) One and a quarter percent (1.25%) = Following attainment of a Master's degree, seven hundred twenty (720) hours of job-related education or training, or the equivalent.
 - (6) One and a quarter percent (1.25%) = Following attainment of a Bachelor's degree or Master's degree, nine hundred sixty (960) hours of job-related education or training, or the equivalent.
- D. "Equivalents" are defined in the requalification section of this policy.
- E. Different certificates will qualify towards EIP based on the certificate's degree of difficulty, hours required for completion, and the recommendation of the Department Director. Attachment A lists specific certificates and licenses, and the respective EIP points that qualify for EIP.

V. REVIEW PROCESS FOR CERTIFICATIONS

The following review process will be used for assessing how a certification, other than a college course, will count towards EIP:

- A. Where possible, the formula found in the "Equivalents other than college units" section of this article will be used to evaluate the degree to which the certificate counts towards EIP.
- B. If it is possible to obtain, the Human Resources Manager will contact the agency awarding the certificate and request a statement describing the number of preparation and/or course hours needed to obtain the certificate. This statement will then be converted to formula hours.
- C. In the event a determination cannot be made using paragraphs A and B listed above, the employee will make a recommendation to their Department Director and to the Union President or in the absence of the Union President, the Vice-President. This recommendation by the employee shall be in writing and shall include the degree to which the employee feels the certificate should count towards EIP and the justification for such.
- D. If these two (2) individuals agree with the employee's recommendation or if they both agree with a modified recommendation, they will present such to the Human Resources Manager for final determination.
- E. The Human Resources Manager, if he/she concurs with the recommendation, will see that such certification is counted towards the employee's EIP.

- F. If the Department Director and Union President cannot agree on a recommendation, the Human Resources Manager will, with both parties present, conduct an informal hearing and allow both individuals to state their recommendation along with appropriate justification. The Human Resources Manager may decide to choose one of the recommendations presented or a modification of such. The decision of the Human Resources Manager will be final.
- G. If both the Department Director and the Union President agree on a recommendation which the Human Resources Manager cannot endorse, the Human Resources Manager will explain his/her justifications and attempt to get the parties to modify their recommendation. If agreement cannot be reached the issue will be presented to the City Manager for determination.
- H. If the employee is not satisfied with the decision of the City Manager, the employee may file a grievance pursuant to the grievance procedure contained in the AFSCME MOU. The grievance will be advanced to the final step in the grievance process as the City Manager review has already taken place.

VI. PROGRAM QUALIFICATIONS AND GUIDELINES

The following qualifications and guidelines exist to help administer this program:

- A. An employee must have completed his/her initial probation before being eligible for this program. Employees on probationary status as a result of promotions shall be deemed eligible under this program.
- B. The employee must demonstrate that the course or degree being sought and being considered for the EIP program will be directly related towards enhancing the employee's present job skills or future promotional opportunities within City. The Human Resources Manager will make this determination after discussions with the employee and the Department Director. The burden of proof as to job relatedness of specific educational levels shall be upon employee. In addition, courses required as part of a degree program will also be considered.
- C. Employees should contact their Department Director prior to enrollment in a course or class to receive confirmation that such a class would qualify for this program. The Department Director will contact the Human Resources Office to receive confirmation that a specific course or certification qualifies for EIP.
- D. Upon Department Director approval, City will make every effort to reasonably accommodate employee course schedules provided employee workload, overtime budgets, etc. are not adversely impacted.
- E. All attendance and participation in this program will be on the employee's own time and at their own expense.
- F. The tuition reimbursement program is a separate benefit contained in the MOU and employees may have the option of using the tuition reimbursement program towards the attainment of their education or professional development goals. Use of the tuition reimbursement program by the employee will not violate any provisions of this article.
- G. To qualify for this program, the employee must complete the course(s) with a passing grade of "C" or better. If grades are not assigned, the employee must provide other written certification which demonstrates that the employee has successfully passed the course or obtained certification.

- H. Payment of EIP will be effective on the first day of the payroll period following the date of the college degree, course certification, etc., provided the employee has made a timely request to the Human Resources Manager for such pay. In no circumstances will payroll periods be split to match the exact date appearing on the degree or certificate.
- I. EIP is based upon education which is in addition to the regular requirements of the job as stated on City's adopted job description. Employees should refer to each specific job description for the minimum educational requirements. These educational requirements are used as the starting point for EIP calculations.

VII. DOCUMENTATION OF EDUCATIONAL ACHIEVEMENT

- A. City will provide an EIP Program form to be kept in the employee's personnel file to track the employee's participation in this program.
- B. Evidence of successful completion of a degree, course or certificate shall consist of a diploma or certificate indicating the major field of study along with a copy of college transcripts.
- C. The employee is responsible to furnish in a timely fashion all necessary documentation to the Human Resources Office.

VIII. TERMINATION OF EDUCATIONAL INCENTIVE PAY

- A. EIP shall be terminated at such time as the employee receiving EIP is promoted to or otherwise placed in a position requiring the educational level which the employee already possesses or a higher educational level.
- B. In cases where a promotion would cause an employee to lose their EIP due to a reclassification, the employee will receive a new base salary equal to or greater than an amount five percent (5%) above their old base salary and EIP combined.
- C. EIP will also be terminated when an employee fails to requalify as per the guidelines outlined in this policy.
- D. Once an employee fails to requalify, they will lose their EIP until such time as they have completed the outlined requalification requirements. At such time, the employee will then be able to return to the EIP level they enjoyed before they failed to requalify.

IX. REQUALIFICATION PROCESS

Requalification for continued receipt of EIP shall be training sessions provided by the City during each year of the contract as identified by the Human Resources Manager.

X. EMPLOYEES PREVIOUSLY ON LONGEVITY

- A. Effective October 1, 1989, the City's Longevity Pay Program will be replaced entirely with a special EIP for only those employees still on the Longevity Pay Program as of that date. The terms of this special program will be as follows:
 - i. All eligible employees shall be converted to the special EIP program at the same pay as they enjoyed under the Longevity Pay Program. No employee will be allowed to begin receiving longevity pay who is not already receiving such pay prior to October 1, 1989. This special EIP Program assumes that these employees will continue to

requalify under the City's existing EIP program guidelines for continued receipt of EIP.

- ii. An employee previously on the longevity pay program may use this special EIP program or they may convert at any time they choose to the regular EIP program outlined in this article. This is a one-way conversion. Once an employee elects the regular EIP Program, he/she may not return to this special EIP Program.
- iii. Employees covered under the previous longevity program may advance on their anniversary date to the various pay levels of five percent (5%) after ten (10) years service, ~~seven and one-half~~ seven- and one-half percent (7.5%) after fifteen (15) years of service, and ten percent (10%) after twenty (20) years of service. Advancement is based upon the assumption that these employees will continue to requalify under the City's existing EIP program guidelines for continued receipt of EIP pay.
- B. Once an employee fails to requalify, they will lose their EIP until such time as they have completed the outlined requalification requirements. At such time, the employee will then be able to return to the EIP level they enjoyed before they failed to requalify.
- C. Employees previously on the City longevity program who do not wish to continue to requalify annually may make a one-time decision to freeze their percentage benefit at its current rate.

**Attachment A of AFSCME
Educational Incentive Pay Program
List of Qualifying Certificates and Point Values**

EIP Point Equivalency

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
State of California	Water Treatment Operator	I - V	6 points ea.
AWWA	Water Distribution Operator	I - IV	6 points ea.
AWWA	Backflow Prevention Tester	n/a	40 hours = 2.5 points
AWWA	Cross Connection Specialist	n/a	40 hours = 2.5 points
CWEA	Collection System Maintenance	I - IV	6 points ea.
CWEA	Mechanical/Electrical/Instrumentation Technologist	I - IV	6 points ea.
CSUS Homestudy Program	Operation and Maintenance of Wastewater Collection Systems Vol. 1	n/a	6 points
CSUS Homestudy Program	Operation and Maintenance of Wastewater Collection Systems Vol. 2	n/a	6 points
CSUS Homestudy Program	Water Treatment Plant Operation Vol. 1 (90 hours)	n/a	6 points
CSUS Homestudy Program	Water Treatment Plant Operation Vol. 2 (90 hours)	n/a	6 points
CSUS Homestudy Program	Small Water System Operation and Maintenance (90 hours)	n/a	6 points
CSUS Homestudy Program	Water Distribution System Operation and Maintenance (90 hours)	n/a	6 points
State of California	Qualified Applicators License	B	6 points
CSUS Homestudy Program	Manage for Success: Effective Utility Leadership Practices (45 hours)	n/a	3 points
CSUS Homestudy Program	Utility Management	n/a	1.5 points

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
CSUS Homestudy Program	Collection Systems: Methods for Evaluation and Improving Performance	n/a	2 points
CSUS Homestudy Program	Small Wastewater System Operation and Maintenance Volume I (90 hours)	n/a	6 points
CSUS Homestudy Program	Operation of Wastewater System Treatment Plants Volume I (90 hours)	n/a	6 points
CSUS Homestudy Program	Operation of Wastewater System Treatment Plants Volume II (90 hours)	n/a	6 points
CSUS Homestudy Program	Operations of Wastewater Treatment Plants Volume I (90 hours)	n/a	6 points
CSUS Homestudy Program	Operations of Wastewater Treatment Plants Volume II (90 hours)	n/a	6 points
State of California	Water Distribution Operator	I - V	6 points ea.
AWWA	Water Treatment Operator	I - IV	6 points ea.
AWWA	Water Conservation Practitioner	n/a	2.5 points
State of California	Journeyman Electrician Certification	n/a	6 points
International Society of Arboriculture	Certified Arborist	n/a	6 points
State of California	Class A Drivers License	n/a	6 points
State of California	Real Estate Salesperson License	n/a	10 points
State of California	Real Estate Broker License	n/a	25 points
State of California	Notary Public	n/a	3.5 points
State of California	General Contractors License	n/a	up to 4.5 points
IIMC	Certified Municipal Clerk	n/a	up to 38.75 EIP points
ICC	Plans Examiner	n/a	4 points
ICC	Building Inspector	n/a	4 points

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
ICC	Electrical Inspector	n/a	4 points
ICC	Building Code Accessibility/Usability Specialist	n/a	4 points
ICC	Housing Inspector	n/a	4 points
ICC	Zoning Inspector	n/a	4 points
ICC	Mechanical Inspector	n/a	4 points
ICC	Plumbing Inspector	n/a	4 points
HCC	Light Commercial Combination Inspector	n/a	4 points
ICC	Elevator Inspector	n/a	4 points
ICC	Special Inspector	n/a	4 points
CABO	One and Two Family One- and Two-Family Dwelling Inspector	n/a	4 points
State of California	Engineer in Training	n/a	7.5 points
State of California	Professional Engineer	n/a	12 points
State of California	Land Surveyor in Training	n/a	7.5 points
State of California	Land Surveyor	n/a	10.5 points
International Assn. of Administrative Professionals	Computer Concepts	n/a	3
International Assn. of Administrative Professionals	Information Systems	n/a	3
International Assn. of Administrative Professionals	Records Management	n/a	3
International Assn. of Administrative Professionals	Business Communications	n/a	3
International Assn. of Administrative Professionals	Human Resources Management	n/a	3

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
International Assn. of Administrative Professionals	Accounting	n/a	1
International Assn. of Administrative Professionals	Management <i>or</i> Supervision	n/a	4
International Assn. of Administrative Professionals	Organizational Behavior	n/a	3
International Assn. of Administrative Professionals	Communications	n/a	3
International Assn. of Administrative Professionals	Leadership	n/a	3

RATIONALE FOR ASSIGNING POINT VALUES

In general, certification/license requirements were equated to college units by using our standard formula of three (3) college semester units = ~~forty-eight~~forty-eight (48) hours of class time = three (3) EIP points. None of the organizations listed above offered standard Continuing Professional Education (CPE) credits for the certifications/licenses, however, employees may take preparatory courses at institutions which do offer CPE credits. If such credits are offered, they count toward EIP, with one (1) CPE credit being equal to one (1) college semester unit.

EIP credit may also be given for home study which is *not* related to a preparatory class, provided that the employee keeps a detailed written log showing the hours of study and the specific topics studied.

For certifications which accept college courses or degrees in lieu of experience, employees will receive credit for the courses/degree under Section IV of the EIP Program.

Real Estate License

The State of California offers two (2) real estate licenses which might be obtained by City employees to benefit their job: a Real Estate Salesperson License, and a Real Estate Broker License. The requirements for each license are outlined below.

Real Estate Salesperson License	EIP Points	Real Estate Broker License	EIP Points
Must be 18 years old	0	Must be 18 years old	0
Must complete 1 3-semester unit course on Real Estate Principles, and 2 additional 3-unit courses within 18 months of receiving the license (9 semester units total required)	9 college units = 9 EIP points	Must take 8 3-unit classes and have two years of full-time licensed real estate sales person experience or a 4-year degree	24 college units = 24 EIP points
Pass Real Estate Salesperson exam	1	Pass Real Estate Broker exam	1
TOTAL POINTS	10	TOTAL POINTS	25

Notary Public

The requirements for becoming a Notary Public in the State of California are outlined below.

Notary License	EIP Points
Must be 18 years old, legal resident	0
Certified home study, up to 32 hours	up to 2
Optional 8-hour preparatory class for the exam	.5
Pass Notary exam	1
TOTAL POSSIBLE POINTS	up top 3.5

General Contractors License

The requirements for obtaining a General Contractors License in the State of California are outlined below.

General Contractors License	EIP Points
Must have 4 years of experience at the journey level (or a BS degree and 1 year of experience)	0
Certified home study, up to 32 hours	up to 2
Optional 24-hour preparatory class for the exam	24 hours = 1.5 EIP points

General Contractors License	EIP Points
Pass General Contractors exam	1
TOTAL POSSIBLE POINTS	up to 4.5

Certified Municipal Clerk

The process for becoming a Certified Municipal Clerk varies considerably depending on the work experience and educational level of the applicant. This table summarizes the primary ways individuals become a Certified Municipal Clerk and assigns EIP points for individuals working on this certification. A copy of the IIMC application for certification is available for review.

Certified Municipal Clerk	EIP Points
Must be a City or Deputy City Clerk, a 3-year member of IIMC, accept the IIMC Code of Ethics, submit an application form, and have a letter from a Clerk sponsor	0
<i>Educational Requirements:</i> Must attend a 100-hour Clerks Institute, have a BA degree in Public Administration or a related field, or have an AA in Public Administration and 67 of Clerks Institute training	100 hours = 6.25 EIP points
<i>Experience Requirements:</i> Must obtain 50 IIMC points based on a combination of work experience, Municipal Clerks Conferences, and relevant college/university course credits not included in educational qualifications. Up to 40 IIMC points for work experience: 4 points per year for a full-time Municipal or Deputy Clerk with administrative responsibility	Depends on method of meeting the requirement 0 EIP points for work experience
Up to 20 IIMC points for attending IIMC Conferences (1 IIMC point per 6-hour day; total 120 hours) Up to 25 IIMC points for college course credits, 1 pt=1 course hour	up to 7.5 EIP points for 120 hours at conferences 25 college credits = 25 EIP points
TOTAL POSSIBLE POINTS	up to 38.75

ICBO and CABO Certifications

The International Code Council (ICC) and the California Association of Building Officials (CABO) offer a number of different certifications (Plans Examiner, Building Inspector, Plumbing Inspector etc.) useful for the professional development in certain fields. The certification process for each of the certificates list above is the ~~same, and~~[same and](#) is summarized below.

ICC /CABO Certificates	EIP Points
Certified home study, up to 32 hours	up to 2
Optional 8-hour exam preparation class	8 hours = .5 EIP points
Pass ICC /CABO exam	1.5
TOTAL POSSIBLE POINTS	up to 4

Engineer-in-Training

The requirements to obtain an Engineer-in-Training certificate are outlined in the California Business and Professions ~~Code, and~~[Code and](#) are summarized below.

Engineer-in-Training Certificate	EIP Points
Three years of engineering experience <i>or</i> 3 years of college education (90 units) in an engineering curriculum	0 EIP points for experience
Certified home study, up to 48 hours	up to 3
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass EIT exam	3
TOTAL POSSIBLE POINTS	up to 9 EIP points

Professional Engineer

The requirements to obtain a Professional Engineer certificate are outlined in the California Business and Professions ~~Code, and~~[Code and](#) are summarized below.

Professional Engineer Certificate	EIP Points
Six years of engineering experience <i>or</i> 4-year college degree in an engineering curriculum plus two years of experience	0 EIP points for experience
Certified home study, up to 96 hours	up to 6
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass PE exam	6
TOTAL POSSIBLE POINTS	up to 15 EIP points

Land Surveyor-in-Training

The requirements to obtain a Land Surveyor-in-Training certificate are outlined in the California Business and Professions [Code, and Code and](#) are summarized below.

Land Surveyor-in-Training Certificate	EIP Points
Two years of land surveying experience or 2 years post-secondary education in land surveying (60 units)	0 EIP points for experience
Certified home study, up to 48 hours	up to 3
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass LSIT exam	3
TOTAL POSSIBLE POINTS	up to 9 EIP points

Land Surveyor

The requirements to obtain a Land Surveyor certificate are outlined in the California Business and Professions [Code, and Code and](#) are summarized below.

Land Surveyor Certificate	EIP Points
Six years of engineering experience <i>or</i> 4-year college degree in (120 units) in an engineering curriculum plus two years of experience	0 EIP points for experience
Certified home study, up to 96 hours	up to 6
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass Land Surveyor exam	3
TOTAL POSSIBLE POINTS	up to 12 EIP points

**CITY OF MORGAN HILL & AFSCME,
LOCAL 101
DRUG AND ALCOHOL TESTING PROGRAM
PURSUANT TO THE DEPARTMENT OF
TRANSPORTATION REGULATIONS**

EFFECTIVE DATE: November 3, 1997
REVISED: July 1, 2003

Effective January 1, 1996, the City of Morgan Hill must comply with the United States Department of Transportation regulation implementing the Federal Omnibus Transportation Employee Testing Act (OTETA) of 1991. OTETA requires the City to establish alcohol and drug testing programs to help prevent the misuse of alcohol and drugs by drivers of commercial motor vehicles. Keeping in mind the basic objectives stated in the City of Morgan Hill Policy on Substance Abuse, which went into effect September 26, 1989, the City has established the following alcohol and drug testing procedures and program in compliance with the OTETA, hereafter referred to as "the program".¹

Employees covered by this program are subject to pre-employment, cause, and random testing, and may be subject to post-accident, return-to-duty and unannounced follow-up testing. The testing procedures use an evidential breath test (EBT) device for alcohol testing. For drug testing, urine specimen collection and testing by a laboratory certified by the Department of Health and Human Services is required. If the Medical Review Officer (MRO) determines that an employee has misused alcohol or drugs in violation of this program, the City will remove the employee from safety-sensitive functions. The employee will not perform safety-sensitive functions until the employee meets the requirements established in this program which may include referral to a Substance Abuse Professional (SAP), participation in a rehabilitation program, return-to duty testing, and/or follow-up testing.

DEFINITIONS

Following are the definitions for the Drug and Alcohol Testing Program. This is a list of major definition areas and is not intended to be all inclusive of definition or terms.

WORD/PHRASE	DEFINITION
Adulterated Specimen	A specimen that contains a substance that is not expected to be present in human urine or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.
Alcohol	The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.
Alcohol Concentration (or Content)	The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.
Collection Agency	State licensed service provider that follows procedures for the collection of urine samples in a split specimen process for delivery to a toxicological laboratory for testing.
Collection Site	A place where individuals present themselves for the purpose of providing breath or urine samples to be analyzed for specified alcohol or drugs.

¹This program meets the federal regulatory requirement that the City promulgate policies and procedures on the misuse of alcohol and use of controlled substances.

WORD/PHRASE	DEFINITION
Commercial Motor Vehicle (CMV)	A motor vehicle or combination of motor vehicles used in commerce or transport passengers or property if the motor vehicle: 1. Has a gross vehicle weight rating of 26,001 or more pounds; or 2. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 3. Is designed to transport 16 or more passengers including the driver; or 4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
Controlled Substance	Drugs as deemed under this policy include marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP).
DOT	Federal Department of Transportation
Driver	Any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers, casual, intermittent or occasional drivers, and leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City. For the purposes of pre-employment/ pre-duty testing only, the term "driver" includes a person applying to the City to drive a commercial motor vehicle.
Drug	Any substance (other than alcohol) that is a controlled substance as defined above and 49 CFR Part 40.
FHWA	The Federal Highway Administration, U.S. Department of Transportation.
Owner-Operator (s)	A driver(s) who has been contracted for services with the District. For the purposes of these procedures and the City's Alcohol and Controlled Substances Abuse Policy, owner-operators are not to be considered employees, but will be required to participate in the City's Alcohol and Controlled Substances Abuse Policy like all employee drivers.

WORD/PHRASE	DEFINITION
Medical Review Officer (MRO)	A licensed physician accredited by the Medical Review Officers' Association National with knowledge and expertise of the clinical and medical diagnosis and treatment of alcohol and drug related disorders.
On Duty Time	All time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. "On duty time" shall include: 1. All time at a City facility or other City property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City; 2. All time inspecting, servicing, or conditioning any commercial motor vehicle at any time; 3. All driving time; 4. All time, other than driving time, in or upon any commercial motor vehicle; 5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; 6. All time spent performing the driver requirements relating to accidents; 7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
Performing (a safety-sensitive function)	A driver is considered to be performing a safety-sensitive function during any period in which the driver is actually performing, ready to perform or immediately available to perform any safety-sensitive functions.
Positive Test	A test is only positive and reported to the City when the initial screening test is positive, the confirming test is positive, and the Medical Review Officer has discussed with the employee the results of the two tests and ascertained that the tests are accurate.
Provider	Certified professional/agency contracted to provide services prescribed by this program.

WORD/PHRASE	DEFINITION
Reasonable Suspicion	The City believes the actions or appearance or conduct of a commercial motor vehicle driver who is on duty as defined below, are indicative of the use of alcohol or drugs.
Refusal to Submit (to an alcohol or drug test)	A covered employee who (1) fails to arrive at the collection site within a reasonable time, as determined by the employer, (2) refuses to take an alcohol or drug test, (3) fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing in accordance with FHWA regulations, (4) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with FHWA regulations, (5) provides a Verified Adulterated or Substituted test, (6) engages in conduct that clearly obstructs the testing process, (7) fails to remain at the collection facility until all testing is completed, or (8) refuses to submit to a direct observation when required by the collector or employer. A refusal includes not providing a breath sample or urine as directed, refusing to sign appropriate control forms, not being readily available following an accident, using alcohol within eight hours of an accident, or tampering with a sample.
Safety-Sensitive Function	Any of those on-duty functions set forth in 49 CFR section 395.2 and as defined under "On duty time."
Split-Specimen	A division of the original urine sample that is stored by the lab when provided by the collection agency for a second test to be used when the primary test results are challenged.
Substance Abuse Professional (SAP)	A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.
Substituted Specimen	A specimen with creatine and specific gravity values that are so diminished that they are not consistent with human urine.
Supervisor	Any one of the following positions: Director of Public Works, Utility Systems Manager, Maintenance Supervisor, or in their absence, a designated trained individual.

WORD/PHRASE	DEFINITION
Toxicological Laboratory	A drug abuse service laboratory licensed to perform alcohol and drug testing under the auspices of the federal government with specific expertise and chain of custody procedures, split specimen sampling, and drug/alcohol record-keeping methodologies. The agency must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary and long-term storage and transportation or shipment of the samples to a laboratory.

I. COVERED EMPLOYEES

A. Covered employees must comply with the alcohol and drug testing requirements of this program. "Covered employees" are those employees who are required to drive, may be required to drive, or have the potential to drive, and who meet any of the three (3) following qualifications:

1. They are required by the City to possess a Commercial Driver's License (Class A or B) to do their jobs.
 - a. This includes all regular, probationary, temporary, and work-out-of class assignments in job positions which require a Commercial Driver's License.
 - b. This also includes applicants to jobs with the City which require the possession of a Commercial Driver's License.
2. They operate a commercial motor vehicle.

"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- b. Has a gross vehicle weight rating of 26,001 or more pounds; or
- c. Is designed to transport 16 or more passengers, including the driver; or

- d. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded and over 1,000 lbs. under the Hazardous Materials Regulations.²
- 3. They are performing safety-sensitive functions.
 - a. "Safety-sensitive function" means any of the following functions:
 - 1) All time spent at the driving controls of a commercial motor vehicle in operation;
 - 2) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 - 3) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
 - 4) All time spent performing the requirements for covered employees who are involved in an accident, as further described in Section X;
 - 5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
 - 6) All time inspecting, servicing or conditioning any commercial motor vehicle at any time.
 - b. A covered employee "performs a safety-sensitive function" during any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
 - c. Employees who have the required commercial license and who want to be immediately available to perform safety-sensitive functions in a temporary, stand-by, call back, or work-out-of-class status will be subject to the provisions of this program.
- 4. Covered employees will also include any employee who has a Commercial Driver's License where the medical examination and/or license fees are paid for by the City.

²49 C.F.R. Section 390.5

II. GENERAL PROVISIONS FOR ALL ALCOHOL AND DRUG TESTING PROGRAMS

A. Notice to Covered Employees That Alcohol and Drug Testing is Required By Federal Law

Before performing an alcohol or drug test under this program, the City shall notify the employee that the alcohol or drug test is required by federal law.

B. Administration of the City's Alcohol and Drug Testing Program

The City has designated the Drug Program Coordinator in the Human Resources Office to answer employee questions about the City's alcohol and drug testing program and procedures.

C. Record Retention Requirements

In compliance with the record retention requirements under the OTETA, the City shall maintain confidential records of its alcohol and drug misuse prevention program in a secure location with controlled access. Records of positive results, documentation of refusals to take test, calibration documentation for breath testing devices, and driver evaluation and referrals shall be maintained for five (5) years in accordance with federal law. The City or its service agent shall generate an annual calendar year summary of the results of its program, which will also be retained for five (5) years. Records relating to the alcohol and drug collection process and training, including collection logbooks, documents relating to the random selection process, breath alcohol technician training, documents relating to reasonable cause tests, post-accident tests, and random tests, compliance, and evaluation, shall be maintained for up to five (5) years. The City or its service agent shall prepare an annual summary by March 15 for the previous year containing specific information as to the number of covered employees, employees who refused to submit to tests, the number of supervisors receiving training, the covered employees, the number and types of tests given, the results, the number of covered employees who refused to submit to tests, the number of supervisors receiving training, the covered employees who returned to duty after a positive test, and other similar information.

D. Access to Records

Covered employees are entitled, upon written request to the Human Resources Office, to obtain copies of any records pertaining to the employee's misuse of alcohol or drugs, including any records pertaining to his or her alcohol or drug tests. The City shall promptly provide the records requested by the employee.

Copies of or information in these records shall not be otherwise released to any other person except as follows:

1. To the Drug Program Coordinator and the City Manager who require access to

these records to comply with the requirements of federal law and this program;

2. To federal, state or local officials with regulatory authority over the City or any of its covered employees and who have legitimate need for access;
3. To a decision maker in connection with a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, and arising from the results of an alcohol and/or drug test administered under this program, or from the City's determination that the covered employee engaged in conduct prohibited by Section III; or
4. To a person identified by the covered employee in accordance with the terms of the employee's written consent authorizing such release.

E. Confidentiality and Recordkeeping

The City desires to comply with the confidentiality and recordkeeping requirements. As such, the City stipulates that with the exception of the Drug Program Coordinator or designee, Collection Facility, Testing Laboratory, MRO and SAP, the results of individual tests shall not be released to anyone without the expressed written authorization of the tested individual, unless ordered by means of proper legal procedure and appropriate legal authority, such as a court ordered subpoena, or in connection with a City disciplinary, grievance or arbitration proceeding initiated by or on behalf of the individual and arising from a certified positive alcohol or drug test.

To maintain confidentiality, records pertaining to program administration, the collection process and individual test records will not be a part of the individual personnel files. A separate test records retention system will be maintained by the Drug Program Coordinator.

The records will be secured and maintained by the Drug Program Coordinator. Access to the test records is restricted to the Drug Program Coordinator and the City Manager. The release to City Management of such information from the Drug Program Coordinator, medical sources of MRO will require the signed release of the employee. Unless noted, such records are permanent and are subject to examination by the Drug Program Coordinator, the City Manager or their designee.

However, information related to an employee's availability for work will be provided to the employee's supervisor ~~to insure that~~ to ensure that an employee is removed from a safety-sensitive function when necessary or accommodated in a non-safety-sensitive function, when appropriate. In the case of reasonable cause testing, the supervisor will receive the results of the alcohol and/or drug tests.

Collection and test records of employees producing negative alcohol and drug tests must be retained for one (1) year. Collection and test records of employees producing

positive alcohol tests of 0.02% Breath Alcohol Concentration (BAC) or greater must be retained for three (3) years and positive drug test must be retained for five (5) years.

The following lists of records shall be retained and maintained by the Drug Program Coordinator:

1. Supporting documents for pre-employment, post accident, reasonable cause or random testing decisions.
2. Records of 2 (2) year drug and alcohol testing histories of new hires.
3. Records of the collection process to indicate specimen identification, accountability and chain of custody.
4. Any individual reports or records provided directly to the tested employee by the MRO.
5. Records of test results and any information provided by the affected employee concerning split samples, retests, or follow-up tests.
6. Return to work test records.
7. All reports forwarded to reporting agencies.
8. Records and documents provided by the Drug Program Coordinator, Rehabilitation Agencies and any consultants.

III. PROHIBITIONS

A. It is UNLAWFUL for covered employees to do the following:

1. To perform safety-sensitive functions after a positive alcohol test result indicating a 0.04% BAC or a positive drug test result, regardless of when the alcohol or drug was ingested and regardless of ~~whether or not~~whether the employee is under the influence of alcohol or drugs;
2. Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04% or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04% or greater shall permit the driver to perform or continue to perform safety-sensitive functions. (See Federal Register, Section 382.201);
3. Perform or continue to perform safety-sensitive functions with an alcohol concentration of 0.02% to 0.04% (see Federal Register, Section 382.505);
4. To use alcohol or products containing alcohol while performing safety-

sensitive functions;

5. To perform safety-sensitive functions within four (4) hours after using alcohol or products containing alcohol;
6. To use alcohol or products containing alcohol for eight (8) hours following an accident for which the employee is required to take a post-accident alcohol test;
7. To report for duty or remain on duty and perform safety-sensitive functions when the employee is currently using a drug, unless the use of the drug is prescribed by a physician. Employees who are taking prescribed medication that may impair their ability to perform safety-sensitive functions are required to inform their supervisor immediately and prior to performing any safety sensitive functions.
8. To refuse to submit to any of the alcohol or drug test required by OTETA (random, post-accident, reasonable cause, follow-up, return to duty test) and alcohol/drug testing rules as described in this program.

A "Refusal to submit" to an alcohol or drug test means that a covered employee:

- a. Fails to arrive at the collection site within a reasonable time, as determined by the employer;
 - b. Refuses to take the test;
 - c. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with this program;
 - d. Fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with this program;
 - e. Provides a Verified Adulterated or Substituted test;
 - f. Engages in conduct that clearly obstructs the testing process;
 - g. Fails to remain at the collection facility until all testing is completed;
- or
- h. Refuses to submit to a direct observation when required by the collector or the employer.

B. The following drugs are specified in the law and will be analyzed during drug testing:

<u>Drug</u>	<u>Initial Screen (ng/ML)</u>	<u>Confirmation Level</u>
Marijuana	50	15
Cocaine	300	150
Amphetamines/ Methamphetamine	1,000	500
Opiates	300	300
Phencyclidine (PCP)	25	25

IV. CONSEQUENCES TO ENGAGING IN ANY GENERAL PROHIBITION

Any covered employee who engages in any action prohibited by this program under Section III will be subject to the following consequences.³

- A. The employee shall be relieved from performing safety-sensitive functions.
- B. The employee shall be immediately suspended according to Section VI.
- C. The employee shall be evaluated by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with the misuse of alcohol or drugs.
- D. After the completion of the suspension period, the employee may return to work as soon as medically certified by the MRO/SAP. The employee must, however, provide a negative test result and be certified for return to duty no later than ninety (90) calendar days after notification of the positive test result.

The employee must, at a minimum, provide six (6) follow-up tests during the first year following the employee's return to safety sensitive duties. The SAP will establish the number and frequency of follow-up tests and that follow-up testing may last up to five (5) years. Failure to be certified by the MRO/SAP or return to work shall result in termination.

- 1. The employee may use accumulated vacation, sick leave, personal leave, comp time or leave without pay while undergoing treatment/rehabilitation.
- 2. Leave accruals may not be used for discipline such as a suspension.
- 3. Any employee who is given an alcohol confirmation test according to 49 CFR 40.65 by the BAT and the BAC level is 0.02% or greater, but less than 0.04%, shall be required to take leave without pay or use vacation or personal leave, but not sick leave time, until the driver's next regularly scheduled duty period, but not less than twenty four (24) hours following administration of the test. Any employee who is given an alcohol confirmation test by the BAT and the BAC level is 0.02% or greater, but less than 0.04%, on the second time shall be suspended without pay for five (5) regularly scheduled work days. The employee shall be referred to the SAP for evaluation and assessment of fitness for duty.
- 4. Any employee who has a BAC level that is 0.02% or greater, but less than 0.04%, on the third time within a five (5) year period will be treated as the second step in random testing.

³For consequences to outside applicants, please see Section VIII (D)(4) of this program regarding pre-employment testing.

- E. Any covered employee who refuses to submit to an alcohol or drug test required by this program shall be terminated.
- F. The City's Drug Program Coordinator or designee will assist in advising the employee of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol or drugs, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs.

V. SELF-IDENTIFICATION PROCEDURE

Covered employees are encouraged to advise the City if they are involved with the misuse of alcohol or for the use of drugs. This procedure is available only to covered employees who have not been notified of a random test, reasonable cause test, or a post-accident test. This procedure cannot be used by covered employees to avoid the consequences for a positive test or a refusal to test.

PROCEDURE

If an employee self-identifies a problem with misuse of alcohol or drugs, the City will refer the employee to a SAP. Prior to returning to a safety-sensitive position, the employee will be tested.

If the SAP determines that the employee requires participation in a rehabilitation program, the employee will be referred to his/her own medical insurance plan and/or the City's Employee Assistance Program (EAP). The City is not required to pay for treatment beyond the cost contributed for those programs as stated in the AFSCME MOU.

If an employee self-identifies a second time, it will be treated as a first incident of a positive test through random testing.

VI. PERSONNEL ACTIONS

A. Disciplinary Action for Misconduct

Any covered employee who engages in an act prohibited by Section III violates federal law. Employee violations of this program may constitute misconduct under the City of Morgan Hill's Personnel Rules and Regulations, Section 11, "Disciplinary Actions" as may be amended from time to time.

- B. Nothing in this section shall be interpreted as interfering with the City's right to remove from the workplace an employee who poses a direct threat to another employee or others.

- C. All disciplinary action under this program is subject to the disciplinary procedures contained in the City's Personnel Rules and Regulations.

- D. The following is a guideline for disciplinary action when an employee violates the City's alcohol and drug program. Discipline shall be based on the degree of the offense and in accordance with the following guidelines:

E. DISCIPLINARY GUIDELINES

RANDOM TESTING	
1st Incident	* Counseling * Suspension (5 days) * Participate and complete rehabilitation, if necessary * Last Chance Agreement
2nd Incident	* Termination

POST ACCIDENT TESTING	
1st Incident	* Discipline (suspension or termination) dependent on seriousness of accident and/or the degree of disregard for safety * "Last Chance" Agreement * Participate and complete rehabilitation, if necessary
2nd Incident	* Termination

REASONABLE SUSPICION	
1st Incident	* Counseling * Suspension (5 days) * "Last Chance" Agreement * Participate and complete rehabilitation, if necessary
2nd Incident	* Termination

SELF-IDENTIFICATION	
1st Incident	* No discipline * Referred to SAP * Participate and complete rehabilitation, if necessary
2nd Incident	* Termination

PROBATIONARY EMPLOYEES	
Positive Drug Test	* Termination of probation. However, at the City's option, if an employee has status in a previous classification, the employee's probationary appointment may be terminated <u>terminated</u> , or the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the case and the classification
Positive Alcohol Test (.04 or greater)	* Termination of probation. However, at the City's option, if an employee has status in a previous classification, the employee's probationary appointment may be terminated <u>terminated</u> , or the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the facts of the case and the classification.
Positive Alcohol Test (.02 to .04)	* Termination of probation. However, at the City's option, probationary employee may be referred to SAP and required to participate in rehabilitation, if necessary. Any second positive test for alcohol during probation will result in termination of probation. However, at the City's option, if an employee has status in a previous classification, the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the case and the classification. Any second positive test showing a result between 0.02% and 0.04% after completion of probation will be treated as the first step in the appropriate category.

OTHER FACTORS	
1.	If an employee has a confirmed positive test from follow-up testing, the employee will be given a last chance agreement unless he/she is already on a last chance agreement at which point he/she will be terminated.
2.	If an employee is required by the SAP to participate in rehabilitation and the employee refuses to participate in the required rehabilitation program, the employee will be terminated.
3.	If an employee is required by the SAP to participate in rehabilitation and the employee fails to complete the required rehabilitation program, the employee will be terminated.
4.	If an employee refuses to be tested under this program, the employee will be terminated.

VII. DRUG AND ALCOHOL TESTING METHODOLOGY

A. Alcohol Testing

Alcohol testing shall be done based on an "evidential breath testing device" which is the testing method used by law enforcement officials in drunk driving cases. A breath alcohol technician shall explain the test to the employee being tested and properly administer the test to the employee.

B. Drug Testing

Drug testing shall be done based on a "split specimen" procedure of collecting and analyzing urine samples. The specimen taken will be divided into primary and secondary specimens. If the primary specimen test is positive, the employee shall be informed of their right to request a test of the secondary specimen by a separate laboratory or by the same laboratory, if they choose, at the employee's expense. The employee will be removed from the safety-sensitive function pending the outcome of the secondary sample test results. The employee has ~~seventy-two~~seventy-two (72) hours within which to make the request for the secondary sample test. If the secondary test result is negative, the City shall reimburse the employee for the cost of the secondary test and all references to the positive test will be expunged from all records. If the secondary test result is positive, the employee will be subject to the procedures in Personnel Rules Section VI.

C. Chain of Custody/Confidentiality

All alcohol and drug tests required to be administered to covered employees under this program shall be conducted by the City's service providers to ensure appropriate chain of custody and confidentiality of results.

VIII. PRE-EMPLOYMENT ALCOHOL AND DRUG TESTING

A. Preface

Prior to performing any safety-sensitive functions for the City, the employee or applicant shall undergo testing for alcohol and drugs. The City shall not allow a covered employee to perform safety-sensitive functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than ~~0.02%, and~~0.02% and has received a drug test result indicating a verified negative test result.

B. Procedures

1. All regular, probationary, temporary, limited term, and work-out-of class assignments in job positions which require a Commercial Driver's License and the performance of safety-sensitive functions are subject to pre-employment

testing.

2. All persons selected by the City Manager and offered a position from an appropriate employment list for a job position requiring a Commercial Driver's License and the performance of safety-sensitive functions are subject to pre-employment testing. This section applies equally to current employees of the City and outside applicants. The drug samples may be collected during pre-employment medical examinations and the samples will be provided to the City certified laboratory.
3. Every job announcement and internal transfer opportunities bulletin for a position requiring a Commercial Driver's License and the performance of safety-sensitive functions will include a written statement of the alcohol and drug testing requirement as stated above.
4. Pursuant to the City's Policy regarding Substance Abuse, all job positions are subject to pre-employment alcohol and drug testing.
5. All pre-employment alcohol and drug tests will be conducted by the City's service providers to ensure appropriate chain of custody and confidentiality of results.

C. Exceptions to Pre-Employment Testing

1. Persons employed by the City upon implementation of the program and who are in positions requiring the possession of a Commercial Driver's License and the performance safety-sensitive functions will not be required to submit to initial drug testing to continue in their jobs. Commencing on implementation of the program, all other persons who are entering into positions requiring the possession of a Commercial Driver's License and the performance of safety-sensitive functions, for example, but not limited to, new hires, rehires, transfers, and return-to-duty from any leave of absence for 20 consecutive working days or more, shall be required to submit to pre-employment testing under this program.
2. Current employees in covered classes will not be required to submit to pre-employment testing if they have been tested within the last twelve (12) months in their current position.
3. Current employees of the City who wish to be eligible for temporary or work-out-of-class ~~assignments, and~~ assignments and have previously passed pre-employment alcohol and drug tests and agreed to remain within the pool of employees from which random testing is conducted.

D. Consequences

1. Any covered employee who tests positive on a drug test or has an alcohol test result of 0.04% BAC or greater will be removed from the safety-sensitive eligibility list and will be subject to the provisions in Section IV. The employee may, however, reapply for future safety-sensitive position with the City and will be subject to testing in accordance with this program at that time.
2. If the pre-employment alcohol test result indicates a BAC of 0.02% or greater but less than 0.04%, the employee will have the right to request retesting of the second split specimen at their expense. If the retest result is negative, the employee will be reimbursed the cost by the City and the employee will be considered for the safety sensitive position. If the retest is positive, the employee will be removed from the safety-sensitive eligibility list and will be subject to the provisions in Section IV. The employee may, however, reapply for future safety-sensitive positions with the City and will be subject to testing in accordance with this program at that time.
3. All outside applicants for positions with the City which require the possession of a Commercial Driver's License and the performance of safety-sensitive functions must submit to pre-employment alcohol and-drug testing without exception. Any applicant who has a confirmed positive test for alcohol or drugs or refuses to take the test will not be hired.

IX. NEW HIRE DRUG AND ALCOHOL RECORD CHECK

A. Preface

The City is required to request information about safety-sensitive function employees from previous DOT-regulated employers who have employed the new hires during any period preceding the two (2) years before the date of the new hire's application or transfer. After obtaining written consent from the employee, the City must request information from previous DOT-regulated employers regarding alcohol tests with results of 0.04% or higher concentration, verified positive drug tests, refusals to be tested and other violations of DOT agency and drug and alcohol testing regulations. In respect to any employee who violated a regulation, the City must obtain documentation of the employee's successful completion of DOT return-to-duty requirements.

B. Procedures

1. The City will obtain the written consent of any employee seeking to begin performing safety-sensitive duties for the first time, such as a new hire or an employee transferring into a safety-sensitive position. If the employee refuses to provide this written consent, the City will not permit the employee to perform safety-sensitive functions.

2. The City will request the following information from the employee's previous DOT-related employers:
 - a. Alcohol tests with a result of 0.04% or higher alcohol concentration.
 - b. Verified positive drug tests.
 - c. Refusals to be tested (including verified adulterated or substituted drug test results).
 - d. Other violations of DOT agency drug and alcohol testing regulations.
 - e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements including follow-up tests. If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test) the City will seek to obtain this information from the employee.
 - f. This information obtained from a previous employer includes any drug or alcohol test information obtained from previous DOT-regulated employers. The City will obtain a release of information from the new hire. This release will accompany the request for information, and will maintain a written, confidential record of this information, including the date, the party to whom it was released, and a summary of the information provided.
3. The City will maintain a written, confidential record of the information obtained or of the good-faith effort made to obtain the information. The City will retain this information for three (3) years from the date of the employee's first performance of safety-sensitive duties.
4. The City must ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, in safety-sensitive work covered by DOT agency drug and alcohol testing rules during the preceding two (2) years. If the employee admits that he or she had a positive test or a refusal to test, the City will not use the employee to perform safety-sensitive functions unless the employee documents successful completion of the return-to-duty process.
5. If the City has not obtained results pre-employment drug or alcohol testing or made a documented good-faith effort to obtain this information within thirty (30) days of the hire date, the employee must be removed from performance of safety-sensitive functions.

6. The City must comply with requests for two (2) year drug and alcohol testing histories from any future employers of personnel covered by this policy.

X. RANDOM ALCOHOL AND DRUG TESTING

A. Preface

Covered employees are required to submit to alcohol and drug testing on a random basis. Twenty-five percent (25%) of the average number of covered employee positions shall be subject to random alcohol testing in each calendar year. Fifty percent (50%) of the average number of covered employee positions shall be subject to random drug testing in each calendar year. The City will change the minimum annual percentage testing rate in compliance with any change by the Federal Highway Administration (FHWA) Administrator to increase or decrease the annual violation rate. The FHWA annual violation rate is based on the reported rate for commercial drivers.

B. Procedures

1. The Provider shall randomly select a sufficient number of covered employees for alcohol and drug testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate established by the FHWA Administrator.
2. The Provider shall select covered employees for random alcohol and drug testing by a scientifically valid method, such as a random number table of a computer-based random number generator matched with the covered employees' Social Security numbers, City identification numbers, or other comparable identifying number. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.
3. Random alcohol and drug tests shall be unannounced and the dates for administering random alcohol and drug tests shall be spread reasonably throughout the calendar year.
4. Each covered employee who is notified of selection for random alcohol or drug testing shall go to the test site immediately. If a notified employee is performing a safety-sensitive function, the employee shall cease to perform that safety-sensitive function and go to the testing site as soon as possible.
5. A covered employee shall only be tested for alcohol while the employee is performing safety-sensitive functions, four (4) hours before the employee is to perform safety-sensitive functions, or four (4) hours after the employee has

ceased performing such functions. The employee will be on City paid time during the testing process

6. A covered employee may be tested for drugs at anytime while the employee is at work for the City.
7. The City shall not require any covered employee to submit to a random test while the employee is off work. If a covered employee is off work, the City will skip the employee's name and the next employee's name on the selection list will be selected and tested. The City shall document that the employee was off work and that the employee was in the random selection pool for that cycle. If the employee's absence lasts for more than thirty (30) days, the pre-employment testing provisions of this program shall apply.
8. Employees performing safety-sensitive functions may be tested for alcohol with a pre-trip inspection. . However, if the pre-trip inspection is not appropriate, the employee may be requested to perform other safety-sensitive functions (e.g., driving a truck or loading a truck) in order to comply with the requirements for alcohol testing.
9. Upon notification of a Negative Dilute, the City may immediately re-test the employee.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section IV and may be subject to disciplinary action under Section VI if they refuse to submit to a random alcohol or drug test or if they have an alcohol test with a result indicating an alcohol concentration of 0.04% or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02% to 0.04% BAC or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary, and may be subject to the referral, evaluation, and rehabilitation requirements in Section IV.

XI. POST-ACCIDENT ALCOHOL AND DRUG TESTING

A. Preface

As soon as practicable following an accident, the City shall test a surviving covered employee for alcohol and drugs where the accident has resulted in any one of the following conditions:

1. Death of a human being.
2. Bodily injury to a person who, as a result of the accident, receives medical treatment away from the scene of the accident.
3. The covered employee received a citation or there is a high probability that the covered employee will receive a citation for a moving traffic violation arising from performance of a safety-sensitive function with respect to the accident. In the case where it is not immediately known if the above criteria is met, the employee will provide a sample and the sample will not be tested until it is determined that the criteria for post-accident testing are met.
4. At least one (1) of the involved vehicles is required to be towed from the scene of the accident.

Following the accident, the covered employee will be tested as soon as possible, not to exceed eight (8) hours for alcohol and ~~thirty-two~~thirty-two (32) hours for drugs.

B. Procedures

1. These procedures do not supersede the Vehicle Use Policy contained in the City of Morgan Hill's Administrative Policy and Procedure Manual or any other departmental policy or procedure regarding reporting of vehicle accidents, incidents, citations, or damage.
2. The covered employee shall notify his or her supervisor as soon as possible following an accident. The covered employee shall refrain from using alcohol for eight (8) hours following the accident or until it is determined that a post-accident alcohol test is not required as provided below. Any employee leaving the scene of the accident without appropriate authorization prior to submitting to an alcohol or drug test or being released by the supervisor will be considered to have refused to test.
3. The supervisor at the site of an accident shall:
 - a. Attend to any emergency needs of employees, passengers, pedestrians, etc. by requesting medical, fire and/or police assistance and the presence of another supervisor;

- b. Take the covered employee involved in the accident aside and give the employee a direct verbal order to abstain from alcohol and drugs until after they have been tested or until after eight (8) hours for alcohol or thirty two hours (32) for drugs and to stand by at the site until the supervisor has determined if the accident is one requiring a post-accident alcohol and drug test;
 - c. Evaluate the accident to determine whether a post-accident test is required under this program and document with written notes the supervisor's decision to require or to not require a post-accident alcohol and drug test.
- 4. If the supervisor at the site affirms that a post-accident alcohol or drug test of the covered employee is required, the supervisor shall take the following actions:
 - a. The supervisor shall inform the covered employee the test is required by the OTETA. The supervisor will also explain that by refusing to take the alcohol and drug tests, the employee will be subject to the mandatory referral, evaluation and rehabilitation requirements of Section IV. . Refusal to take the tests will subject the employee to disciplinary action in accordance with Section IV.

Any employee who refuses to submit to a post-accident test as required by federal law shall be terminated from employment pursuant to Section IV. The employee will be offered the opportunity to be safely transported home. If an employee appears to be impaired, refuses the post-accident alcohol and drug test, and intends or attempts to drive home, the City will inform the employee that it is required to notify the proper authorities.

 - b. The supervisor shall transport the employee to the designated collection site to take the necessary tests. The supervisor shall inform the employee that they have a right to request a steward. However, the process will proceed whether or not the steward is present. The supervisor transporting the employee will stay with the employee, verify the employee's identification at the collection site and later return the employee to the employee's division or work unit.
 - c. If the covered employee is injured and requires off-site treatment, the supervisor shall escort the employee to a hospital or other appropriate treatment facility. The hospital will be requested to collect the necessary specimen and provide safe-keeping until the sample is picked up by the City collection agency.

- d. The supervisor shall ensure that the covered employee does not perform any safety-sensitive function until the employee is cleared by the post-accident test results. This includes ensuring that neither the covered employee nor any other employee involved in the accident operates the vehicle any further. If necessary, the supervisor will move the vehicle or request another employee not involved in the accident to do so.
5. If the supervisor at the site of the accident determines that the accident does not meet the criteria for a post-accident alcohol and drug test, the covered employee may continue to perform safety-sensitive functions.
6. If the covered employee is taken into police custody at the site of an accident and the site supervisor has affirmed that the accident is one requiring post-accident drug testing, the City's collection agency will be requested to test the employee for alcohol and drugs.
7. If a post- accident alcohol test is required and is not administered within two (2) hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight (8) hours, the City shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.
8. If a post-accident drug test is required and is not administered within ~~thirty~~ twenty-two (32) hours following the accident, the City shall cease attempts to administer a drug test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section IV and shall also be subject to the disciplinary consequences of Section VI if they refuse to submit to a post-accident alcohol or drug test or if they have a post-accident alcohol test with a result indicating an alcohol concentration of 0.04% or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02% to 0.04% BAC or greater shall not perform a safety-sensitive function until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary, and may be subject to the referral, evaluation, and rehabilitation requirements in Section IV.

XII. REASONABLE SUSPICION ALCOHOL AND DRUG TESTING

A. Preface

The City shall require a covered employee to submit to an alcohol and/or drug test when the City has reasonable suspicion to believe that the employee is under the influence of alcohol or drugs.

B. Procedures

1. The City's decision to require a covered employee to submit to a reasonable suspicion alcohol and/or drug test shall be based on a supervisor's determination that reasonable suspicion exists that the employee is in violation of Section III . The City's determination must be based on:

- a. Specific, personal, and articulate observations concerning the appearance, behavior, speech or performance of the employee; or
- b. Violation of a safety rule, or other unsafe work incident which, after further investigation of the employee's behavior, leads the supervisor(s) to believe that alcohol or drug use may be a contributing factor; or
- c. Other physical, circumstantial or contemporaneous indicators of alcohol or drug use

Suspicion based solely on third party observation, violation of safety rule or unsafe work incident is not reasonable suspicion for testing. However, such suspicion may be a basis for further investigation, or for action to protect the safety of others, such as ordering the employee to stop work.

No action shall be taken against a covered employee based solely on the employee's behavior and appearance, with respect to alcohol or drug use, without a positive test.

2. The supervisor will obtain the assistance of another supervisor, when feasible, to observe and document the above behavior or factors.
3. The supervisor shall inform the employee of the facts upon which the reasonable suspicion is based, advise the employee that the supervisor wishes to question the employee about the employee's behavior or conduct on which the reasonable suspicion is based, and advise the employee that he or she has the right to request the presence of a steward or other representative before answering the supervisor's questions.
 - a. If the employee chooses to be represented, the steward or other representative will be allowed up to one (1) hour to arrive. If no steward other representative is available within one (1) hour, the supervisor should continue the procedure.

- b. The supervisor shall request an explanation from the employee concerning the employee's behavior or conduct on which the reasonable suspicion is based. If a satisfactory explanation is not provided, the employee will be tested.
 - c. The supervisor must complete the Observation/Incident Report within one (1) hour of the incident. The supervisor will provide a copy of the completed Observation/Incident Report to the Union. A copy should be given to the steward or other representative, if present, and another sent to the Union president.
4. If the employee refuses to submit to the test, the employee will be terminated pursuant to Section VI. The employee shall be offered the opportunity to be safely transported home.

If an employee appears to be impaired, refuses the reasonable suspicion alcohol and drug test, and intends or attempts to drive home, the supervisor will inform the employee that the City is required to notify the proper authorities. Again, an employee who has refused to submit to a post-accident test will be disciplined in accordance with Section VI.

5. If the employee submits to the reasonable suspicion alcohol and/or drug test, the supervisor will assign the employee to ~~non-safety~~non-safety-sensitive duties until the supervisor receives the test results, unless in the supervisor's judgment, the continued presence of the employee in the workplace poses a significant safety risk to the employee or others or is disrupting the workplace. In that event, the supervisor shall place the employee on sick leave or other accrued leave and arrange to safely transport the employee home.
- a. If the alcohol and/or drug test is positive, the employee will be subject to the return to duty/follow-up testing program and procedures.
6. No supervisor shall physically search an employee or an employee's private property (purse, briefcase, car) based on the supervisor's reasonable suspicion that the employee has violated Section III.
7. The supervisor(s) or City official(s) who observe(s) the employee's behavior on which reasonable suspicion testing is based must have received at least sixty (60) minutes of training on alcohol misuse and an additional sixty (60) minutes training on drug use. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs.
8. No reasonable suspicion alcohol testing may be done except while the employee is performing a safety-sensitive function, four (4) hours before the employee is to perform a safety-sensitive function, or four (4) hours after the employee has ceased performing such function.

9. If an alcohol test is not conducted within two (2) hours of the observation, the City must prepare and maintain a record stating the reasons the alcohol test was not promptly administered. If eight (8) hours have passed, the City will not administer the test.
10. A written record must be made of the observations leading to an alcohol or drug reasonable suspicion ~~test, and~~ test and signed by the supervisor or City official who made the observations, within one (1) hour of the observed behavior or before the results of the alcohol or drug test are received, whichever is earlier.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements contained herein and may be subject to the disciplinary consequences of Section VI if they refuse to submit to a reasonable suspicion alcohol or drug test or if they have a reasonable suspicion alcohol concentration of 0.04% or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or has had an alcohol test with a result of 0.02% to 0.04% BAC or greater shall not perform a safety-sensitive function until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary.

XIII. RETURN TO DUTY/FOLLOW-UP TESTING

A. Preface

Covered employees who have alcohol test results of 0.04% BAC or greater or who test positive for drugs are subject to return-to-duty testing and are also subject to unannounced follow-up alcohol and/or drug test following their return to duty.

B. Procedures

1. Return to duty test
 - a. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or had an alcohol test with a result of 0.04% BAC or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified

negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary.

- b. Any covered employee who has engaged in conduct in violation of Section III concerning the use of drugs or who has had a drug test with a positive result shall not return to duty until the employee has submitted to a return to duty drug test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, of necessary.

2. Follow-up testing

- a. If an employee tests positive for either alcohol or controlled substances, he/she will be subject to unannounced follow-up alcohol and controlled substances tests following his/her return to duty. The number and frequency of such follow-up testing shall be as directed by the SAP and consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty.
- b. Follow-up testing shall not exceed sixty (60) months from the date of the employee's return. The SAP may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered if the SAP determines that such testing is no longer necessary.
- c. Follow-up alcohol testing shall be conducted only when the employee is performing safety-sensitive functions, four (4) hours before the employee is to perform safety-sensitive functions, or (4) four hours after the employee has ceased performing safety-sensitive functions.
- d. Follow-up drug testing may be conducted at anytime while the employee is at work for the City.

C. Consequences

- 1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements contained herein and may be subject to the disciplinary consequences of Section VI if they refuse to submit to a return-to-duty or a follow-up alcohol or drug test or if they have a return-to-duty or follow-up alcohol test with a result indicating a BAC of 0.04% or greater or drug test with a verified positive test result.
- 2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02% to 0.04% BAC or greater shall not return to duty until the employee has submitted to a return-to-duty alcohol test with a verified negative result. In

addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary. In addition, the employee may be subject to the disciplinary consequences of Section VI if they refuse to submit to a return-to-duty or a follow-up alcohol or drug test or if they have a return-to-duty or follow-up alcohol test with a result indicating a BAC of 0.04% or greater or drug test with a verified positive test result.

XIV. DOCUMENT DISTRIBUTION AND TRAINING

A. City's Alcohol and Drug Testing Programs and Procedures

Every employee who is covered by the federal alcohol and drug testing regulation as explained in this program shall be provided with a copy of this program prior to the start of alcohol and drug testing. Each employee is required to sign a statement certifying that he or she has received a copy of this program. The City will maintain the original of the signed document in the official personnel file and will provide a copy of the certificate to the employee.

B. Required Training for Covered Employee

Every covered employee will receive a one (1) hour training course on the City's Alcohol and Drug Testing Programs and Procedures. Each employee will sign an attendance roster and will receive a certificate of completion of this training. A copy of the certificate of completion will be placed in the employee's official personnel file. Every subsequent year, refresher training will be provided.

C. Supervisory Training

All supervisors of covered employees will receive a minimum of one (1) hour of training for alcohol and one (1) hour for drugs related to the City's Alcohol and Drug Testing Program and Procedures. In addition, the supervisor will be trained on alcohol and drug usage and impairment with strategies for dealing with these types of issues. Each supervisor will sign an attendance roster and will receive a certificate of completion of this training. A copy of the certificate of completion will be placed in the supervisor's official personnel file. Every subsequent year, refresher training will be provided.

CERTIFICATE OF RECEIPT
OF CITY OF MORGAN HILL & AFSCME, LOCAL 101
DRUG AND ALCOHOL TESTING PROGRAM

I, _____, understand that I am employed by the City of Morgan Hill in a position that is covered by the federal alcohol and drug testing regulations, and that I will be subject to the alcohol and drug testing programs described in this program which implements those federal alcohol and drug testing regulations. I hereby certify that the City has provided me with a copy of this program. I understand that the City will maintain the original of the signed certificate and that I will be provided a copy of the certificate. I also understand that federal law requires the City to ensure that I have been provided with a copy of the City's alcohol and drug testing program and also requires me to sign this statement certifying my receipt of a copy of this program.

Date _____
Signature of Employee

I hereby acknowledge that I asked for and received a copy of this certificate of receipt.

Date _____
Signature of Employee



CITY OF MORGAN HILL
LAST CHANCE AGREEMENT

CITY OF MORGAN HILL

This Last Chance Agreement is created to assist you in understanding the severity of the issues being confronted and the City's desire that you be successful in resolving of these concerns. Successful completion of this Agreement will prevent further disciplinary action toward you for the issues stated hereafter.

EMPLOYEE NAME: _____

EMPLOYEE CLASSIFICATION: _____

DEPARTMENT: _____

NATURE OF THE INCIDENT:

CREATED PROGRAM FOR REHABILITATION: This may include day treatment, night programs, residential programs or some form of counseling as developed by the Substance Abuse Professional in concert with the employee.

NUMBER OF TESTS REQUIRED FOR UNANNOUNCED TESTING IN COMPLIANCE WITH THIS AGREEMENT: _____

THE AGREEMENT:

I, _____, agree to comply with the guidelines and procedures entailed in the City's Drug and Alcohol Testing Program and the conditions established in the rehabilitation program. I understand that periodic unannounced samples will be taken as a condition of continued employment. Any positive test as a result of unannounced testing will be considered a violation of this last chance agreement. Should I successfully complete the rehabilitation program described above and successfully maintain negative test results for a duration of one (1) year for alcohol and five (5) years for drugs, this agreement shall be null and void and a notice of completion shall be placed in my alcohol and drug file. Another incident of drug and/or alcohol use after completion of this process shall not be subject to a second last chance agreement and I will be terminated as outlined in Section VI of the Program.

Signature of Employee

Date

MEMORANDUM OF UNDERSTANDING

Item # 07

AGENDA DATE: 12/05/18
SUPPLEMENT # 4



Morgan Hill Police Officers' Association

~~July 1, 2015 – December 31, 2018~~ December 30, 2018 – December 31, 2021

POA
MEMORANDUM OF UNDERSTANDING
2015 – 2018 December 30, 2018 – December 31, 2021

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This Memorandum of Understanding ("MOU") has been executed by representatives of the MORGAN HILL CITY COUNCIL ("City") and representatives of the MORGAN HILL POLICE OFFICERS' ASSOCIATION ("Association"). City and Association may be referred to collectively as "Parties" and individually as a "Party."

Article I. ~~1.00~~ — TERM

Section 1.01 ~~1.01~~ — The term of this MOU shall commence ~~July 1, 2015 and end December 31, 2018~~ December 30, 2018 and end December 31, 2021.

Article II. ~~2.00~~ — REPRESENTATION

Section 2.01 ~~2.01~~ — Association is a recognized employee organization within the meaning of City's Employer-Employee Relations Resolution No. 4955.

~~2.02~~ Section 2.02 Association ~~represents~~ all employees in the Police Unit ("~~Unit~~") ("~~Unit Members~~"). ~~Unit which~~ consists of City classifications of Multi Service Officer, Police Officer, Police Corporal, and Police Sergeant.

Section 2.03 A Police Officer Trainee is a person being considered for hiring as a Police Officer with City. Police Officer Trainees are not classified City employees, ~~not covered by this MOU and are not represented by Association.~~ A Police Officer Trainee signs a separate contract to attend a P.O.S.T. Certified Academy ("Academy"). Upon successful completion of the Academy, the Police Officer Trainee is hired as a Police Officer and begins to receive a regular salary and benefits pursuant to this MOU.

Section 2.04 All employees within the bargaining unit represented by the Association may voluntarily join the Association and pay dues, initiation fees, and general assessments, as well as payment of any other membership benefit program sponsored by the organization (hereinafter "payroll deductions") as determined by the Association. It shall be the responsibility of the Association to maintain a record of employees who have given their written consent to join and pay dues to the Association. The Association shall certify to the City the identity of such members and the amount of such payroll deductions to be deducted.

Section 2.05 New Employee Orientation

Section 2.06 The City shall provide the Association with reasonable advance notice of the start date of any new hire to a represented classification. The City shall provide the Association with an exclusive 30-minute meeting with any new employee or group of employees covered by this MOU, during the employee orientation (i.e., the first two (2) days of employment). The specific date, time, and location of the 30-minute union meeting with new employees will be coordinated by the Chief of Police and the President of the Association.

Section 2.07 Payroll Deductions/Authorizations

Section 2.08 The City agrees to deduct the periodic payroll deductions from the paycheck of each employee who voluntarily executes a valid authorization form as certified by the Association, or pursuant to an authorization form tendered to the City by either the Association or the employee. All sums deducted by the City shall be remitted to the Association in an expedient manner and at the

intervals requested by the Association (i.e., no more than seven (7) calendar days after the deduction), together with a list of names of each employee for whom a deduction was made.

~~Section 1.02~~Section 2.09 If an employee member in the bargaining unit desires to revoke, cancel or change prior dues deduction authorization, the City shall direct the employee member to the Association. Any such dues deduction revocation, cancellation and/or change shall only be effective when submitted by the Association directly to the City and is subject to the terms and conditions as set forth in the original payroll deduction/authorization.

Section 2.10 Notification will be provided to the City's Payroll Division. Change, cancellation or deduction requests received by the City prior to the 15th of the month will be processed the first full pay period of the following month. Change, cancellation and deduction requests received by the City on or after the 15th of the month will be processed the second full pay period of the following month.

~~Section 1.03~~Section 2.11 The Association shall indemnify and hold the City and its agents and employees harmless from any cost, expense, fee or liability resulting from any claims, demands, lawsuits, or any other action arising from the operation of this Section 2.02.

~~Section 1.04~~Section 2.12 ~~2.03~~ **— Meet & Confer Process**

~~Section 1.05~~Section 2.13 ~~2.04~~ Association is the only employee organization which is entitled to meet and confer with City on —behalf of ~~Unit Member~~employees.

~~Section 1.06~~Section 2.14 ~~2.05~~ **— Association Meetings**

~~Section 1.07~~ ~~Unit Members~~Employees ~~shall shall~~ be allowed to attend one (1) Association meeting per month on-duty —for ~~not~~ longer than one-and-a-half (1.5) hours, subject to call out. The Association meeting ~~must~~ be for the purpose of Association business and is not a social event. ~~If~~ on-duty Unit —Members ~~could be~~ affected by any Association meetings, Association must give three (3) days —notice to ~~the~~ Police Chief ("Chief") or his/her designate.

Section 2.15 ~~2.06~~ Association's Elected and Appointed Officers ("Association Officers") and ~~Unit employees~~Members may —be granted limited privileges to utilize City owned equipment ~~within the Police Station in return —for an annual honorarium of one hundred fifty dollars (\$150.00) due and payable on January 1 —of each year to compensate City for costs to operate and maintain that equipment. The limited —privileges are~~ as follows:

- ~~1.~~ 1. Association Officers may utilize the Police Department ("Department") email system to post official notices to its membership or conduct necessary official business that cannot be conveniently conducted in another fashion. Likewise, ~~Unit Member~~employees may utilize this system to reply to notices or other necessary Association business.

(a)

- ~~2.~~ 2. ~~Association Officers shall be allowed the use of City's fax machine. Use of the fax machine is limited to routine communication/correspondence. Faxes outside the local area are permitted; however, mass statewide or nationwide faxes are prohibited.~~

~~3.(b)~~ Association Officers or their designates may utilize City's telephones within the Police Station to conduct official Association business for local calls only. All long distance or message calls must be made collect with the use of a private phone credit card.

~~4.(c)~~ Association Officers or their designates may utilize City's copy machines within the Police Station to reproduce notices to its membership, other official correspondence using Association stationary, and copies of the MOU for distribution to its membership. Reproducing multiple copies of large documents or large quantities (more than ~~twenty five~~ twenty-five (25) copies) of short documents may only be allowed with permission of the Chief.

~~5.(d)~~ Official business shall be defined as notifying ~~Unit-Member~~ employees of meetings, Association activities, or other official communications, such as preparing election ballots, correspondence, etc. Not included in official business are items such as actually voting on Association issues, lobbying or campaigning with respect to Association issues, expressing personal or political views, making statements which are injurious to individuals or the Department, or other similar transmissions.

~~6.(e)~~ The Chief or his/her designate shall monitor these privileges during the term of this MOU. Should the Chief or his/her designate detect an abuse of these privilege(s), he/she shall notify the Association Officers and allow Association to be heard. If additional abuses are detected after having placed Association on notice, the Chief may unconditionally revoke any or all of these privileges.

Section 2.16 ~~2.07~~ — A maximum of four (4) Association Officers shall be allowed to utilize a cumulative total of ~~—~~ forty (40) hours per year of release time for Association business and attendance of Association related functions including, but not limited, to meetings, seminars, and schools. Release time shall be granted subject to minimum staffing requirements of the Police Department ("Department") and is subject to Chief and/or City's City Manager ("City Manager") approval.

Section 2.17 Representatives of City and Association have met and conferred, pursuant to the provisions of the Meyers-Milias-Brown Act and Resolution No. 4955, for the purpose of reaching agreement concerning all matters within the scope of representation for ~~Unit-Member~~ employees during the term of this MOU.

Section 2.18 An agreement has been reached.

Section 2.19 This MOU sets forth the full and entire understanding of the Parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the Parties, whether formal or informal, regarding any such matters, are hereby superseded or terminated in their entirety.

Section 2.20 It is agreed and understood that each Party hereto voluntarily and unqualifiedly waives its right to negotiate and agrees that the other Party shall not be required to negotiate with

respect to any matter covered herein during the term of this MOU Nothing in this paragraph shall preclude the Parties from jointly agreeing to meet and confer on any issue(s) within the scope of representation during the term of this MOU.

Section 2.21 No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall, in any manner, be binding upon the Parties hereto unless made and executed in writing by all Parties hereto and, if required, approved and implemented by City and Association.

Article III. MANAGEMENT RIGHTS

Section 3.01 The rights of City, as exercised by the City Council and the City Administration, include, but are not limited to,: 1) the exclusive right to determine the mission of its constituent departments, commissions and boards, 2) the right to set standards of service and determine the procedures and standards of selection for employment, 3) the right to direct its employees, 4) the right to take disciplinary action, 5) the right to relieve its employees from duty because of lack of work or other legitimate reasons, 6) the right to maintain the efficiency of governmental operations, 7) the right to determine the methods, means, and personnel by which government operations are to be conducted, 8) the right to determine the content of job classifications, 9) the right to require that employees work overtime, and 10) the right to and exercise complete control and discretion over its organization and the technology of performing its work. These rights are absolute, except that any agreement between City and Association evidenced by a MOU under Government Code § 3500 et. seq. shall take precedence over any of the above enumerated management rights and such MOU will be honored in good faith during the life of this MOU, subject to City's right to determine when an emergency exists and to take all necessary action to carry out its mission in emergencies.

Section 3.02 Nothing in this Article III shall be construed to limit, amend, decrease, revoke, or otherwise modify the rights vested in City by any law regulating, authorizing, or empowering City to act or refrain from acting.

Article IV. DEFINITIONS

Section 4.01 The terms "Salaries", "Wages" or "Salary and Wages" shall mean the gross monthly base pay prior to any deductions.

Section 4.02 The term "Personnel Rules" as used in this MOU means those regulations titled "City of Morgan Hill Personnel Rules and Regulations" enacted by Resolution No. 1485 and thereafter and hereafter amended.

Section 4.03 Personnel Rules

Section 4.04 The Personnel Rules are incorporated by reference as though fully and completely set forth in this MOU.

Section 4.05 It is understood that, during the term of this MOU, City will be reviewing and updating, where needed, the Personnel Rules. City shall meet and confer with Association on revisions that are within the scope of representation.

Section 4.06 Interpretation

Section 4.07 In the event a conflict in interpretation between the Personnel Rules, as included by reference, and similar sections contained in this MOU, the language in the MOU will be used for interpretation.

Article V. SALARY, WAGES & PAID BENEFITS

Section 5.01 Salaries

Section 5.02 The salaries and wages paid by City to ~~Unit Member~~employees will be in accordance with the job classifications they hold with pay rates to be amended as follows according to City's adopted salary range schedule. The adopted Salary Schedule, as may be amended from time to time, is attached hereto as Appendix A and is incorporated herein by this reference.

Section 5.03 Sworn Classifications (Police Officer, Police Corporal, and Police Sergeant): Effective the first pay period ~~following July 1, 2015~~including December 30, 2018, the ~~Unit Member~~employee's' base salary shall be increased ~~by two and a half~~four percent (2.54.0%). Effective the first pay period ~~following July 1, 2016~~including January 1, 2020, ~~Unit Members'~~the employee's base salary shall be increased by ~~two and a half~~four percent (2.54.0%). Effective the first pay period ~~following July 1, 2017~~including January 1, 2021, the ~~Unit Members'~~employee's base salary shall be increased by ~~two and a half~~four percent (2.54.0%). Effective the first pay period following July 1, 2018, the ~~Unit Members'~~ base salary shall be increased by one half percent (0.5%).

Section 5.04 Miscellaneous (Non-Sworn) Classifications (Multi Service Officer): Effective the pay period including December 30, 2018, the employee's base salary shall be increased by three and a half percent (3.5%). Effective the pay period including January 1, 2020, the employee's base salary shall be increased by three and a half percent (3.5%). Effective the pay period including January 1, 2021, the employee's base salary shall be increased by three and one quarter percent (3.25%).

Section 5.05 Specialized Pay Assignments

Section 5.06 ~~Unit Members~~Employees may be assigned to special assignment work which entitles the ~~Unit Member~~employee to specialty pay, as outlined below (a "Specialized Pay Assignment").

~~Section 1.08~~Section 5.07 The Specialized Pay Assignments are Canine (Officer/Corporal), School Resource Officer, Task Force ~~_(Officer/Corporal),~~ ~~_(Detective (Sergeant/Corporal/Officer) and Traffic (Corporal/Officer).~~ ~~_(The pay received by these~~ ~~Unit Member~~employees when they are assigned to a Specialized Pay Assignment ("Specialty Pay") shall be paid according to the following:

- (a) \$250 per pay period, for Police Officer classification
- (b) \$275 per pay period, for Police Corporal classification
- (c) \$300 per pay period, for Police Sergeant classification

~~(d) Unit Members assigned to a Specialized Pay Assignment as of June 30, 2015 shall receive either five percent (5%) of their base salary or a fixed rate of two hundred fifty dollars (\$250.00) per pay period, whichever is greater, while assigned to a Specialized Pay Assignment. On July 1, 2015, the five percent (5%) rate will be calculated and converted to a flat rate which shall remain fixed during which time~~

~~the Unit Member remains in a Specialized Pay Assignment.~~

~~B. Unit Members assigned to a Specialized Pay Assignment on or after July 1, 2015 will receive a fixed amount of two hundred and fifty dollars (\$250.00) per pay period.~~

~~C. Once the Unit Members who are assigned to a Specialty Pay Assignment as of June 30, 2015 transfer out of their Specialty Pay Assignment, they will receive a flat rate of two hundred and fifty dollars (\$250.00) per pay period for any future reassignment to a Specialty Pay Assignment.~~

Section 5.08 ~~Unit Members~~Employees in the Detective, Canine, Task Force, and Traffic Specialized Pay Assignments will be required to be on call for on a rotational basis.

Section 5.09 ~~Unit Members~~Employees in the Detective, Canine, and Task Force Specialized Pay Assignments will be given a Department issued vehicle and associated equipment and are required to keep the vehicle and associated equipment immediately available and either keep Morgan Hill Dispatch advised of their location or maintain call-back availability by carrying their Department issued cell phone.

Section 5.10 Traffic Officers and Corporals are assigned to use Department-issued motorcycles for traffic enforcement. Traffic Officers and Corporals will not receive Specialty Pay until successful completion of Motor Officer School.

Section 5.11 Canine Officers and Corporals are only eligible for Specialty Pay during periods when assigned an animal as part of their duties.

Section 5.12 The Canine Officers or Corporals shall be authorized to receive three-and-one-half (3.5) hours weekly on at the Overtime Pay rate for animal care ("Canine Care Pay"). No additional time shall be worked without the express approval of the Canine Sergeant. Canine Officers and Corporals are only eligible for animal care pay during periods when assigned an animal as part of their duties.

Section 5.13 With the exception of the Canine Care Pay as specified above, ~~Unit Member~~employees who are assigned to these Specialized Assignments will not be entitled to any type of additional pay for the performance of these Specialized Assignments.

Section 5.14 Out of Class

Section 5.15 A supervisor may assign in writing an employee to work "Out of Class" in a higher classification and receive "Out of Class Pay" if (a) the employee will assume the full range of duties of the higher classification, (b) the assignment is for a limited duration, (c) the assignment will not and does not exceed 960 hours in a fiscal year and (d) is to a position in a higher class that is vacant during recruitment for a permanent employee (i.e. does not include a vacancy due to an employee on leave). Out of Class Pay shall be at the pay step in the higher class closest to but no less than 5.0% higher than the employee's base pay and is intended to be PERSable compensation under Government Code section 20480. To qualify as Out of Class Pay rather than Higher Class Assignment Pay (see next paragraph), the assignment must be approved by the Police Chief's designee and the Human Resources Division.

Section 5.16 Higher Class Assignment Pay

Section 5.17 A supervisor may also assign in writing an employee to work in a higher class and receive "Higher Class Assignment Pay" if the employee will assume the full range of duties of the higher classification and does not qualify for Out of Class Pay. Higher Class Assignment Pay shall also be at the pay step in the higher class closest to but no less than 5.0% higher than the employee's base pay but is not PERSable compensation under Government Code section 20480.

Section 5.18 Holiday Pay

Section 5.19 Holiday Pay for entitled ~~Unit Member~~employees shall be six and a half percent (6.5%) of the ~~Unit Member's employee's~~ base salary. If the City Council declares an additional holiday for City employees during this MOU, an additional one-half percent (.5%) Holiday Pay will be granted to ~~Unit Member~~employees.

Section 5.20 Other Pay

Section 5.21 Callback Pay

Section 5.22 "Callback Pay" is any assignment worked which is not contiguous with an ~~Unit Member's employee's~~ regular shift. Callback Pay is paid at a two (2) hour minimum at the ~~Unit Member's employee's~~ Overtime Pay hourly rate. When overtime worked is contiguous to a regular shift, either preceding or afterwards, it is a "Shift Extension" and shall be compensated at the normal Overtime Pay rate for completed fifteen (15) minute increments worked.

Section 5.23 Shift Supervisor Pay

Section 5.24 Effective December 30, 2018, the City shall pay an additional ~~one dollar~~two dollars and fifty cents (~~\$1.00~~2.50) per hour for Police Officers temporarily assigned to work as Shift Supervisors.

Section 5.25 5.18 FTO Pay

Section 5.26 Effective December 30, 2018, Police Officers serving as Field Training Officers shall receive additional compensation of ~~one two~~ dollars and fifty cents (~~\$2~~2.50) per hour for time spent training newly hired Police Officers.

Section 5.27 Bilingual Pay

~~Section 1.09~~Section 5.28 ~~Unit Members~~Employees identified by the Chief to use Spanish in the course of performing their work duties and who have successfully completed the certification process, as outlined below, shall receive the following compensation:

~~A.(a)~~A.(a) ~~Unit Members~~Employees hired prior to June 30, 2013 shall receive five percent (5%) of the ~~Unit Member's employee's~~ base salary. On July 1, 2013, that amount will be calculated and converted to a fixed amount. Should there be subsequent adjustments to base salaries, the amount determined on July 1, 2013 shall remain fixed in perpetuity. For ~~Unit Member's employees~~ hired on, or after July 1, 2013, ~~Unit Member's employees~~ shall receive a monthly stipend of one hundred dollars (\$100.00).

~~B.(b)~~B.(b) The certification process shall be completed by a provider contracted by Human Resources or three (3) person panel established by Human Resources to determine conversational

competence. ~~Unit Members~~Employees shall be subject to recertification every two (2) years, unless the certification is waived by City.

~~€.(c)~~ An eligible ~~Unit Member~~employee may request to be tested for bilingual certification at any time.

Section 5.29 Court Pay

Section 5.30 "Court Pay" is any court assignment worked which is not contiguous with a regular shift. Court Pay is paid at a four (4) hour minimum at the ~~Unit Member's~~employee's Overtime Pay hourly rate.

(a) ~~A.~~ —The minimum an ~~Unit Member~~employee can receive for a court appearance cannot cause the ~~Unit Member~~employee to receive a rate of pay which overlaps into their regular shift. The time between the start of the court appearance and the start of the scheduled shift shall be paid as governed under the ~~Department's Policy~~Department's Policy Manual Section 1038, which is hereby incorporated by this reference and the ~~Unit Member~~employee will be required to report to work. The same overlap rule applies for a court appearance which begins within thirty (30) minutes of the end of a regular shift.

(b) ~~B.~~ —~~Unit Members~~Employees shall be compensated for travel time. "Travel Time" is any time in excess of the time the ~~Unit Member~~employee spends going to and from a court appearance. If the sum of the Travel Time and the court appearance does not exceed the four (4) hour minimum paid for court appearances or if the time overlaps into the ~~Unit Member's~~employee's regular shift, no additional Overtime Pay will be paid. Normal commute is defined as the time necessary for an ~~Unit Member~~employee to travel from their residence to the Police Station based on the distance and prevailing commuter speeds and congestion.

(c) ~~Unit Members~~Employees are not required to drive a City vehicle to court but may be provided a City vehicle for out-of-County travel, if available. ~~Unit Member~~employees will be reimbursed at the current IRS rate for use of their personal vehicle when making in-County or out-of-County court appearances.

(d) ~~D.~~ —Except as provided herein, ~~Unit Member~~employees receiving Court~~receiving Court~~ Pay shall not receive reimbursement for meals nor overtime pay for court meal recesses. ~~Unit Member~~employees held over through a court lunch recess, but then released from court immediately following the recess, shall receive Overtime Pay for the lunch recess not to exceed one (1) hour.

(e) ~~E.~~ —Only one (1) four (4) hour minimum compensation for an ~~off duty~~off-duty court appearance will be paid per day. If additional off duty court appearances are required beyond the time covered by the four (4) hour minimum, the ~~employee~~Unit Member shall be paid at the Overtime Pay rate for actual hours worked as governed by Policy Manual Section 1038.

Section 5.31 Court Stand By Pay

Section 5.32 "Court Stand By" is defined as time in which the ~~off-duty~~ activity of an ~~Unit Member~~employee is restricted due to the inevitability of said ~~Unit Member~~employee having to respond to court within the succeeding twenty-four (24) hours

(a) In the event that ~~Unit Member~~employees are assigned by the Chief or his/her designate to remain on call for the purposes of Court Stand By, the ~~Unit Member~~employee shall receive one quarter (1/4) straight time pay for every hour on standby with a two (2) hour minimum and an eight (8) hour maximum per court day.

(b) The Chief or his/her designate shall be responsible for informing appropriate court officials of the above stated Court Stand By procedure and any conflicts resulting from the procedure.

Section 5.33 Rest Period Between Shifts

Section 5.34 ~~Unit Members~~Employees who are assigned to and actually work more than four (4) hours between two (2) regularly scheduled twelve (12) hour patrol shifts shall be entitled to an eight (8) hour rest period between said shifts. The eight (8) hour rest period may not necessarily consist of eight (8) consecutive hours, depending upon the circumstances. If any portion of the eight (8) hour rest period occurs during the ~~Unit Member's~~employee's regularly scheduled twelve (12) hour shift, the ~~Unit Member~~employee shall receive normal compensation for that time.

For example, a Police Officer goes off duty at 7:00 a.m. and is subpoenaed to court at 8:00 a.m. The Police Officer remains in court until 3:00 p.m. and is scheduled to return to work at 7:00 p.m. In this case, the Police Officer could return to work at 10:00 p.m. without loss of hours or the need to use accrued time off for the three (3) hour period of the regular work shift.

(a) A. —The ~~Unit Member~~employee is responsible to contact the ~~on-duty~~ Watch Commander to request this rest period as soon as he or she is aware that it will be required so that ample time is available to arrange for replacement officers if necessary.

(b) B. —The ~~on-duty~~ Watch Commander may exercise discretion as to the exact time the ~~Unit Member~~employee must report back to work, based on individual circumstances and operational needs, so long as it complies with the intent of this section.

(c) C. —This section shall not apply to voluntary overtime work assignments between shifts which are worked at the option of the individual ~~Unit Member~~employee.

(d) D. —This section shall not apply in emergencies such as mutual aid mobilizations or natural disasters.

Section 5.35 Overtime Pay and Compensatory Time

Section 5.36 The City has established a 14 day / 86-hour Section 207(k) work period for purposes of Fair Labor Standards Act (FLSA) overtime hours. The established work period begins at 12:01 a.m. every other Sunday and ends every other Saturday, fourteen (14) days later at 12:00 midnight.

~~Section 1.10~~Section 5.37 MOU "Overtime Pay" and / Compensatory Time ("Comp Time") are for hours worked outside an employee's regular work schedule, and are paid defined as at one-and-a-half (1.5) times ~~a Unit Member's~~an employee's FLSA regular rate of pay—base hourly salary. Overtime Pay and Comp Time shall be calculated on a minimum of fifteen (15) minute increments actually worked ~~beyond outside of the Unit Member's~~employee's normal-regular work shift. For clarification, this equates to 15-29 minutes = 15 minutes of ~~o~~Overtime pPay, 30 - 44 minutes = 30 minutes of ~~o~~Overtime pPay and so on. All such time must be approved in advance with the ~~Unit Member's~~employee's supervisor or the Chief.~~Unit Members who have accrued Vacation and/or Comp Time at least equal to eighty (80) hours shall have the option of receiving pay in lieu of time off. Payment shall be made at the straight time rate. Unit Members may elect this option by December 1 of the each for the cash out of the following calendar year. The cash out election is irrevocable. City will follow IRS regulations regarding cashout of leave and communicate the procedures for cashing out to Association by July 1, 2015.~~

~~Section 1.11~~Section 5.38 ~~Unit Members~~Employees will have the option of receiving either Overtime Pay or Comp Time. The Comp Time accrual limit for the term of this MOU is one hundred eighty (180) hours. Comp Time will be cashed out at the FLSA regular rate at time of separation. Comp Time may also be cashed out at the FLSA regular rate each calendar year via an irrevocable cash out election form to the extent and in manner provided in section 7.08.

~~Section 1.12~~Section 5.39 Employees may elect to ~~make contributions~~contribute via payroll deduction to ~~the one of~~City's Deferred Compensation Plans, in a given pay period in lieu of receiving Overtime Pay. These Employee contributions can be ~~one (1) time,~~ lump sum contributions or percentage of base wages contributions.~~Unit Members can temporarily increase the amount of their established deferral five (5) times in a given fiscal year. For example, if a Unit Member works overtime in a given pay period, he/she may temporarily increase the amount of their Deferred Compensation contribution for that pay period.~~ Unit Members~~Employees~~ must submit a completed "Deferred Compensation Enrollment/Change Form" to the Human Resources Office for changes in their deferred compensation contributions, prior to the end of the pay period for which they wish to have the change be effective. Changes shall be effective the second full pay period following receipt by Human Resources of the applicable Deferred Compensation Enrollment/Change Form.

~~Section 1.13~~ — ~~Unit Mem~~

Section 5.40 In- House Department Training

Section 5.41 When a Department in-house training falls on an ~~an Unit Member's~~employee's scheduled day off and the ~~employee~~Unit Member attends the training, the affected ~~Unit Member~~employee will have the option of receiving Comp Time, if eligible, or pay if Comp Time is at 160 hours, for the training time or, upon approval by the ~~Unit Member's~~employee's supervisor, the ~~Unit Member~~employee may schedule ~~adjust.~~"Schedule adjust. "Schedule Adjust" is defined as the act of taking the equivalent number of hours off within the same pay period.

Section 5.42 All schedule requests must be approved in advance by the ~~Unit Member's~~employee's supervisor.

Section 5.43 Outside Department Training

Section 5.44 When an outside Department training falls on an ~~Unit Member's employee's day off~~ day off and the ~~Unit Member employee~~ attends the training, the affected ~~Unit Member employee~~ will Schedule Adjust. If the Department is not able to make a schedule adjustment, the ~~Unit Member employee~~ may take Comp Time or receive Overtime Pay.

Section 5.45 All provisions included in this MOU which affect base wages, including salary, promotions, step increases, etc., shall be implemented beginning the first full pay period following the effective date of this MOU.

Section 5.46 Base Work Schedules

Section 5.47 ~~Unit Members~~ Employees will work schedules based upon assignment as follows:

- (a) ~~A. For purposes of calculating Overtime Pay, Comp Time, and defining payroll periods, the established work period is a fourteen (14) day period, recurring every fourteen (14) days, beginning at 12:01 a.m. every other Sunday and ending every other Saturday, fourteen (14) days later, at 12:00 midnight. For purposes of establishing a control point, the first work period cycle for this contract period begins on July 1, 2015 at 12:01 a.m. and ends on December 31, 2018 at 12:00 midnight.~~ B. The "Work Day", for pay purposes, shall be a twenty-four (24) hour period within which the ~~Unit Member's employee's~~ regularly scheduled shift begins.
- (b) ~~C. Unit Members~~ Employees assigned to the Patrol Division will work an approved flexible schedule of five (5) twelve (12) hour Work Days and two (2) ten (10) hour Work Days totaling no more than eighty (80) hours per pay period.
- (c) ~~D. Unit Members~~ Employees assigned to the Special Operations Division will work an approved flexible schedule days totaling no more than eighty (80) hours in each pay period. The schedule shall be the traditional 4/10 schedule, meaning four (4) ten (10) hour days with three (3) consecutive days off each week.
- (d) School Resource Officers shall work a traditional 9/80 schedule which consists of ~~five (5)~~ nine (9) hour days one (1) week and four (4) nine (9) hour days on the alternate week.
- (e) ~~F. Unit Members~~ Employees assigned to Task Forces to work in conjunction with other government agencies shall work schedules which are compatible with the joint needs of the Department and the other agency, not to exceed eighty (80) hours in each pay period.
- (f) ~~G. Specialty Pay Assignments are limited to a two (2) year assignment with two (2) one (1) year renewals based on the approval of the Special Operations Division Captain. Field Training Officer assignments shall be a two (2) year assignment, which assignment may be extended each year for one year based on the approval of the Patrol Captain.~~
- (g) ~~Unit Members~~ Employees assigned to any other Special Assignment that do not fall into any of the assignments listed in 5.47 ~~(b) C~~ through 5.47 ~~(f) F~~ will work an approved flexible schedule totaling no more than eighty (80) hours per pay period.

~~(h) Unit Members~~Employees on extended leave (excluding vacation and Comp Time) of two (2) —weeks or more will be assigned a base forty (40) hour per week, Monday through Friday, 8:00 a.m. to 5:00 p.m. work schedule. For such individuals who are on ~~-Workers Compensation or 4850 leave~~, the schedule reassignment will not affect compensation.

~~(i) The Chief retains the right to make any special exceptions to the above schedules. ———If at any time it becomes evident to the Chief that the most efficient use of staffing to —meet the workload demands of the community are not being met, the Chief reserves the right to modify work schedules on a temporary or permanent basis. The City will —attempt to give the affected Unit Member~~employees as much notice as possible, but at least ~~—five (5) full working-calendar days prior to the effective date of any temporary schedule change. —Management reserves the right to revert to the previous practice of three (3) days —notice, effective July 1, 2014.~~

~~(j) Any permanent schedule change requires a meet and confer with City and Association.~~

Section 5.48 Health Benefits

~~Section 5.49 Effective January 1, 2014, The~~ City will contribute to the City's medical and dental health plans as follows:

~~A. —Ninety percent (90%) of the lowest cost Public Employees' Medical & Hospital Care Act ("PEMHCA") medical health plan plus dental for Unit Members with family coverage. Ninety-six and one half percent (96.5%) of the lowest cost PEMHCA medical health plan plus dental for Unit Members with employee plus one coveraFor those Unit Members who waive medical and/or dental coverage, or who have employee only coverage, the health allowance contribution will be six hundred ten dollars (\$610.00) per month. Unit Members not using all of the benefit amount shall be entitled to use fifty percent (50%) of the surplus amount for optional benefits, participating in medical reimbursement, or dependent care expense accounts. If Unit Members do not use their fifty percent (50%) surplus for optional benefits, it will be added to their salary as taxable income.~~

- ~~(a) For employees with family coverage, up to \$2,000/month in 2019, up to \$2,080/month in 2020, and up to \$2,165/month in 2021.~~
- ~~(b) For employees with employee plus one coverage, —up —to —\$1,600/month in 2019, up to \$1,665/month in 2020, and up to \$1,730/month in 2021.~~
- ~~(c) For employees with employee only coverage, up to \$800/month in 2019, up to \$830 in 2020, and up to \$865 in 2021.~~
- ~~(d) Employees enrolling in City health but not using the maximum amount available from the City for their premium category (ee only, ee+1, ee+family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City for their premium category shall have the difference deducted on a pre-tax basis from their paycheck.~~

- (e) Employees who waive medical coverage and annually provide proof of alternative medical coverage shall be entitled to a taxable cash in lieu payment of six hundred ten dollars (\$610.00) per month.
- (f) If an employee waives medical and elects dental coverage, the employee shall be entitled to a taxable cash in lieu payment of six hundred ten dollars (\$610.00) per month but will pay the appropriate dental premium.
- (g) The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs (a) through (f) above.

Section 5.50 City agrees to provide, at City's expense, up to one hundred percent (100%) of the premium costs per ~~Unit Member~~employees for the Psychological Health Program as presently constituted.

Section 5.51 All ~~Unit Member~~employees shall have the option of continuing their current medical insurance at the ~~Unit Member's~~employee's own cost after retirement. This option can continue as long as there is no lapse in coverage and the ~~Unit Member~~employee pays the monthly premium to the California Public Employees' Retirement System ("CalPERS") or to the Finance Department as per their billing requirements.

Section 5.52 Effective January 1, 2004, City agrees to provide, at City's expense, one hundred percent (100%) of the premium cost per ~~Unit Member~~employees for enrollment in a Basic ~~Long Term~~Long-Term Medical Care Program.

Section 5.53 City has formed a labor – management committee headed by the City Manager to address the issue of worksite wellness. The Wellness Committee will continue to design, plan, and implement worksite policies and programs that encourage healthy outcomes and enhance the quality of life for all employees.

Section 5.54 **Uniforms**

Section 5.55 Effective July 1, 2013, City shall provide a single once a year one thousand four hundred (\$1,400) payment of uniform allowance to ~~Unit Member~~employees. The payment shall be made on or about July 1st of each year and will be considered to be payment for the preceding year. Upon an ~~Unit Member's~~employee's separation from City, the ~~Unit Member~~employee will receive a prorated uniform allowance payment for the period worked up to the date of separation. The uniform allowance is for uniform cleaning and replacement of worn uniforms. ~~Unit Members~~Employees assigned to the Specialty Assignments of Canine, Bike Patrol, and Special Weapons and Tactics ("SWAT") -shall receive an additional ~~fifty dollar~~fifty-dollar (\$50.00) uniform allowance per year.

Section 5.56 Newly hired ~~Unit Member~~employees will, at time of hire, -be provided an initial uniform as follows:

- (a) Two (2) Short Sleeve Shirts
- (b) Two (2) Long Sleeve Shirts
- (c) Three (3) Wool Pants

- (d) One (1) Belt
- (e) One (1) Hat
- (f) One (1) Baseball Cap
- (g) One (1) Ultra Duty Jacket
- (h) One (1) pair Shoes

Thereafter, ~~Unit Member~~employees shall be paid the annual uniform maintenance and replacement allowance as set forth in 5.47 above.

Section 5.57 City shall pay for the replacement of uniforms/clothing damaged due to the performance of job duties on a prorated basis, based on the age of the uniform and upon the recommendation of the Police Chief or his/her designate. For the purpose of this section, the useful life of uniform items shall be assumed as follows:

- (a) Uniform Shirts/Pants Two (2) years
- (b) Uniform Jackets Five (5) years
- (c) Uniform Hats Five (5) years

If available, ~~Unit Member~~employees shall provide receipts establishing date of purchase.

Section 5.58 Authorized personal property such as watches, glasses, etc. damaged due to the performance of job duties shall be replaced up to a ~~seventy five dollar~~seventy-five-dollar (\$75.00) limit upon the recommendation of the Police Chief or his /her designate. For prescription glasses, this limit will be one hundred ~~twenty five~~twenty-five dollar (\$125.00) for prescription glasses. No reimbursement, however, shall be made for personal property which the employee is using on a voluntary basis in lieu of an item which has been provided by City.

Section 5.59 Newly hired ~~Unit Member~~employees, at time of hire, will have their safety equipment including gun, baton, handcuffs, flashlight, rain gear, leather, and related equipment furnished by City as per Department Policy Manual Section 1046, hereby incorporated by reference. City will repair or replace existing safety equipment owned by ~~Unit Member~~employees hired before July 1, 1997 as they are damaged, worn out, or as Department Specifications change, not to exceed the cost of City provided safety equipment.

Section 5.60 ~~Unit Members~~Employees who were hired before February 4, 1990 may request, or may be issued, mandatory safety equipment to include: gun, baton, handcuffs, flashlight, rain gear, leather, and related equipment. If any of these items are personally owned when they become worn out or damaged, they shall be replaced with City issued equipment in lieu of repair, except that City may choose to repair, rather than replace, a personally owned firearm or holster. In no event shall City's expense for repairing or replacing personally owned firearms or holsters exceed the cost of City provided equipment.

Section 5.61 City shall provide a Threat Level III protective vest, including shock plate, to all ~~Unit Member~~employees. City shall replace a vest after it has been in service for five (5) years, has been compromised, or is otherwise unserviceable per industry standards. ~~Unit Members~~Employees in an assignment that requires them to wear a uniform must wear the City issued protective vest at all times.

~~Unit Members~~Employees in a non-uniform assignment are not required to wear a vest at all times while on duty but shall maintain the vest in an accessible location and should wear the vest when engaged in planned, high risk events. This provision applies only to vests purchased by City after March 4, 1990.

Article VI. EDUCATIONAL INCENTIVE PAY PROGRAM

Section 6.01 Educational Incentive Pay Program

Section 6.02 All ~~Unit Member~~employees who have completed their original probationary period shall have the option of participating in the Educational Incentive Pay ("EIP") Program.

Section 6.03 Rates of Pay for the EIP Program shall be:

- (a) ~~A.~~ Five percent (5%) - Intermediate P.O.S.T. Certificate
- (b) ~~B.~~ ~~Seven and one half~~Seven- and one-half percent (7.5%) - Advanced P.O.S.T. Certificate and/or B.A. or B.S. Degree

Section 6.04 Tuition Reimbursement

Section 6.05 Tuition reimbursement will work on the following basis:

- (a) ~~A.~~ The Chief must approve all classes in advance.
- (b) ~~B.~~ Reimbursement will be given upon successful completion of the class. See Article 6 of this MOU for use in conjunction with the EIP Program.
- (c) ~~C.~~ City will not reimburse for personal transportation, lodging, or meal costs.
- (d) ~~D.~~ ~~Unit Members~~Employees may receive a total of up to one thousand dollars (\$1,000.00) annually in tuition reimbursement according to the following schedule:
 - (i) ~~1.~~ Up to three hundred fifty dollars (\$350.00) may be used for work-related courses or training subject to the approval of the Chief.
 - (ii) ~~2.~~ ~~Unit Members~~Employees may use an additional three hundred dollars (\$300.00), or a total of six hundred fifty dollars (\$650.00) annually, for courses taken at a community college or toward an Associate of Arts or Science degree.
 - (iii) ~~3.~~ ~~Unit Members~~Employees may use an additional six hundred fifty dollars (\$650.00) or a total of one thousand dollars (\$1,000.00) annually, for courses taken at a four-year college or university which will result in a Bachelor's or Master's degree.
- (e) ~~E.~~ For classes or training which have been scheduled in advance and approved by the Chief as listed above, City will reimburse the ~~Unit Member~~employee for any out of pocket

expenses he or she may have incurred if the ~~Unit Member~~employee is required to miss their class to cover another shift. ~~The Unit Member~~employee must notify the Chief at the time they are being reassigned of any potential schedule conflicts. Failure to do so will result in no reimbursement.

Article VII. TYPES OF LEAVE/LEAVE PROCEDURES

Section 7.01 Sick Leave

Section 7.02 Sick Leave credit shall be accumulated on the basis of eight (8) hours per month. ~~The Unit Member's~~employee's accumulated Sick Leave is unlimited.

Section 7.03 City will pay twenty-five percent (25%) of unused annual Sick Leave at the end of each calendar year. This payment will be based on semi-annual calculations, made on June 1st and December 1st of each year. The balance of Sick Leave will be added to the ~~Unit Member's~~employee's accumulated Sick Leave.

Section 7.04 City has amended its PERS contract to provide for Government Code § 20965 credit for unused Sick Leave. ~~One hundred percent (100%) of the Unit Member's~~employee's unused Sick Leave will be converted into service time and added to the ~~Unit Member's~~employee's retirement eligibility upon retirement.

Section 7.05 ~~Unit Members~~Employees are entitled to twelve (12) hours of paid time off per fiscal year to be used as personal leave time. The use of this leave must be approved in advance by the Chief or his/her designee and shall be deducted from the ~~Unit Member's~~employee's current year Sick Leave accrual.

Section 7.06 Vacation Time ~~Accrual~~

Section 7.07 Vacation Time Accrual shall be as follows:

- (a) ~~A.~~ Eighty (80) hours Vacation Time per year from the date of hire through the second (2nd) year of employment.
- (b) ~~B.~~ ~~Eighty-eight~~Eighty-eight (88) hours Vacation Time during the third (3rd) year of employment.
- (c) ~~C.~~ One hundred four (104) hours Vacation Time during the fourth (4th) year of employment.
- (d) ~~D.~~ One hundred twelve (112) hours Vacation Time during the fifth (5th) year of employment.
- (e) ~~E.~~ One hundred twenty (120) hours Vacation Time during the sixth (6th) year of employment.
- (f) ~~F.~~ One hundred twenty-eight (128) hours Vacation Time during the seventh (7th) year of employment.

~~(g) G.~~ One hundred thirty-six (136) hours Vacation Time during the eighth (8th) year of employment.

~~(h) H.~~ One hundred forty-four (144) hours Vacation Time during the ninth (9th) year of employment.

~~(i) I.~~ One hundred fifty-two (152) hours Vacation Time during the tenth (10th) year of employment.

~~(j) J.~~ One hundred sixty (160) hours Vacation Time after the tenth (10th) year of service.

~~(k) K.~~ Maximum accumulation of Vacation Time shall not be more than the equivalent of two (2) years' annual accrual. ~~Unit Members~~Employees may "float" over this maximum accrual during the fiscal year but will lose any accumulated Vacation Time over the equivalent of two (2) years' annual accrual on June 30th of each fiscal year.

~~(l) L.~~ If a vacation is canceled due to 7.23 below, ~~Unit Member~~employees will not lose any accrued Vacation Time. However, ~~Unit Member~~employees will be required to reschedule the Vacation Time in a reasonable period of time in accordance with Sections 7.22 and 7.24 below.

Section 7.08 An employee may submit an Irrevocable Cash-Out Declaration Form to cash out up to eighty (80) hours of accrued vacation and/or comp time in the following calendar year. —To be effective, the Form must be received by payroll no later than December 1st of the year prior to the calendar year in which the employee wishes to cash-out vacation and/or comp time. It is understood that an employee using vacation or comp time shall always use vacation or comp time earned in prior years first before using vacation or comp time earned in the current year.

Section 7.09 The employee shall specify the pay period in the following calendar year in which the employee wishes the cash-out to occur. If no pay period is specified, the City shall process and pay the cash-out request in the pay period including November 1st. Employees are responsible for ensuring a sufficient balance of available accrued vacation and/or comp time on the date of the requested cash-out. Accrued comp time shall be cashed out first and then accrued vacation once an accrued comp balance is exhausted. If there is an insufficient balance, the maximum available up to eighty (80) hours will be cashed out.

Section 7.10 As part of the City's open enrollment packet each year, the City will provide all employees with a copy of the Irrevocable Cash-Out Declaration form and a reminder of the for submission of the Form.

Section 7.11 ~~Unit Members~~Employees may request Vacation Time of one (1) week (the equivalent of ~~thirty-four~~thirty-four (34) consecutive hours or more) in one (1) of the following ways:

~~(a) A.~~ Preferred vacations sign-up procedure beginning with Section 9.~~60-23~~ of this MOU.

~~(b) B.~~ Other vacations may be requested at any time during the year on a first come, first serve basis. Approval of other Vacation Time is subject to adequate staffing due to the scheduling of preferred vacations, training assignments, or other leaves which may take precedence.

Section 7.12 Approved Vacation Time and/or Comp Time will not be canceled unless there is an unforeseen and/or urgent staffing need. Comp Time shall not be denied if, at the time of request, the request itself will not place a shift below minimum allowed number, with the exception of a planned or outstanding major event.

Section 7.13 If an Unit Memberemployee signs up for enough preferred vacation to bring them below the vacation accrual limit by June 30th, City cancels the Unit Member'semployee's preferred vacation, and the Unit Memberemployee is unable to reschedule in the current fiscal year, causing them to be above the limit on June 30th, City will cash out the Vacation Time to bring the Unit Memberemployee in compliance with the limit or, at the Unit Member'semployee's option, the Vacation Time will be rescheduled within sixty (60) days, subject to departmental approval and Preferred Vacation Sign-Up Rules, as defined in Section 9.~~60-23~~.

Section 7.14 Extended Leave Policy

Section 7.15 In the event that a Unit Memberan employee is absent from work for illness or injury or disability or per the Family Medical Leave Act ("FMLA"), or California Family Rights Act, which includes bonding and caring for a partner after the birth or adoption of a child, , unless notified otherwise, the time off will be coded and deducted from the leave banks in the following order: (1) accumulated sSick lLeave, (2) accumulated cComp tTime, and (3) accumulated vVacation tTime. ~~Paid leave for birth or adoption of a new child shall not exceed the use of four (4) weeks of accrued Sick Leave.~~ If a determination is subsequently made by City that the leave taken was for a job related illness or injury-was job related, all sSick lLeave, cComp tTime, and vVacation tTime used to cover the leave will be credited back to the Unit Memberemployee in an amount up to the worker's compensation determination. Unit MembersEmployees ~~without accrued/credited non-sufficient~~ time off credited to them will be coded on payroll as "absent without pay."

Section 7.16 City and Association acknowledge that City has the authority, in its discretion, to place Unit Membersemployees on paid administrative leave in appropriate circumstances. ~~Examples~~ include investigations, waiting periods for disciplinary hearings of use of weapons, etc.

Section 7.17 Bereavement Leave

Section 7.18 Unit MembersEmployees shall, per occurrence, be granted Bereavement Leave when a death occurs in the Unit Member'semployee's or the employee'sUnit Member's spouse's immediate family. For the purpose of this section, "immediate family" is defined as father, mother, brother, sister, spouse, natural or legally adopted child, step-child, in-laws, grandparents, and grandchildren. Up to three (3) days of Bereavement Leave shall be granted when the death and service are within the State of California and up to five (5) days when the death or service is outside the State. Bereavement Leave usage shall not be charged against the Unit Member'semployee's Sick Leave or Vacation Time. Unit MembersEmployees may also use up to two (2) additional days of Sick Leave to supplement their allotted Bereavement Leave if other circumstances require absence during that time.

Section 7.19 ~~7.42~~—Requests for additional Bereavement Leave beyond the allotted three (3) or five (5) days, shall be subject to the approval of the ~~Unit Member's~~employee's Division Captain and deducted from the ~~Unit Member's~~employee's accumulated Comp Time, Personal Leave, or Vacation Time. -Special circumstances beyond this definition may be considered on a case-by-case basis and must be approved by the City Manager.

Section 7.20 **Family Illness and Medical Appointments**

Section 7.21 ~~Unit Members~~Employees may utilize accrued Sick Leave for an illness or injury of a member of their immediate household, or per the FMLA, including bonding and caring for a partner after the birth or adoption of a child Paid leave for birth or adoption of a new child shall not exceed the use of four (4) weeks of accrued Sick Leave. Accrued Sick Leave may also be used for the ~~Unit Member's~~employee's medical and dental appointments where it is not feasible for the ~~Unit Member~~employee to schedule the appointment on the ~~employee's~~Unit Member's own time. All appointments may only be taken with prior approval of ~~the~~ Watch Commander. ~~—~~Prior approval is not needed for emergency appointments; however, the Watch Commander must be notified.

Section 7.22 Pursuant to Personnel Rule 18.03, the Chief may require a physician's certificates attesting to the nature of the illness, injury, or treatment.

Section 7.23 **Maternity Leave**

Section 7.24 A pregnant ~~Unit Member~~employee shall be entitled to a Leave of Absence without pay for up to one hundred and twenty (120) days. ~~—~~This Leave shall commence upon certification from the ~~Unit Member's~~employee's attending physician that she is no longer capable of performing the regular duties of her position. ~~—~~Upon expiration of the approved Leave, the ~~Unit Member~~employee shall be reinstated to her former position or to a comparable one if her former position is abolished during the period of leave and the ~~Unit Member~~employee would otherwise not have been laid off. Prior to the ~~Unit Member~~employee being reinstated, the Chief may require a statement from the ~~Unit Member's~~employee's attending physician that the ~~Unit Member~~employee is physically capable of resuming the regular duties of her position.

Section 7.25 Where the Chief believes that the ~~Unit Member~~employee should be placed on leave sooner than prescribed by her physician due to her inability to perform the regular duties of her position or for the protection of the ~~Unit Member's~~employees' personal health and safety, the Chief, with the concurrence of the City Manager, shall direct the ~~Unit Member~~employee to be examined by a second physician. The cost of this examination shall be paid by City.

Section 7.26 ~~A Unit Member~~An employee may, based upon medical factors, request that her leave be extended beyond one hundred and twenty (120) days and shall submit a supporting statement from her attending physician to Human Resources. The Chief, with the prior approval of the City Manager, may extend the Leave for an additional one hundred and twenty (120) days.

Article II ~~Article VIII.~~ **MISCELLANEOUS BENEFITS**

Section 2.01 ~~Retirement/Pension~~

Section 8.01

12/5/18: Please note, Section 8.01- Retirement/Pension, language subject to change per new Tentative Agreement.

(a) For ~~Unit Member~~employees hired on or before January 1, 2013 ("Classic Employees") as defined in Government Code Section 7522.02(c) of the Public Employees' Pension Reform Act of 2013 ("PEPRA"), City agrees to continue its Safety contract with CalPERS to provide the single highest year and the "3% @ 50" basic retirement formula, that was in effect as of July 1, 2007.

(b) For ~~Unit Member~~employees hired on or after January 2, 2013 ("New Members") as defined in Government Code Section 7522.04(f) of PEPRA, City agrees to continue its Safety contract with CalPERS to provide for the three (3) highest years compensation average and the "2.7% @ 57" retirement formula.

(c) ~~C.~~ Safety (sworn) PEPRA employees: Beginning with CalPERS rates effective July 1, 2013, City and ~~Association~~safety (sworn) PEPRA employees agree to ~~split~~ future rate increases at a 50/50 ratio. For example, the FY 12-13 CalPERS ~~Safety~~ Contribution Rate equaled 32.70%. On July 1, 2013, the effective rate ~~increased~~ to 34.63% for FY 13-14. ~~Therefore~~Therefore, City paid half of the 1.92% increase (equal to .96%) and Association paid the other half (also equal to .96%). This ~~methodology~~ methodology will be used in subsequent years should CalPERS increase the Safety ~~Contribution~~ Rate.

(d) Safety (sworn) Classic employees: beginning December 30, 2018, the Safety (sworn) classic employees shall contribute, in addition to the employee's CalPERS rate of 9%, a 6.12% towards the employer's share of pension costs. (i.e. the total safety (sworn) employee contribution for Fiscal Year 2018-19 shall be 15.12%, (9.00% EE + 6.12% of the ER share). As soon as administratively feasible, pursuant to Government Code section 20516, the City shall amend its contract with the CalPERS to convert the additional sworn employee contribution of 6.12% to the employee share. The total "Classic" employee contribution shall remain at 15.12% for sworn employees.

Section 8.02 Long Term ~~Disability~~ Insurance shall be paid by ~~Unit Member~~employees through payroll deduction.

Section 8.03 City will provide reimbursement for traveling, lodging, and meal expenditures incurred by ~~Unit Member~~employees traveling on City business in accordance with existing Policies and Procedures. Overtime Pay will be paid for travel time, other than court time, if it is beyond the established work week.

Section 8.04 ~~Unit Members~~Employees may be entitled to three (3) fifteen (15) minute breaks and one (1) ~~forty-five~~forty-five (45) minute break during each twelve (12) hour shift. ~~Unit Members~~Employees working less than a twelve (12) hour shift shall be entitled to two (2) fifteen (15) minute breaks and one (1) ~~thirty~~(thirty (30) minute break during the shift. ~~Unit Members~~Employees may request to take the fifteen (15) minute breaks in conjunction with the ~~forty-five~~forty-five (45) minute break, workload permitting, at the discretion of the ~~on-duty~~on-duty Watch Commander.

Section 8.05 ~~Unit Members~~Employees are responsible for the employees' nine percent (9%) CalPERS contribution deferred from federal and state income taxes pursuant to IRS Section 414(h)(2).

Section 8.06 Gym Equipment

Section 8.07 City agrees to maintain the existing gym equipment in the Police Station for the term of this MOU.

Section 8.08 Hepatitis B Vaccinations

Section 8.09 City agrees to provide Hepatitis-B shots for ~~Unit Member~~employees.

- (a) ~~A.~~ If the ~~Unit Member~~employee selects a medical plan which provides this benefit, the ~~Unit Member~~employee in these classifications must get the shots through their medical plan.
- (b) ~~B.~~ If not covered by their group medical plan, ~~Unit Member~~employees wishing to receive the Hepatitis-B shots must submit a written request to the Human Resources Office. The Human Resources Office will contact the medical office currently being used for City medical examinations to set up the first appointment.
- (c) ~~C.~~ Charges for Hepatitis-B shots for these ~~Unit Member~~employees pursuant to 8.21B 09(b) above will be paid by City.

Article IX. MISC POLICIES AND PROCEDURES

Section 9.01 The Parties to this MOU recognize and acknowledge that the services performed by the ~~Unit Member~~employees are essential to the public health, safety, and general welfare of the residents of City.

Section 9.02 Watch Swaps

Section 9.03 A "Watch Swap" is a voluntary agreement between two ~~Unit Member~~employees of similar rank to trade a specific and equal number of work shifts. When one ~~Unit Member~~employee agrees to work for another, the second ~~Unit Member~~employee must reciprocate by working an equal amount of time for the first ~~Unit Member~~employee. When a trade is agreed upon and reciprocated, both involved ~~Unit Members~~Employees will have accounted for two thousand eighty (2080) base work hours per year.

Section 9.04 ~~Unit Members~~Employees may negotiate Watch Swaps among other ~~Unit Members~~Employees provided that:

- (a) ~~A.~~ The involved ~~Unit Member~~employees complete the "Watch Swap Request" at the bottom of the "Overtime Form" at least one (1) working day prior to the Watch Swap;
- (b) ~~B.~~ The ~~on duty~~on-duty Watch Commander for the affected shift approves the request;
- (c) ~~C.~~ The trade is among members of a similar rank. Police Officers may negotiate a Watch Swap with Police Officers and Corporals, Corporals may negotiate a Watch Swap with Corporals and Sergeants, and Sergeants may negotiate a Watch Swap with Sergeants and Corporals.

(d) ~~D.~~—The regularly scheduled ~~Unit Member~~employee shall code his/her time sheet as if he/she had worked.

Section 9.05 The Reverse Portion of the Watch Swap may occur at any time at the ~~Unit Member's~~employee's direction, provided that the steps listed above are also followed for the reverse portion of the Watch Swap. The Reverse Portion of the Watch Swap is the sole responsibility of the two involved ~~Unit Member~~employees. No ~~Unit Member~~employee shall have any recourse with the Department for failure to pay back a shift or for working in excess of eighty (80) hours per pay period without Overtime Pay in which a Watch Swap was negotiated.

Section 9.06 Watch Swaps are intended to be a convenience for the regularly scheduled ~~Unit Member~~employee and it is the sole responsibility of the regularly scheduled ~~Unit Member~~employee to ensure that his/her replacement reports to work. If for any reason the replacement ~~Unit Member~~employee fails to appear for duty, the regularly scheduled ~~Unit Member~~employee will be ordered back to work or, if that is not possible, will be considered to have taken the day off without pay. Since Watch Swaps are usually the result of inadequate staffing to allow that ~~Unit Member~~employee to take time off by other means, the regularly scheduled ~~Unit Member~~employee may not account for the missing time by use of Sick Leave, Comp Time, or the like.

Section 9.07 The ~~on-duty/on-duty~~ Watch Commander shall not approve a Watch Swap for the purposes of allowing the regularly scheduled ~~Unit Member~~employee to work an overtime assignment the same day. The Watch Commander may disapprove Watch Swap requests due to operational needs, including days on which there are planned special events that require maximum available staffing, etc.

Section 9.08 The Chief may evaluate this process from time to time and may suspend this process if it becomes apparent that ~~Unit Member~~employees are failing to honor Watch Swap commitments.

Section 9.09 Work Stoppage, Any Job Action, Slowdown

Section 9.10 Association agrees that, under no circumstances, will it recommend, encourage, or cause a work stoppage, any job action, or slowdown in any office or department of City or curtail any work, restrict any production, or interfere with any operation of City. In the event any such work stoppage, job action, or slowdown is instigated by Association, City shall not be required to negotiate on the merits of any dispute which may have given rise to such work stoppage until said work stoppage has ceased.

Section 9.11 In the event of any work stoppage during the term of this MOU, whether by Association or by any ~~Unit Member~~employee, Association by its Association Officers shall immediately declare in writing and publicize that such work stoppage is illegal and unauthorized and further direct its ~~Unit Member~~employees in writing to cease the said conduct and resume work. Copies of such written notice shall be served upon City. If, in the event of any work stoppage, job action, or slowdown, Association promptly and in good faith performs the obligations of this Section 9.~~2009~~, provided Association has not otherwise authorized, permitted, or encouraged such work stoppage, Association shall not be liable for any damages caused by the violation of this Section 9.~~2009~~.

Section 9.12 City shall not be liable for any damages caused by the violation of this Section 9.~~2009~~. City shall have the right to discipline, including termination, any ~~Unit Member~~employee who instigates,

participates in, or gives leadership to any work stoppage activity herein prohibited. City shall also have the right to seek full legal redress, including damages, against any such ~~Unit Member~~employee.

Section 9.13 Light Duty Assignment

Section 9.14 In the event an ~~employee~~~~Unit Member~~ is injured and may be able to return to work but not able to perform all their normal duty assignments, a temporary "Light Duty Assignment" may be made by City for each injury, provided that a suitable Light Duty Assignment is available within the Department. To be eligible for such a Light Duty Assignment, City may require the ~~Unit Member~~employees to provide the Human Resources Office with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the ~~Unit Member~~employee. City may require a second or third doctor's determination at City's expense. No initial or subsequent light duty assignment may exceed ninety (90) days, and all light duty assignments will be evaluated and may not be extended without approval of the Police Chief or Police Chief's designee.

Section 9.15 ~~A Unit Member~~An ~~employee~~ receiving such a Light Duty Assignment could be reassigned to any type of forty (40) hour work week or reduced work schedule and may be assigned to any type of job or task consistent with the Light Duty limitations upon the determination of the Chief. Once the ~~Unit Member~~employee is certified by City doctor as no longer in need of a Light Duty Assignment, the ~~Unit Member~~employee will be reassigned to their normal work.

Section 9.16 In the event an ~~Unit Member~~employee is injured and unable to return to work for a specific period of time and is on City-approved leave, the ~~Unit Member~~employee is required to (1) respond by phone within eight (8) hours upon receiving a call from Human Resources and (2) to inform Human Resources if the ~~Unit Member~~employee away from their primary residence for a duration exceeding seven (7) calendar days.

Section 9.17 Substance Abuse Policy

Section 9.18 City and Association mutually agree City will maintain a drug-free workplace. Alcohol and drug abuse on the job will not be tolerated and will result in immediate disciplinary action. Drug or alcohol abuse off the job, which can be shown to ~~effect~~affect the job performance or safety of the ~~Unit Member~~employee or other employees, will be documented and will result in quick disciplinary action up to and including termination. City cannot and will not put its employees or members of the general public in danger by having ~~employing~~employed a ~~Unit Member~~an employee on duty who may be a risk to themselves or others.

Section 9.19 City does not intend to test any ~~Unit Member~~employees for drug use unless a documented reasonable suspicion exists. ~~City agrees to be~~to be bound by applicable State and Federal Laws.

Section 9.20 Association and City recognize the need for a drug-free workplace and the need to assist employees whose job performance is impaired due to chemical or alcohol dependency. Association and City agree to abide by the Substance Abuse Policy dated May 3, 2006, as adopted by the City Council, and incorporated herein by this reference.

Section 9.21 Emergency Waiver Provision

Section 9.22 In the event of circumstances beyond the control of City such as acts of God, fire, flood, insurrection, civil disorder, national emergency, or similar circumstances, the provisions of this MOU which restrict City's ability to respond to these emergencies shall be suspended for the duration of such emergency. After the emergency is over, Association shall have the right to meet with City regarding the impact of the suspension of these provisions in the MOU on Unit Membersemployees.

Section 9.23 Preferred Vacation Sign-up and Shift Selection (Sworn Classifications)

Section 9.24 The sign-up period for preferred vacation begins on February 1 of each year. There will be one (1) sign-up period for the Patrol Division and one (1) sign-up for the Special Operations Division.

- (a) A. Each Unit Memberemployee may sign up for only one (1) preferred vacation period of ~~thirty four~~thirty-four (34) hours or more. ~~The Following the first rotation of~~ preferred vacation sign up, ~~there will be a second rotation of preferred sign up,~~ may not to exceed four (4) consecutive weeks of preferred vacation per fiscal year, unless specifically authorized by the Chief or his/her designate. Employees must utilize accrued vacation prior to utilizing accrued compensatory time off for preferred vacation.
- (b) B. A maximum of two (2) Unit Membersemployees assigned to the Patrol Division may request preferred vacation during the same week, provided the Unit Memberemployee with the least seniority must select a patrol shift slot with different days off from the senior Unit Memberemployee for the shift rotation period during which the vacation will occur.
- (c) C. Preferred vacations which are in compliance with subsections A and B above will be approved and posted by March 15 of each year, following the sign-up period.
- (d) D. An Unit Memberemployee who fails to request a preferred vacation or who does not take a preferred vacation which has been approved shall lose any right to a preferred vacation until the next sign-up period.
- (e) E. Every Unit Memberemployee shall be included in the sign-up for the preferred vacation schedule.

Section 9.25 The sign-up period for shift selection begins at least forty-five (45) days prior to the next shift rotation. Unit MembersEmployees shall select shifts for a six (6) month period, beginning the start of the first pay period in January and June. The approved schedule will be posted at least twenty (20) days prior to the date the schedule is to become effective.

~~A.~~(a) The Special-Field Operations Division Captain may elect to administratively assign ~~a Unitan employee Member~~ to a specific shift for the good of the Department. Examples may include, but are not limited to, long-term personnel shortage or career enhancement of probationary Unit Membersemployees.

~~(a)~~(b) Once a shift schedule has been finalized for the period, Unit Membersemployees may mutually swap shift assignments upon the recommendation of both the affected supervisors and with the approval of the Special-Field Operations Division Captain.

~~(b)~~(c) Beginning July 1, 2015, ~~Unit Member~~employees who qualify for a sign-up date will choose shifts by seniority within rank. Beginning July 14, 2019 employees in the rank of Sergeant and Corporal may select the same patrol shift (Dayshift or Midnights – regardless of days of the week) for a maximum of three (3) consecutive six (6) month rotations (18 months). After three (3) consecutive rotations, the employee must choose an alternate shift for one (1) six-month rotation. Those who have previously worked three consecutive shifts prior to July 14, 2019, must choose another shift for the rotation beginning July 14, 2019. Employees in the rank of Officer will continue to select a shift based on seniority.

~~(e)~~(d) The Patrol Captain will assign probationary ~~Unit Member~~employees to a specific watch based on need of the ~~Unit Member~~employee and operational necessity during period.

~~After June 30, 2017, at the request of either Party, the Parties will meet and confer on a return to the limit of two (2) consecutive shift rotations that was in effect prior to July 1, 2015.~~

~~Section 2.02~~**Section 9.26 Sign-up Procedures (Sworn Classifications)**

~~Section 2.03~~**Section 9.27** At least ~~three (3) weeks~~ prior to the beginning of the sign-up period for either a ~~preferred vacation or shift selection~~, every ~~Unit Member~~forty five (45) days prior to the end of shift, every employee assigned to the Patrol —Division, or who has been issued an order assigning them to the Patrol Division, will ~~be assigned a sign-up due date for shift selection and time in one (1) hour segments for purposes of selecting their desired shift. The bid process will take place during normal business hours (8:00a.m. – 5p.m.) Monday through Friday. Preferred vacation will be bid after the completion of the shift -bid and cover the same period of time.~~

Section 9.28 ~~B.~~—Each affected ~~Unit Member~~employee is solely responsible for preferred vacation or shift selection sign-up on their assigned date and time. ~~They may be done using one~~The employee may sign-up using one (1) of ~~four~~five (5) methods:

- (a) ~~1.~~—The ~~Unit Member~~employee may come to the Police Station and physically sign-up for an available vacation or shift slot; or
- (b) ~~2.~~—The ~~Unit Member~~employee may phone the ~~on-duty~~on-duty Watch Commander and verbally select an available vacation or shift slot. If the Watch Commander is not in the office, the ~~Unit Member~~employee is responsible for leaving the Watch Commander a return phone ~~or pager~~ number where the ~~Unit Member~~employee can be contacted at the Watch Commander's earliest convenience; or
- (c) ~~3.~~—The ~~Unit Member~~employee may leave a message for the Watch Commander in advance of the assigned sign-up date, listing desired shift selection(s) and a phone number where the ~~Unit Member~~employee can be reached on the sign-up date and time in order to resolve any conflicts; or
- (d) ~~4.~~—The ~~Unit Member~~employee may notify the Watch Commander in advance that no selection is desired.

Section 9.29 C. ~~—If a Unit Member an employee fails to sign-up on the within their assigned date and time, that employee will be passed until such a time that the employee makes contact with the Watch Commander either by phone or in person. The employee will then be able to select any remaining shift that is still available, that Unit Member forfeits his/her seniority benefit and his/her name will be placed in a pool at the bottom of the list. When the assigned dates have been passed, a preferred vacation or shift selection schedule will be posted. Unit Members listed in the pool will have until the end of the sign-up period to submit a request of available slots. For preferred vacations, this period will end on March 1 of each year. For patrol shift selection, this period will end twenty (20) days before the next shift rotation. Requests from Unit Members in the pool will be granted on an as-available basis in seniority order.~~ If no request is made, or if a request conflicts with other previous sign-ups, vacations will be approved on a first-come/first-serve basis and shifts will be administratively assigned.

Section 9.30 D. ~~—~~Sign-ups will be on the Unit Member's employee's own time if the assigned sign-up date and time falls outside of regular work time.

Section 9.31 Preferred Vacation for Multi-Service Officers

Section 9.32 The sign-up period for preferred vacation for MSOs begins on February 1st of each year. Department wide seniority shall be used to determine the schedule for vacation selection. Seniority within a classification is used for shift selection within Department Divisions. If a conflict between these two methods of establishing seniority arises in the process of shift selection, seniority within a classification shall prevail.

- (a) Each MSO may sign up for only one preferred vacation period of thirty-four (34) hours or more. Following the first rotation of preferred vacation sign up, there will be a second rotation of preferred sign up, not to exceed four (4) consecutive weeks of preferred vacation per fiscal year unless specifically authorized by the Chief.
- (b) Only one (1) MSO may request preferred vacation during the same week, provided that the MSO with the least seniority must select a patrol shift slot with different days off from the senior MSO for the shift rotation period during which the vacation will occur.
- (c) Preferred vacations which are in compliance with this section 9.31 above will be approved and posted by March 15th, following the sign-up period.
- (d) An MSO who fails to request a preferred vacation or who does not take a preferred vacation which has been approved shall lose any right to a preferred vacation until the next sign-up period.
- (e) Every MSO covered by this MOU shall be included in the sign-up for the preferred vacation schedule.
- (f) The sign-up period for shift selection begins at least forty-five (45) days prior to the next shift rotation. MSOs shall work the same shift rotations as sworn officers.

- (g) The approved schedule will be posted at least twenty (20) days prior to the date the schedule is to become effective.
- (h) MSOs may only select the same shift for two (2) consecutive watch rotations. MSOs are required to select another shift for a minimum of one (1) four (4) month period. City shifts are designated as the Day, Evening, and Overlap watches. Different days off do not constitute a different watch.
- (i) If, due to this seniority-based selection process, an MSO has no choice but to select a shift for the third time, the Division Captain may assign that MSO to another shift. If this assignment requires placing the MSO in an occupied slot, the assignment shall be by seniority from those who have not worked the third term shift the previous period.
- (j) MSOs who have been assigned to the Patrol Division for three (3) or more consecutive years are required to select a specific watch if that MSO has not selected that watch during the past three (3) years. For example, an MSO must select to work a Day watch if, during that past three (3) consecutive years, that MSO has been assigned to the Patrol Division and has rotated between the Evening and Overlap Watch. An MSO who is reassigned to the Patrol Division after spending a minimum of two (2) years in another Division must work each watch for at least one (1) rotation during the next three (3) years.
- (k) The Operations Division Captain may elect to administratively assign an MSO to a specific shift for the good of the organization. Examples may include, but are not limited to, long- term personnel shortage or career enhancement of probationary employees. Any bumping of personnel done in order to accomplish this shall be done by seniority.
- (l) Once a shift schedule has been finalized for the period, MSOs may mutually swap shift assignments only upon the recommendation of both the affected supervisors and with the approval of the Operations Division Captain.
- (m) Only MSOs who are assigned to the Patrol Division, or who, prior to the start of the sign- up period, have received an order assigning them to the Patrol Division during the subject shift rotation, shall be assigned a sign-up due date for shift selection.

Section 9.33 At least three (3) weeks prior to the beginning of the sign-up period for either a preferred vacation or shift selection, every affected MSO assigned to the Patrol Division, or who has been issued an order assigning them to the Patrol Division, will be assigned a sign-up due date for shift selection.

- (a) Each affected MSO is solely responsible for preferred vacation or shift selection sign- up on their assigned date. They may be done using one (1) of four (4) methods:
 - (i) Coming to the station and physically sign-up for an available vacation or shift slot;
 - (ii) Phoning the Watch Commander and verbally selecting an available vacation or shift slot. If the Watch Commander is not in the office, the MSO is responsible for leaving the Watch

Commander a return phone, or pager number where the MSO can be contacted at the Watch Commander's earliest convenience;

(iii) Leaving a message for the Watch Commander, in advance of the assigned sign-up date, listing desired shift selection(s) and a phone number where the MSO can be reached on the sign-up date in order to resolve any conflicts; or

(iv) Notifying the Watch Commander in advance that no selection is desired.

Section 9.34 If an MSO fails to sign-up on the assigned date, that MSO forfeits his/her seniority benefit and his/her name will be placed in a pool at the bottom of the list. When the assigned dates have been passed, a preferred vacation or shift selection schedule will be posted. MSOs listed in the pool will have until the end of the sign-up period to submit a request of available slots. For preferred vacations, this period will end on March 1st of each year. For patrol shift selection, this period will end twenty (20) days before the next shift rotation. Requests from MSOs in the pool will be granted on an as-available basis in seniority order. If no request is made or if a request conflicts with other previous sign-ups, vacations will be approved on a first-come/first-serve basis and shifts will be administratively assigned.

Section 9.35 Sign-ups will be on the MSO's own time if the assigned sign-up date falls outside of regular work time.

Section 9.36 Department Seniority

Section 9.37 Department wide seniority shall be used to determine the schedule for vacation selection and seniority within a classification is used for shift selection within Department Divisions. If a conflict between these two (2) methods of establishing seniority arises in the process of shift selection, seniority within a classification shall prevail.

Section 9.38 Facial Hair

Section 9.39 9.31 ~~Unit Members~~Employees will be allowed to grow facial hair. Facial hair shall be maintained in accordance with Department Policy Section 1044, which is incorporated herein by this reference.

Section 9.40 Vehicles

Section 9.41 In accordance with Department guidelines, Detective Vehicles and Canine Vehicles will be available for ~~Unit Member~~employees to utilize on a take home basis, provided that the ~~Unit Member lives~~employee lives no more than thirty (30) minutes driving time (mutually understood to include Hollister) from the Police Station. ~~Unit Members~~Employees are provided these vehicles to be available on an ~~on-call~~on-call basis. Due to operational needs, ~~Unit Member~~employees may be required, by their supervisor, to leave their take home vehicle at work.

Section 9.42 Practice Firearms Training

(a) A. ~~If requested, t~~The Department will provide up to fifty (50) rounds of ammunition each month to ~~Unit Member~~employees who wish to conduct firearms practice. ~~during the month. Additional ammunition will be provided for subsequent months only when rounds already provided have been utilized.~~ Employees shall obtain their allocation of ammunition

from the Range Master with the understanding that the employee has exhausted rounds provided previously.

(b) B. Individual practice must occur off duty on the Unit Member's employee's own time.

(c) C. Practice must occur at an approved range.

(d) D. All practice must conform with the Department Policy Manual.

Article X. COMPLAINT/GRIEVANCE PROCEDURE

Section 10.01 A "Complaint" is an allegation or charge against a party that a wrong has been committed. The "Complaint Procedure" is the orderly process by which a determination is made as to whether or not a wrong has been committed. Each of the following steps is to take no more than five (5) working days to complete before the complaint proceeds to the next step.

Section 10.02 Step 1: The Unit Member employee should review any Complaint with his/her supervisor. The supervisor is required to review every Complaint and attempt to settle it as quickly and fairly as possible.

Section 10.03 Step 2: If the action taken by the Unit Member's employee's supervisor is not satisfactory to the Unit Member employee, the Unit Member employee has the privilege of taking the Complaint to successive levels of supervision as determined by the chart of administrative organization, up to and including the Chief, which can be found in the Policy Manual.

Section 10.04 Step 3: If the Complaint is against the immediate supervisor, the Unit Member employee may proceed directly to the next higher level.

Section 10.05 Step 4: If the Complaint is not resolved in Step 2 or Step 3, the Unit Member employee may take the complaint to the Assistant City Manager for Administrative Services. The decision of the Assistant City Manager for Administrative Services will be final.

Section 10.06 If the Complaint involves an issue which could fall under the Grievance Procedure, as outlined in this MOU, the time requirements for the Grievance are waived while the issue is attempted to be resolved via this Complaint Procedure. The time limits involved in the Grievance Procedure will be followed once the Complaint Procedure has been exhausted and the Complaint comes under the guidelines as outlined in the Grievance Procedure.

Section 10.07 Definition of a Grievance

Section 10.08 A "Grievance" is any dispute involving the interpretation, application, or alleged violation of this MOU, City's Personnel Rules where the provision in dispute is within the scope of representation or State or Federal Law.

Section 10.09 The Association Officers may move a Grievance with an alleged specific violation of State or Federal Law to City by a written certified majority vote.

Section 10.10 Should any dispute concern an agreement, rule, or action which prescribes a separate appeal procedure, that dispute shall be excluded from the Grievance Procedure defined below.

Section 10.11 Grievance Procedure

Section 10.12 Step 1. ~~A Unit Member~~An employee who has a Grievance shall bring it to the attention of his/her immediate supervisor within five (5) working days of the occurrence of the act which is the basis for the dispute. The immediate supervisor must give the ~~Unit Member~~employee a decision within five (5) working days of the date it is raised.

Section 10.13 Step 2. If the ~~Unit Member~~employee and his/her immediate supervisor are unable to resolve the Grievance within five (5) working days of the date it is raised with the immediate supervisor or if the ~~Unit Member~~employee is dissatisfied with the decision of the immediate supervisor the ~~Unit Member~~employee shall have the right to submit a Grievance to the Chief within seven (7) working days from the date of the immediate supervisor's decision. The Grievance shall contain the following information:

- (a) ~~A.~~ — The name of the grievant;
- (b) ~~B.~~ — The grievant's department and specific work site;
- (c) ~~C.~~ — The name of the grievant's immediate supervisor;
- (d) ~~D.~~ — A statement of the nature of the grievance including the date and place of occurrence;
- (e) ~~E.~~ — The specific provision, policy or procedure alleged to have been violated;
- (f) ~~F.~~ — The remedies sought by the grievant; and
- (g) ~~G.~~ — The name of an ~~employee~~Unit Member designated by the grievant to represent him or her in the processing of the grievance.

The Chief shall respond to the Grievance in writing seven (7) working days from the date of its receipt.

Section 10.14 Step 3. If the ~~Unit Member~~employee is dissatisfied with the decision of the Chief, he or she may submit the Grievance to the City Manager within ten (10) working days from receipt of the Chief's response. ~~The City~~The City Manager or his/her designated representative shall respond to the Grievance, in writing, within the ten (10) working days of its receipt. Within this period, the City Manager, at his/her discretion, may conduct an informal hearing involving the parties to the dispute.

Section 10.15 Step 4. If the ~~Unit Member~~employee is dissatisfied with the decision of the City Manager, he or she may submit the Grievance to the Employee Relations Panel, as provided in Section 10.11~~7~~ of this MOU. Notice of such appeal must be filed in writing by the ~~Unit Member~~employee with the City Manager within fifteen (15) working days of receipt of the City Manager's decision.

Section 10.16 Employee Relations Panel

Section 10.17 The Employee Relations Panel ("Panel") shall consist of three (3) members selected as follows:

- (a) A. — A City representative selected by the City Manager; and
- (b) B. — An employee representative selected by the grievant, provided, however, that the participation of the employee representative shall not be a potential recipient of the grievance settlement; and
- (c) C. — A representative of the California State Mediation and Conciliation Service, or an individual acceptable to both the City Manager and the grievant or, an individual chosen by the parties who is knowledgeable in public sector labor relations. This person may be chosen from any source reasonably likely to produce such an individual, including, but not limited to a labor organization or management organization. The person selected shall serve as Chairperson.
- (i) 1. — The Chairperson shall serve without compensation unless it can be demonstrated that the individual was obliged to use accrued leave benefits or leave without pay to serve on the Panel. Where provided, compensation paid shall be shared by City and the grievant or Association.
- (ii) 2. — The Panel shall be constituted and hear the Grievance within thirty (30) working days from the filing of the appeal with the City Manager. The Panel's decision shall be rendered within fifteen (15) working days from the conclusion of the Panel hearing ("Hearing"). The majority decision of the Panel shall be final and binding, subject only to ratification by City's City Council if said decision mandates a capital expenditure or significant, unbudgeted expenditures. In those instances, the ruling shall be submitted to City's City Council for action, which may include modification or reversal.

Section 10.18 The conduct of the Hearing shall be governed by the following ground rules:

- (a) A. — The Hearings shall be convened during regular established City hours to the extent feasible. The grievant and City employees serving on the Panel or whose participation in the Hearing is required by the Panel shall not suffer loss of wages for time devoted to this purpose. If the Hearing takes place during time other than the City employee's regularly scheduled work period, no compensation shall be provided.
- (b) B. — The Hearing shall be conducted in an expeditious manner. The Chairperson has final authority to the rule on procedural matters or on other points affecting the length and conduct of the Hearing. Legal counsel, court reporters, and briefs shall only be utilized upon agreement between City and the grievant and shall not serve to delay the Panel's decision beyond the prescribed time limit, except by mutual agreement.

~~(c) C.~~ The Panel shall be committed to resolving the grievance in an objective, timely, and equitable fashion and shall not permit either party to engage in any presentation or line of argument which detracts from this purpose. The Panel shall not accept evidence not presented in Step 3 of this procedure.

~~(d) D.~~ No Hearing shall be convened unless both parties have stipulated, in writing, to the issue or issues to be heard by the Panel.

Section 10.19 General Conditions

Section 10.20 Any time limit set forth in 10.11 or 10.16 of Article X of this MOU may be extended by written agreement between City and grievant or Association.

~~(a) A.~~ Failure on the part of the grievant or their Association representative to comply with the time limits of this Grievance Procedure or any extensions thereto shall constitute a withdrawal of the Grievance without further recourse for re-submittal. Failure on the part of City to comply with prescribed time limits or extensions thereto shall result in the Grievance being moved to the next step of the Procedure.

~~(b) B.~~ The grievant shall be entitled to have a representative of his/her own choosing, except as provided in 10.11- 10.18 of Article X of this MOU, present at any grievance meeting with City.

~~(c) C.~~ A representative of Association shall be entitled to be present at any hearing held in conjunction with Step 3 and Step 4 of this Grievance Procedure.

~~(d) D.~~ The City Manager or his/her designated representative shall serve as the central repository for all grievance records.

Article XI. RATIFICATION/FUTURE MEETINGS

Section 11.01 This MOU shall be effective ~~July 1, 2015~~December 30, 2018 following ratification by Association's Membership and approval by City's City Council.

Section 11.02 Unless mutually agreed otherwise by City and Association, Association shall provide City with its written requests on terms within the scope of representation for the period beginning January 1, ~~2019-2022~~ no later than two (2) weeks prior to the start of negotiations. City and Association shall begin to meet and confer on or before August 1, ~~2018-2021~~ and endeavor to complete negotiations on a successor MOU by the end of November ~~2018~~2021.

FOR THE CITY OF MORGAN HILL

FOR MORGAN HILL POLICE OFFICERS'
ASSOCIATION

~~Steve Rymer~~ Christina Turner _____ Date _____
Date _____
City Manager

~~Carson~~ Santiago Thomas Fierro
POA President

~~Allyson Hauck~~ Edward Kreisberg _____ Date _____
~~Peter Hoffmann~~ _____ Date _____
~~Renne Sloan Holtzman Sakai~~ Lead Negotiator
~~City Negotiator~~ Meyers Nave

~~Brayton "Bud" Stone~~

POA Negotiator

Cindy Murphy _____ Date _____

Assistant City Manager
for Administrative Services

~~Bill Norman~~ Christopher Woodrow _____

POA ~~Negotiator~~ Treasurer

Michelle Katsuyoshi _____ Date _____
Human Resources Manager

Carlos Guerrero _____ Date _____
POA Negotiator

Michael Horta _____ Date _____
Senior Human Resources Analyst
Negotiator

Bill Norman _____ Date _____
Senior Human Resources Analyst POA

~~Joni Evans~~ Michael Horta _____ Date _____
~~Senior Human Resources Analyst~~

Shane Palsgrove _____ Date _____
Police Captain

Article XII. EXHIBIT A

**City of Morgan Hill Salary Schedule
Morgan Hill Police Officers' Association
December 30, 2018 - December 31, 2021**

Effective pay period including December 30, 2018

% Increase	POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
4.00%	Police Sergeant	\$9,388.75	\$54.17	\$9,858.19	\$56.87	\$10,351.10	\$59.72	\$10,868.66	\$62.70	\$11,412.09	\$65.84	\$11,982.69	\$69.13
4.00%	Police Corporal	\$8,729.47	\$50.36	\$9,165.95	\$52.88	\$9,624.24	\$55.52	\$10,105.45	\$58.30	\$10,610.72	\$61.22	\$11,141.26	\$64.28
4.00%	Police Officer	\$8,110.64	\$46.79	\$8,516.16	\$49.13	\$8,941.98	\$51.59	\$9,389.08	\$54.17	\$9,858.53	\$56.88	\$10,351.45	\$59.72
3.50%	Multi-Service Officer	\$6,204.63	\$35.80	\$6,514.86	\$37.59	\$6,840.60	\$39.47	\$7,182.63	\$41.44	\$7,541.76	\$43.51	\$7,918.85	\$45.69

Effective pay period including January 1, 2020

% Increase	POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
4.00%	Police Sergeant	\$9,764.30	\$56.33	\$10,252.52	\$59.15	\$10,765.14	\$62.11	\$11,303.40	\$65.21	\$11,868.57	\$68.47	\$12,462.00	\$71.90
4.00%	Police Corporal	\$9,078.65	\$52.38	\$9,532.58	\$55.00	\$10,009.21	\$57.75	\$10,509.67	\$60.63	\$11,035.15	\$63.66	\$11,586.91	\$66.85
4.00%	Police Officer	\$8,435.06	\$48.66	\$8,856.81	\$51.10	\$9,299.66	\$53.65	\$9,764.64	\$56.33	\$10,252.88	\$59.15	\$10,765.51	\$62.11
3.50%	Multi-Service Officer	\$6,421.79	\$37.05	\$6,742.88	\$38.90	\$7,080.02	\$40.85	\$7,434.02	\$42.89	\$7,805.72	\$45.03	\$8,196.01	\$47.28

Effective pay period including January 1, 2021

% Increase	POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
4.00%	Police Sergeant	\$10,154.87	\$58.59	\$10,662.62	\$61.52	\$11,195.75	\$64.59	\$11,755.54	\$67.82	\$12,343.31	\$71.21	\$12,960.48	\$74.77
4.00%	Police Corporal	\$9,441.79	\$54.47	\$9,913.89	\$57.20	\$10,409.58	\$60.06	\$10,930.06	\$63.06	\$11,476.56	\$66.21	\$12,050.39	\$69.52
4.00%	Police Officer	\$8,772.47	\$50.61	\$9,211.08	\$53.14	\$9,671.65	\$55.80	\$10,155.23	\$58.59	\$10,662.99	\$61.52	\$11,196.13	\$64.59
3.25%	Multi-Service Officer	\$6,630.50	\$38.25	\$6,962.02	\$40.17	\$7,310.12	\$42.17	\$7,675.63	\$44.28	\$8,059.41	\$46.50	\$8,462.38	\$48.82

APPENDIX A
CITY OF MORGAN HILL SALARY SCHEDULE
MORGAN HILL POLICE OFFICERS' ASSOCIATION

Effective 7/5/2015 — 2.5% Increase for all classifications

POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Police Sergeant	\$8,549.89	\$49.33	\$8,977.39	\$51.79	\$9,426.26	\$54.38	\$9,897.57	\$57.10	\$10,392.45	\$59.96	\$10,912.07	\$62.95
Police Corporal	\$7,949.51	\$45.86	\$8,346.99	\$48.16	\$8,764.34	\$50.56	\$9,202.55	\$53.09	\$9,662.68	\$55.75	\$10,145.81	\$58.53
Police Officer	\$7,385.97	\$42.61	\$7,755.26	\$44.74	\$8,143.03	\$46.98	\$8,550.18	\$49.33	\$8,977.69	\$51.79	\$9,426.57	\$54.38

Effective 7/3/2016 — 2.5% Increase for all classifications

POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Police Sergeant	\$8,763.64	\$50.56	\$9,201.82	\$53.09	\$9,661.91	\$55.74	\$10,145.0	\$58.53	\$10,652.26	\$61.46	\$11,184.87	\$64.53
Police Corporal	\$8,148.25	\$47.01	\$8,555.66	\$49.36	\$8,983.44	\$51.83	\$9,432.62	\$54.42	\$9,904.25	\$57.14	\$10,399.46	\$60.00
Police Officer	\$7,570.62	\$43.68	\$7,949.15	\$45.86	\$8,346.61	\$48.15	\$8,763.94	\$50.56	\$9,202.14	\$53.09	\$9,662.24	\$55.74

Effective 7/2/2017 — 2.5% Increase for all classifications

POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Police Sergeant	\$8,982.73	\$51.82	\$9,431.87	\$54.41	\$9,903.46	\$57.14	\$10,398.6	\$59.99	\$10,918.57	\$62.99	\$11,464.49	\$66.14
Police Corporal	\$8,351.96	\$48.18	\$8,769.55	\$50.59	\$9,208.03	\$53.12	\$9,668.43	\$55.78	\$10,151.86	\$58.57	\$10,659.45	\$61.50
Police Officer	\$7,759.89	\$44.77	\$8,147.88	\$47.01	\$8,555.27	\$49.36	\$8,983.04	\$51.83	\$9,432.19	\$54.42	\$9,903.80	\$57.14

Effective 7/1/2018 — .5% Increase for all classifications

POSITION	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Police Sergeant	\$9,027.64	\$52.08	\$9,479.03	\$54.69	\$9,952.98	\$57.42	\$10,450.6	\$60.29	\$10,973.16	\$63.31	\$11,521.82	\$66.47
Police Corporal	\$8,393.72	\$48.43	\$8,813.41	\$50.85	\$9,254.08	\$53.39	\$9,716.78	\$56.06	\$10,202.62	\$58.86	\$10,712.75	\$61.80
Police Officer	\$7,798.69	\$44.99	\$8,188.62	\$47.24	\$8,598.06	\$49.60	\$9,027.96	\$52.08	\$9,479.36	\$54.69	\$9,953.32	\$57.42

~~Adopted by City Council on June 3, 2015~~

POA, Morgan Hill ~~MOU~~ MOU ~~July 1, 2015 – December 31, 2018~~ December 30, 2018 – December 31, 2021

From: [D. Muirhead](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: Morgan Hill City Council Meeting December 5, 2018 comment Item #8: GIS Services Project
Date: Monday, December 03, 2018 2:13:21 PM

Dear Morgan Hill City Council,

Comments for the Public Record submitted by
Doug Muirhead, a resident of Morgan Hill, for:
Morgan Hill City Council
Meeting December 5, 2018
Item #8: GIS Services Project

Thank you for your consideration.

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#8: Agreement \$59,000 for GIS Services Project

While I have been a supporter of GIS in the City since you hired Ms. van der Leeden (I remember violating Council decorum by shouting "Yea!" when her hiring was announced), I have seen no visible signs of what we are getting for that investment. Since she was one of the recipients of the Employee Innovation award, something must be happening. And County IT staff spoke positively of her when I chatted with them at the County events for World GIS Day (I saw no Morgan Hill faces in the audience).

While I can guess at how GIS supports Ongoing Priority:
Enhancing Public Safety, I see no direct linkage to
Protecting the Environment
Supporting Our Youth, Seniors, and Entire Community
and I disagree that this item embraces
Preserving and Cultivating Public Trust

In the Budget Book for this year, you said:
Internal Service Funds/Geographic Information Systems (GIS)
A GIS program vision for the City was developed.
FY 2018-19 and 2019-20 Activity Goals
* Set standards for GIS maps and data that are shared outside the City
* Make appropriate data available to the public

So it appears that your "vision" is to "develop a GIS strategic plan to outline a road map that assesses existing GIS system infrastructure, and designs and implements an Enterprise GIS system ... with spatial data, maps, and applications."

You want to contract with a "highly qualified consultant" to design a 3 to 5-year GIS strategic plan, assess the existing GIS system infrastructure, and design and implement an Enterprise GIS system.

You say that several consultants were interviewed and one was the best candidate. You give us no hint as to how the consultants were solicited and there is no mention of an RFP or other formal scope of work and other requirements and conditions. You can quote City Municipal Code

3.04.240 which allows the claim
that the bidding process is unlikely to result in a better qualified
consultant at a lower price.

But I am fond of the saying of a famous Hollywood actor
"Trust but Verify"

You provide no way to Verify, so I personally have decreasing Trust.

You say nothing about what the GIS team will be doing while the consultants
prepare their strategic plan and build an internal web map for the City.

One of the GIS Activity Goals was to

Make appropriate data available to the public

I continue to I vote for a formal Open Data Portal. Join with VTA,
Water District, and the County.

Lastly, the Staff Report Narrative reminds us that in 2016, the City
conducted a review of Development Services via a consultant.

In the Budget Book, Development Services Activity Goals included

Continue to implement recommendations from Zucker Report

As I said in my comment letter on the budget, we have never seen
the plan to respond to the 140+ recommendations in that report.

Staff's response to my comment was

We plan to return to Council in the Fall of this year.

So the 3-month review requested at the time of the original report
remains undelivered as Fall is replaced by Winter and 2018 comes to an end.

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Item # 09
AGENDA DATE: 12/05/18
SUPPLEMENT # 1

From: [D. Muirhead](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: Morgan Hill City Council Meeting December 5, 2018 comments on Item #9 and #7
Date: Monday, December 03, 2018 11:22:14 AM

Dear Morgan Hill City Council,

Comments for the Public Record submitted by
Doug Muirhead, a resident of Morgan Hill, for:
Morgan Hill City Council
Meeting December 5, 2018
Item #9: additional \$50,000 for labor negotiations services
Item #7: MOU with AFSCME, CSOA, and POA

Thank you for your consideration.

-----+-----+-----+-----+-----+-----+-----+-----+
#9: Approve Amendment with Meyers Nave for additional \$50,000 to provide
labor negotiations services for a total not to exceed \$100,000

This item violates Ongoing Priorities
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

Of great concern is that the original agreement prevents this additional
amount from being billed and paid:

EXHIBIT "I" CONSULTANT AGREEMENT

This agreement is made this 14 day of June, 2018

4.. Compensation: CONSULTANT shall be compensated as follows:

4.1. Amount. Compensation for all services, fees and expenses
under this Agreement shall not exceed \$50,000. ... Services
or work performed in excess of the total compensation set forth
above shall be at no cost to CITY.

Since previous agenda item #7 claims that negotiations are complete,
and the original contract with Meyers Nave required detailed billing
by hour, you should know how much above the original \$50K the City
wants to pay the consultant and will reject this open-ended additional
\$50,000 which hides the overrun amount.

The original Consultant Agreement described the "Services to be Provided"
with the vague "labor contract negotiations" and "Compensation shall
be on an hourly billing rate". Staff claims that the negotiations
extended over a longer period than planned, requiring additional meetings.
So what was the original planned period and the participation by each of
the consultants, given different hourly billing rates?

-----+-----+-----+-----+-----+-----+-----+-----+
#7: Memorandum of Understanding (MOU) with AFSCME, CSOA, and POA

For Ongoing Priority: Fostering a Positive Organizational Culture

Our City employees will benefit from a three-year contract
(December 30, 2018 through December 31, 2021) which locks in
a minimum 3.25% salary increase each year. Management, Professional,

and Confidential employees receive a 3.5% salary increase for one year.

For Ongoing Priority: Maintaining Fiscal Responsibility

While neither you nor I can be certain of the state of the economy in the next three years, the ability to adjust City expenses in the case of a downturn is a requirement. You do not indicate having any flexibility in salaries and benefits with this three-year contract. I made similar comments to the Water District earlier this year. I suggested the old-fashioned approach of across-the-board percent reductions rather than layoffs based on seniority. Your approach is probably in the MOUs which though approved by the bargaining units you chose not to include in the packet.

--

"The net cost for the three-year term is estimated at \$518,000. Staff anticipates savings from vacancies, supplies and services will sufficiently cover the net cost through the term. Therefore, no budgetary appropriations are needed at this time."

--

You claim that you can save \$518,000 from vacancies, supplies and services. How about some documentation. How many vacancies exist now, how long have they been vacant, which are likely to be filled in the next year, and how will you then deal with reduced savings that you claim can offset the increased salaries? From a resident perspective, one-half million dollars is not an amount that you can casually dismiss.

For Ongoing Priority: Preserving and Cultivating Public Trust

The last time you presented MOUs to our residents, I complained that you provided no justification for the 3% increase. You repeat this lack of transparency with no information on the "twelve local comparator government employers in this region". You also fail to provide any justification for the 3.25%-4% rates. Are not our residents one of the parties benefiting from the Council-adopted "Employee Compensation Guiding Principles, May 2017":
guiding principle (6) transparency and accountability ?

Question

[CSOA] Bilingual Pay: For employees hired on or after July 1, 2013, bilingual monthly stipend increase from \$150 to \$200 per month. How do you determine fluency? Can an existing employee become fluent and be eligible for the special pay? More interestingly, what other positions in our local government would benefit from multiple language abilities and what are you doing to increase this capability?

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Item # 13

AGENDA DATE: 12/05/18
SUPPLEMENT # 1

From: [CityClerk](#)
To: [Christina Turner](#); [Donald Larkin](#)
Cc: [Michelle Bigelow](#); [Angie Gonzalez](#); [Anthony Eulo](#)
Subject: FW: Item 13 of 12/5/18 City Council Agenda: "Approve Purchase of Agricultural Conservation Easement on Fountain Oaks Ranch"
Date: Wednesday, December 05, 2018 1:07:38 PM
Attachments: [image001.png](#)
Importance: High

From: Andrea Mackenzie <amackenzie@openspaceauthority.org>
Sent: Wednesday, December 5, 2018 11:54 AM
To: 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>
Cc: 'Greg Leonard' <greg@landtrustscv.org>; 'Meehan, Michael' <michael.meehan@pln.sccgov.org>; 'Eastwood, Rob' <Rob.Eastwood@PLN.SCCGOV.ORG>; Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>; CityClerk <clerk@morganhill.ca.gov>
Subject: Item 13 of 12/5/18 City Council Agenda: "Approve Purchase of Agricultural Conservation Easement on Fountain Oaks Ranch"

Dear Mayor Tate and Councilmembers,

We are writing in regards to Item 13 in the 12/5/18 agenda packet, "Approve Purchase of Agricultural Conservation Easement on Fountain Oaks Ranch." Yesterday, the Open Space Authority and the Land Trust of Santa Clara Valley learned that the City Council will be considering the purchase of an agricultural conservation easement (ACE) on a 33-acre portion of Fountain Oaks Ranch. The report notes that, "If the purchase is approved and finalized, the City will subsequently work with the Authority, the Land Trust, or other entities to arrange for the long-term stewardship of the land under the ACE."

Neither the Santa Clara Valley Open Space Authority nor the Land Trust of Santa Clara Valley would be in a position to hold and steward this conservation easement as proposed. The easement development process does not conform to Land Trust Alliance Standards and Practices and it does not reflect how we, as conservation organizations accredited by the Land Trust Alliance, would choose to work with the landowner, the City and other partners to prepare an effective and enduring conservation easement.

As a conservation easement holder, we would be responsible for upholding the easement in perpetuity and therefore need to be intimately involved at the outset in its development. This includes working with the landowner to identify any specific restrictions and allowable uses, boundaries of the easement, other terms, and price as determined by a current appraisal that evaluates the specific easement configuration. Conservation easements are such a serious, long-term commitment that we cannot simply be a "service provider" that just receives an easement without being involved.

Protection of the Fountain Oaks Ranch property through a conservation easement remains a priority for the Authority and the Land Trust. We hope to work in partnership with the City and County on this and other agricultural conservation projects to implement the Santa Clara Valley Agricultural Plan. Indeed, our preference would be to see the partners continue pursuing an easement over the entire 68+ acres of the Fountain Oaks property and we would hope that the City would not proceed with this 33-acre easement project (relying on appraisal that valued an entirely different easement configuration). Our understanding is that the County has shared a written offer with the landowners over the entire 68+ acres and that the landowners have not provided a definitive response that has fully ruled out a conservation easement over the full 68+ acres.

Respectfully submitted,

Andrea Mackenzie, General Manager
Santa Clara Valley Open Space Authority

Greg Leonard, Executive Director
Land Trust of Santa Clara Valley

Andrea Mackenzie

General Manager

408.224.7476 T

Openspaceauthority.org

amackenzie@openspaceauthority.org



Celebrate our 25th Anniversary with us!

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Eden Housing Rehabilitation

Item # 23



EDEN HOUSING REHAB

Request to Approve Assignment, Modification, Extension, Assumption, and Resubordination of City Loans and Ground Leases for Rehabilitation of Apartment's:

- Depot Commons
- Skeels
- Villa Ciolino
- The Willows

New affordability restrictions for a 55-year term

- EDEN will seek new Low-Income Housing Tax Credit financing and tax-exempt bonds
- Geographically-based Low Income Tax Credit “boost” will expire at the end of this year, application is due December 14, 2018
- Eden must be able to demonstrate that the City of Morgan Hill will re-subordinate its loan(s) and extend/assign the ground leases to the newly created tax credit entity

DEPOT COMMONS

- 17135-17145 Depot Street, contains 12 studio apartments affordable to low-income residents and one staff apartment
- Proposal to combine Depot Commons with Willows Apartments to obtain new scattered-site financing
- No City loans or a ground lease; however, as part of a scattered-site project, would share financing and be cross-collateralized with The Willows Apartments
- Potential to increase the number of affordable units provided at Depot Commons by three units

Skeels

- 17305 Monterey Road, contain 13 efficiency studios affordable to low-income residents
- Proposal to combine the residential portion of Skeels Hotel with Villa Ciolino in a new scattered-site financing
- Eden is exploring the possibility of subdividing the commercial portion of the building
- City loan (\$300,000) with a principal balance of \$162,331 and \$68,339 of accrued interest at 3% simple interest with a maturity date of April 1, 2026

Skeels

- Eden is asking the City to approve the assignment, modification, extension, assumption, and re-subordination of its loan and regulatory agreement
- Skeels Hotel has an existing City ground lease of \$1 per year
- Proposal to extend the term of the ground lease and the affordability restrictions attached to the ground lease
- Eden is considering asking the City to approve modifying the existing ground lease to remove the commercial portion from the legal description and to enter into a new separate ground lease to encumber only the subdivided commercial parcel

Villa Ciolino

- 80 Ciolino Ave, contains 41 rental units affordable to low-income families and one staff unit
- Proposal to combine Villa Ciolino with the residential portion, and possibly also the commercial portion, of Skeels Hotel in a new scattered-site financing
- City loan in the principal amount of \$2,375,000 and \$1,783,111 of accrued interest at 4% simple interest with a maturity date of April 1, 2054
- Eden is asking the City to approve the assignment, modification, extension, assumption, and re-subordination of its loan and its related regulatory agreement

Willows Apartments

- 50 West Edmundson Ave, contains 19 rental units affordable to low-income families and one staff unit
- Proposal to combine Depot Commons with Willows Apartments in a new scattered-site financing
- City ground lease that terminates in 2046, Eden is proposing to extend the term of the ground lease
- Eden is asking the City to approve the assignment, modification, extension, and assumption of its ground lease

Use of Loan Proceeds

- Critical repairs in excess of \$4 million
- Roof repair and/or replacement, mechanical system upgrades, common area and unit interior improvements, increased energy and water efficiency measures and pursue the installation of solar photovoltaic systems
- Eden proposes that the refinance transaction repay up to \$100,000 of its current City loans
- The City loans are Residual Receipt loans, the City would continue to be eligible for a prorated portion of cash flow from these affordable housing developments, to the extent that there is sufficient cash flow

Next Steps

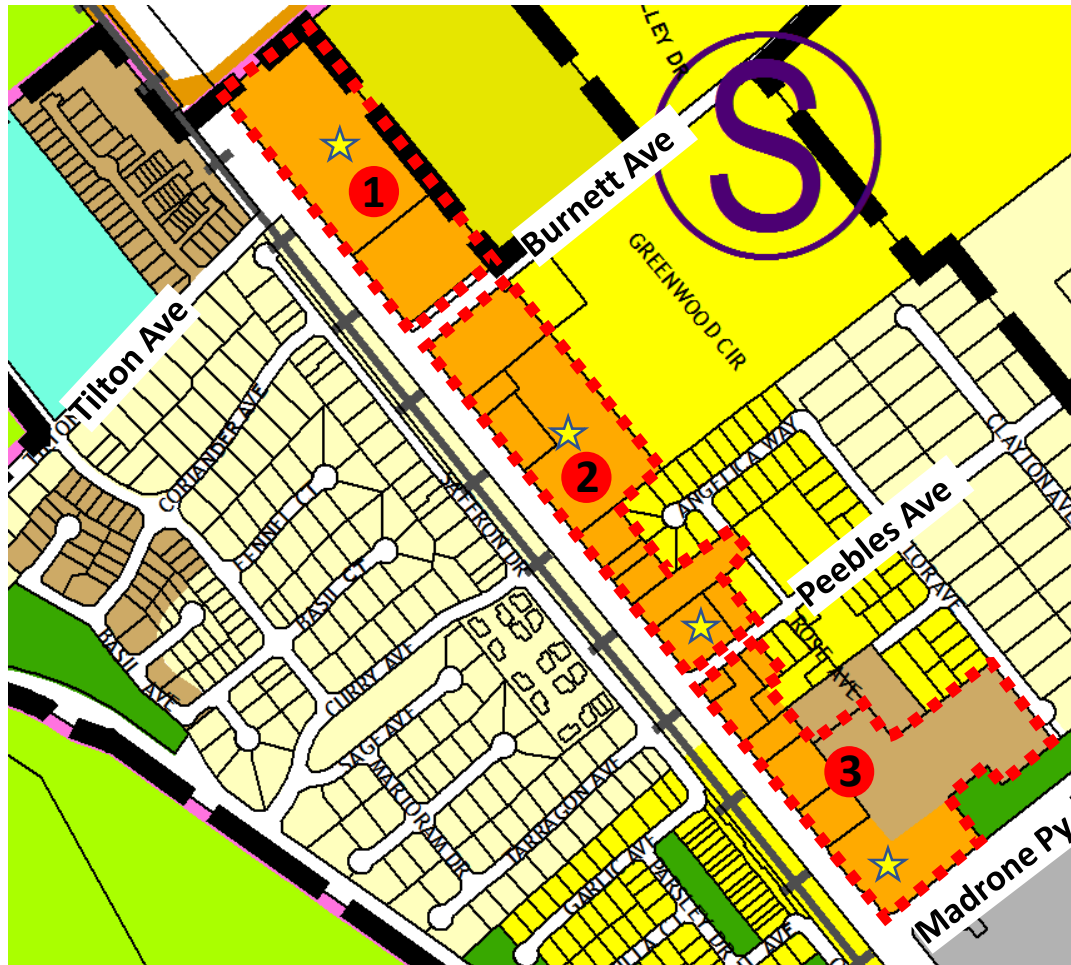
- A Tax Equity and Fiscal Responsibility Act (TEFRA) hearing will be held before the City Council, with rehab work intended to occur immediately thereafter
- Eden will have up to December 14, 2020 to close the new tax credit financing and retain the tax credit boost

Item # 24

AGENDA DATE: 12/05/18
PRESENTATION

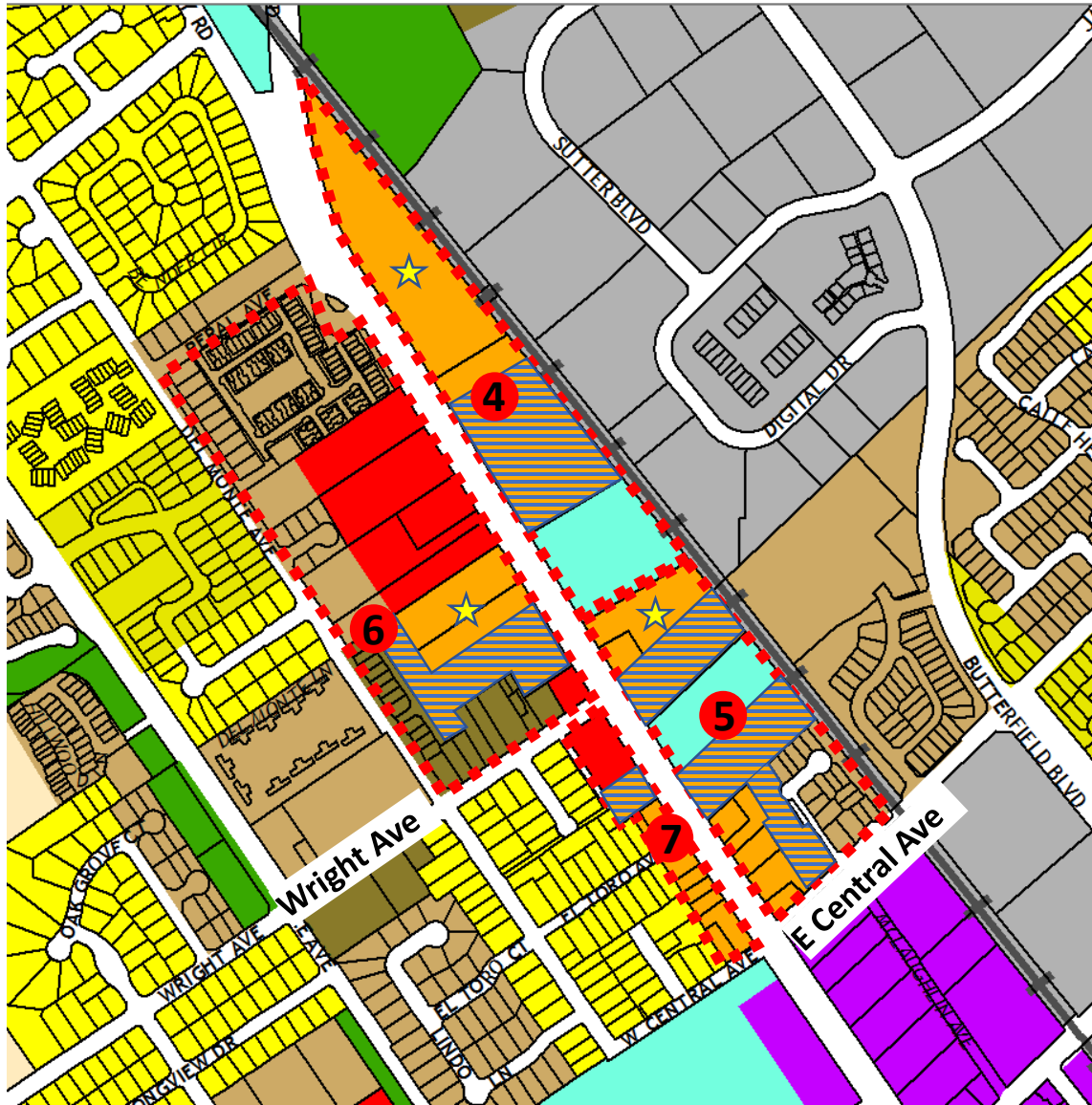
Monterey Corridor Block-Level Master Plan Blocks

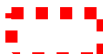
North: City Limits to Madrone Parkway



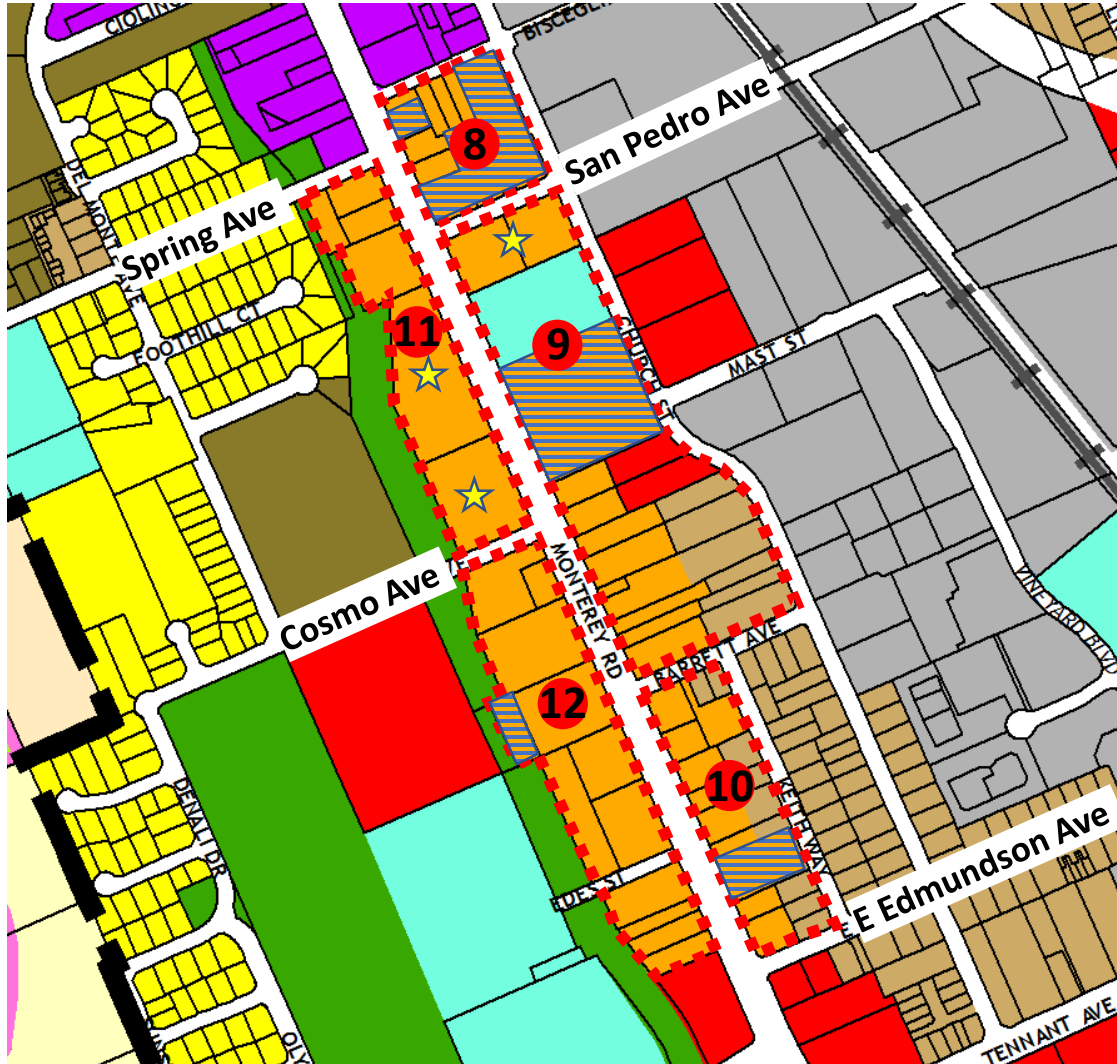
-  Mixed Use Flex Site  Block  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop  Vacant/Underutilized Opportunity Site

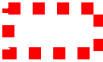
North of Downtown: RR Overcrossing to Central Avenue



-  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



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Rich Constantine - Mayor Pro Tem

Larry Carr - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, December 5, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

(Deputy City Clerk Bigelow)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. DECLARE SURPLUS OF VEHICLES AND ONE PIECE OF EQUIPMENT FOR AUCTION

Recommendation:

1. Declare nine vehicles and one piece of equipment to be surplus; and
2. Authorize the purchasing officer to dispose of the vehicles and equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

2. ACCEPT MONTEREY ROAD SEWER VAULT COATING AT LLAGAS CREEK PROJECT

Recommendation:

1. Accept as complete, the Monterey Road Sewer Vault Coating at Llagas Creek Project, in the final amount of \$203,863;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

3. RESOLUTION APPROPRIATING FUNDS FOR A CUT-THROUGH TRAFFIC STUDY

Recommendation:

Adopt resolution to amend the Fiscal Year 2018-19 budget to appropriate \$26,000 from the General Fund to perform a Citywide cut-through traffic study.

4. APPROVE AGREEMENT ACCEPTING LAW ENFORCEMENT TOBACCO GRANT FROM THE COUNTY OF SANTA CLARA

Recommendation:

Adopt resolution authorizing the City Manager to execute an agreement with the County of Santa Clara to accept grant funds as a sub-recipient of the State of California Department of Justice Law Enforcement Tobacco Grant for total amount of \$63,731 over two fiscal years and amending the City's FY 2018-19 and FY 2019-20 adopted budget to appropriate expenditure of the grant funding of \$31,568 in FY 2018-19 and \$32,163 in FY 2019-20, in the General Fund (010).

5. APPROVE HEALTHIER KIDS FOUNDATION FUNDING MOU AND LICENSE AGREEMENT

Recommendation:

Authorize the City Manager to enter into and administer a memorandum of understanding, and a license agreement, with the Healthier Kids Foundation to provide funding in the amount of \$20,000 annually and usage of a City facility.

6. APPROVE MEMORANDUM OF UNDERSTANDING FOR SOUTH VALLEY CIVIC THEATER FUNDING

Recommendation:

Authorize the City Manager to enter into and administer a memorandum of understanding with South Valley Civic Theater for the purpose of providing funding of \$10,000 annually to support theater programming for low-income participants.

7. APPROVAL OF MEMORANDUM OF UNDERSTANDING (MOU) WITH THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), THE COMMUNITY SERVICE OFFICERS' ASSOCIATION (CSOA), POLICE OFFICERS' ASSOCIATION (POA) AND CORRESPONDING SALARY SCHEDULES AND APPROVAL OF THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULES

Recommendation:

1. Approve a Memorandum of Understanding (MOU) with AFSCME effective December 30, 2018 – December 31, 2021 and corresponding salary schedules;
2. Approve a MOU with CSOA effective December 30, 2018 - December 31, 2021 and corresponding salary schedules;
3. Approve a MOU with POA effective December 30, 2018 - December 31, 2021 and corresponding salary schedules;
4. Approve the Management, Professional, and Confidential Employees Resolution effective December 30, 2018 and corresponding salary schedules; and
5. Approve the Part-Time Temporary and Seasonal Employees Resolution effective December 30, 2018 and corresponding salary schedule.

8. APPROVE GEOGRAPHIC INFORMATION SYSTEM (GIS) SERVICES CONTRACT WITH GEOGRAPHIC TECHNOLOGIES GROUP

Recommendation:

1. Approve an agreement with Geographic Technologies Group for a not to exceed amount of \$59,000, for the GIS Services Project; and
2. Authorize City Manager to execute and administer the said agreement.

9. APPROVE FIRST AMENDMENT TO AGREEMENT WITH MEYERS NAVE FOR LABOR NEGOTIATION SERVICES

Recommendation:

1. Approve First Amendment to Agreement with Meyers Nave for an additional \$50,000 to provide labor negotiations services for a total not to exceed amount of \$100,000;
2. Authorize the City Manager to execute and administer the amended agreement; and
3. Adopt resolution amending the City's adopted Fiscal Year 2018-19 budget, to appropriate \$50,000 from the General Fund (010) for labor negotiations.

10. APPROVE FIRST AMENDMENT TO COMMUNITY CHRISTIAN LEASE AGREEMENT

Recommendation:

1. Approve First Amendment to the Lease Agreement with Community Christian for use of the El Toro Youth Center Building; and
2. Authorize the City Manager to execute and administer the First Amendment to the Lease Agreement.

11. APPROVE IMPACT FEE FREEZE AGREEMENT WITH TBI-MISSION WEST II, LLC FOR THE DEVELOPMENT OF A MANUFACTURING BUILDING IN THE MADRONE BUSINESS PARK, PARCEL IDENTIFIED AS APN 726-35-029

Recommendation:

1. Approve an Impact Fee Freeze Agreement for the development of a 31,100 manufacturing building on 2.4 acres on Madrone Parkway identified by Assessor Parcel Number 726-35-029; and
2. Authorize the City Manager to execute and administer the Impact Fee Freeze Agreement.

12. ADOPT RESOLUTION INITIATING 2019 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 6, 2019.

13. APPROVE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT ON FOUNTAIN OAKS RANCH

Recommendation:

1. Authorize the City Manager to negotiate and execute an agreement with Fountain Oaks Ranch, LLC for the purchase of an agricultural conservation easement for up to \$3.0 million on approximately 33 acres of land consisting of the entire historical parcels 155, 168, and 169 on APN 817-21-011 subject to the review and approval of the City Attorney; and
2. Authorize the City Manager to execute all additional forms and agreements relating to the preservation of the agricultural lands including the transfer of the agricultural conservation easement to another agency, land trust, or other qualified entity.

14. RECEIVE AND FILE THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Receive and file the report.

15. APPROVE FISCAL YEAR 2017-18 RECOMMENDED YEAR END BUDGET AMENDMENTS

Recommendation:

Adopt resolution amending the Fiscal Year 2017-18 adopted budget to appropriate a total of \$314,317, in various funds, as detailed in Exhibit A to the resolution.

16. ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2017-18

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

17. ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2018

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018.

18. CONTINUE RECRUITMENT EFFORTS TO FILL UP TO TWO VACANCIES ON THE PLANNING COMMISSION

Recommendation:

Direct the City Clerk to continue recruitment efforts to fill up to two unexpired terms ending June 1, 2021, on the Planning Commission.

19. ADOPT ORDINANCE AUTHORIZING THE CITY MANAGER TO APPOINT THE CITY CLERK

Recommendation:

Waive the reading, adopt Ordinance No. 2291, 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.

20. ADOPT ORDINANCE ADDING CHAPTER 5.68 TO TITLE 5 (BUSINESS LICENSES GENERALLY) OF THE MORGAN HILL MUNICIPAL CODE TO PROVIDE UNIFORM REGULATIONS APPLICABLE TO ALL FIREARM DEALERS IN THE CITY

Recommendation:

Waive the reading, adopt Ordinance No. 2292, 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.

21. ADOPT ORDINANCE APPROVING ZONING AMENDMENT ZA 2018-0006 CHANGING THE ZONING DESIGNATION OF AN APPROXIMATELY 16.28-ACRE SITE LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE (ASSESSOR PARCEL NUMBERS 728-30-003, -004) FROM R-2 3,500/PD PLANNED DEVELOPMENT DISTRICT TO RAL-3,500 RESIDENTIAL ATTACHED LOW DISTRICT

Recommendation:

Waive the reading, adopt Ordinance No. 2293, 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.

22. APPROVE THE NOVEMBER 28, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

23. EDEN HOUSING - APPROVE ASSIGNMENT, MODIFICATION, EXTENSION, ASSUMPTION, AND RE-SUBORDINATION OF EXISTING CITY LOANS AND GROUND LEASES FOR REHABILITATION OF APARTMENTS; SKEELS, VILLA CIOLINO, WILLOWS APARTMENTS AND DEPOT COMMONS

Recommendation:

1. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of \$162,331 and accrued interest of approximately \$68,339 for rehabilitation of 13-unit Skeels Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
2. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for rehabilitation of housing component of Skeels Affordable Housing Apartment Complex and potential subdivision of commercial space subject to the final review and approval of the City Manager;
3. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of \$2,375,000 and accrued interest of approximately \$1,783,111 for rehabilitation of 42-unit Villa Ciolino Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
4. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for 20-unit Willows Affordable Housing Apartment Complex subject to the final review and approval of the City Manager; and
5. Approve a letter of commitment to support EDEN's efforts to seek new Low Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation of projects.

Estimated Time: 15 Minutes

24. MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES FOLLOW-UP

Recommendation:

1. Receive follow-up information on Monterey Corridor Block-Level Master Plan Alternatives and Specific Plan preparation; and
2. Direct staff to proceed with Monterey Corridor Block-Level Master Plan process.

Estimated Time: 30 Minutes

25. SEPTEMBER 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 5 Minutes

26. ADOPT AN ANNUAL REGULATORY FEE FOR MASSAGE ESTABLISHMENTS WITHIN THE CITY

Recommendation:

Adopt resolution establishing an Annual Regulatory Fee for Massage Establishments.

Estimated Time: 5 Minutes

PUBLIC HEARING

**27. ADOPT RESOLUTION OF NECESSITY FOR THE ACQUISITION OF REAL PROPERTY
CONSISTING OF A PORTION OF APN NO. 767-03-936 FOR HALE AVENUE
EXTENSION PROJECT**

Recommendation:

1. Adopt resolution of necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Faridey Betpolice as identified in Exhibits A and B for the Hale Avenue Extension Project;
2. Authorize the City Attorney to file suit in eminent domain with respect to said property; and
3. Approve the expenditure of \$300,500 for said properties for deposit into the State Condemnation Deposit Fund.

Estimated Time: 10 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.