



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member
Rene Spring - Council Member

Wednesday, December 19, 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 Constantine)

ROLL CALL ATTENDANCE

(Deputy City Clerk Bigelow)

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

Morgan Hill Community Library, Heather Geddes

YAC PRESENTATION ASSET # 39 - SENSE OF PURPOSE

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. ACKNOWLEDGE NO BIDS FOR PARKING STRUCTURE SAFETY ENHANCEMENT PROJECT AND DIRECT STAFF TO NEGOTIATE CONTRACT FOR SERVICES

Recommendation:

1. Adopt resolution appropriating up to \$220,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$420,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

2. APPROVE AGREEMENT WITH HINDERLITER, DE LLAMAS AND ASSOCIATES (HdL), FOR SALES AND USE TAX AUDIT AND BUSINESS LICENSE ADMINISTRATION SERVICES

Recommendation:

1. Approve an agreement with Hinderliter, de Llamas and Associates (HdL), for sales and use tax audit, and business license administration services;
2. Authorize the City Manager to execute and administer that certain agreement; and
3. Adopt resolution authorizing certain City officials and HdL to examine the sales, use, and transaction tax records of the State of California Department of Tax and Fee Administration.

3. ACCEPT GRANT FUNDING FOR AN EMERGENCY BACKUP GENERATOR FOR THE CENTENNIAL RECREATION CENTER AND AUTHORIZE THE PURCHASE AND INSTALLATION OF THE GENERATOR

Recommendation:

Adopt resolution to amend the City's Fiscal Year (FY) 2018-19 adopted budget, to appropriate \$235,000 from the Community/Recreation Centers Impact Fund (360) for the purchase and installation of an emergency back up generator for the Centennial Recreation Center, subject to reimbursement of \$140,249.80 from the State of California Hazard Mitigation Program.

4. ACCEPT DONATION FROM COMMUNITY LAW ENFORCEMENT FOUNDATION

Recommendation:

Adopt a resolution:

1. Accepting a donation from the Community Law Enforcement Foundation in the amount of \$25,439, for the purchase of ballistic plates and carriers for first responders, enhanced communication equipment for our tactical team, and integration costs for a community engagement and evaluation program;
2. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund (010) to recognize the CLEF donation as revenue, and appropriate \$25,439 in the Police Department budget for associated expenditures; and
3. Appropriating a transfer of \$15,840 from the Asset Seizure Fund (225) and to the General Fund (010) for the annual program subscription services.

5. APPROVE AGREEMENT WITH OUTREACH SERVICES IN PARTNERSHIP WITH THE COUNTY OF SANTA CLARA

Recommendation:

1. Approve an agreement with the County of Santa Clara Office of Supportive Housing for Homeless Services to continue support for joint Rapid Re-Housing and Homeless Outreach Services specifically for South County; and
2. Authorize the City Manager to execute and administer the certain agreement.

6. REJECT BID PROTEST AND AWARD NEW COMMUNITY GARDEN INSTALLATION PROJECT

Recommendation:

1. Reject bid protest;
2. Award contract to Castlewood Construction Company, Inc. in the amount of \$195,000 for Community Garden construction;
3. Authorize the expenditure of contingency funds not to exceed \$19,500; and
4. Authorize the City Manager to execute and administer that certain construction contract with Castlewood Construction Company, Inc.

7. APPROVE AGREEMENT FOR TRANSPORTATION FUND FOR CLEAN AIR (TFCA) FUNDING FOR THE MAIN AVENUE BIKE LANE AND SIDEWALK PROJECT

Recommendation:

Adopt resolution:

1. Approving the Santa Clara Valley Transportation Authority's funding agreement for the Bay Area Air Quality Management District TFCA grant program for up to \$65,100 towards the construction of the Main Avenue Bike Lane and Sidewalk Project;
2. Amending the adopted Fiscal Year (FY) 2018-19 budget in School Pedestrian and Traffic Safety Fund (355) to recognize the TFCA Grant as revenue; and
3. Authorizing the Public Services Director to execute and administer the TFCA agreement.

8. APPROVE STORMWATER BEST MANAGEMENT PRACTICES OPERATION AND MAINTENANCE AGREEMENT FOR THE RESIDENTIAL CARE FACILITY FOR THE ELDERLY AT 16515 BUTTERFIELD BLVD (APN: 817-57-049)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Residential Care Facility for the Elderly at 16515 Butterfield Blvd. (APN: 817-57-049); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

9. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - CONNEMARA PHASE 2 - TRACT NO. 10357

Recommendation:

1. Accept the Subdivision Public Improvements for Connemara Phase 2 – Tract No. 10357;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

10. APPROVE PHASE 1 RECORDS RETENTION SCHEDULE UPDATE

Recommendation:

Approve changes to the City's Records Retention Schedule.

11. APPROVE THE DECEMBER 5, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

12. APPROVE THE DECEMBER 12, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

13. RECEIVE HIGH SPEED RAIL (HSR) UPDATE AND APPROVE HDR ENGINEERING INC. CONTRACT FOR GRADE SEPARATIONS STUDY

Recommendation:

1. Authorize City Manager to execute a contract with HDR Engineering, Inc., in the amount of \$125,000 to study roadway grade separations at Dunne Avenue and Tennant Avenue; and
2. Adopt resolution approving a three-year interfund loan in the amount of \$125,000 to the Traffic Impact Fund from the Local Drainage Impact Fund and amend the City's adopted Fiscal Year 2018-19 budget in funds No. 303 and 309 for related expenditures.

Estimated Time: 30 Minutes

14. APPROVE OUTDOOR SPORTS CENTER OPERATOR AGREEMENT

Recommendation:

1. Authorize the City Manager to execute an operations and maintenance agreement with MHOSC, LLC. for the Outdoor Sports Center; and
2. Adopt resolution appropriating \$100,000 from the Park Impact Fund (301) and \$50,000 from the General Fund (010), a total of \$150,000, for improvements and repairs to the Outdoor Sports Center.

Estimated Time: 30 Minutes

15. APPROVE MAGICAL BRIDGE MORGAN HILL PLAYGROUND CONCEPT DESIGN

Recommendation:

Approve the updated conceptual design for the Magical Bridge Inclusive Playground at Community Park.

Estimated Time: 20 Minutes

16. ADOPT POLICY FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AGRICULTURAL PRESERVATION EXEMPT SET-ASIDES, TRANSFER OF DEVELOPMENT RIGHTS AND/OR AUCTION

Recommendation:

1. Adopt a policy for Agricultural Set-A-Sides, Transfer of Development Rights, and/or Auction process;
2. Establish number of Agricultural Set-A-Sides Available for Auction in 2019; and
3. Authorize 2019 Auction.

Estimated Time: 20 Minutes

17. PROVIDE DIRECTION REGARDING MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES

Recommendation:

Receive report and provide direction to staff on follow-up recommendation for Block-Level Master Plan Alternative for two Monterey Road Corridor projects.

Estimated Time: 20 Minutes

18. SELECT CITY COUNCIL MAYOR PRO TEMPORE AND REVIEW CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01; and
3. Review and discuss the listing of City Council Appointments to Outside Agencies.

Estimated Time: 5 Minutes

PUBLIC HEARING

19. ACCEPT PUBLIC COMMENT REGARDING THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID)

Recommendation:

Receive and accept public comment on the formation of a Morgan Hill TBID.

Estimated Time: 5 Minutes

20. DEVELOPMENT AGREEMENT APPLICATION DA2018-0002: E. DUNNE-YOUNG: REQUEST FOR APPROVAL OF A DEVELOPMENT AGREEMENT FOR THE FIRST 20 UNITS OF A 46-UNIT, THREE STORY, MULTI-FAMILY RESIDENTIAL CONDOMINIUM PROJECT PROPOSED ON A 3.5 ACRE PARCEL LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE, ADJACENT TO THE NORTH SIDE OF THE MORGAN HILL KINDER CARE LEARNING CENTER AT 605 E. DUNNE AVENUE.

Recommendation:

1. Open and close public hearing;
2. Waive the first and second reading of Development Agreement Ordinance; and
3. Introduce the Development Agreement Ordinance.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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



Sustainable Morgan Hill Vision

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

CITY COUNCIL ONGOING PRIORITIES

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

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

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



Economic Development and Telecommunications

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



Financial Stewardship

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



Infrastructure

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



Regional Initiatives

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



December Developmental Asset #39 Sense of Purpose

Young person reports that
“my life has a purpose.”

How sense of purpose affects youth?

- Improves well-being
- Youth are open to try new opportunities
- Youth feel happier
- Youth feel encouraged to strive for success



How youth can feel important?

- Let youth know their ideas are important.
- Allow their ideas and opinions be heard.
- Support their goals and dreams.
- Treat their ideas with respect and seriousness.





December Complementary Asset number #5 Caring School Climate

School provides a caring,
encouraging environment.

How this relates to sense of purpose?

- Shows other people care about the youth
- Schools support and respect their ideas
- Schools open up new ideas for youth to take part in.
- Creates confidence to engage in new ideas.



Sense of Purpose

Family

Mentors

Friends

School

Community





CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

ACKNOWLEDGE NO BIDS FOR PARKING STRUCTURE SAFETY ENHANCEMENT PROJECT AND DIRECT STAFF TO NEGOTIATE CONTRACT FOR SERVICES

RECOMMENDATION(S)

1. Adopt resolution appropriating up to \$220,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$420,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The City of Morgan Hill opened the Downtown Parking Structure in March 2016. Since its inception, there have been several challenges that have arisen at the facility. These include: youth and adults climbing on ledges, cars speeding within the structure, skateboarding and bicycling at high rates of speed, and loitering on the top floor resulting in litter and vandalism.

On September 6, 2017, City Council adopted a resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure and authorizing the City Manager to negotiate, execute, and administer agreements up to \$200,000 for parking structure improvements.

Since, City staff have been proactive in limiting these challenges using specific actions for these issues including enforcement, education, and engineering. Regular police presence has helped tremendously along with additional signage throughout the parking structure. Additional communication with residents, increased use of the upper floors by business employees, and closure to the top floor of the parking garage using temporary fencing have also reduced inappropriate behaviors.

While the temporary fencing used to close off the top level of the parking structure is an improvement, a permanent solution of additional railings and screenings are necessary to allow for the full use of the facility, and improve the safety of the structure. Staff entered into a consultant agreement with Weston Miles Architects for a design, and to provide plans and specifications for a permanent solution relating to the railings and screenings at the parking structure.

The bid opening was held on November 29, 2018 and no bids were received. In referencing Section 20166 of the Public Contract Code, "In its discretion, the legislative body may reject any bids presented and re-advertise. If two or more bids are the same and the lowest, the legislative body may accept the one it chooses. If no bids are received, the legislative body may have the project done without further complying with this chapter." Since no bids were received, staff recommends negotiating with a qualified contractor to complete the work.

The Engineer's estimate for this project is \$335,000, which does not include any special inspection, contingency, and construction administration costs. In September 2017, Council appropriated \$200,000 for this project. Staff is now requesting an additional appropriation of \$220,000, for a total of \$420,000, from the Public Facilities Fund (346) to fully fund the project. The increased estimate, above the previous estimate in 2017, is based upon complexities relating to required structural considerations associated with attaching the fencing to the existing concrete structure and increased material needs identified through the design process. City staff have discussed the opportunity of negotiating the work to be performed with known contractors and if approved by Council, will formalize the discussions and develop a contract for the work to be performed.

COMMUNITY ENGAGEMENT: Inform

City staff have and will continue to utilize City promotional channels to communicate the planned work and closure with the community. The communication will also promote active reporting of inappropriate activity in the Parking Structure to the Morgan Hill Police Department. Information signage regarding the work will be posted in the Parking Structure.

ALTERNATIVE ACTIONS:

The City Council may choose to not provide the authorization to the City Manager to make improvements at the parking structure at this time. Additionally, City Council may direct staff to rebid the project to secure bids for this project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

September 6, 2017 – City Council adopted a resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure (Project# 252017)

FISCAL AND RESOURCE IMPACT:

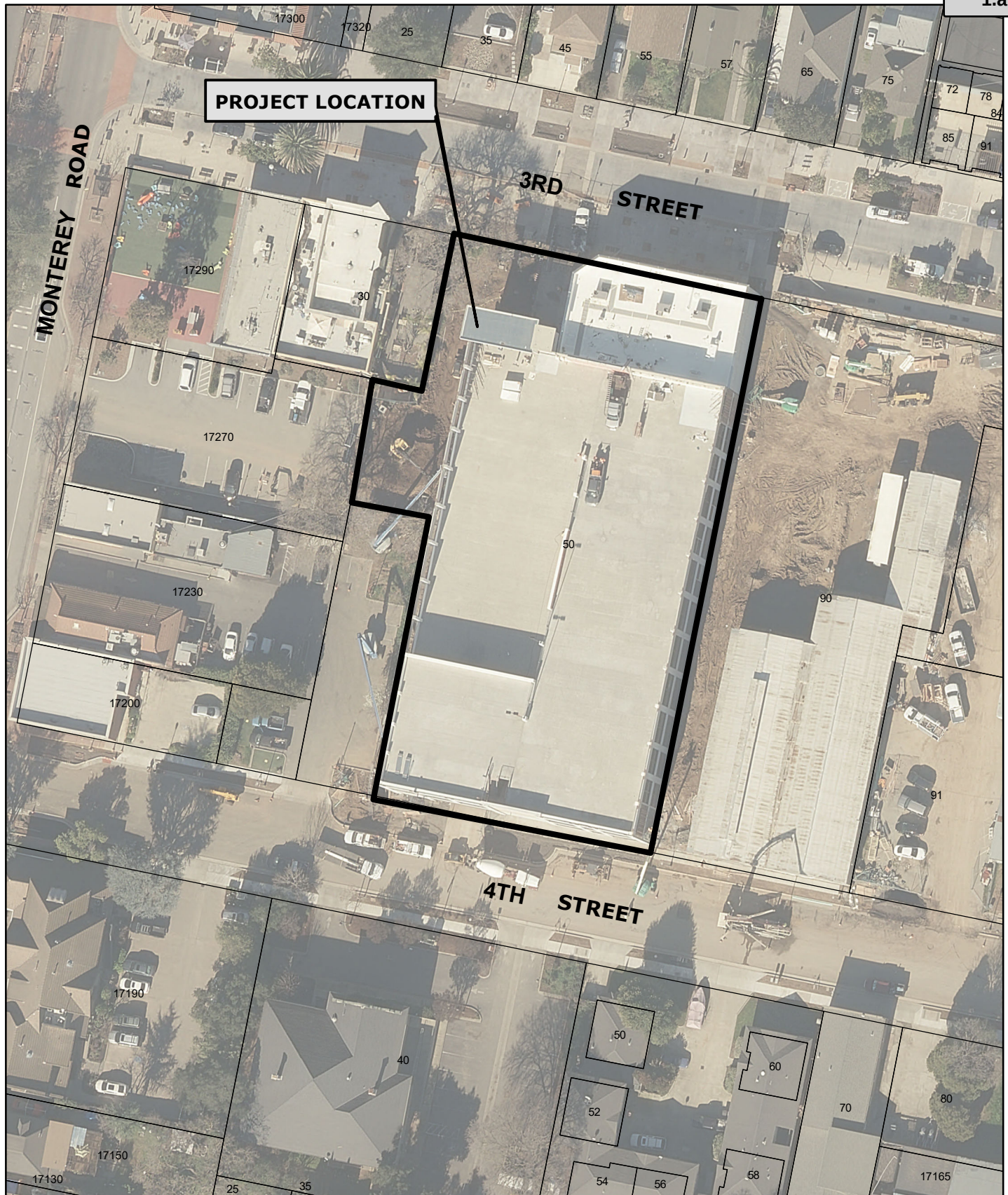
Funding for the additional \$220,000 would be appropriated from the Public Facilities Fund (346), which has adequate funds for this project (252017).

CEQA (California Environmental Quality Act):
Categorical Exemption

The proposed improvements would be limited in scope and considered part of the planned maintenance and management of city facilities, which falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. SiteMap_Parking Garage_SafetyEnhancement
2. Resolution and Budget Scorecard - Parking Garage Safety Enhancement Project



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

SITE MAP **Parking Garage** **Safety Enhancement Project**



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 IN THE PUBLIC FACILITIES FUND (FUND NO. 346) TO APPROPRIATE TWO HUNDRED TWENTY THOUSAND DOLLARS (\$220,000) FOR THE PARKING GARAGE SAFETY ENHANCEMENT PROJECT

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 19th day of December 2018 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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 19, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

021

FUND:

DEPARTMENT:

OBJECT:

346	Public Facilities (Non AB1600)
8049	Public Facility/Non AB1600
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

12/19/18
Parking Garage Safety Enhancements

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	667,397	590,499	821,119	436,777
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	220,000	(220,000)
RESULT OF RECOMMENDED ACTION	667,397	590,499	1,041,119	216,777



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Harjot Sangha, Accounting Manager
APPROVED BY: City Manager

APPROVE AGREEMENT WITH HINDERLITER, DE LLAMAS AND ASSOCIATES (HDL), FOR SALES AND USE TAX AUDIT AND BUSINESS LICENSE ADMINISTRATION SERVICES

RECOMMENDATION(S)

1. Approve an agreement with Hinderliter, de Llamas and Associates (HdL), for sales and use tax audit, and business license administration services;
2. Authorize the City Manager to execute and administer that certain agreement; and
3. Adopt resolution authorizing certain City officials and HdL to examine the sales, use, and transaction tax records of the State of California Department of Tax and Fee Administration.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The purpose of this report is for the City Council to consider approving an agreement with HdL Companies, for sales and use tax audit (SUTA), and business license administration services.

As part of the Finance workplan to continue streamlining and improving its services, staff issued a Request for Proposal (RFP) for SUTA and web-based business license software and related services. The purpose of the RFP was to evaluate current market rate for the services, tools, and features available for the City's economic development staff to study and analyze business opportunity, and last but not least, to evaluate options that enhance customer service to the City's business license customers.

A total of four (4) proposals were received, of which two (2) firms' responses included proposals on both SUTA and business licenses services, while the other firms' responses included proposals only for the business license software as a service.

Firm	SUTA and Related Services	Business License Software	Business license Administration
Avenu	X	X	X
HdL Companies	X	X	X
Progressive Solutions		X	

Tyler Technologies - EnerGov		X	
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The evaluation team narrowed the list of candidates to two, Avenu and HdL, as both are reputable firms that provide SUTA and business license software and related services.

Sales and Use Tax Auditing Services

Sales tax, currently projected at \$9.9 million, or 25 percent of the total General Fund revenue for FY 2018-19, is the second largest revenue source for the City's General Fund. Sales tax is levied on retailers who sell or rent tangible personal property. The local share (Bradley-Burns 1%) is distributed to the jurisdiction where the sale is negotiated, or the order is taken. Municipal agencies contract with specialized firms that maintain large and complete sales tax databases and work directly with the California Department of Tax and Fee Administration (CDTFA), to maximize agency's share of the sales and use tax generated by its business community. Such firms continuously audit to identify, correct, and recover all sales and use allocation errors, and in return, retain a percentage of the discovered revenue as their commission. These firms also provide quarterly sales tax analysis reports which include trend analysis, and revenue forecasts specific to the agency.

The City of Morgan Hill has contracted with Avenu, also known as MuniServices, since 1989 for services related to SUTA, trend analysis, and sales tax revenue forecasting. Conducting periodic RFPs is a good practice for entities to evaluate and align service providers that best fit the overall goals of their organization and community.

Both Avenu and HdL are considered industry leaders in California for SUTA and related services. As a result, the City interviewed both entities and received a demonstration of their sales tax analysis products and concluded that while both firms can provide reliable SUTA services, staff found HdL's sales tax analysis product to be more robust, easier to use, and had enhanced features (instant geographical based sales tax information) that can be utilized by staff to study retail segments. HdL's customer service was also noted to be exceptional by staff who had prior experience. Therefore, staff recommends approving the agreement with HdL for sales and use tax management and auditing services.

Furthermore, HdL is the only firm with professionals having direct experience regulating cannabis operations at the local and state level. The City recently passed Measure I, which allows the taxation of cannabis businesses. Should the City Council proceed with amending existing ordinances to allow cannabis operations within City limits, HdL would be instrumental in providing the required guidance and expertise in the field.

Business License Program Administration Services

The City generates about \$200,000 in business license tax revenue annually. Currently, the City's business license program is administered in-house utilizing the LicenseTRAK module within Superior's TRAKiT software. Since 2016, staff has used the system to process new applications, and to process annual renewals. During each subsequent year, staff has faced challenges in processing annual renewal notices, requiring extensive customer support, often delaying the renewals, and resulting in a backlog.

The receipting and issuing process is still a manual process within LicenseTRAK. As a result, additional staff resources are often consumed during renewal season, which makes the current process inefficient and has resulted in a lack of customer satisfaction.

Customer service continues to be an area of importance and it is essential to be able to provide basic services via the internet. While the City website provides information and forms required to obtain a business license, it does not offer a method to complete and submit an application, nor the ability to renew a license online. Both Avenu and HdL's business license solutions provide these online capabilities. Staff interviewed both entities and received demonstrations of their business license products.

After evaluating both Avenu and HdL's business license administration services, staff recommends contracting with HdL for full administration of the City's business license program. Again, HdL's demonstration showed that it better met the needs of Morgan Hill, compared to Avenu's solution, as it offers features for multiple departmental review of a business license application, which is a current required process for the City.

HdL's business license administration services will include:

- Registration Database Management
- Renewal Processing
- New Account Processing / Reviewing
- Document Submission Capability
- Payment Posting / Processing (Checks)
- Business Support Center – Phone/Email/Fax/Online
- Online Filing / Payment Processing (CC/EFT)
- Revenue Discovery/Compliance Outreach
- Public Portal for Business License Lookup

By combining and awarding the SUTA and business license administration services together, the City would also benefit from a discount offered from HdL.

COMMUNITY ENGAGEMENT: Inform

The staff report serves to inform the community of a proposed agreement with HdL to provide SUTA related services, and full business license administration services.

ALTERNATIVE ACTIONS:

Council could elect to not approve the agreement for both or an individual service.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior City Council action.

FISCAL AND RESOURCE IMPACT:

The cost of these services will be sufficiently covered by the revenue generated by the activities. Each service's cost is further discussed below.

Sales and Use Tax

The fixed cost of sales and use tax management services is \$7,800 for first year, adjusted annually by Consumer Price Index (CPI) for preceding 12 month period. . It is anticipated that the annual sales and use tax recovered due to misallocation/errors will more than cover this fixed cost.

To put into context, in the past three fiscal years, Avenu (MuniServices) has recovered an average of \$84,000 (\$112,000 - \$28,000 (25% commission)), for the City of Morgan Hill, due to misallocation/errors in sales and use tax reporting/filing.

Furthermore, HdL's proposed fee for all new sales and use tax revenue received by the City, resulting from audit and recovery work performed by the firm, will be 15%. These fees will only be billed once the City has received the recovery monies.

Business License Administration

The cost is \$13.00 per processed account, and 30% of revenue discovered and collected.

The City maintains about 4,000 active business licenses annually. Estimated annual cost of processing business licenses with HdL is estimated at \$52,000. Per HdL, clients typically see gross revenues increase up to 15% within the first year of service. From a cost perspective, by switching to this model, staff estimates net annual cost of about \$10,500 to the City, as illustrated in the table below.

Business License Cost Description	Annual Cost
HdL Fixed Cost (4,000 licenses x \$13.00)	(\$52,000.00)
Cost Savings from current Annual LicenseTRAK Maintenance Fee	16,000.00
Increase in BL Revenue (15% gross increase (\$30,000), less discovery fee 30% (\$9,000)	21,000.00
Cost Savings in Supplies and Services	4,500.00
Net Cost of Proposed Model to City	(\$10,500.00)

In addition, there would be personnel resources saved from this model, which would be re-allocated to other needed tasks and/or projects within Finance and the City.

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. HdL Agreement
2. Resolution

CONSULTANT AGREEMENT Hinderliter, De Llamas & Associates dba HdL

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

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 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 sales and use tax auditing and business license administration services as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** Compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above, shall be six hundred fifty and no/100 dollars (\$650.00) per month adjusted annually by CPI for preceding 12 months, plus sales and user tax auditing services and business license administrative services billed at the percentages set forth in **Exhibit B.**
 - 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

Attachment: HdL Agreement (2111 : Sales & Use Tax Audit and BL Admin Services with HdL)

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:

HdL Companies
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

Address of CITY is as follows:

Harjot Sangha	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]

Attachment: HdL Agreement (2111 : Sales & Use Tax Audit and BL Admin Services with HdL)

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:

Hinderliter, De Llamas & Associates dba HdL

 City Attorney

By: _____

 Donald A. Larkin

 Print Name

ANDREW NICKERSON, PRESIDENT

 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: _____

12-11-18

By: _____

JEFFREY SCHMEHR, CFO

 Print Name and Title of Signer.

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

Date: _____

12/11/18

EXHIBIT A SCOPE OF SERVICES

~SALES AND USE TAX AUDITING AND INFORMATION SERVICES~

OBJECTIVES

- Identify specific procedures used to detect, correct and recover misallocated sales and use tax revenue for the City.
- Monitor and analyze the quarterly distributions reports with a focus on ensuring all identified errors are corrected for prior and future quarters.
- Identify opportunities for the City to recover the local allocation on purchase transactions subject to tax and facilitate the recovery of such funds.
- Assist the City with strategies to preserve and enhance sales and use tax generated by existing businesses within the City.

REPORTING AND INFORMATION

- Provide an electronic database of the City's sales and use tax data to the City, including but not limiting to:
 - Sales tax producers in the City, including business name address, CDTFA #, current and historical sales tax allocations.
 - Quarterly updates.
 - Ability to create and maintain subsets of information by geographic areas/features (Ex: Downtown, Industrial Park, etc.)
 - Ability to define, print, and/or export data to spreadsheet.
- Provide written sales tax reports on a quarterly basis to the City, following the receipt of the quarterly distribution report. The report should include:
 - Morgan Hill's sales tax receipts, compared to other cities within the County, quarterly and fiscal year to date.
 - County of Santa Clara sales tax receipts compared to other counties/regions within the State, quarterly and fiscal year to date.
 - Top 100 sales tax generators ranked by the amount produced, with change over prior year's same quarter.
 - Top 25 largest declines in the quarter, with change over prior year's same quarter
 - Sales Tax Leakage report by industry category.
 - Historical sales tax by business category and geographic areas with the City.
 - Other reports mutually agreed upon.
 - Provide updates on legislative actions or bills that can impact or materially alter sales and use tax revenue to the City.
- Forecasting – to be included in sales tax reports:
 - Analysis of sales trends by business category, identifying by business the major increases and decreases each quarter
 - Provide multi fiscal-year sales tax forecast (at least 5 years), incorporating growth assumptions regarding future development within the City. The forecast should include conservative, most likely, and optimistic scenarios.

**~BUSINESS LICENSE ADMINISTRATION SERVICES~
GENERAL REQUIREMENTS**

- Database
 - o Transfer City's existing licenses database and maintain.
 - o Provide web-based citizen lookups with select field data.
- New Application/Registration
 - o Host/Maintain a site for new applicants to complete forms and submit supporting documentation, with ability to track the status of application.
 - o Site to contain capabilities to notify City Staff, and conduct review and approval process.
- Renewals
 - o Generate and send active license accounts a renewal notice within 45 days of renewal period.
 - o Generate and send delinquent license accounts a renewal notice with applicable penalties.
- Collecting, Processing and Posting Payments
 - o System should have capabilities to assess, collect, process and post applicable licenses tax rates, fees, and penalties, based on license types, for new and renewing accounts.
 - o Ability to accept Credit Card and e-check payments.
 - o The site should be in PCI compliant in all aspects and must maintain compliance with any new requirements

REPORTING AND INFORMATION

- Provide basic set of reports and have ability to develop additional reports based various fields as criteria
- Provide a web-based business look-ups for public.
- Allow the City to download raw business license data for economic development purposes.
- SB1186 – Quarterly Reporting and if available, filing.

OTHER SERVICES

- Revenue Recovery
 - o Firm should have capabilities to discover and recover additional business license tax revenue for the City.
- Other Permits/Licenses
 - o City currently issues Tobacco Retailer Licenses which will be included in initial conversion, and may, in future, require additional licenses/permits. The system should have ability to offer one account for multiple billings for businesses.

*Plus any other services, outlined in detailed proposal prepared August 31, 2018 by HdL Companies.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

A.) Sales and User Tax Auditing Services

New Sales and Use Tax Revenue - 15% - billed after audit, corrections, and receipt of revenue by City

Tax Management Services - \$650.00 per month

Staff Rates

Principal - \$325/per hour, Programmer - \$295/per hour, Senior Associate - 245/per hour, and Analyst - \$195 per hour.

Includes:

Field Inventory - 20 hours per year

Field Follow Up - 25 hours per year

Quarterly Analysis - 10 hours per quarter

Processing and Monitoring - 5 hours per quarter

Manner of payment - Monthly fee is invoiced quarterly in arrears and will be paid by City no later than 30 days. Adjusted annually by CPI for preceding 12 month period.

B.) Business License Administration Services

\$13.00 per processed license account

Revenue Discovery - 30% (applied to current and back years, not future years after discovery and collection)

Staff Rates

Partner - \$275/ per hour, Principal - \$225/per hour, Programmer - \$195/per hour, Senior Analyst - \$150/per hour, Analyst - \$75/per hour.

Manner of payment - Services are invoiced in the month after they are performed, as part of ongoing remittance process.

Attachment: HdL Agreement (2111 : Sales & Use Tax Audit and BL Admin Services with HdL)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

As directed by staff.

Attachment: HdL Agreement (2111 : Sales & Use Tax Audit and BL Admin Services with HdL)

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AUTHORIZING EXAMINATION OF
SALES, USE AND TRANSACTION RECORDS**

WHEREAS, Hinderliter, de Llamas and Associates (HdL), as the City's contracted consultant for sales tax reporting, audit, and analysis, will require complete access to the Department of Tax and Fee Administration records; and

WHEREAS, the City Council deems it desirable and necessary for authorized representatives of the City to examine confidential sales, use and transactions tax records of the Department of Tax and Fee Administration (Department) pertaining to sales, use and transactions taxes collected by the Department for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Department of Tax and Fee Administration records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales, use and transactions tax records of the Department; and

WHEREAS, That Avenu (previously MuniServices) shall be removed for examination of all sales, use and transactions tax and that Hinderliter, de Llamas and Associates is hereby designated to examine the sales, use and transactions tax records of the Department pertaining to sales, use and transactions taxes collected for the City by the Department of Tax and Fee Administration. The resolution shall designate HdL as a person authorized to examine sales and use tax records and certify that this agreement meets the requirements set forth above and in Section 7056(b), (1) of the Revenue and Taxation Code; 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 activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

NOW, THEREFORE, 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 HdL in their capacity as a contracted consultant to the City of Morgan Hill, is hereby authorized to receive any and all relevant data from the Department of Tax and Fee Administration regarding the local collection of Sales, Use, and Transactions Taxes pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law. HdL is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.
- b. That HdL is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
- c. That HdL is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after the Agreement has expired. Information obtained by examination of Department of Tax and Fee Administration records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate HdL as a person authorized to examine sales and use tax records and certify that this agreement meets the requirements set forth above and in Section 7056(b), (1) of the Revenue and Taxation Code.
- d. That the City Council finds and determines that the following City Officials and employees of the City are hereby authorized to receive and review Sales, Use and Transactions Taxes information for the City of Morgan Hill from the Department of Tax and Fee Administration and the City's contracted consultant.

City Manager
 City Attorney
 Assistant City Manager
 Finance Director
 Economic Development Director
 Economic Development Manager
 Budget Manager
 Finance/Accounting Manager

- e. That Avenu (previously MuniServices) shall be removed for examination of all sales, use and transactions tax.

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 19th day of December 2018 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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 19, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution (2111 : Sales & Use Tax Audit and BL Admin Services with HdL)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

ACCEPT GRANT FUNDING FOR AN EMERGENCY BACKUP GENERATOR FOR THE CENTENNIAL RECREATION CENTER AND AUTHORIZE THE PURCHASE AND INSTALLATION OF THE GENERATOR

RECOMMENDATION(S)

Adopt resolution to amend the City's Fiscal Year (FY) 2018-19 adopted budget, to appropriate \$235,000 from the Community/Recreation Centers Impact Fund (360) for the purchase and installation of an emergency back up generator for the Centennial Recreation Center, subject to reimbursement of \$140,249.80 from the State of California Hazard Mitigation Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Background

On October 4, 2017, the City of Morgan Hill adopted resolution 17-078 which approved the City of Morgan Hill's 5-Year Hazard Mitigation Plan (Plan) which outlines disaster mitigation efforts to be undertaken by the City and its agency partners over the next 5 years.

Mitigation is defined in this context as any sustained action taken to reduce or eliminate long-term risk to life and property from a hazard event. Mitigation planning is the systematic process of learning about the hazards that can affect the community, setting clear goals, identifying appropriate actions, and following through with an effective mitigation strategy. Mitigation encourages long-term reduction of hazard vulnerability and can reduce the enormous cost of disasters to property owners and all levels of government. Mitigation can also protect critical community facilities, reduce exposure to liability, and minimize post-disaster community disruption.

The adoption of the Plan allows the City of Morgan Hill to be eligible to pursue hazard mitigation project funding from Federal and State governments from both the Pre-Disaster Mitigation and the Hazard Mitigation Grant Programs.

Morgan**Hill****Project**

The Centennial Recreation Center (CRC) is a multipurpose building that supports a range of uses and clientele. In times of natural hazards/disasters the CRC can also help provide continuity of service to 16,100 people. In addition, should the power fail during a normal business day, continuity of services is provided to 600 economically diverse people. The facility provides important day-to-day services to youth and seniors as well as acts as a cooling center for the community when temperatures escalate. Lastly, the facility has shower and kitchen facilities and is a designated Red Cross Emergency shelter.

For these reasons, the City submitted a Notice of Interest (NOI) to CalOES's 404 Hazard Mitigation Grant Program for an Emergency Backup Generator for the CRC on November 1, 2017. The Federal Grant funding had been made available in response to the Presidential Disaster Declaration DR-4301 California Severe Winter Storms, Flooding, and Mudslides. Grant funding would address the project funding shortfall as well as ensure that the CRC is more resilient in the times of natural disaster. CalOES deemed the City's application complete in February 2018 and forwarded the application to Federal Emergency Management Agency (FEMA) for their consideration.

The project includes the acquisition and installation of a 400kw diesel generator and the construction of a concrete pad to support the equipment. The estimated cost of the project is \$235,000.

On October 22, 2018, FEMA notified CalOES that the City of Morgan Hill's grant application was approved, and the grant would support approximately 60% of the estimated total project cost, or \$140,249.80.

As a result, Staff recommends accepting the FEMA Grant, and adopting the resolution recognizing the grant revenue and appropriating the related expenditure for the project.

COMMUNITY ENGAGEMENT: Inform

In order to implement an emergency backup generator at the CRC, the City will go out to public bid for the purchase and installation of a 400kw diesel generator. It is anticipated that the process will start at the end of January. Once the project is awarded, it is anticipated that the project will take 6 months to complete.

Once operational, the proposed emergency backup generator contains enough fuel storage to power the facility continuously for 48 hours before refueling.

ALTERNATIVE ACTIONS:

Alternatively, the City Council could choose not to accept the grant and fully fund the project itself. The City Council could also elect to use the General Fund to fund the project, conserving funding in the Community/Recreation Centers Impact Fund for future projects.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 4, 2017, the City of Morgan Hill adopted resolution 17-078 which approved the City of Morgan Hill's 5 Year Hazard Mitigation Plan which outlines disaster mitigation efforts to be undertaken over the next 5 years.

FISCAL AND RESOURCE IMPACT:

The CalOES grant will require the City to procure, construct, and install the project with dedicated funds. Upon the completion of the project, the City will request a reimbursement for all eligible costs associated with the project, as defined below, up to \$140,249.80. The remaining funds (\$94,750) are recommended to be appropriated from the Community/Recreation Centers Impact Fund (360), which has adequate funds to support this project without impacting the CRC Expansion Project and future projects significantly. Out of the available funding sources, the Community/Recreation Centers Impact Fund is the most appropriate and only alternative to the General Fund where other projects will not be significantly impacted.

Estimated Costs	Costs	Share of Project Costs
Generator	\$128,500	
Permits/Fees	\$11,747	
Pad Construction/Design	\$10,000	
Installation and Hookup	\$59,500	
Testing	\$4,000	
Capital Improvement Project Administration	\$10,000	
Contingency	\$11,253	
subtotal	\$235,000	
CalOES Grant Project #PJ0042 Reimbursement	(\$140,250)	60%
City of Morgan Hill Final Obligation	\$94,750	40%

The City of Morgan Hill currently has in place a maintenance agreement with CD & Power for all generators. A condition tied to the CalOES grant funds is that the generator will need to undergo preventative maintenance each year. It is anticipated the City will have to amend the agreement with CD & Power to include annual preventative maintenance instead of a rolling three-year cycle for all other generators. It is estimated the annual contract cost will increase by \$2,500, this cost will be required and absorbed by the Centennial Recreation Center Maintenance budget beginning in FY 2019-20. Therefore, no budget appropriations are required at this time. Community Services Maintenance staff will also be required to take on additional record keeping and inspection of the additional generator, which will be incorporated within the existing workplan.

CEQA (California Environmental Quality Act):

Categorically Exempt: As a minor alteration of an existing facility, this project is categorically exempt from CEQA. CEQA Guideline §15301.

LINKS/ATTACHMENTS:

1. Budget Amendment Resolution
2. CalOES Announcement of Grant Award to City

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET IN THE COMMUNITY/RECREATION CENTERS IMPACT FUND (360) TO RECOGNIZE \$140,250 AS GRANT REVENUE AND APPROPRIATE \$235,000 FOR THE PURCHASE AND INSTALLATION OF AN EMERGENCY BACK UP GENERATOR AT THE CENTENNIAL RECREATION CENTER

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 are categorically exempt 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 the City of Morgan Hill at its meeting held on this 19th day of December 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

DATE: _____

RICH CONSTANTINE, 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 19, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Exhibit A

AGENDA BUDGET SCORECARD
FISCAL YEAR 2018-19
ADJUSTMENT #

029

FUND:

360 Com. Rec. Centers Impact Fund

DEPARTMENT:

8065 Com/Rec Center Impact

OBJECT:

86360 CONSTRUCTION

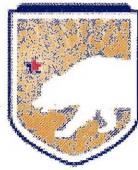
AGENDA DATE:

12/19/18

AGENDA ITEM TITLE:

Hazard Mitigation Grant for an Emergency Backup Generator

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,113,663	1,275,010	2,184,177	204,496
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	140,250	235,000	(94,750)
RESULT OF RECOMMENDED ACTION	<u>1,113,663</u>	<u>1,415,260</u>	<u>2,419,177</u>	<u>109,746</u>



November 8, 2018

Dale Dapp
Program Administrator, Community Services
Morgan Hill, City of
17575 Peak Avenue
Morgan Hill, CA 95037

Subject: **Notification of Subapplication Approval**
Hazard Mitigation Grant Program
FEMA-4301-DR-CA, Project #PJ0042, FIPS #085-49278

Dear Mr. Dapp:

The California Governor's Office of Emergency Services (Cal OES) received notification that the Federal Emergency Management Agency (FEMA) has fully approved your organization's subaward application in the amount of **\$140,249.80**. A copy of the FEMA award package is enclosed for your records.

In order to receive payment, all subrecipients must have a current (within the last 3 years), valid Governing Body Resolution and updated Grant Assurances on file with our office (sample copies enclosed). These forms may be downloaded in an electronic format at www.caloes.ca.gov following the links: *Cal OES Divisions; Recovery; Disaster Mitigation & Technical Support; 404 Hazard Mitigation Grant Program; HM Post Obligation Documents*. An active DUNS Number registration with the federal System for Award Management (SAM) website is also required for obtaining payment. For your convenience, information regarding completing and renewing a SAM registration is included in this package. Please complete the electronic forms as well as the enclosed Supplemental Grant Subaward Information sheet and return them to the address below within 30 days. Payments will be made on a reimbursement basis using the Hazard Mitigation Reimbursement Request Form. A ten percent (10%) retention will be withheld from all reimbursement payments and will be released as part of the subaward closeout process.

Reimbursements can be made only for items listed on the approved subaward application; expenditures for any other work should be separately maintained and are the sole responsibility of the subrecipient. Any funds received in excess of current needs or approved amounts, or those found owed as a result of a final inspection or audit, must be refunded to the State within 30 days of receipt of an invoice from Cal OES.

Please read all enclosed documents prior to initiating the approved project. For further assistance, please contact the Grants Processing Unit at (916) 845-8110.

Grants Processing Unit

Enclosures

c: Applicant's File



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

ACCEPT DONATION FROM COMMUNITY LAW ENFORCEMENT FOUNDATION

RECOMMENDATION(S)

Adopt a resolution:

1. Accepting a donation from the Community Law Enforcement Foundation in the amount of \$25,439, for the purchase of ballistic plates and carriers for first responders, enhanced communication equipment for our tactical team, and integration costs for a community engagement and evaluation program;
2. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund (010) to recognize the CLEF donation as revenue, and appropriate \$25,439 in the Police Department budget for associated expenditures; and
3. Appropriating a transfer of \$15,840 from the Asset Seizure Fund (225) and to the General Fund (010) for the annual program subscription services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

REPORT NARRATIVE:

The Community Law Enforcement Foundation of Morgan Hill (CLEF) is a not-for-profit volunteer organization dedicated to supporting and promoting public safety through partnerships that provide resources to enhance the operation of the Police Department. CLEF Board of Directors and volunteers work to raise funds for the purchase of equipment and materials that are not within the Department's operating budget.

CLEF wishes to provide a cash donation for the following amounts and purposes:

1. \$18,503 for the purchase of enhanced ballistic plates and plate carriers for field personnel. The plates would be donned by officers when performing high-risk activities such as search warrants and calls involving weapons. The plates provide an increased level of protection, above the current ballistic ratings of soft body armor, for critical areas of the body. Ballistic plates are becoming increasingly provided and worn by officers in the public safety profession.
2. \$1,936 for the purchase of communications equipment. The Gilroy-Morgan Hill regional tactical team uses communication headsets that are integrated into their ballistic helmets. The headsets are engineered to protect against hearing loss in

the event of a firearm discharge or deployment of a distraction device inside a home or apartment. The headsets require a unique adapter to function with our current radios. The donation will facilitate the purchase of the needed equipment integrating the radios and the headsets.

3. \$5,000 to pay for the integration costs of a new community engagement program from SPIDRTech. SPIDRTech is a cloud-based software program that increases community engagement by sending pre-formatted text messages to reporting parties and victims of crime. Using cell phone numbers, provided by the recipients, the program will send text messages at pre-defined intervals for different reasons. Some reasons for sending the messages include response delays, necessary follow-up contact information, providing a means to contact a detective, and to evaluate our service to ensure it aligns with our goal of being responsive, empathetic and professional.

If approved by Council, the annual on-going costs of \$7,920 for FY 2018-19 and 2019-20 will be paid from the Asset Forfeiture Fund by transfer into the General Fund.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve as notification to the community of the donation from CLEF of equipment.

ALTERNATIVE ACTIONS:

Council could choose to approve some, or none of the proposed actions. If Council chose to accept the donation for integration costs of SPIDRTech but not the on-going funding, staff would not implement the program.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously accepted donations from CLEF to enhance the Police Department's operations every year since 2010. CLEF's total donations to-date have exceeded \$225,000. The budget appropriations for those donations were approved and incorporated into the respective year's budget.

FISCAL AND RESOURCE IMPACT:

1. Recognize \$25,439 as revenue towards CLEF Donations (010.37516). Appropriate a maximum of \$20,439 in Field Operations Supplies (010.3210.42248) for the costs of the ballistic plates and communications equipment.
2. Appropriate a maximum of \$5,000 in Field Operations Contract Services (010.3210.42231) for integration costs of the SPIDRTech program.
3. Appropriate a transfer of \$15,840 from Asset Seizure Fund (225.6800.49210) to the General Fund (010.39219), and related expenditure in PD Support Services Division (010.3225.42246).

CEQA (California Environmental Quality Act):

Not a Project.

Continuing administrative activities, such as purchases for supplies and equipment, is not a project subject to environmental review.

LINKS/ATTACHMENTS:

1. Clef Donation and Asset Seizure Reso 12-19-18
2. CLEF ballistic vests community engagement software City donation information

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 ACCEPTING A DONATION OF \$25,439 FROM THE COMMUNITY LAW ENFORCEMENT FOUNDATION AND APPROPRIATING \$25,439 FOR THE PURCHASE OF TACTICAL AND COMMUNICATION EQUIPMENT, AND APPROPRIATING A TRANSFER OF \$15,840 FROM THE ASSET SEIZURE FUND (225) TO THE GENERAL FUND (010) FOR THE PURCHASE OF A SOFTWARE SUBSCRIPTION 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 purchase described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Accept Donation from Community Law Enforcement Foundation" submitted for City Council consideration at its meeting of December 19, 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 consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; 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 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 is in support of the donation to purchase ballistic plates and carriers and communication equipment for the tactical team to enhance the the safety and well-being of first responders during emergency call-outs and increase the community engagement activities of the Police Department through communications software; and
- b. 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
- c. 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; and
- d. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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 19th day of December 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Rich Constantine, 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 19, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

026

FUND:

010 General Fund

DEPARTMENT:

3210 Police-Patrol

OBJECT:

Various Various

AGENDA DATE:

12/19/18

AGENDA ITEM TITLE:

Donation from CLEF

	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	672,571	(347,821)
RECOMMENDED ACTION	-	25,439	25,439	-
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,614,738</u>	<u>42,356,499</u>	<u>16,945,291</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

027

FUND:

225 Asset Seizure Fund

DEPARTMENT:

6800 Asset Seizure

OBJECT:

49210 TRANSFER OUT-010 (GENERAL FUND)

AGENDA DATE:

12/19/18

AGENDA ITEM TITLE:

Transfer from Asset Seizure

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	111,921	1,670	-	113,591
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	15,840	(15,840)
RESULT OF RECOMMENDED ACTION	111,921	1,670	15,840	97,751

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

028

FUND:

010 General Fund

DEPARTMENT:

3225 Police-Support Services

OBJECT:

42231 CONTRACT SERVICES

AGENDA DATE:

12/19/18

AGENDA ITEM TITLE:

Transfer from Asset Seizure

	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	-	350,189	698,010	(347,821)
RECOMMENDED ACTION	-	15,840	15,840	-
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,630,578</u>	<u>42,372,339</u>	<u>16,945,291</u>



**COMMUNITY LAW ENFORCEMENT FOUNDATION
Of
MORGAN HILL, INC.
305 Vineyard Town Center, PMB 216
Morgan Hill, CA 95037**

December 14, 2018

VIA EMAIL ONLY

margarita.balagso@morganhill.ca.gov

David Swing, Chief of Police
c/o Margarita Balagso, Analyst
Morgan Hill Police Department
16200 Vineyard Boulevard
Morgan Hill, CA 95037

**Re: CLEF Ballistic Plates and Carriers, Enhanced Communication
Equipment, and Community Engagement and Evaluation Software
Intent to Donate Notice**

Dear Chief Swing:

The Community Law Enforcement Foundation intends to make a donation of \$25,439 to the City of Morgan Hill for the purchase for the MHPD of the following:

- 1) ballistic plates and carriers for first responders,
- 2) enhanced communication equipment for our tactical team, and
- 3) integration costs for a community engagement and evaluation program software, all for the purpose of enhancing and facilitating public safety in our community. Please thank your entire police department for its service and for allowing us to help them.

Very truly yours,


Craig C. van Keulen, President
Community Law Enforcement Foundation

CvK/blm

Attachment: CLEF ballistic vests community engagement software City donation information (2106 : Donation From Community Law



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Christie Thomas,
APPROVED BY: City Manager

APPROVE AGREEMENT WITH OUTREACH SERVICES IN PARTNERSHIP WITH THE COUNTY OF SANTA CLARA

RECOMMENDATION(S)

1. Approve an agreement with the County of Santa Clara Office of Supportive Housing for Homeless Services to continue support for joint Rapid Re-Housing and Homeless Outreach Services specifically for South County; and
2. Authorize the City Manager to execute and administer the certain agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Community Engagement and Messaging
Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

In partnership with the County of Santa Clara Office of Supportive Housing (OSH), the Housing team requests City Council's continued support of (2) South County Homeless programs, authorizing the City Manager to execute an agreement with the County of Santa Clara for Homeless Services in the amount of \$50,000 (\$25,000 for each of (2) programs) as appropriated for the 2018-19 fiscal year.

Policy considerations include:

1. Does the partnership in these programs enhance services for Morgan Hill residents?
2. Do leveraged resources produce benefits to the City, as well as, the County and South County region?

REPORT NARRATIVE:

Homelessness continues to be a pressing issue for Santa Clara County (SCC) and the State of California. According to the U.S. Department of Housing and Urban Development (HUD) 2014 Annual Homeless Assessment Report, Santa Clara County

has the seventh largest number of homeless persons on any given night and the fourth largest number of unaccompanied homeless youth in the nation. The 2015 SCC Homeless Census confirmed this by demonstrating that homelessness in the southern part of the County is on the rise.

More recently, in January 2017 Santa Clara County Homeless Census was conducted and concluded that out of the total (7,394) Santa Clara County homeless counted, (1,260) homeless were counted in South County. The Census also identified 105 homeless families totaling 396 members in Santa Clara County.

Currently, Morgan Hill Unified School District (MHUSD) reports that there are 572 homeless youth in Morgan Hill. Please note, that MHUSD considers youth/families homeless if they are residing in the following circumstances: living on the street, in a car or RV, living in a shelter, renting a room, doubled up living with someone else (non-permanent co-habitation), or living in a structure that is not deemed livable (examples would be renting a garage, empty structure, barn, or a house without water, electricity, or plumbing), whereas the SCC Homeless Census considers people homeless if they are, residing in emergency shelters and/or transitional housing, living on the streets, living in cars (not RV's), abandoned properties, or in other places not meant for human habitation.

In June 2015, the City Council endorsed the countywide Community Plan to end and prevent homelessness to continue to advance the goal of supporting regional housing strategies in collaboration with other jurisdictions and agencies. The Community Plan's scope included all homeless populations and encourages partnerships with the County to grow needed services in South County.

To continue to respond to the need, the Housing team and its regional partners, County OSH and homeless advocate, Destination:Home (D:H), have been working towards a "South County" strategic response to homelessness. D:H is a private-public partnership serving as a "backbone" organization for collective impact strategies to end and reduce homelessness in Santa Clara County by driving and aligning resources. For the past year and a half, with these collaborative efforts, Morgan Hill has funded the following two programs to specifically focus on "South County" homelessness.

1.) Rapid Rehousing and Homeless Prevention Supportive Housing Program for Homeless Families with Children (\$25,000)

Broad Goals:

- End homelessness for families and children who are living in shelters, on the streets, in their cars, or other places not meant for human habitation.
- Prevent homelessness among families with children who are at imminent risk of homelessness.

- Integrate supportive housing into school-based resources/systems that are the “natural settings” for kids and their families.

Program Concept:

- Work with school district homeless coordinators to identify families in need.
- For the homeless families, the solution is to enroll them in Rapid Rehousing programs
 - Provide temporary, but not long-term, rental assistance, case management, financial services, legal services, and housing services so they can move into housing as soon as possible;
 - While the families are looking for housing, provide them with temporary housing or transitional housing sites (aka, interim or bridge housing);
 - Work with schools’ adult education and community college partners to provide the families with services to help them improve their earning potential; and
 - Assist the families to eventually transition in place. When the program ends, families stay in their assisted apartment and take over the full lease.
- For families who are at imminent risk (e.g., have an eviction notice) or otherwise need one-time assistance (e.g., help with security deposit to move into an apartment after transient living), we would provide similar but less intensive services and less financial assistance.

Partnership structure/concept:

- The County and the City jointly fund an RRH and Homelessness Prevention Program. Morgan Hill’s funds, (\$25,000) offset the County funds, (\$3.3 million). The level of assistance per family varies based upon need. The goal is to encourage multiple cities to support these efforts; however, Morgan Hill funds serve Morgan Hill residents.
- The services are provided by a non-profit (currently Salvation Army). County staff has the capacity to procure and administer the contracted program and selects the service provider if no longer contracting with Salvation Army.

- For Morgan Hill, the program has been operated out of Morgan Hill locations including the Morgan Hill Unified School District Office, “Voices School”, Etc.

2.) Outreach and Engagement (\$25,000)

Broad Goals:

- This support co-funds a Homeless Outreach team and linkage service program in South County through an agency identified by the County OSH. Without this program in South County, outreach is limited to law enforcement, faith-based volunteers, and the existing safety net agencies (County services used to support individuals and prevent poverty and homelessness). This collaboration will continue to increase the effectiveness and clarity of the Countywide coordinated entry system into services and housing.
- Having dedicated outreach teams in South County has increased the number of individuals who are assessed for need. It has also increased the speed and likelihood that Morgan Hill individuals and families are referred to and enrolled in housing and safety net programs offered by the County.
- Since implementation of this program by the City of Morgan Hill on July 1, 2017, the following outcomes have been obtained: (Attachment No. 1)
 - Between the months of July 1, 2017 and December 31, 2017:
 - **Permanent Supportive Housing (PSH)** – (8) Morgan Hill affiliations enrolled in program, and (6) housed. Nearly 3% of all (county-wide) PSH enrolled and 2.6% of all PSH housed households have an affiliation* with the City of Morgan Hill;
 - **Rapid Rehousing (RRH)** – (12) Morgan Hill affiliations enrolled in program, and (6) housed (2.5% of all county wide RRH enrolled and 2.2% of all RRH housed have an affiliation* with the City of Morgan Hill);
 - **VI-SPDAT assessment conducted** - *(convergence of Vulnerability Index and the Service Prioritization Decision Assistance Tool – a prescreening tool that includes medical risk factors and social risk factors)* – (404) Morgan Hill assessments (of the total SCC 12,692 VI-SPDATS assessments conducted, 3.2% of those clients have a City of Morgan Hill affiliation*)

* affiliation to City of Morgan Hill by at least one of the following connections:

- Address
- Work/School
- Spending most time in Morgan Hill
- Living in Morgan Hill prior to homelessness

Program Concept:

- A partnership between the County outreach team and the local housing and law enforcement team ensures that: 1.) the County continues to address some of the unmet mental health needs of homeless persons; and, 2) establishes a more holistic and humane response to meeting the needs of unsheltered homeless persons.
- City teammates continue to work closely with the County's outreach team to ensure coordination with law enforcement and community-based organizations. Through the County database, called the Homeless Management Information System (HMIS), the City and County OSH will continue to monitor the number and quality of assessments performed, and the effectiveness of outreach teams.

Partnership structure/concept:

- This proposal continues to support the City and County's goal of creating a more robust and coordinated supportive housing system that prevents and reduces homelessness in South County. The County has added (2) full time homeless outreach workers dedicated to South County, a personnel expense of \$300,000 to the County on an ongoing basis. The expenditures of these outreach workers continue to be offset by \$25,000 from the City of Morgan Hill for FY 2018-19. The program will continue to be evaluated for its effectiveness in South County before requesting additional funds for the FY 2019-20.
- The City of Morgan Hill has also appropriated an additional \$50,000 for FY 2018-19 to fund another South County outreach worker but is awaiting the City of Gilroy's \$50,000 contribution to make this possible.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation to enter into an agreement with the County for homelessness services.

ALTERNATIVE ACTIONS:

The Council could alternatively choose not to provide funding for these homelessness programs at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 17, 2015, the City Council endorsed the Community Plan to End Homelessness.

On April 5, 2017, the City Council authorized the contract between SCC and the City of Morgan Hill to fund \$50,000 (\$25,000 each) towards the RRH program and the addition of (2) dedicated South County Outreach workers.

On May 19, 2017 (Mid-Cycle Budget Review Workshop), the City Council authorized an additional \$25,000 for the RRH program and the addition of (2) dedicated South County Outreach workers for FY 2017-18

On June 6, 2018, the City Council adopted FY 2018-19 budget appropriating \$50,000 for RRH program and (2) dedicated South County Outreach workers

FISCAL AND RESOURCE IMPACT:

The contract amount of \$50,000 (\$25,000 for each program) will be funded with budgeted appropriations Housing Mitigation Fund. (GL Account # 236.7100.86441.

CEQA (California Environmental Quality Act):

Under California Environmental Quality Act (CEQA) Guidelines Section 15378 the administrative actions taken to approve a service contract do not qualify as a "project" and are therefore exempt from California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. County services report - Morgan Hill as of Dec 31, 2018
2. FY19 Morgan Hill Revenue Agreement FINAL unsigned

City of Morgan Hill Results – February 2018

Permanent Supportive Housing (Disability required)	Enrolled	Housed
PSH Total	279	234
PSH - Morgan Hill Affiliation	8	6
Percent	2.9%	2.6%

Rapid Rehousing	Enrolled	Housed
RRH Total	475	275
RRH - Morgan Hill Affiliation	12	6
Percent	2.5%	2.2%

VI-SPDATs	All Clients	Head of Household
Total VI-SPDATs	12,692	11,605
VI-SPDATs with a Morgan Hill affiliation	404	339
Percent	3.2%	2.9%

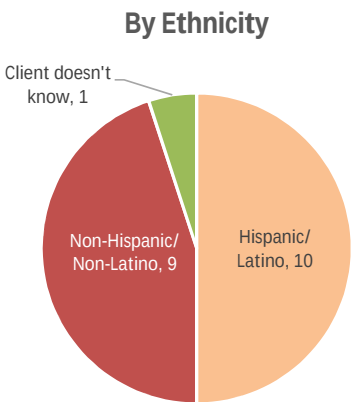
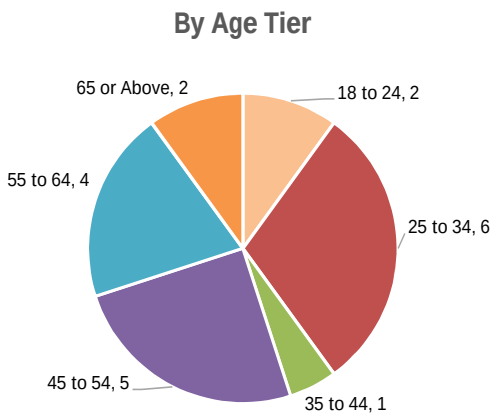
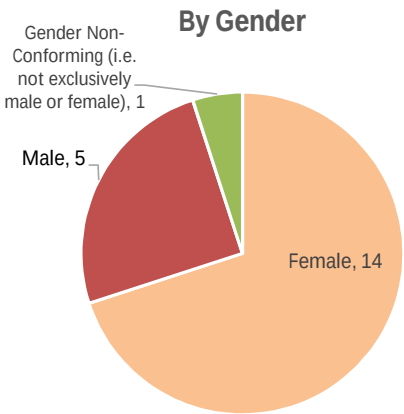
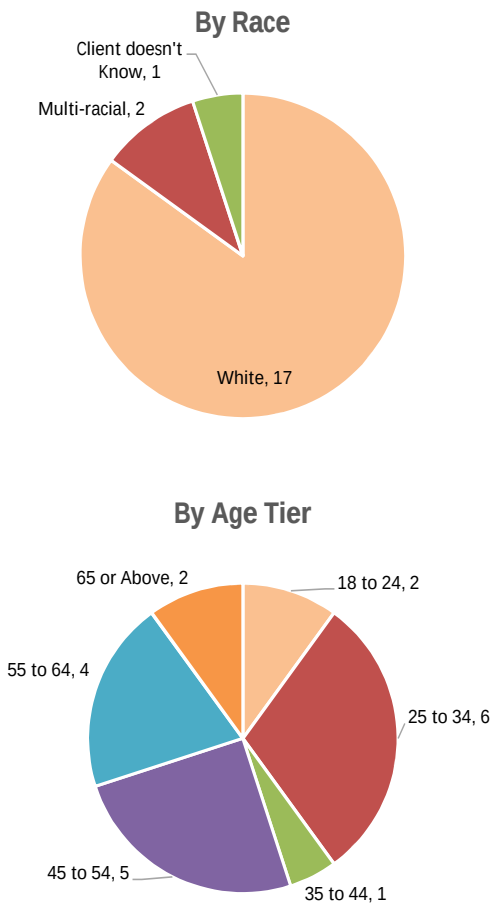
Income at Entry and Exit	Average HH Income at Entry	Average HH Income at Exit
Average Household Income for the 20 PSH and RRH Morgan Hill Affiliated Enrolled Households	\$718	\$1,214

Between July 1, 2017 and December 31, 2017:

- Nearly 3% of all PSH enrolled and 2.6% of PSH housed households have an affiliation with the City of Morgan Hill by at least one of these connections:
 - Address
 - Work/School
 - Spending most time in Morgan Hill
 - Living in Morgan Hill prior to homelessness
- 2.5% of RRH enrolled and 2.2% of RRH housed have a City of Morgan Hill affiliation
- Of the total 12,692 VI-SPDATs conducted, 404 or 3.2% of those clients have a City of Morgan Hill affiliation by address, work/school, spending most time, and living in Morgan Hill prior to homelessness
- 5.2% of the homeless population reported in the 2017 Santa Clara County Point-in-Time (PIT) count were counted in Morgan Hill (388 out of 7394)

City of Morgan Hill Results – February 2018 (Cont'd)

Demographics based on 20 Morgan Hill Affiliated PSH and RRH Enrolled Households between July and December 2017



**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA
AND THE CITY OF MORGAN HILL**

This Agreement is entered into by and between the County of Santa Clara (the “County”) and the City of Morgan Hill (the “City”), individually, a “Party” and, collectively, the “Parties,” in order to provide funding for and establish roles, rights and responsibilities related to preventing and ending homelessness in Morgan Hill.

RECITALS

- A. WHEREAS, the Parties have endorsed the Community Plan to End Homelessness and have approved resolutions finding that the problem of homelessness in Santa Clara County is a crisis;
- B. WHEREAS, the City is in a collaborative partnership with the County whereby the Continuum of Care (CoC) Recommendations for Homeless Housing Contracts will be added into any City contracts when directly funding County homeless programs (see Attachment A);
- C. WHEREAS, the City, the County and other partners seek to reduce homelessness while sharing costs, prioritizing services to the community’s most vulnerable homeless persons, using resources strategically, and maintaining effective operational relationships;
- D. WHEREAS, in its role as the lead agency for the Santa Clara County CoC, the County’s Office of Supportive Housing (OSH) coordinates permanent housing programs, shelter and transitional housing, rapid rehousing programs, supportive services, a homeless management information system and supportive housing policies countywide;
- E. WHEREAS, the County manages the Permanent Supportive Housing program, which coordinates care of the county’s most vulnerable and long-term homeless residents;
- F. WHEREAS, the City seeks to leverage the County’s resources and expertise in managing supportive housing programs by allowing the County to manage programs for homeless persons with the intent of providing outreach and services to Morgan Hill and South County homeless, and at-risk of homelessness, residents, both in the City and surrounding unincorporated areas;

- G. WHEREAS, the City seeks to leverage the County's resources and expertise to respond to the Biannual Homeless Census Count, and work towards reducing and ending homelessness in the City of Morgan Hill.

In consideration of the foregoing Recitals, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

1) TERM

This Agreement is effective upon execution and will continue thereafter until June 30, 2019 unless extended by mutual consent or terminated as provided below in Sections (4) and (15).

2) ROLES AND RESPONSIBILITIES

- a) The Parties shall jointly develop, implement and monitor a Rapid Rehousing (RRH) Program and a Homelessness Prevention Program for homeless families with children.

(1) The City shall reimburse the County for expenses associated with the RRH and Homelessness Prevention Programs in an amount not to exceed \$50,000 through June 30, 2019.

(2) Funding for the RRH Program and Homelessness Prevention Program is contingent on annual appropriations that are approved by the City's Council and the County's Board of Supervisors.

- b) The Parties shall each designate a Program Manager to implement the terms of this Agreement and ensure successful implementation of the Program. The City hereby designates the Assistant to the City Manager or his/her designee. The County hereby designates the OSH's Program Manager of Rapid Rehousing and Homelessness Prevention for the County.

- c) The City's Program Manager shall:

- i) Serve as the liaison to the City's departments, Council, and community groups;
- ii) Participate in the development and process of selecting services providers for the Programs, if applicable;

- iii) Participate in management meetings for the Programs, which will be held as needed;
 - iv) Actively assist the development, management and refinement of the Programs to ensure that the Programs meets their goals;
 - v) Review and process all invoices from the County; and
 - vi) Actively assist in the development, management and refinement of the Programs to ensure that the Programs are working in partnership with the faith based community, service providers, City Departments, including the Police and Fire Department to respond to the needs of those who are homeless and interfacing with City Departments on an ongoing basis.
- d) The County's Program Manager shall:
 - i) Serve as the liaison to County departments;
 - ii) In addition to managing the Permanent Supportive Housing Program, the County will integrate the Coordinated Entry System (CES) into school-based resources/systems working with school district homeless coordinators to identify families in need. The services will include assessing homeless families into the CES. For families at imminent risk of homelessness, services will include one-time financial assistance. Additionally, to the extent possible the County outreach workers will outreach and provide services to individuals and families living in vehicles including Recreational Vehicles (RV's), both in the City limits and nearby unincorporated areas.
 - iii) Lead in the development, management and refinement of the Program to ensure that the Program meets its goals; and,
 - iv) Submit quarterly reports to the City's Program Manager; and
 - v) Review and submit all invoices from the County.
- e) The Parties will work collaboratively to:
 - i) Establish the Programs' referral criteria and procedures, which shall be consistent with the Santa Clara County Continuum of Care's Coordinated Assessment System

(aka Coordinated Entry System) and the City's goal to end homelessness in the City; and

- ii) Establish the Programs' success and outcome measures, which shall be consistent with the Santa Clara County Continuum of Care's Performance Measurement System; and,
 - iii) Identify ways and resources that would enable the Programs to more effectively use County-funded rental subsidies, provide interim housing, or provide other support services.
- f) The Parties will jointly monitor the Programs' expenses and outcomes. Based on the availability of the City's funds in future years and the Program's outcomes, the Parties will determine whether to continue, expand, contract or terminate the Programs at the end of the Term.

3) MUTUAL INDEMNIFICATION

Each Party agrees to indemnify, defend, and hold harmless the other Party from any claim, liability, or loss resulting from the willful, wrongful, or negligent act or omission of the indemnifying Party, its members, officers, directors, trustees, agents or employees for its or their performance or failure to perform provisions of this Agreement. Each Party shall notify the other Party, in writing, of any claim of injury or damage related to activities performed pursuant to this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of activities of this Agreement, provided that nothing shall require either Party to disclose any documents, records, or communications which are protected under the attorney-client privilege or the attorney work product doctrine. The provisions of this section shall survive the termination of this Agreement.

4) TERMINATION

Either Party may terminate this Agreement at any time for convenience and without cause, upon providing a ninety-day (90) notice to the other Party at the addresses set forth in Section (14) below. The notice shall state the effective date of the termination.

5) CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If the City's proprietary information is contained in documents or information submitted to County, and the City claims that such information falls within one

or more CPRA exemptions, the City 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 the City prior to such disclosure. If the City 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 the City fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

The City 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 City.

6) ASSIGNMENT

The expertise and experience of the County is a material consideration for this Agreement. The County shall not assign or transfer the performance of this Agreement to another entity without the prior written consent of the City. Any attempt by the County to assign its performance of its duties or obligations arising under this Agreement, and any attempt by the City to assign the performance of its duties or obligations arising under this Agreement shall be deemed void.

7) ASSURANCE

Each Party represents and warrants that it has the authority to enter into this Agreement.

8) RELATIONSHIP

Nothing contained in this Agreement shall be deemed or construed by the Parties or any third party to create the relationship of partners or joint ventures between the City and the County.

9) CONFIDENTIALITY

The Parties agree that by virtue of entering into this Agreement they each will have access to certain confidential information regarding the other Party’s operations. Each of the Parties shall not disclose confidential information and/or materials without the prior written consent of the other Party, unless such disclosures are required by California law. Where appropriate, resident releases will be secured before confidential resident information is exchanged.

10) ENTIRE AGREEMENT

This instrument contains the entire agreement between the Parties, and no statements, promises or inducements made by either Party or the designated agent of either Party that are not contained in this Agreement shall be valid or binding.

11) MODIFICATION

This Agreement may not be enlarged, modified, or altered, except if it is evidenced in writing, signed by the Parties and endorsed to this Agreement.

12) INSURANCE

Each Party shall, at its own expense, keep in force during the Term, Workers' Compensation Insurance, insuring against and satisfying each Party's obligations and liabilities under the workers' compensation laws of the State of California, including employer's liability insurance in the limits required by the laws of the State of California.

13) SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in force without being impaired or invalidated in any way.

14) NOTICES

Notices to the Parties in connection with this Agreement shall be given personally or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties as follows:

SANTA CLARA COUNTY

Jessica Orozco
County of Santa Clara
3180 Newberry Dr. Ste 150
San Jose, CA, 95118

THE CITY OF MORGAN HILL

Rebecca Garcia
Housing Manager
17575 Peak Avenue
Morgan Hill, CA 95037

Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated on the date of delivery.

15) AMENDMENTS

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

16) CONFLICT OF INTEREST

The City shall 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.

17) 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 must be provided, in writing, and shall apply to the specific instance expressly stated.

18) GOVERNING LAW and 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.

19) COUNTERPARTS

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

20) 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.

21) 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.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into as of the day and year of execution of this Agreement.

COUNTY OF SANTA CLARA

S. Joseph Simitian, President

Board of Supervisors

Date: _____

CITY OF MORGAN HILL

Christina Turner

City Manager

Date: _____

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

Date: _____

APPROVED AS TO FORM AND LEGALITY

Tony LoPresti

Deputy County Counsel

Date: _____

APPROVED AS TO FORM AND LEGALITY

Donald A. Larkin

City Attorney

Date: _____

ATTACHMENT A
SANTA CLARA COUNTY CONTINUUM OF CARE (CoC) PARTICIPATION REQUIREMENTS

As a provider of housing and/or services for persons experiencing or at risk of homelessness, CONTRACTOR agrees to participate as an active member in the CoC and abide by the CoC's Quality Assurance Standards. In particular, CONTRACTOR shall:

- (a) Send representative(s) to CoC Membership meetings, including semi-annual General Membership meetings and relevant CoC Workgroups.
- (b) Subscribe to and participate in the CoC's email listservs applicable to CONTRACTOR.
- (c) Participate in Santa Clara County's Homeless Management Information System (HMIS), including and not limited to promptly and accurately entering data into HMIS consistent with HUD and County standards for program type and funding source and including the following elements:

- (i) Workflow,
- (ii) Emergency Shelter Inventory.

(1.1) CONTRACTOR shall report changes in Emergency Shelter inventory capacity to the HMIS System Administrator and County of Santa Clara Office of Supportive Housing.

- (d) Ensure all programs and services that receive funds by and through this CONTRACTOR participate in the Santa Clara County Coordinated Entry System (CES) if CES is available for the program or service type, including:

- (i) All Emergency Shelter programs shall participate in development of the CES to include Emergency Shelter and fill vacancies through the CES, consistent with CES Policies and Procedures, after such time as the CES is available for Emergency Shelter;
- (ii) Specific parameters for eligibility or preference may be aligned with program funding requirements where applicable; and
- (iii) Compliance with written CES Policies and Procedures.

- (e) Serve as an access point for CES, employing the CES standard assessment tool (currently the VI-SPDAT), promptly entering resulting scores into HMIS (or the equivalent confidential system for victim service providers), and otherwise conducting assessments according to CES Policies and Procedures.

- (f) If applicable, achieve outcomes consistent with or exceeding the community benchmarks, updated annually, that shall be established by the CoC's Performance Management Work Group for the program type, including but not limited to:

- (i) Percentage of exits to permanent housing destinations,
- (ii) Percentage of adults increasing employment income from program entry to program exit,
- (iii) Percentage of adults increasing non-employment income from program entry to program exit,
- (iv) Percentage of adults increasing total cash income from program entry to program exit,

(v) Percentage of housed individuals (including children) enrolled in health insurance, and

(vi) Maximum percentage of individuals that return to homelessness after exiting the program to a permanent housing destination.

Outcomes shall be tracked via HMIS with measurement methodology available from the County of Santa Clara Office of Supportive Housing.

(g) Ensure all programs that receive funds by and through this AGREEMENT expressly provide in written policies that applicants for assistance are not screened out based on the following criteria:

(i) Having too little or no income;

(ii) Active, or history of, substance use or a substance use disorder;

(iii) Having a criminal record (with exceptions for state-mandated restrictions); and

(iv) History of domestic violence (e.g., lack of a protective order, period of separation from abuser, or law enforcement involvement).

(h) Ensure all programs that receive funds by and through this AGREEMENT expressly provide in written policies that participants are not terminated from the program for the following reasons:

(i) Failure to participate in supportive services,

(ii) Failure to make progress on a service plan,

(iii) Loss of income or failure to improve income,

(iv) Being a victim of domestic violence, and

(v) Any other activity not covered in a lease agreement typically found in the project's geographic area.

(i) Comply with all other relevant provisions of the CoC's Quality Assurance Standards that apply to CONTRACTOR or its programs.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

REJECT BID PROTEST AND AWARD NEW COMMUNITY GARDEN INSTALLATION PROJECT

RECOMMENDATION(S)

1. Reject bid protest;
2. Award contract to Castlewood Construction Company, Inc. in the amount of \$195,000 for Community Garden construction;
3. Authorize the expenditure of contingency funds not to exceed \$19,500; and
4. Authorize the City Manager to execute and administer that certain construction contract with Castlewood Construction Company, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Castlewood Construction Company, Inc. in the amount of \$195,000 to install the new Morgan Hill Community Garden at 15690 Railroad Avenue.

The Community Garden is a successful collaboration between the local community nonprofit, Morgan Hill Community Garden (MHCG), and the City. It officially opened in October 2010, thanks to the efforts of its dedicated volunteers and the City's willingness to lease the land. The community garden is a tremendous success and has consistently maintained a waiting list of community members interested in obtaining additional plots. Current members have invested countless hours building raised garden plots, which now total 76.

The current garden is on land directly north of the County Courthouse, which was acquired by the Redevelopment Agency with the intent of developing a future fire station. As interest in the community garden has outgrown its current location, and an increasing population necessitates the development of the long-envisioned fire station, it is an opportune time to locate and build a new and expanded garden.

The City of Morgan Hill remains committed to the community garden and has set aside three acres of city-owned property near Railroad Avenue and the Butterfield overpass to continue the important work of MHCG. Thanks to a grant from the Santa Clara Valley Open Space Authority and a matching contribution from the City, the MHCG will be able to enjoy a new and expanded garden. Weston Miles Design has designed the new Community Garden with almost 100 raised garden plots, eight of which will be ADA accessible. There will also be 20,000 square feet of multi-crop gardening and almost 12,000 square feet of land available for mulch. There will be an outdoor patio classroom area, as well as a restroom. At the center of the garden will be an enlarged pollinating plants garden.

A bid solicitation was issued on November 7, 2018 and four bids were received from the following contractors on December 4, 2018:

Bidder	Base Bid	Bid Alternate
Castlewood Construction Co., Inc	195,000	57,000
101 Builders, Inc.	224,101	46,000
Edward R. Bacon Co., Inc.	238,000	65,800
Guerra Construction Group	358,100	52,400

Although the bid solicitation included a bid alternate for additional fencing and planting beds, City staff is recommending to contract for the base bid only at this time.

In soliciting bids for this contract, the City advertised in the Morgan Hill Times, posted on the City website, and two online plan services, Public Purchase and the Online Plan Service, whose subscribers include multiple Northern California Builders' Exchanges.

Castlewood Construction Company, Inc. was the low bidder with a base bid of \$195,000. This general contractor has 41 years of experience and has successfully completed five projects for the City of Morgan Hill since 2013. Staff recommends entering into a contract with Castlewood Construction Company, Inc. to install the new community garden.

A bid protest was received from 101 Builders based on the fact that Castlewood did not indicate which subcontractors that they intended to use on the job. Castlewood affirmed that they were self-performing the work, which is allowed under their license, and the bid protest was, therefore, denied.

COMMUNITY ENGAGEMENT: Inform

Staff will post updates on the City's website, Next Door Morgan Hill, Facebook and Twitter to inform residents on the status of the community garden installation. Staff will also keep Morgan Hill Community Garden members updated on the status of the

project, so that they may post updates on their website. It is not anticipated that this project will substantially affect right of way or pedestrian traffic in the area as Railroad Avenue is not a heavily travelled roadway.

ALTERNATIVE ACTIONS:

An alternative action would be to reject all bids and release another bid solicitation in an attempt to obtain more bids.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously authorized a \$250,000 grant application to the Santa Clara Valley Open Space Authority on August 24, 2016 and authorized a match amount of \$150,000. The Council has also previously taken actions annually to authorize the agreement allowing the MHCG to operate on land owned by the City.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this contract would be \$214,500, which includes the contract amount of \$195,000 and a 10% contingency amount of \$19,500. The Open Space Authority's grant of \$248,012 will fully fund the construction costs of the community garden. The City's match is in the form of staff time estimated at \$71,880 and the new community garden site.

The Community Garden will be funded through the Park Impact Fund (301), and is included in the adopted Capital Improvement Program (CIP), project# 142017, with a budget of \$220,000 for this fiscal year's activities.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Sections 15303(e) (Small Structures) and 15304 (b) (Minor Alternations to Land) of the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Community Garden Installation_Castlewood Construction Signed
2. Community Garden Bid Protest_120618
3. Castlewood Bid Protest Response

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Castlewood Construction Company, Inc. ("Contractor") for work on the New Community Garden Installation Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20____, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.

2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:

- 2.1 Notice Inviting Informal Bids;
- 2.2 Instructions to Bidders;
- 2.3 Addenda, if any;
- 2.4 Bid Proposal and attachments thereto;
- 2.5 Contract;
- 2.6 ~~Payment and Performance Bonds;~~
- 2.7 General Conditions;
- 2.8 Special Conditions;
- 2.9 Project Drawings and Specifications;
- 2.10 Change Orders, if any;
- 2.11 Notice of Award;
- 2.12 Notice to Proceed;
- 2.13 And the following:

"No other documents"

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor One Hundred Ninety-Five Thousand Dollars (\$195,000) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 90 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Phone: (409) 779-7259
 Attn: City Clerk
 Email: michelle.bigelow@morganhill.ca.gov
 Copy to: Anthony.eulo@morganhill.ca.gov
 Copy to: cynthia.iwanaga@morganhill.ca.gov

Contractor:

Name: Castlewood Construction Company, Inc.
 Address: 835 West San Martin Avenue
 City/State/Zip: San Martin, CA 95046
 Phone: (408) 887-3294
 Attn: Nick Cortese
 Email: castlewoodinc@att.net

10. General Provisions.

- 10.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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.

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

CASTLEWOOD CONSTRUCTION CO.,
 INC.

 Signature

NICK CORTESIE PRESIDENT
 Name/Title [print]

Date: 12/10/18

*Corporate entities must provide a
 second signature:*

 Signature

ROSETTA CORTESIE SECRETARY
 Name/Title [print]

Date: 12/10/18

343791
 Contractor's License Number(s)

3/31/19
 Expiration Date(s)

Seal:

1000018054
 Contractor's DIR Registration Number(s)

END OF CONTRACT

Dennis B. Cook
 Ronald W. Brown
 Brian D. Bertossa
 Terry A. Wills
 Carrie E. Bushman
 Barbara A. Cotter
 Lisa V. Ryan
 Stephen R. McCutcheon, Jr.
 Christopher W. Moores

December 6, 2018

VIA FACSIMILE (408.779.1592), EMAIL (Cynthia.hasson@morganhill.ca.gov)
AND OVERNIGHT MAIL

Cynthia Hasson, Assistant City Attorney
 City of Morgan Hill
 City Attorney's Office
 17575 Peak Avenue
 Morgan Hill, CA 95037

**Re: Bid Protest Against Castlewood Construction Co. on
 New Community Garden Installation Project**

Dear Ms. Hasson:

The undersigned represents 101 Builders, Inc. ("101 Builders") second-low bidder on the City of Morgan Hill's New Community Garden Installation Project ("Project"). By this letter, 101 Builders protests the award of the contract to apparent low bidder Castlewood Construction Co., Inc. ("Castlewood") and requests that the City of Morgan Hill ("City") instead award the contract to 101 Builders.

The bids were opened on Tuesday, December 4, 2018. Pursuant to the Instructions to Bidders, protests must be received by 5:00 p.m. on the second working day following the date of bid opening. Therefore, this protest is timely.

As detailed below, 101 Builders protests on the ground that the fencing portion of the Project constitutes more than ½ of one percent of the total bid and therefore pursuant to the Instructions to Bidders (copy attached) and Public Contract Code section 4104 a fencing subcontractor must be listed. Castlewood failed to list a fencing subcontractor and does not hold the C-13 license required to self-perform fencing work (see attached license detail from the Contractors State License Board identifying licenses held by License No. 343791 (Castlewood Construction Co., Inc.). These acts and omissions violate at a minimum the Invitation to Bid/Notice to Bidders and Public Contract Code Sections 4100-4114.

By way of background, 101 Builders' bid was \$224,101 plus \$46,000 in alternates for a total bid of \$270,101. Castlewood's bid was \$195,000 plus \$57,000 for a total bid of \$252,000. 101 Builders received three bids from

Cynthia Hasson, Assistant City Attorney
 City of Morgan Hill
 December 6, 2018
 Page 2

subcontractors for the fencing work and 101 Builders' utilized the lowest of the three bids from Cal West Fence (copy attached). One-half of one percent of 101 Builders' bid is \$1,350. Cal West Fence's bid totaled \$22,605 for the base bid (wall fence) or \$20,316 for the alternate (chain link fence). This amount greatly exceeds ½ of one percent of 101 Builders' total bid and had Castlewood solicited bids for fencing the amount would have similarly greatly exceeded ½ of one percent of Castlewood's total bid.

Castlewood did not include a fencing subcontractor with its bid (see attached blank Subcontractor List submitted by Castlewood) and therefore its bid is non-responsive. Further, Castlewood may not now attempt to claim it will self-perform the fencing work. The bid documents provide at paragraph 3.1:

License. This Project requires a valid California contractor's license for the following classification(s): "A" General Engineering.

The bid documents go on at paragraph 9:

Subcontractor List. Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one half (1/2) of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.

California Code of Regulations section 834(a) states ". . . a general engineering contractor shall operate only within those areas defined in Section 7056 of the [Business and Professions (B&P)] Code." Business & Professions Code section 7056 provides:

A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, powerplants and other utility plants and installations,

Cynthia Hasson, Assistant City Attorney
 City of Morgan Hill
 December 6, 2018
 Page 3

mines and metallurgical plants, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above-mentioned fixed works.

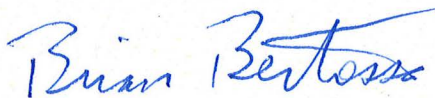
The case of *Ron Yates Construction Co. v. Superior Court* (1986) 186 Cal.App.3d 337, 345–347 considered whether an “A” license holder could properly construct the foundation for a residence under its “A” license. The Court, relying on the definition of the limits of an “A” license contained in Business & Professions Code section 7056, held “that a general engineering contractor which possesses a Class A license may contract to construct a foundation for a residence *if it requires ‘specialized engineering knowledge and skill’* (Id. at p. 348.) (emphasis added). Fencing, unlike the foundation work in *Yates*, does not require the specialized engineering knowledge and skill relied on by the *Yates* court in finding that an “A” contractor could perform foundation work and therefore the fencing work at issue here is properly required to be performed by a listed subcontractor. 101 Builders listed such a subcontractor; Castlewood did not.

In sum, Castlewood failed to meet the bid requirements by failing to list a fencing subcontractor as required by the bid documents, and Castlewood is not licensed to self-perform the fencing work.

For all of the reasons stated above, the City should reject Castlewood’s bid and instead award the contract to 101 Builders, Inc.

Sincerely,

COOK BROWN, LLP



BRIAN D. BERTOSSA

(bbertossa@cookbrown.com)

BDB/bp

cc: Castlewood Construction Co., Inc. (Via Fax – 408/683-7215
 and email castlewoodinc@att.net)
 101 Builders, Inc.

Enclosures

ATTACHMENT 1

SPECIFICATIONS and CONTRACT DOCUMENTS FOR

NEW COMMUNITY GARDEN INSTALLATION PROJECT

Bids Due: Tuesday, December 4, 2018 @ 2:30 p.m.

Mandatory Pre-Bid Meeting: Friday, November 16, 2018 @ 9:00 a.m.



MORGAN HILL, CALIFORNIA
COMMUNITY SERVICES DEPARTMENT

PREPARED BY
COMMUNITY SERVICES DEPARTMENT

November 2018

Attachment: Community Garden Bid Protest_120618 (2090 : Award New Community Garden Installation)

NOTICE INVITING INFORMAL BIDS

1. **Bid Acceptance.** The City of Morgan Hill ("City"), will accept sealed bids for its New Community Garden Installation Project ("Project"), by or before Tuesday, December 4, 2018 at 2:30 p.m., at Morgan Hill City Hall, located at 17575 Peak Avenue, Morgan Hill, California, at which time the bids will be publicly opened and read aloud.

2. **Project Information.**

2.1 Location and Description. The Project is located at 15690 Railroad Avenue, Morgan Hill, CA and the Scope of Work is described as follows:

Installation of New Community Garden

2.2 Time for Completion. The planned timeframe for commencement and completion of construction of the Project is 90 calendar days.

3. **License and Registration Requirements.**

3.1 License. This Project requires a valid California contractor's license for the following classification(s): "A" General Engineering.

3.2 DIR Registration. City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

4. **Contract Documents.** The plans, specifications, bid and contract documents for the Project ("Contract Documents") may be obtained from the City of Morgan Hill, at 17575 Peak Avenue, Morgan Hill, CA, (408) 778-6480. Electronic copies of the Contract Documents are available on CD for ten dollars (\$10.00). If mailing by USPS, a five dollar (\$5.00) charge will be added. **To download plans and specifications at no charge, register at www.publicpurchase.com**

5. **Bid Proposal and Security.**

5.1 Bid Proposal Form. Each Bid must be submitted using the Bid Proposal form provided with the Contract Documents.

5.2 Bid Security. The Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's

or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.

6. Prevailing Wage Requirements.

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

6.2 Rates. These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work must be at least time and one-half (1/2).

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

7. **Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds for one hundred percent (100%) of the Contract Price.
8. **Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code Section 22300.
9. **Subcontractor List.** Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one half (1/2) of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.
10. **Instructions to Bidders.** Additional and more detailed information is provided in the Instructions for Bidders, which should be carefully reviewed by all bidders before submitting a Bid Proposal.

- 11. Mandatory Bidders' Conference.** A bidders' conference will be held on Tuesday, November 16, 2018 at 9:00 a.m., at the following location: New Community Garden Job Site at 15690 Railroad Avenue, Morgan Hill, CA for the purpose of acquainting all prospective bidders with the Contract Documents and the Worksite. The bidders' conference is mandatory. A bidder who fails to attend a mandatory bidders' conference may be disqualified from bidding.

By: Irma Torrez, City Clerk

Date: November 7, 2018

END OF NOTICE INVITING INFORMAL BIDS

Attachment: Community Garden Bid Protest_120618 (2090 : Award New Community Garden Installation)

INSTRUCTIONS TO BIDDERS

Each Bid Proposal submitted to the City of Morgan Hill ("City") for its New Community Garden Installation Project ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

1.1 General. Each bid ("Bid Proposal") must be signed, sealed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in the Notice Inviting Informal Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all indirect costs such as applicable taxes, insurance and field offices.

1.2 Bid Envelope. The envelope containing the sealed Bid Proposal and required attachments must be clearly labeled as follows:

BID PROPOSAL
Morgan Hill DSC
New Community Garden Installation Project
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Bid Opening/RFP
Bid Date: December 4, 2018
Bid Time: 2:30 p.m.

The envelope must also be clearly labeled, as follows, with the bidder's name, address, and its registration number with the California Department of Industrial Relations ("DIR") for bidding on public works contracts (Labor Code sections 1725.5 and 1771.1):

[Contractor company name]
[Street address]
[City, state, zip code]
DIR Registration No. _____

Please note: If City is unable to confirm that the bidder's DIR registration is current, City must disqualify the bidder and return its bid unopened (Labor Code section 1725.5).

2. **Examination of Contract Documents and Project Site.** Each bidder is solely responsible for diligent and thorough review of the Contract Documents (as defined in the General Conditions), examination of Project site, and reasonable and prudent inquiry concerning known and potential site conditions prior to submitting a Bid Proposal. However, bidders should not enter onto City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104. City expressly disclaims responsibility for assumptions the bidder might draw from the presence or absence of information provided by City.
3. **Requests for Information.** Questions regarding the Project, the bid procedures or any of the Contract Documents must be submitted in writing to Cynthia Iwanaga at cynthia.iwanaga@morganhill.ca.gov no later than **Wednesday, November 21, 2018 at 5:00 p.m.**
4. **Addenda.** Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time.
5. **Brand Designations and "Or Equal" Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code Section 3400(c).
 - 5.1 **Pre-Bid Requests.** Any request for submission made before the Contract is awarded must be submitted to the City Project Manager at least ten (10) days before the opening of bids so that all interested bidders may be notified of any approved alternative.
 - 5.2 **Post-Award Requests.** After the Contract is awarded, Contractor may submit a substitution within fourteen (14) days after the date of award of the Contract, or as specified in the Special Conditions.

6. **Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one (1) Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
7. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with terms such as "negotiable," "will negotiate," or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 9 below, and by the completed Subcontractor List, and Non-Collusion Declaration using the forms included in the Contract Documents.
8. **Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
9. **Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's check, a certified check, or a bid bond, using the form included in the Contract Documents, executed by a surety licensed to do business in the State of California, made payable to City. The bid security must guarantee that upon award of the bid, the bidder will execute and submit the Contract on the form included in the Contract Documents, will submit payment and performance bonds for one hundred percent (100%) of the maximum Contract Price, and will submit the insurance certificates and endorsements as required by the Contract Documents within ten (10) days after issuance of the notice of award.
10. **Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of ninety (90) days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code Section 5100 et seq.
11. **Bid Protest.** Any bid protest must be in writing and received by City at the City Attorney's Office at 17575 Peak Avenue, Morgan Hill, CA, (Fax: (408)

779-1592), before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:

11.1 General. Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 11, a "working day" means a day that City is open for normal business, and excludes weekends and holidays observed by City.

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

11.3 Copy to Protested Bidder. A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.4 Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

11.5 Copy to Protesting Bidder. A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

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

11.7 Right to Award. City reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

- 12. Rejection of Bids; Award of Contract.** City reserves the right, acting in its sole discretion, to waive immaterial bid irregularities, the right to accept or reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within ninety (90) days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid.
- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract price as awarded, including additive alternates, if applicable.
- 14. Evidence of Responsibility.** Within twenty four (24) hours following a request by City, a bidder must submit to City satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by City, the bidder's organization available for the performance of the Contract and any other required evidence of the bidder's qualifications to perform the proposed Contract. City may consider such evidence before making its decision awarding the proposed Contract.
- 15. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. This Project requires a valid California contractor's license for the following classification(s): "A" General Engineering.
- 16. Taxes.** The bid price must include all applicable federal, state, and local taxes.
- 17. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.

ATTACHMENT 2



Contractor's License Detail for License # 343791

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

Data current as of 12/6/2018 1:53:21

Business Information

CASTLEWOOD CONSTRUCTION CO INC
835 WEST SAN MARTIN AVE
SAN MARTIN, CA 95046
Business Phone Number: (408) 683-7215

Entity Corporation

Issue Date 09/06/1977

Expire Date 03/31/2019

License Status

This license is current and active.

All information below should be reviewed.

Classifications

B - GENERAL BUILDING CONTRACTOR
A - GENERAL ENGINEERING CONTRACTOR

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with AMERICAN CONTRACTORS INDEMNITY COMPANY.

Bond Number: SC1030865

Bond Amount: \$15,000

Effective Date: 01/01/2016

[Contractor's Bond History](#)

Bond of Qualifying Individual

The qualifying individual NICK CORTESE certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 12/13/2005

[BQI's Bond History](#)

The qualifying individual BRIAN FRANK CORTESE certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 01/14/2013

[BQI's Bond History](#)

Workers' Compensation

This license has workers compensation insurance with the STATE COMPENSATION INSURANCE FUND

Policy Number: 9143766

Effective Date: 10/01/2015

Expire Date: 10/01/2019

[Workers' Compensation History](#)

Other

Personnel listed on this license (current or disassociated) are listed on other licenses.

ATTACHMENT 3

CAL WEST FENCE

12505 Sycamore Ave San Martin CA, 95046
 (408) 695-0015 phone (408) 695-0065 fax
 License # 836779 DIR 1000008671

1000055639

PROPOSAL

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95826.

PROPOSAL SUBMITTED TO ESTIMATOR		E-MAIL	DATE 12/4/18
PHONE NUMBER	FAX NUMBER	JOB NAME NEW COMMUNITY GARDEN INSTALLATION	
ADDRESS, CITY, STATE, ZIP		JOB LOCATION CITY OF MORGAN HILL	

We hereby submit estimates and specifications for:

Furnish and Install fence and gates per plans and specs.

BASE BID.....\$ 22,605

- 215' LF. WALL FENCE

ALT. CHAIN LINK FENCE.....\$ 20,316

EXCLUSIONS: Lay out, permit fees, surveying, clearing and grubbing, staking, core drilling, backfill, locating underground utilities, and repairs and off-haul.

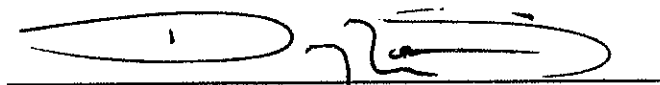
NOTICE TO OWNER: (Section 7019 - Contractors License Law) - Under the Mechanics' Law, any contractor, subcontractor, laborer, materialman or other person who helps to improve your property and is not paid for his labor, services or material, has a right to enforce his claim against your property. Under the law, you may protect yourself against such claims by filing, before commencing such work of improvement, an original contract for the work of improvement or a modification thereof, in the office of the recorder of the county where the property is situated and requiring that a contractor's payment bond be recorded in such office. Said bond shall be in an amount not less than fifty percent (50%) of the contract price and shall, in addition to any conditions for the performance of the contract, be conditioned for the payment in full of the claims of all persons furnishing labor, services, equipment or materials for the work described in said contract.

We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

_____ dollars (____)

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized
Signature



Diery Maldonado

Note: This proposal may be withdrawn by us if not accepted within 15 days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance _____

ATTACHMENT 4

SUBCONTRACTOR LIST

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number. **Bidders: Please print legibly. Illegible forms may be rejected.**

[illegible]

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

CASTLEWOOD CONSTRUCTION COMPANY, INC.

LICENSE #343791 A&B / DIR #1000018054

10 December 2018

Sent Via Email

City of Morgan Hill
Attn: Mr. Anthony Eulo
17575 Peak Avenue
Morgan Hill, CA 95037

Subject: New Community Garden Installation Project
Bid Protest Response

Mr. Eulo:

Castlewood Construction Company, Inc. is in receipt of the bid protest filed by Cook Brown LLP on behalf of 101 Builders, Inc. regarding the subject project. A fencing subcontractor was not listed as the fence work will be performed in-house. Castlewood Construction Company, Inc. possesses A & B contractor licenses and has installed similar fencing on past projects. The fence on this project is not a complicated specialty item and therefore does not require a dedicated fencing subcontractor to construct. Castlewood Construction Company, Inc. takes exception to the bid protest and is more than qualified to construct this fence/gate system.

Please let me know if you have any questions and/or if additional information is needed. Castlewood Construction Company, Inc. will defer signing the contract and ordering bonds/insurance until this matter is resolved and/or is directed otherwise by the City of Morgan Hill.

Thank You
Castlewood Construction Company, Inc.

Nick Cortese
President

Attachment: Castlewood Bid Protest Response (2090 : Award New Community Garden Installation)

835 West San Martin Avenue • San Martin, CA 95046
Phone: (408) 887-3294 • Fax: (408) 683-7215 • Email: castlewoodinc@att.net



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

APPROVE AGREEMENT FOR TRANSPORTATION FUND FOR CLEAN AIR (TFCA) FUNDING FOR THE MAIN AVENUE BIKE LANE AND SIDEWALK PROJECT

RECOMMENDATION(S)

Adopt resolution:

1. Approving the Santa Clara Valley Transportation Authority's funding agreement for the Bay Area Air Quality Management District TFCA grant program for up to \$65,100 towards the construction of the Main Avenue Bike Lane and Sidewalk Project;
2. Amending the adopted Fiscal Year (FY) 2018-19 budget in School Pedestrian and Traffic Safety Fund (355) to recognize the TFCA Grant as revenue; and
3. Authorizing the Public Services Director to execute and administer the TFCA agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

On December 15, 2017, the Santa Clara Valley Transportation Authority (VTA) issued a call for projects for the Fiscal Year (FY) 2018-19 Transportation for Clean Air Program Manager 40% Fund. Staff submitted an application in March of 2018 for funding a portion of the Main Avenue Bike Lane and Sidewalk project. On September 24, 2018, staff received confirmation from the VTA that the project would receive funding in the amount of \$65,100.

The Main Avenue Bike Lane and Sidewalk project consists of installing bike lanes along Main Avenue between Butterfield Boulevard and Condit Road as well as 306 lineal feet of road widening and new sidewalk. In order to widen the road and install the improvements, approximately 2,034 square feet of right of way must first be acquired. The project is included in the FY 2018-19 Capital Improvement Program with a total

project budget of \$550,000. The TFCA grant amount of \$65,100 will be applied towards the construction, thereby reducing the City's contribution. The grant amount is derived from the application Cost Effectiveness Worksheet and is intended to cover only bike lane signing and striping improvements. City funds will be used to purchase and widen the roadway and install sidewalks.

The proposed bikeway improvements are intended to encourage walking and biking and provide a safer east/west connection to El Toro Elementary School, Live Oak High School, Butterfield Linear Path and Downtown. It is anticipated that this could reduce the number of single occupant vehicles on the road, reduce emissions, and promote a healthy lifestyle. The Main Avenue Bike Lane and Sidewalk project is included in the City's Bikeways, Trails and Recreation Master Plan and the VTA's Bicycle Expenditure Program (BEP).

Staff recommends that City Council adopt the resolution authorizing the Public Services Director to execute the attached TFCA agreement for \$65,100 so staff can proceed with the environmental studies and design work. Construction is anticipated to commence in 2019.

COMMUNITY ENGAGEMENT: Inform

During the design process, project information will be available via NextDoor, the City's email subscribers, and the City's website. Residents living near or adjacent to the proposed construction site will be notified prior to installing the improvements.

ALTERNATIVE ACTIONS:

No alternative actions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted the FY 2018-19 through 2023-24 Capital Improvement Program, which includes the Main Avenue Bike Lane and Sidewalk project.

FISCAL AND RESOURCE IMPACT:

The project is included in the adopted FY 2018-19 through 2023-24 Capital Improvement Program (CIP#580018) with a total project budget of \$550,000 utilizing School Pedestrian & Traffic Safety Funds (355). The TFCA reimbursement grant amount of \$65,100 will be applied to the construction portion of the project. Thus, there is no fiscal impact at this time.

CEQA (California Environmental Quality Act): Project

This project was identified in the Bikeways, Trails, Parks and Recreation Master Plan. An addendum to the 2035 General Plan Environmental Impact Report for the Master Plan was adopted on July 20, 2017.

LINKS/ATTACHMENTS:

1. TFCA Resolution
2. Exhibit A - TFCA Agreement

3. Exhibit B - Budget Scorecard
4. Project Location Map

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE PUBLIC SERVICES DIRECTOR TO EXECUTE AND ADMINISTER, THAT CERTAIN FISCAL YEAR 2018-19 TFCA FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) FOR THE MAIN AVENUE BIKE LANE AND SIDEWALK PROJECT AND AMENDING THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET TO RECOGNIZE THE \$65,100 TFCA GRANT AS REVENUE IN THE SCHOOL PEDESTRIAN AND TRAFFIC SAFETY FUND (355)

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 Santa Clara valley Transportation Authority (VTA) issued a call for projects on December 15, 2017; and

WHEREAS, project types include: alternative fueled vehicles, alternative fueled infrastructure, ridesharing projects, shuttle bus services, bicycle projects, bay area bike share, arterial management, and smart growth/traffic calming improvements; and

WHEREAS, projects must be located within Santa Clara County and have a cost effectiveness less than \$90,000 of TFCA funds per ton of total emissions reduced; and

WHEREAS, the applications are competitive and judged on cost effectiveness, community benefits and local matching funds; and

WHEREAS, there is no match requirement, however, TFCA funds rarely cover the cost of the entire project, thus City funds must be used to complete the project; and

WHEREAS, the City is applying for grant funds to install bike lanes along Main Avenue, between Butterfield Boulevard and Condit Road; 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 B to this Resolution, to appropriate the requisite funds to implement the actions authorized by 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 Transportation Fund for Clean Air (TFCA) Agreement with the Santa Clara Valley Transportation Authority for the Main Avenue Bike Lane and Sidewalk Project, substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the “Agreement”) is hereby approved.
- b. That the Public Services Director 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 A.
- c. 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 B attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2018-19 Budget of the City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of December 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Rich Constantine, MAYOR

Attachment: TFCA Resolution (2082 : Approve TFCA Funding Agreement)

∞ **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 19, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: TFCA Resolution (2082 : Approve TFCA Funding Agreement)

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2018/19**

This agreement ("Agreement") by and between the Santa Clara Valley Transportation Authority ("VTA") and the City of Morgan Hill ("Sponsor") shall be effective on the date that this Agreement is fully executed by the parties hereto ("Effective Date").

RECITALS

This Agreement is made with reference to the following facts:

- A. VTA has been designated by resolutions of the County of Santa Clara, as well as a majority of the cities within Santa Clara County, as the Program Manager for Santa Clara County Transportation Fund for Clean Air ("TFCA") County Program Manager under the State of California Health and Safety Code Section 44241.
- B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara's TFCA County Program Manager Fund ("County Fund") to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District ("BAAQMD").
- C. On September 6, 2018, the VTA Board approved the programming of FY 2018/19 Transportation Fund for Clean Air Program Manager (TFCA 40%) funds for the Main Avenue Bicycle Lanes project (PROJECT).
- D. This Agreement specifies the conditions under which VTA will allocate and administer a grant from the County Fund to Sponsor for fiscal year 2018/19.

Now, therefore the parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Project

- A. Subject to appropriation and receipt of TFCA funds (as further set forth in Section 9, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed \$65,100 (the "Grant Funds") in consideration for Sponsor's agreement to implement and complete the Project (as further set forth in the project summary, attached hereto as **Attachment A**), in accordance with the terms and conditions set forth in this Agreement.
- B. In consideration of VTA's providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Project in conformance with the terms of this Agreement. In implementing the Project, Sponsor shall comply with the Project schedule and monitoring requirements, as described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

- A. Sponsor shall assure that all funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state and local law, and Sponsor shall require any other sub-recipients of Grant Funds for the Project to do the same.
- B. Sponsor shall comply with: (i) all TFCA program and project requirements, as set forth in the BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending (FYE) 2019," the Funding Agreement between VTA and BAAQMD for FY 2018/19 (FYE 2019); and (ii) the TFCA County Program Manager Fund Policies for FYE 2019 (hereinafter "Policies"). These documents, including appendices, are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- C. Sponsor shall expend no more than five percent (5%) of Grant Funds received hereunder on administrative costs, per California Health and Safety Code Section 44233.
- D. Sponsor shall return to VTA all funds that are not expended in accordance with applicable provisions of law.
- E. In addition, Sponsor shall return the TFCA funds to VTA if a project is not maintained and/or operated throughout and until the conclusion of the "Number of Years of Effectiveness." This is the default value stated in Appendix H of BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2019" for the applicable project type, unless a different value was approved and shown to yield a Project that meets the cost-effectiveness requirement in the Policies by the Program Manager. The amount of funds returned to the Program Manager shall be calculated on a prorated basis.

Section 3. Term

The term of this Agreement shall commence July 1, 2018 and shall continue until either the Project is completed or terminated in accordance with Section 15C.

Any requests for additional time to complete Project beyond June 30, 2020 must be submitted in writing to VTA no later than sixty (60) days prior to that date. VTA may approve or deny two 12-month requests in its sole discretion. In order to approve any time extensions, sponsor must prove to VTA that significant progress has been made on implementing the project. Any subsequent schedule extensions for projects can only be approved by BAAQMD on a case-by-case basis, if BAAQMD finds that sponsor has made significant progress has been made on a project. Documentation by VTA or BAAQMD approving any extensions for the Project shall be sufficient approval to extend the term of this Agreement.

Section 4. Work Product

Sponsor shall place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by

law, and to the extent required by the California Public Records Act (California Government Code Sections 6250 et seq.).

Section 5. Acknowledgement of Funding Sources

- A. Sponsor shall acknowledge both VTA and BAAQMD as Project's funding sources during the implementation of a project and shall use the VTA and the BAAQMD approved logos as specified below:
- (1) The logos shall be used on signs posted at the site of any Project construction;
 - (2) The logos shall be displayed on any vehicles operated with or obtained as part of the Project;
 - (3) The logos shall be used on any material intended for public consumption associated with the Project, such as websites and printed materials, including project-related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material; and
 - (4) Sponsor will demonstrate to VTA, through evidence such as photographs of vehicles, construction signs, and copies of press releases, that the logos are used and displayed as required by this Section.
- B. VTA shall provide a copy of BAAQMD and VTA logos to Sponsor solely for use in fulfilling Sponsor's obligations under this Section.
- C. Sponsor shall acknowledge VTA and BAAQMD as a funding source in any related articles, news releases, or other publicity materials for the Project that are produced or caused to be produced by Sponsor.

Section 6. Insurance Coverage

Sponsor shall obtain and maintain, throughout the term of this Agreement, the insurance coverage specified in Attachment B "Insurance Requirements," and shall comply with all insurance requirements set forth therein, including the provision regarding documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement. The Sponsor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to william.hough@vta.org.

Section 7. Invoicing

Sponsor shall submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the Project. Sponsor shall send requests for reimbursement to VTA Accounts Payable at 3331 North 1st Street, Building A, San José, CA 95134-1927. Sponsor shall include relevant, auditable back-up documentation (time sheets, bills, etc.) with each invoice.

Section 8. Reimbursement

- A. All funds allocated by VTA to Sponsor shall be on a cost-reimbursement basis only. VTA shall pay no funds in advance.

- B. Upon review and approval of invoices and documentation, VTA shall, within twenty (20) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in Section 1 of this Agreement. Only those Project costs incurred by Sponsor on or after July 1, 2018 shall be considered reimbursable expenditures.
- C. Funds for the Project described in this Agreement, which are not submitted for reimbursement prior to June 30, 2020, shall not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2020, has been approved by VTA and BAAQMD, as set forth in Section 3, above.

Section 9. Funds Subject to Appropriation/Allocation of Funds Contingent on Appropriation

VTA's obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by BAAQMD under VTA's "19-SC" agreement with BAAQMD for approved projects during Fiscal Year 2018/19.

Section 10. Audit

This Agreement shall be subject to the examination and audit of the California State Auditor pursuant to California Government Code Section 8546.7 for a period of five (5) years after final payment. Audits may also be conducted by an auditor chosen by BAAQMD or VTA.

Section 11. Sponsor's Record Keeping

Sponsor shall:

- A. Allow VTA staff, BAAQMD staff, both Parties' authorized representatives, and both Parties' independent auditors, during the term of this Agreement and for five (5) years following completion of each Project, to conduct performance and financial audits of the Project and to inspect the Project. During audits, the Sponsor shall make available to the auditor, in a timely manner, all records relating to Sponsor's implementation of the Project. During inspections, Sponsor will provide, at the request of VTA or BAAQMD, access to inspect the Project and related records.
- B. Maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the Project, including both administrative and Project implementation costs, or to establish an alternative method to document staff costs charged to the funded Project.
- C. Keep all financial and Project implementation records necessary to demonstrate compliance with this Agreement and the Program. Such records shall include documentation that demonstrates significant progress made for those Program Projects seeking extensions to the completion date. Sponsor shall keep such documents in a central location for a period of five (5) years following completion of the Project.
- D. Submit a mid-year progress report to VTA one (1) month after the end of the second quarter of each fiscal year ("fiscal year" means the period starting July 1 and ending June 30.) The

report shall itemize: (a) the expenditure of the funds; and (b) progress to-date in the implementation of each funded project.

- E. Submit a year-end report within one (1) month of the end of each fiscal year until each project is completed and all monitoring requirements have been fulfilled. The report shall itemize: (a) the expenditure of the funds; (b) progress to-date in the implementation of each funded project; and (c) the results of the monitoring of the performance of the Project as specified in Attachment A.

Section 12. Indemnity

Neither VTA nor BAAQMD nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under or in connection with Sponsor's performance of the Project. It is understood and agreed that Sponsor shall fully defend, indemnify, and save harmless VTA and BAAQMD from all liability, loss, expense (including reasonable attorneys' fees), claims for injury or damages, or suits or actions of every name, kind, and description brought on, for, or on account of injury to persons, damages to real or personal property, or other monetary damages to the extent caused by anything done or omitted to be done by Sponsor under or in connection with the performance of the Project with funds allocated by this Agreement.

Section 13. Review

- A. VTA shall review Sponsor's progress in implementing the Project at the end of the sixth (6th) quarter following execution of this Agreement. If progress at the sixth (6th) quarter review is insufficient to implement the Project or to expend the funds within the period described in Section 3, VTA shall develop an action plan with the Sponsor to ensure that these funds are not required to be repaid to the County Funds, and the action plan may include reprogramming funds to other projects within Santa Clara County to ensure their expenditure prior to the fund expiration date described in Section 3.
- B. VTA shall provide Sponsor with all BAAQMD-approved Program Manager reporting forms required pursuant to this Agreement.

Section 14. Non-Performance

- A. If Sponsor causes all or part of these Grant Funds to be subject to repayment to the County Program Manager Fund as a result of failure to complete a project according to the work scope described in Attachment A, Sponsor's next grant allocation of any kind shall be reduced by the amount lost.
- B. Sponsor shall be ineligible for future funding under this program if Sponsor has five (5) or more projects greater than two (2) years old on BAAQMD's annual "Less than 100% complete" list.

Section 15. General Terms and Conditions

- A. **Notices.** Any notice required to be given by either Party, or which either Party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date shown below.

City of Morgan Hill
(Sponsor)

Santa Clara Valley Transportation Authority
(VTA)

Dated: _____

Dated: 10.5.18

Christina J. Turner, City Manager



Nuria I. Fernandez, General Manager/CEO

Attest:

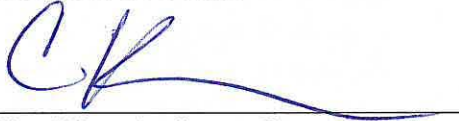
Dated: _____

Michelle Bigelow, Deputy City Clerk

Approved As To Form:

Approved As To Form:

Donald A. Larkin, City Attorney



Caroline Kim, Assistant Counsel

Attachment: Exhibit A - TFCA Agreement (2082 : Approve TFCA Funding Agreement)

PROJECT INFORMATION

- A. Project Number: 19SC12
- B. Project Title: Main Avenue Bicycle Lanes
- C. TFCA Program Manager Funds Allocated: \$65,100.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$65,100.00
- F. Total Project Cost: \$500,000.00
- G. Project Description: Grantee will use TFCA funds to construct bicycle lanes on Main Avenue between Butterfield and Condit Roads.
- H. Final Report Content: Final Report Form for Trip Reduction projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

ATTACHMENT B

INSURANCE REQUIREMENTS

I. INDEMNITY

The Sponsor must indemnify, defend, and hold harmless Santa Clara Valley Transportation Authority (hereinafter, "VTA"), the Bay Area Air Quality Management District, their respective officers, agents, employees, representatives, and successors-in-interest from any claim, liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damage arising out of, or in connection with, performance of this Agreement by Sponsor and/or its agents or employees or subcontractors, excepting only loss, injury or damage caused by the gross negligence or willful misconduct of personnel employed by VTA.

II. INSURANCE

Without limiting the Sponsor's obligation to indemnify VTA, the Sponsor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Sponsor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in the Sponsor's Bid/Proposal. The Sponsor must furnish complete copies of all insurance policies, within three (3) business days of any such request by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance
- d. Property insurance covering all risks of loss, damage, or destruction of vehicles, vessels, engines or equipment funded under this Agreement.

2. Minimum Limits of Insurance

Sponsor must maintain limits no less than:

- a. General Liability: \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 limit per accident for bodily injury and property damage.

- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Property insurance in an amount not less than the replacement cost value (RCV) of vehicles, vessels, engines, or equipment funded under this Agreement.

3. Self-Insured Retention

Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Sponsor is a publicly-traded company) must be declared to and approved by VTA. If Sponsor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, Sponsor must provide a current financial report including balance sheet and income statement for the past three years, so that VTA can assess Sponsor's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if VTA, in its sole discretion, deems it necessary, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its officers, officials, employees and volunteers; or to require Sponsor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom must be borne solely by the Sponsor.

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Sponsor must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must be of at least two (2) years.
3. No prior acts exclusion to which coverage is subject that predates the date of this Agreement.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Sponsor, including VTA's general supervision of the Sponsor; products and completed

operations of the Sponsor or subcontractors; premises owned, occupied or used by the Sponsor; or automobiles owned, leased, hired or borrowed by the Sponsor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
- c. The Sponsor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Sponsor and its subcontractors for VTA.
- b. The Sponsor's insurance coverage must be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its officers, officials, employees, or volunteers may apply only as excess to the Sponsor's insurance. Sponsor's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Sponsor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

E. Certificates of Insurance

Sponsor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. The Sponsor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to william.hough@vta.org.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If the Sponsor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Sponsor or insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

F. Maintenance of Insurance

If Sponsor fails to maintain such insurance as is called for herein, VTA, at its option, may suspend payment for work performed and/or may order the Sponsor to suspend work at Sponsor's expense until a new policy of insurance is in effect.

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

022

FUND:

DEPARTMENT:

OBJECT:

355	School Ped & Traffic Safety
0000	
37715	PROJECT REIMBURSEMENT/GRANTS

AGENDA DATE:

AGENDA ITEM TITLE:

12/19/18
TFCA Funding Agreement

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,505,042	684,678	1,830,740	358,980
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	65,100	-	65,100
RESULT OF RECOMMENDED ACTION	<u>1,505,042</u>	<u>749,778</u>	<u>1,830,740</u>	<u>424,080</u>

Attachment: Exhibit B - Budget Scorecard (2082 : Approve TFCA Funding Agreement)



Attachment: Project Location Map (2082 : Approve TFCA Funding Agreement)



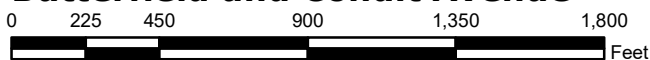
CITY OF MORGAN HILL

Engineering Division
Community Development Agency

Path: G:\R-14\PROJ\GIS\StaffReport_SiteMaps\SiteMap_MainAve_bikelanes.mxd

SITE MAP

TFCA Agreement for Main Avenue
Bike Lanes and Sidewalks Between
Butterfield and Condit Avenue





CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

APPROVE STORMWATER BEST MANAGEMENT PRACTICES OPERATION AND MAINTENANCE AGREEMENT FOR THE RESIDENTIAL CARE FACILITY FOR THE ELDERLY AT 16515 BUTTERFIELD BLVD (APN: 817-57-049)

RECOMMENDATION(S)

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Residential Care Facility for the Elderly at 16515 Butterfield Blvd. (APN: 817-57-049); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The development located at 16515 Butterfield Boulevard (APN: 817-57-049) is a 67-unit Residential Care Facility for the Elderly (See Attachment No. 1 - Site Map). The project required the construction of onsite private storm drain detention and retention facilities to improve the quality of stormwater runoff as required by City Municipal Code, Post-Construction Stormwater Pollution Prevention, and the project's site review approval (SR2016-0015). The private stormwater facilities will require regular maintenance and inspection by the owner, Steadfast Collin Morgan Hill, LLC. To ensure proper maintenance and inspection, staff recommends that the City Council authorize the City Manager to sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the 67-unit Residential Care Facility for the Elderly.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 15, 2016, the Development Services Department approved the site review (SR2016-0015) for the 67-unit Residential Care Facility for the Elderly.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Statutory Exemption

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

LINKS/ATTACHMENTS:

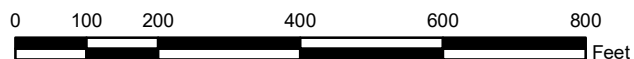
1. Site Map
2. Stormwater BMP Operation and Maintenance Agreement



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

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

SITE MAP



RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

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

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

APN: 817-57-049

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

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

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

RECITALS:

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

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter ~~18.140~~ (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **Stormwater Control Plan for Butterfield Retirement Phase 3** prepared by **Kier & Wright Civil Engineers & Surveyors** and dated **October 4, 2017**, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

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

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

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

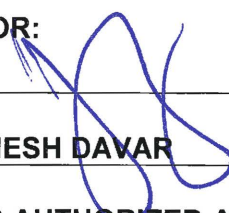
2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by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

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

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

Executed the day and year first above written.

COVENANTOR:

By:  _____

Name: **DINESH DAVAR** _____

Title: **IT'S AUTHORIZED AUTHORITY** _____

CITY OF MORGAN HILL:

By: _____

Name: _____

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

APPROVED AS TO FORM:

By: _____

Name: **DONALD A. LARKIN** _____

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

EXHIBIT "A"

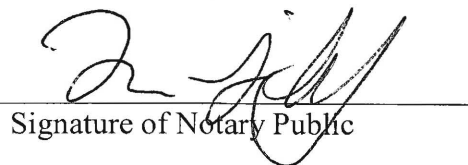
All that real property situated in the City of Morgan Hill, Santa Clara County, State of California being more particularly described as follows:

Parcel B as shown on that Parcel Map thereof filed in Book 887 of Maps at Pages 7 thru 9, Santa Clara County Records.

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

On September 13, 2018 before me, Nina Ziboroff, a Notary Public, personally appeared Dinesh Davar, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) ~~acted~~, executed the instrument.

WITNESS my hand and official seal.





CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - CONNEMARA PHASE 2 - TRACT NO. 10357

RECOMMENDATION(S)

1. Accept the Subdivision Public Improvements for Connemara Phase 2 – Tract No. 10357;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Connemara Phase 2 - Tract 10357 is a 14-lot subdivision located on the south end of La Alameda accessed from Watsonville Road (Attachment No. 1 - site map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and MH Connemara 2013, LLC, dated November 4, 2016, and as specifically set forth in the plans and specifications approved by the City.

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

Street	Street Lengths
La Alameda	0.07 mi
Mooreland Drive	0.04 mi
Total	0.11 mi

To date, the total length of streets previously accepted by the City is 128.18 miles.

The value of the public improvements (including streets and other infrastructure) being accepted is \$454,419.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS: Not Applicable.**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The City Council approved the Final Map, and Subdivision Improvements Agreement for Connemara Phase 2 - Tract No. 10357, on October 19, 2016.

FISCAL AND RESOURCE IMPACT:

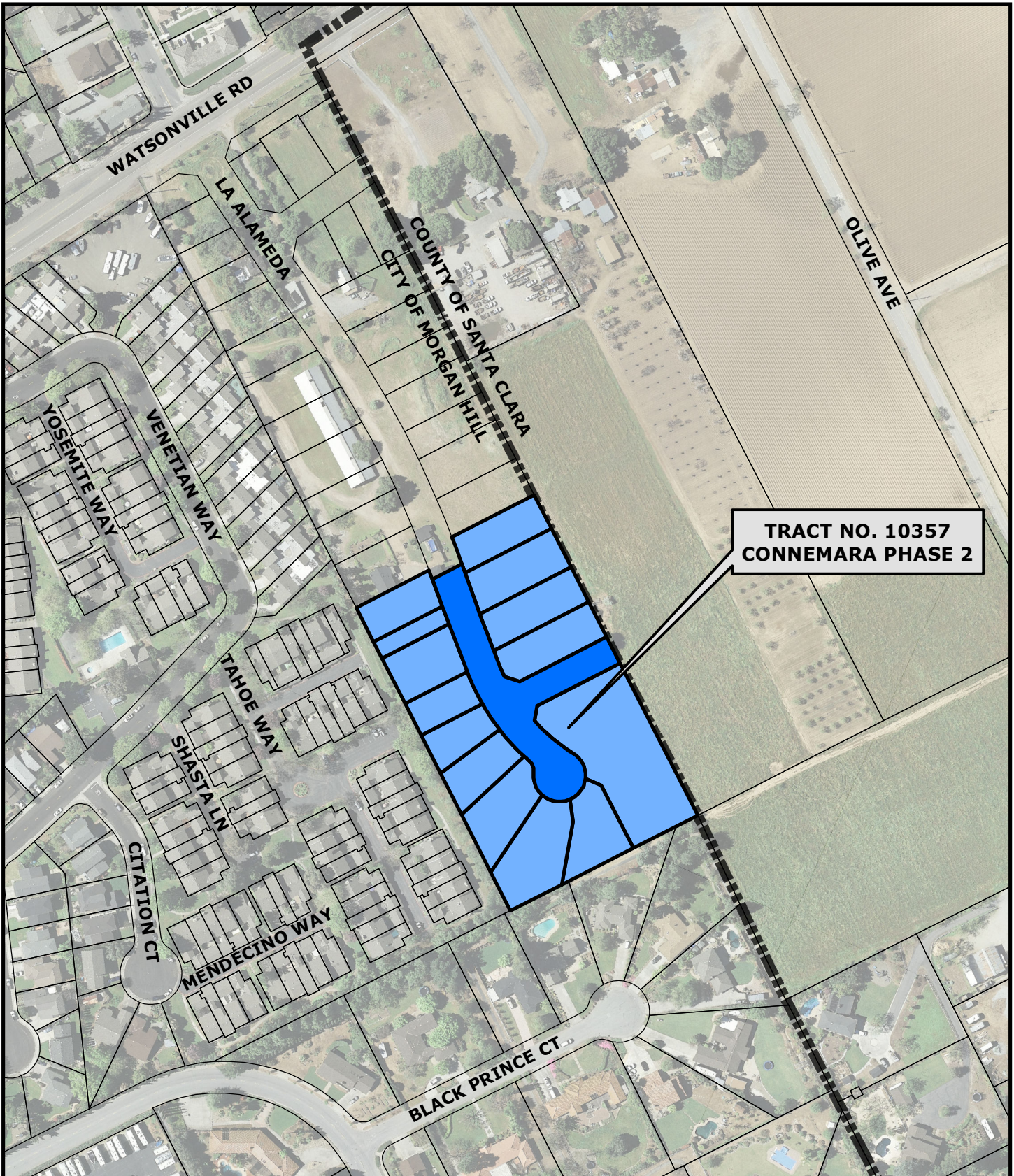
Staff time for this project was paid by the developer's land development fees.

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration for this project was adopted on April 3, 2013.

LINKS/ATTACHMENTS:

1. Site Map
2. Notice of Completion



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

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SITE MAP
TRACT NO. 10357
CONNEMARA PHASE 2



0 75 150 300 450 600
 Feet

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 **November 4, 2016**, the City of Morgan Hill, a Municipal Corporation, entered into a Subdivision Improvements Agreement with **MH Connemara 2013, LLC** for the **Connemara Phase 2 – TRACT NO. 10357** subdivision project located on the south end of La Alameda off of Watsonville Road.
- 2) The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037.
- 3) The contractor is **MH Connemara 2013, LLC**.
- 4) The surety is **Developers Surety and Indemnity Company**.
- 5) The project was completed on **November 30, 2018** and accepted by the City Council of the City of Morgan Hill on **December 19, 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 foregoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

APPROVE PHASE 1 RECORDS RETENTION SCHEDULE UPDATE

RECOMMENDATION(S)

Approve changes to the City's Records Retention Schedule.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The City's Records Retention Schedule was last updated in 2010. Staff is in the process of updating the schedule to reflect changes to current processes and ensure that retention periods are consistent with current state law. The Records Retention Schedule serves several important purposes:

- Provides a comprehensive list of all records retained by the City
- Controls how long records must be retained and provides authority for destruction of records which are no longer required
- Designates which City departments are responsible for retention of specific records
- Lists the legal authority for the retention periods

The City Clerk's Office has worked extensively with the City Attorney's office and Police Department over the past two years to accomplish a comprehensive update to their sections of the schedule. The remaining updates will be brought to the Council in the Spring of 2019. The updates ensure that the schedule complies with all applicable legal, fiscal, administrative, and historic requirements.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation to update a portion of the City's Records Retention Schedule.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City's Records Retention Schedule was first adopted in January 1996. It has been revised numerous times since then, most recently in 2010.

FISCAL AND RESOURCE IMPACT:

The time and cost associated with the Records Retention Schedule Update have been accommodated for in the City Clerk and City Attorney budgets and workplans.

CEQA (California Environmental Quality Act):

Not a project.

The update of the records retention schedule is an administrative activity and is not a project, as defined in Section 15378 of the State CEQA guidelines.

LINKS/ATTACHMENTS:

1. City Attorney and Police Department Updated Schedules

ACRONYMS USED IN LEGAL CITATIONS				
AC = While Active CU = Current Year CL = Closed D = Day FR = Final Resolution LA = Limitation on Action LI = Life (of program, asset) M = Month MA = Maturity MAINT = Maintain Records PR = Permanent S = Superseded T = Termination Y = Year				
Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
001	Agreements, Contracts and Leases - Construction, Improvements to Real Property and Facilities Executed agreements and contracts for construction and/or improvements to the City's real property and facilities .	Addendums and Amendments Attachments / Exhibits Bonds Certificate of Insurance Change Orders Disclosures Letters of Intent Memoranda of Agreement (MOAs) Public Works Contract Standard Consultant Agreement Services Agreement Services Agreement for Design Professionals Statements of Work (SOWs) Warranties	While Active+10Y	CA - CCP 315 - (LA10Y) CA - CCP 337.1 - (LA4Y) CA - CCP 337.15 - (LA10Y) CA - CCP 343 - (LA4Y) CA - GOV 34090 - (2Y) US - 29 CFR 516.5 - (3Y) US - 40 CFR 122.21(p) - (3Y) US - 40 CFR 122.41(j) - (3Y)
002	Agreements, Contracts and Leases - Goods and Services Executed agreements and contracts for goods and services (which includes all types of contracts and agreements, including franchise, purchase orders, or non-real property leases) and associated ancillary documents, between the City and other parties.	Addendums and Amendments Attachments / Exhibits Bonds Certificates of Insurance Disclosures Letters of Intent License Agreements, Licenses Licensing, Licenses (general) Maintenance Agreements Memoranda of Agreement (MOAs) Memoranda of Understanding (MOUs) - other than labor MOUs Standard Consultant Agreement Services Agreement Services Agreement for Design Professionals Rental Agreements Statements of Work (SOWs) Warranties	While Active+4Y	CA - CCP 337.1 - (LA4Y) CA - CCP 343 - (LA4Y) CA - GOV 34090 - (2Y) US - 29 CFR 516.5 - (3Y) US - 40 CFR 122.21(p) - (3Y) US - 40 CFR 122.41(j) - (3Y)
003	Animal Services Records and information documenting investigated animal cases.	Advice as to Treatment Approval or Denial of Treatment by City Classification Cases of Potentially Dangerous Animals Kennel Records Photos Records of Medical Treatment or Euthanasia	2Y	CA - CCP 340 - (LA1Y) CA - GOV 34090 - (2Y) CA - HSC 122331 - (MAINT) CA - PEN 802 - (2Y)
004	Criminal Registrations - Drugs, Gangs Records for those required to register as drug or gang violence offenders.		5Y	CA - GOV 34090 - (2Y) CA - HSC 11594(a) - (5Y) CA - PEN 186.32 - (5Y)

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)

Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
005	Criminal Registrations - Sex Offenders, Arsonists Records for those required to register as sex offenders or arsonists.		Life*+2Y	CA - GOV 34090 - (2Y) CA - PEN 290(b) - (Life of Offender) CA - PEN 457.1(b)(2) - (Life of Arsonist) * Life of the offender or arsonist
006	Internal Legal Advice and Opinions Memoranda containing legal advice prepared by the City Attorney's for City departments. (NOTE: Legal advice and opinions associated with specific projects will be retained with the project file.)	Memos Opinions	2Y	CA - GOV 34090 - (2Y)
007	Joint Powers Authority Agreement Executed agreements between the City and one or more public agencies that share a common power and want to jointly implement programs, build facilities, or deliver services.	Addendums and Amendments Attachments / Exhibits JPA	While Active+5Y	CA - CCP 337.1 - (LA4Y) CA - CCP 343 - (LA4Y) CA - GOV 34090 - (2Y)
008	Litigation and Third Party Claims Records generated for or related to any case or action before a judicial, arbitral, or administrative officer or body.	Complaints Court Orders Discovery Exhibits Judgments Pleadings Related Correspondence Releases Summons	Final Resolution + 5Y	CA - 2 CCR 11013 - (FR+2Y) CA - 8 CCR 10102 - (5Y; CL+1Y) CA - 22 CCR 1085-2 - (CU+4Y) CA - CCP 315 - (LA10Y) CA - CCP 337.15 - (LA10Y) CA - GOV 34090 - (2Y) CA - LAB 5410 - (LA5Y) CA - RTC 19704 - (LA6Y) CA - UIC 1132 - (LA3Y) US - 26 CFR 31.6001 - (CU+4Y) US - 26 CFR 301.6501 - (3Y) US - 26 CFR 301.6532-1 - (LA2Y) US - 26 CFR 301.6532-2 - (LA5Y) US - 26 USC 6531 - (LA6Y) US - 26 USC 6532 - (LA2Y) US - 29 USC 255 - (LA2Y) US - 29 USC 626(d) - (LA300D) US - 42 USC 2000e-5(e) - (LA180D) US - 42 USC 2000e-5(f) - (LA180D)
009	Personnel Files All documents related to paid employees (full and part-time), unpaid volunteers, and interns including but not limited to: - selection/hiring - assignments - promotion - demotion - transfer - layoff - termination / resignation - pay rates / other terms of compensation - work authorizations	Applications, Applicant Reference Verifications, PD Employee Hiring Background Investigation Reports Awards, Rewards, Commendations, Certificates Disciplinary Actions Drivers License Data - Class C Employee Policy Acknowledgements Employment Authorizations (confirmations, status changes, terminations) Exit Records Individual Education, Development, Training Records Job Offer Letters Leave of Absence Documentation, FMLA Oaths of Office Performance Evaluations, Reviews or PIPs Recognition Volunteer Acknowledgements	Termination+3Y	CA - 2 CCR 11013 - (FR+2Y) CA - GOV 12946 - (2Y; T+2Y) CA - GOV 34090 - (2Y) US - 29 CFR 1602.14 - (FR+1Y) US - 29 CFR 1602.31 - (T+2Y) US - 29 CFR 1627.3 - (T+1Y) US - 29 USC 1059 - (T+1Y) US - 41 CFR 60-1.12(a) - (2Y) US - 41 CFR 60-741.80 - (2Y)

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)

Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
010	Police - General Support and Administrative Records Records of general community support activities and administrative reports received and/or generated in the routine course of law enforcement activities and not associated with a case number.	Activity Reports Citizen's Academy Crime Statistics Daily Bulletins LiveScan Research (<i>for non-City organizations</i>) Logs (<i>booking number, case number, daily DR#, incident, subpoenas received</i>) Police Explorer Program Records Published Reports Ride-Along Program Records Uniform Crime Reporting Volunteers in Policing (VIP) Program Records	2Y	CA - CCP 339 - (LA2Y) CA - GOV 34090 - (2Y)
011	Police - Personnel Complaints, Internal Investigations Documentation of personnel complaints received, formal inquiries, and investigations, including those by Professional Standards, involving Police department employees (excludes officer involved shootings), whether sustained or not sustained.	Actions Taken Citizen Complaints Internal Affairs Investigations	5Y	CA - GOV 12946 - (2Y) CA - GOV 34090 - (2Y) CA - PEN 801.5 - (4Y) CA - PEN 832.5(b) - (5Y) CA - PEN 13300(l) - (5Y) CA - VEH 2547 - (3Y)
012	Police Case Files - Dead Bodies Records, crime reports and evidence associated with investigations of dead bodies, whether by natural causes or found.	Reports Statements	While Active*+2Y	CA - GOV 34090 - (2Y) CA - PEN 799 - (PR) * Case is active until body has been identified and cause of death determined. If determination is made that the death was a homicide, records are recategorized as "Felony Murder/Homicide" case files (see "Police Case Files - Felony Murder/Homicide, Capital Offenses, Child Abuse, Elder Abuse, and Violations of Public Trust" below
013	Police Case Files - Felonies, Excluding Murder Records, crime reports and evidence associated with felony violations of laws, including domestic violence, but excluding homicide and capital violations.	Criminal Protective Orders Reports Restraining Orders Statements	While Active*+10Y	CA - CCP 337.5 (LA10Y) CA - CCP 339 - (LA2Y) CA - GOV 34090 - (2Y) CA - PEN 799 - (MAINT) CA - PEN 851.8 - (SEAL & DESTROY) CA - PEN 851.90 - (MAINT) CA - PEN 13710 (MAINT) CA - Law Enforcement Evidence and Property Management Guide * Case becomes inactive when it has been adjudicated, all appeals exhausted or all time served. Provided there are not outstanding warrants, deaths, and it is not classified under PC §800 and 290 and HSC §11850; Statute of limitations is 2 years; Destroy juvenile marijuana after age 18; HSC §11361.5; GC §34090, PC §802, PC §187, 800 et seq.

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)

Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
014	Police Case Files - Felony Murder/Homicide, Capital Offenses, Child Abuse, Elder Abuse, and Violations of Public Trust Records, crime reports and evidence associated with capital felony violations of laws, including homicide, child abuse, elder abuse, embezzlement of public funds, or falsification of public documents.		Permanent	CA - GOV 34090 - (2Y) CA - PEN 187-199 - (MAINT) CA - PEN 290 - (MAINT) CA - PEN 799 - (PR) CA - Law Enforcement Evidence and Property Management Guide No limitation on commencement of action; PC §261, 286, 288, 288a, 288.5, 289, 289.5, and 799
015	Police Case Files - Juvenile Records, crime reports and evidence associated with criminal cases dealing with juveniles.		Longer of: MAJ*+8Y (or) SEAL**+5Y	CA - GOV 34090 - (2Y) CA - WIC 300 (age 18 or as directed by court) CA - WIC 600 (age 18 or as directed by court) CA - WIC 781 (age 18 or as directed by court) CA - WIC 826 (age 18 or as directed by court) CA - Law Enforcement Evidence and Property Management Guide *MAJ = Age of Majority Status (18Y); **SEAL = Date Records Sealed Statute of limitations runs up to age of majority + 8 years; Sealing for juveniles and Wards of the Court retained for 5 years; CP §340.1; GC §34090; WIC §781(d); WIC §826(a)&(b); WIC §781(a).
016	Police Case Files - Misdemeanors, Infractions Records, crime reports and evidence of misdemeanors and infractions, including traffic incidents, parking/moving citations, administrative citations, and appeals.		5Y	CA - CCP 339 - (LA2Y) CA - GOV 34090 - (2Y) CA - PEN 802 - (2Y) CA - PEN 853.6 - (MAINT) CA - Law Enforcement Evidence and Property Management Guide
017	Police Case Files - Missing Persons, Protective Custody and Runaways Records, crime reports and evidence associated with missing persons and runaways.		While Active*+2Y	CA - GOV 34090 - (2Y) CA - Law Enforcement Evidence and Property Management Guide * Case remains active until solved
018	Police Case Files - Officer Involved Shootings Records, crime reports and evidence associated with criminal cases dealing with officer involved shootings.		2Y	CA - GOV 34090 - (2Y) CA - Law Enforcement Evidence and Property Management Guide CA - PEN 832.18 - (2Y)
019	Police Case Files - Sealing of Adult Records Records of court orders to seal the records of adults.		SEAL*+3Y	CA - GOV 34090 - (2Y) CA - PEN 851.8 - (SEAL+3Y) CA - PEN 851.90 - (MAINT) *SEAL = Date Records Sealed

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)

Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
020	Police Case Files - Sealing of Juvenile Records Records of court orders to seal the records of juveniles.		Longer of: MAJ*+8Y (or) SEAL **+5Y	CA - CCP 340.1 (LA8Y) CA - GOV 34090 - (2Y) CA - WIC 300 (age 18 or as directed by court) CA - WIC 781 (age 18 or as directed by court) CA - WIC 781.5 (EXONERATION+3Y) CA - WIC 826 (age 18 or as directed by court) * MAJ = Age of Majority Status (18Y) ** SEAL = Date Records Sealed
021	Police Case Files - Stolen Property Records, crime reports and evidence associated with stolen property.		While Active*+3Y	CA - CCP 338 - (LA3Y) CA - GOV 34090 - (2Y) CA - Law Enforcement Evidence and Property Management Guide * Case remains active until solved
022	Police Case Files - Traffic Collisions - Fatal Records, crime reports and evidence associated with traffic collisions involving fatalities.		Permanent	CA - GOV 34090 - (2Y) CA - Law Enforcement Evidence and Property Management Guide
023	Police Dispatch Records Records of emergency calls to include time and date of call, contents of call, location of call, name of unit sent to scene, and other related information.	911 Emergency Call Logs Computer Aided Dispatch (CAD)	2Y*	CA - GOV 34090 - (2Y) CA - GOV 60201 - (MAINT) * Exception: Recordings used as evidence in a criminal prosecution or claim filed or litigation or potential claims and litigation shall be preserved for 100 days after conclusion of the court action.
024	Police Routine Body-Worn Camera Video Records Recordings of routine body-worn camera video monitoring, to include time and date of video, location of video and other related information.	Body-Worn Camera Recordings (body cam)	30D*	CA - PEN 832.18 - (60D) * Exception: If recordings are evidence in any criminal prosecution, claims filed, potential claims or any pending litigation, they shall be preserved for 100 days after the conclusion of the court action.
025	Police Routine Dispatch Telephone and Radio Communications Records Routine daily recording of telephone communications and all radio communications relating to the operations of the department.	Audio Telephone Recordings Audio Radio Recordings 911 Call Recordings	100D*	CA - GOV 34090.6 - (Routine Audio: 100D) CA - GOV 26202.6 - (100D) CA - GOV 60201 - (MAINT) * Exception: If recordings are evidence in any criminal prosecution, claims filed, potential claims or any pending litigation, they shall be preserved for 100 days after the conclusion of the court action.

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)

Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
026	Police Routine Video Records Recordings of routine video monitoring, other than body-worn camera recordings, to include time and date of video, location of video and other related information.	Jail Observation/Monitoring Building Security Recordings	1Y*	CA - GOV 34090.6 - (Routine Video: 1Y) * Exception: If recordings are evidence in any criminal prosecution, claims filed, potential claims in any pending litigation, they shall be preserved for 100 days after the conclusion of the court action.
027	Police-Issued Licenses, Permits Documentation of licenses, non-building permits and other authorizations issued in the City.	Adult Businesses Alarm Permits Animal Establishment/Commercial Kennels Bingo Concealed Weapons (guns, etc.) Firing Weapons within City Limits Live Entertainment Massage Establishments (includes background checks) Secondhand Dealer/Pawnbroker DOJ Licenses Taxi Permits	While Active+4Y	CA - CCP 337 (4Y) CA - GOV 34090 - (2Y)
028	Public Information Requests Records requested by the public, required for provision to the public, and related inquiries.	Collection Lists Formal Public Records Requests Inquiries Maddy Act Lists Subpoenas for records and/or testimony (cases in which City is not a party)	2Y	CA - GOV 34090 - (2Y)
029	Risk Management - Claims Against the City Records detailing claims lodged against the City.	Accident/Incident Reports Actuarial Reports Annual Audit of Open Claims Appraisals Claims By/Against the City Closing Letters Damage Estimate Reports Supporting Documentation Insurance Claims, Appraisals, Reports Investigations	Final Resolution+5Y	CA - CCP 337 - (LA4Y) CA - CCP 338.1 - (LA5Y) CA - GOV 34090 - (2Y)
030	Risk Management - Insurance Coverage Records detailing the City's general coverage against property damage and liability, including renewal submission information, insurance quotes, & broker correspondence. (NOTE: Third party proofs-of-insurance associated with facility rentals or City projects are retained with those rental or project files.)	Binding Information Binders Broker Correspondence Certificates of Insurance Completed Applications Flood Insurance Insurance Policies Insurance Quotes Insurance Submissions Liability Insurance Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) Renewal Strategy	While Active+5Y	CA - 22 CCR 3267-2 - (MAINT) CA - CCP 337 - (LA5Y) CA - GOV 34090 - (2Y)
031	Settlement Agreements Records of final settlement agreements.	Settlement Agreements	Permanent	CA - GOV 34090 - (2Y)

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)

Record No.	Record Name and Description	Example Records	Retention	Legal Citations and Comments
032	Training Records - City Staff and Officials All documents related to general and specialized technical education and training taken by officials, paid employees and unpaid volunteers, including: - Ethics - Fire Extinguisher - First Aid/CPR - Privacy - Safety - Specialized Equipment - Child Protective Services & Boundaries	Attendance Briefing/Unit Training Certification Records Compliance Training Individual Education, Development Tailgates	5Y	CA - 8 CCR 3203 - (CU+1Y) CA - GOV 34090 - (2Y) CA - GOV 53235.2b - (5Y)
033	Training Records - Materials, Courses, Scheduling Documentation regarding the content of courses and schedules for training offered to employees, officials and volunteers.	Attendance Lists Employee Development Presentation Materials PowerPoint Slide Decks Rosters Sign-in Sheets Testing/Qualifications Training Bulletins	7Y	CA - GOV 12946 - (2Y) US - 29 CFR 1602.14 - (FR+1Y) US - 45 CFR 164.530 (j) - (CU+6Y)

Attachment: City Attorney and Police Department Updated Schedules (2117 : Records Retention Update)



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, 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 called the meeting to order at 7:01 p.m.

ROLL CALL ATTENDANCE

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

DECLARATION OF POSTING AGENDA

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

None.

CITY MANAGER'S REPORT

City Manager Christina Turner announced the evening's supplements and presentations. She shared that our Police Department has been awarded a grant in the amount of \$560,000 under Proposition 56; a Cigarette Tax to Fund Healthcare, Tobacco Use Prevention, Research, and Law Enforcement. This grant will pay for an additional School Resources Officer (SRO). This grant will cover the salary and benefits of the additional SRO for three years. This position will focus on tobacco education and prevention in our schools, with an emphasis on electronic cigarettes and flavored tobacco. The tobacco prevention and education work will include both student and parent outreach. These grant funds also align with the enforcement grant that is being presented and accepted this evening.

She introduced and welcomed our new Police Captain Emil Kokesh. Captain Kokesh joins us from the City of San Bernadino where he has served for over 27 years. Most recently, he served as a sergeant overseeing the homicide unit. While working in San Bernadino, he led their regional auto theft task force, worked as an acting lieutenant, and was a first responder to the terrorist attack at the Inland Regional Center in December 2015. Here in Morgan Hill, he will lead our Special Operations Division which includes investigations, internal affairs, school resource officers, and the office of emergency services.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that he attended the Board of Directors (Board) for the Plan Joint Powers Authority (JPA) meeting this morning, which is the City's public liability assurance network. It is not quite an insurance policy, rather it is a risk pool in which the City has joined with other agencies to share liability risks in the event of claims or lawsuits. He commented that the Board usually only meets twice a year, however, they will hold an additional meeting in February for a strategic planning session. At that meeting they will consider a number of things including addition of coverage for employment practices liability, cyber liability, earthquake coverage, and some other things such as if they should be recruiting members from outside the greater bay area. One other piece of news that came out of the meeting this morning, is that the City's payment into the pool will likely increase next fiscal year due to our claims history and because our actual insurance is over and above what is covered through the plan.

OTHER REPORTS

Council Member Constantine asked that the meeting be adjourned in honor of President George Herbert Walker Bush.

Mayor Tate shared that he spent most of the afternoon at the Local Area Formation Commission (LAFCO) meeting regarding the annexation of property into the City to accommodate a Catholic High School. He complimented City staff for their excellent work at the meeting. He also thanked all of the people who attended the meeting and spoke in support of the project. He shared that unfortunately, the vote was not in our favor. He commented that we will do some thinking about how to move forward and will let the community know. He also reported that he learned this evening that the County of Santa Clara will be taking over Saint Louise and O'Connor hospitals, as well as, the DePaul Center here in Morgan Hill.

PUBLIC COMMENT

The public comment was opened at 7:09 p.m.

Brian Faircloth 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, Constantine, Carr, Jachimowicz, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 8, 10 through 12, and 14 through 22.

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

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. ITEM PULLED FOR DISCUSSION

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. ITEM PULLED FOR DISCUSSION

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.

ITEMS PULLED FOR DISCUSSION

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.

The public comment was opened at 7:14 p.m.

Doug Muirhead was called to speak.

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

MOTION:

Approving the recommended actions.

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

13. FOUNTAIN OAKS RANCH EASEMENT

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.

Program Administrator Anthony Eulo presented the report.

The public comment was opened at 7:45 p.m. The following people were called to speak:

John Telfer

Greg Leonard

George Chiala

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

MOTION:

Approving the recommended actions with the condition that the City will make an agreement with a suitable trust to oversee the land.

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

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.

Housing Manager Rebecca Garcia and Assistant City Manager Leslie Little presented the report.

The public comment was opened at 8:36 p.m.

Teddy Newmyer was called to speak.

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

MOTION:

Authorizing the 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.

RESULT:	AUTHORIZED [4 TO 0]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Carr, Jachimowicz, Spring
ABSTAIN:	Tate

MOTION:

Authorizing the 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; Authorizing the 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; Authorizing the 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; and Approving 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.

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

The meeting recessed at 8:45 p.m.

The meeting was reconvened at 8:51 p.m.

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.

Development Services Director Jennifer Carman and Principal Planner John Baty presented the report.

The public comment was opened at 8:59 p.m. The following people were called to speak

Dick Oliver

Kathy Sullivan

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

Council provided direction to staff.

RESULT:	NO ACTION TAKEN
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25. SEPTEMBER 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Finance Director Dat Nguyen presented the report.

The public comment was opened at 9:26 p.m.

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

Council accepted the report.

RESULT: ACCEPT REPORT

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

Recommendation:

Adopt resolution establishing an Annual Regulatory Fee for Massage Establishments.

Accounting Manager Harjot Sangha presented the report.

The public comment was opened at 9:31 p.m.

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

MOTION:

Adopting the resolution setting the initial annual fee at 100% cost recovery (\$843) and setting the subsequent annual renewals at 75% cost recovery (\$497).

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

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.

Associate Engineer David Gittleson presented the report.

The public hearing was opened at 9:39 p.m.

Trevor Bacolini was called to speak.

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

MOTION:

Adopting the 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.

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

Minutes Acceptance: Minutes of Dec 5, 2018 7:00 PM (CONSENT CALENDAR)

MOTION:

Authorizing the City Attorney to file suit in eminent domain with respect to said property and Approving the expenditure of \$300,500 for said properties for deposit into the State Condemnation Deposit Fund.

RESULT:	AUTHORIZED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring asked that staff bring back a discussion regarding cannabis in Morgan Hill. He also asked to have a report come to Council on the Fire Disaster Plan for Morgan Hill with scenarios. Lastly, he asked for a discussion on the high level plan for agricultural land preservation.

ADJOURNMENT

There being no further business, the meeting was adjourned in honor of President George Herbert Walker Bush at 9:47 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

DRAFT



Meeting Minutes City Council

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

Wednesday, December 12, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL MEETING

A Special Meeting of the City Council was called at 7:00 p.m. for the purpose of conducting City business.

CALL TO ORDER

Mayor Tate called the meeting to order at 7:06 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

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

DECLARATION OF POSTING OF AGENDA

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

Minutes Acceptance: Minutes of Dec 12, 2018 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

YOUTH ACTION COUNCIL PRESENTATION

PRESENTATIONS

Senator Monning presented Mayor Steve Tate and Council Member Caitlin Jachimowicz with recognitions on behalf of the California State Senate. He also thanked the Mayor's wife, Jennifer Tate, for her support.

Assembly Member Rivas presented Mayor Steve Tate with a recognition on behalf of the California State Assembly.

CITY COUNCIL REPORTS

Council Member Jachimowicz thanked everyone for attending and encouraged the community to come to future council meetings. She thanked the City teammates and her colleagues on the Council for their support, hard work and dedication; the people of Morgan Hill for their love and kindness; her father and husband for their support, and her son Griffin and her daughter Penelope for giving up some time with their mom for a little while so that she could serve the community. She concluded with a message to her daughter, "You are never too young, too blonde, or too female to be taken seriously. It is your job to work hard enough to exceed everyone's expectations."

Council Member Spring thanked Mayor Tate for his many years of service, leadership, and support. He shared that he and Mayor Tate met through Leadership Morgan Hill and shared how that program changed his life. He shared how he met Council Member Jachimowicz and thanked her and her family for their friendship and support. He congratulated the new Council Members and shared his excitement to work with them.

Council Member Carr recognized and thanked Council Member Jachimowicz for all the value that she brought to both the City Council and community and for her kindness to him and his family. He congratulated the incoming Council Members and Mayor and shared his excitement to work with them. He thanked Jennifer Tate and the Tate family and shared some of his experiences with them. He recognized and thanked Mayor Tate for his outstanding service to the community and for his many years of friendship.

Mayor-Elect Constantine shared his appreciation for all of the things that Mayor Tate has taught him over the years and the example that he has set as Mayor. He recognized the many contributions that Mayor Tate has given the community and expressed his gratitude for the legacy that he will leave behind. He expressed his appreciation to Council Member Jachimowicz for all that she brought to the City Council and thanked the City teammates and his colleagues on the Council for their hard work and support.

Mayor Tate thanked everyone for their support. This job it is all about the people and that is why he loves it so much. He thanked City Managers Ed Tewes, Steve Rymer, and Christina Turner. Mayor Tate shared that the City's overall challenge has been, and continues to be, having enough money to move the City forward and to accomplish all of our goals. He stated that he will continue to try to find a permanent solution to the City's need for long term additional income. He expressed his delight to work with this Council and commented on how phenomenal Council Member Jachimowicz has been to work with. He thanked everyone for attending.

Craig van Keulen, on behalf of the Morgan Hill Rotary Club, presented Mayor Tate with a certificate of recognition and thanked him and Council Member Jachimowicz for their service.

CITY MANAGER'S REPORT

On behalf of the entire Morgan Hill team, City Manager Christina Turner thanked Council Member Jachimowicz for the two years working with her and for her thoughtfulness and articulation. She thanked Mayor-Elect Constantine for his eight years of service on the Council and shared the team's excitement to work with him in his new capacity as Mayor. She congratulated Council Members- Elect Martínez Beltrán and McKay and thanked them both for their service to the community as Planning Commissioners. She thanked Mayor Tate for his passion and 27 years of dedicated service.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin thanked Council Member Jachimowicz for her hard work and shared that she makes him a better lawyer by being a lawyer on the Council. He thanked Mayor Tate for his service going all the way back to the 1970's when the Residential Development Growth System (RDCS) was put into place. He also recognized the Mayor for his work in implementing the City's Ethics Policy and for truly living those values and instilling them in the Council and City.

OTHER REPORTS

Mayor Tate recognized his wife Jennifer and his family for all of their support.

PUBLIC COMMENT

The public comment was opened at 7:58 p.m.

Murv Little 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:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

OTHER BUSINESS

1. NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION - CERTIFIED STATEMENT OF ELECTION RESULTS

Recommendation:

Adopt resolution reciting the facts of the General Municipal Election of November 6, 2018 and declare the results of such other matters as provided by law.

City Clerk Irma Torrez presented the report.

MOTION:

Approving the recommended action.

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

OATHS OF OFFICE

Mayor - Elect Richard Constantine
 Council Member - Elect John McKay
 Council Member - Elect Yvonne Martínez Beltrán

Following the Oaths of Office, City Clerk Irma Torrez presented the Mayor-Elect and Council Members-Elect with their certificates of election.

The new Council took their seats at the dais.

Mayor Constantine thanked everyone for coming.

Council Member McKay thanked everyone in the community for paying attention to the elections and for the great turnout. He shared that he will not forget all the conversations he had while campaigning. They were wonderful, and he appreciates having had them. Although he regrets that he will not get to serve on the Council with Mayor Tate, he leaves a legacy of great cooperation. He is looking forward to working with the City teammates and cannot think of a better team to be working with.

Council Member Martínez Beltrán thanked Council Member Jachimowicz and Mayor Tate for their service and leadership. She expressed her appreciation to everyone that came out tonight and offered their support. She thanked her family for setting the foundation for her to grow and for their love, support, and hard work in this campaign. She thanked the City teammates for helping her navigate and learn and thanked her colleagues on the Planning Commission for providing a training ground that led her to the City Council. She thanked the many people that supported her and worked on her campaign.

On behalf of the entire City team, Deputy City Clerk Michelle Bigelow presented Mayor Tate and Council Member Jachimowicz with gift baskets as a token of appreciation for their many contributions to the City and presented Mayor Constantine and Council Members Martínez Beltrán and McKay with welcome gifts.

Mayor Constantine thanked his mother for coming out from Florida to support him this evening and his many friends who have supported him along the way. He thanked his buddy Pete and shared that it has been his pleasure and honor to work with him for over 24 years. He thanked everyone that attended for their support of the City Council and City as a whole.

ADJOURN TO RECEPTION

The meeting adjourned to the reception recognizing the outgoing elected officials and welcoming the incoming elected officials at 8:23 p.m.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

RECEIVE HIGH SPEED RAIL (HSR) UPDATE AND APPROVE HDR ENGINEERING INC. CONTRACT FOR GRADE SEPARATIONS STUDY

RECOMMENDATION(S)

1. Authorize City Manager to execute a contract with HDR Engineering, Inc., in the amount of \$125,000 to study roadway grade separations at Dunne Avenue and Tennant Avenue; and
2. Adopt resolution approving a three-year interfund loan in the amount of \$125,000 to the Traffic Impact Fund from the Local Drainage Impact Fund and amend the City's adopted Fiscal Year 2018-19 budget in funds No. 303 and 309 for related expenditures.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Economic Development and
Telecommunications
Infrastructure
Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element
Public Safety Master Plan

POLICY CONSIDERATION:

Should the City study the feasibility and impacts of roadway/rail grade separations at Dunne Avenue and at Tennant Avenue?

REPORT NARRATIVE:

The California High-Speed Rail Authority (CHSRA) is nearing completion of the High-Speed Rail (HSR) project definition phase, including development of the latest at-grade, blended system alternative within the Union Pacific Rail Road (UPRR) corridor. Currently there are three alternatives being considered for the Morgan Hill segment:

Embankment Adjacent to UPRR

This alignment would place the High Speed Rail (HSR) facility on the east side of the UPRR right-of-way (ROW) and necessitate approximately 85 feet of additional right-of-way through the length of the project, causing direct impact to over 80 private properties in Morgan Hill. The alignment would be constructed on an embankment (berm) of eight to 10 feet in height and may warrant the

construction of sound walls, creating a continuous barrier up to 27-30 feet in height for the length of the Morgan Hill segment. This option would also lower E. Main Street, E. Dunne Avenue, San Pedro Avenue, and Tennant Avenue under the raised tracks to grade separate all intersections. Finally, this alignment would relocate Monterey Highway 60 feet to the east, north of Cochrane Road.

Viaduct West of Hwy. 101

This option places the HSR facility on a 50 to 80-foot-high viaduct on the west side of Hwy 101 from Burnett Avenue to Tennant Avenue. North of Morgan Hill, the proposed HSR facility runs on a viaduct in the median of the Monterey Corridor past the Charter School. North of Barnhart Avenue, it travels on county land to the west side of Hwy 101 at Burnett Ave and at approximately Tennant Avenue starts traveling back to Monterey Road. The project directly impacts a row of houses on Walnut Grove that are immediately adjacent to the freeway.

Blended, At Grade within UPRR Corridor

The alignment is the newest alignment presented in the 2018 Business Plan that suggests the joint use of the UPRR corridor. This alignment option assumes two electrified tracks and one conventional track to remain at grade and predominantly within the existing UPRR Right of Way (ROW). The private property impacts are limited to the acquisition and relocation of parking currently serving commercial and residential projects, relocation of the Monterey Road Train Overpass, and the loss of parking and circulation at the Caltrain Station area. The project would provide for the extension of blended electrified passenger service along the train corridor from San Jose to Gilroy and provide for an expanded station with two platforms and an underground pedestrian crossing required to replace the current at-grade pedestrian crossing Downtown. This alternative would provide safety improvements at each grade crossing, including pedestrian barriers at all four quadrants of the intersection and continuous fencing, that would increase vehicle and pedestrian safety, offer the opportunity for the City to apply for a Quiet Zones designation at its sole cost, and allow for Caltrain to provide increased service based on the electrification of the tracks.

The Authority plans to identify a preferred alternative in September 2019 and issue the Draft Environmental Impact Report/Statement (EIR/S) for public comment by December 2019.

On August 14, 2018, the CHSRA staff held two public meetings in Morgan Hill. The meetings were well attended. The key issue raised at the meetings by the community was the concern for maintaining vehicular and pedestrian circulation and safety around the crossings. Subsequently, staff has learned that Dunne Avenue and Tennant Avenue are some of the busiest street crossings along the entire Caltrain corridor.

At the same time, Caltrain is exploring its future service across the corridor and including to South County. Currently, Caltrain provides commuter rail service along the San Francisco Peninsula, through the south Bay to Gilroy. Today Caltrain service

consists of three northbound trains in the morning and three southbound trains in the evening. Caltrain is developing a Business Plan to outline service to 2040. Through this Business Plan, and with the anticipation of electrification improvements in South County, it is possible Caltrain will be able to increase service significantly in South County.

While Morgan Hill does not currently have a level of train service that would warrant a grade separation, if the CHSRA selects the Blended alternative and Caltrain develops plans to increase service to South County, train volumes at these two key intersections can be expected to increase over time. To better understand the potential need, timing, and tradeoffs with grade separations at these two intersections, staff recommends retaining the services of HDR Engineering. HDR Engineering will be scoped to study the implications of, and options for how to grade separate Dunne and Tennant Avenues across the rail corridor, to help the City understand the benefits and impacts of grade separations, and whether these projects would be in the City's interest to pursue. The study would also inform future General Plan updates and other City planning documents regarding the areas surrounding the grade crossings.

The scope of work will provide conceptual design services to investigate options to provide a grade separated overpass and grade separated underpass of the UPRR ROW. In addition, HDR Engineering will provide cost estimates, renderings, and a table of pros and cons for each alternative. The Study will take approximately four months and will provide needed information to help the City ascertain a position regarding the need or desire of grade separating these intersections in the future. The cost of the Study is \$125,000 utilizing funds from the Traffic Impact Fund. The CHSRA will not reimburse the City for this work.

About HDR Engineering, Inc.

HDR Engineering employs nearly 500 staff in Northern California delivering transportation, water, and building infrastructure projects. In 2017, HDR Engineering developed preliminary engineering for an Integrated Operating Concept (IOC) for Diridon Station and adjoining Caltrain, UPRR, and HSR track and maintenance facilities. This included a feasibility study for track alignments, tunnels, and grade separations between San Jose and Morgan Hill. Since 2014 HDR Engineering has served as the General Engineering Consultant (GEC) for Caltrain and completed preliminary engineering for four grade separations in Burlingame and San Mateo. Between 2008 and 2011, HDR Engineering performed the preliminary engineering and track alignment for a portion of the CHSRA San Jose to Merced Section to support the environmental documentation phase. Due to HDR Engineering's immense knowledge and experience working with HSR, and other transportation agencies, Staff recommends that it is in the City's best interest to have HDR Engineering prepare this study, and it is determined a bid/request for qualification process would not likely result in a lower price to the City.

HSR Background

The California High Speed Rail Project, approved by the voters in 2008, is a high-speed rail system intended to connect Los Angeles to the San Francisco Bay Area with a train system that would run at speeds over 200 miles per hour.

On May 15, 2018, the CHSRA Board adopted its 2018 Business Plan (Plan). The Plan acknowledged 20-35% cost increases affecting each segment, project delays of as much as four years, revised cost estimates and a financing strategy aligned with the availability of Cap-and-Trade funds. Other key highlights in the 2018 Business Plan include:

- The Authority will complete the civil works for the 119-mile Central Valley Segment, and complete environmental review for the entire Phase 1 System between San Francisco to Los Angeles/Anaheim by 2022.
- The Silicon Valley to Central Valley Line will extend from San Francisco to Bakersfield.
- Develop high-speed-rail-ready infrastructure on two lines 1) between Bakersfield and Madera and 2) between Gilroy and San Jose/San Francisco for potential early service as soon as 2027.
- Pacheco Pass work will complete the Silicon Valley to Central Valley Line for service from San Francisco to Gilroy.
- Electrification of the Caltrain and UPRR corridor between San Francisco and Gilroy.

For Morgan Hill, there are two items in the Plan that are of importance:

- 1) The Plan identifies the *new* Silicon Valley to Central Valley Line to be from San Francisco to Bakersfield. However, due to funding constraints, the Plan suggests a phased approach, which would construct and potentially have separate interim operations, one between Madera and Bakersfield, and one between San Francisco and Gilroy. The connection through Pacheco Pass and extensions to Merced will be developed in a later phase as funding becomes available.
- 2) The Plan proposes electrification and sharing of the UPRR tracks from south San Jose to Gilroy. This is a new alignment option that assumes staying within the UPRR right-of-way and running trains at-grade at approximately 110 miles per hour.

Staff has also received and provided comments to the Preliminary Engineering for Project Definition design documents for the most recent alternative, the Blended, at-grade alternative and attended numerous meetings with CHSRA staff to discuss impacts and design solutions for the Morgan Hill Caltrain Station.

COMMUNITY ENGAGEMENT: Inform

CHSRA held two community meetings in Morgan Hill on August 14, 2018, met with the Realtors Association on October 3, 2018, hosted a Community Working Group meeting on November 7, 2018, and a Technical Working Group meeting on November 28, 2018.

The City of Morgan Hill has an HSR web page that provides basic information on the project and links to HSR staff and website for additional information. Email announcements to all residents have been made, including posts to NextDoor. Residents that have chosen to be contacted on this topic, receive emails about any project-related meetings.

ALTERNATIVE ACTIONS:

The Council may choose not to study grade separations at Dunne and Tennant Avenues or to only study one of the two crossings.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

September 7, 2016: CHSRA staff presented four route alternatives that included the previous two alignments plus the West of 101 alignment and the aerial structure along the UPRR tracks.

December 2016: Council responded with a Supplemental Scoping Letter for the project EIR/EIS and requested that HSR evaluate a freeway-only alternative and continue to study all options through Morgan Hill.

January 2017: CHSRA staff provided project update, indicating narrowing down the four alternatives to only two: The West of 101 viaduct option and the at grade Monterey Corridor option.

May 24, 2017: Council approved three consultant contracts to help evaluate and advance design solutions for the HSR project, including a contract with rail experts, Michael Baker and Associates, to evaluate the feasibility of a freeway-only alignment.

November 15, 2017: Rail consultant provided an update on the freeway options.

April 4, 2018: City Council approved a budget amendment to cover consultant-related costs.

FISCAL AND RESOURCE IMPACT:

This study is not a budgeted expenditure. It is recommended the study be funded by Traffic Impact Fund 309. However, due to the planned land acquisition for the Hale Extension Project, the fund currently has a negative balance. To complete the Hale Extension Project land acquisition, an interfund loan from the Local Drainage Impact Fund (303) was utilized. Staff is proposing an additional loan of \$125,000 be made from Fund 303, which has adequate funds available to make this loan for funding this study. It is proposed that the loan be paid back over the next three fiscal years.

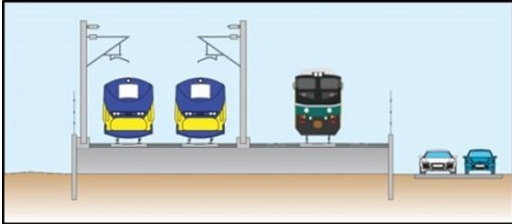
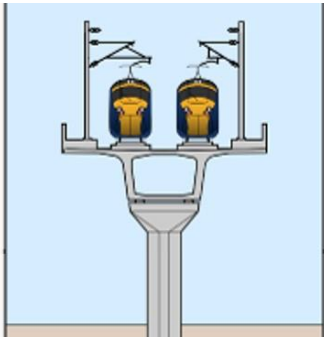
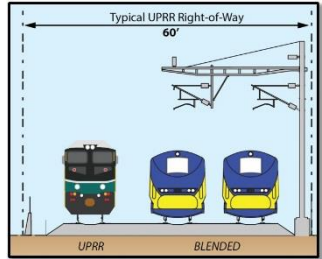
CEQA (California Environmental Quality Act):

By the definition provided in the California Environmental Quality Act Guidelines Section 15378 this study does not qualify as a "project" and is therefore exempt from the California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. HSR Alignment Options Through Morgan Hill
2. Resolution - budget amendment interfund loan
3. HDR -City Services Agreement for Grade Separations
4. Exhibit A to HDR Agreement - Scope of Services

HSR Alignment Options Through Morgan Hill

	Embankment Adjacent to UPRR	Viaduct West of Hwy. 101	Blended, At-grade with UPRR
			
LOCATION	On the east side of UPRR ROW	On west side of Hwy. 101 from Burnett Ave to Tennant Ave	In UPRR ROW
STRUCTURE TYPE	On top of Berm/Retained Fill up to 8 feet high	50' to 80' elevated viaduct	At grade
PROPERTIES AFFECTED	>80	>12	<6
VISUAL IMPACTS	Creates barrier adjacent to existing tracks. Potential soundwalls depending on noise study findings.	Viaduct structure will be highly visible	Overhead Contact System poles every 100-150 feet. Potential soundwalls depending on noise study findings.
TRANSPORTATION IMPACTS	Relocates Monterey Hwy to the east north of Cochrane Rd. Requires grade separations at all grade crossings.	Limited	
TRANSPORTATION BENEFITS	Provides grade separations at all grade crossings.	None	Increased safety (vehicle and pedestrian) at grade crossings by providing Quad Gate configuration. Allows for Caltrain to provide increased service based on their Business Plan (currently under development).

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 APPROPRIATING A THREE YEAR INTERFUND LOAN AND RELATED EXPENDITURE IN THE AMOUNT OF \$125,000 IN THE TRAFFIC IMPACT FUND (309) FROM THE LOCAL DRAINAGE IMPACT FUND (303) FOR ROADWAY/RAIL SEPARATIONS STUDY AT DUNNE AVENUE AND TENNANT AVENUE, THEREFORE

WHEREAS, recommended interfund loan and 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. Approve the One Hundred Twenty Five Thousand (\$125,000) interfund loan to the City's Traffic Impact Fund (309) from the Local Drainage Impact Fund (303) that will be repaid in three years; and
- b. 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

- c. 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, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 19th day of December 2018.

AYES:

COUNCIL MEMBERS:

NOES:

COUNCIL MEMBERS:

ABSTAIN:

COUNCIL MEMBERS:

ABSENT:

COUNCIL MEMBERS:

DATE: _____

Rich Constantine, 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. XX-XXX, adopted by the City Council at a regular meeting held on December 19, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A**AGENDA BUDGET SCORECARD**

FISCAL YEAR 2018-19

ADJUSTMENT #

025

FUND:

309 Traffic Impact Fund

DEPARTMENT:

8053 Traffic Impact

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

12/19/18

Approve HDR Contract Agreement and Interfund Loan for
Roadway/Rail Grade Separations at Dunne Avenue and Tennant
Avenue Study

AGENDA ITEM TITLE:

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	3,258,074	17,251,157	19,694,392	814,839
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	2,250,000	2,250,000	-
RECOMMENDED ACTION	-	125,000	125,000	-
RESULT OF RECOMMENDED ACTION	<u>3,258,074</u>	<u>19,626,157</u>	<u>22,069,392</u>	<u>814,839</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

030

FUND:

303

Drainage Impact Fund

DEPARTMENT:

8052

Local Drainage

OBJECT:

49230

TRANSFER OUT-LOCAL DRAINAGE

AGENDA DATE:

12/19/18

Approve HDR Contract Agreement and Interfund Loan for
Roadway/Rail Grade Separations at Dunne Avenue and Tennant
Avenue Study

AGENDA ITEM TITLE:

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	10,380,974	1,394,482	516,242	11,259,214
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	2,250,000	(2,250,000)
RECOMMENDED ACTION	-	-	125,000	(125,000)
RESULT OF RECOMMENDED ACTION	<u>10,380,974</u>	<u>1,394,482</u>	<u>2,891,242</u>	<u>8,884,214</u>

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS HDR ENGINEERING, INC.

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

1. **City Authority.** This Agreement is entered into pursuant to 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 June 30, 2019, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to study grade separations at the Union Pacific rail road crossings of East Dunne Avenue and Tennant Avenue, as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$125,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed ONE HUNDRED AND TWENTY-FIVE 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:

HDR ENGINEERING, INC.
2033 Gateway Place, Suite 500
San Jose, CA 95110-3712

Address of CITY is as follows:

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

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

15. **CONSULTANT'S Proposal.** If applicable, 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.

16. **Maintenance of Records.**

16.1. **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.

16.2. **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.

16.3. **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.

17. **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.

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

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by 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.

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

21. **Defense and Indemnification.**

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

21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a

limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) 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.
- 21.6. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
22. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and 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.
23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
26. **Binding Agreement.** Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of 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]

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

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

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

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

HDR Engineering, Inc.

City Attorney

By:

Donald A. Larkin

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: _____

By:

Print Name and Title of Signer.

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

Date: _____

**EXHIBIT A
SCOPE OF SERVICES**

See separate attached Scope of Work

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

CONSULTANT shall render services as directed by CITY in an amount not to exceed 125,000.00. Services shall be performed on a time and material basis. Scope of services anticipates the Consultant will need a full time project engineer for approximately 8 to 12 weeks, supporting consultants to complete renderings for 4 to 8 weeks, a project manager will be needed for 1/2 of that duration. Thereafter, the CONSULTANT project manager will be needed for approximately 4 to 6 weeks to prepare final pros and cons of the three alternatives for each crossing, construction costs of each alignment, and prepared renderings of what those alternate grade separations would look like.

CONSULTANT shall be compensated for the actual hours worked by CONSULTANT staff based upon the hourly rate schedule.

Principal In Charge	\$356.10/hour
Project Manager	\$155.22/hour
Project Engineer	\$155.22/hour
Rail Engineer	\$177.39/hour
BIM Modeler	\$127.80/hour
CAD Operator	\$128.88/hour

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

PERIOD OF PERFORMANCE

1. CONSULTANT shall commence services upon receipt of a fully executed Agreement with the CITY.
2. CONSULTANT shall provide service for a period of approximately 6 months from date of execution of Agreement or until such time as services are completed.

November 16, 2018

City of Morgan Hill – Conceptual Grade Separation Study Proposal

GENERAL

The purpose of this proposal is to provide conceptual design services to investigate options for grade separating two at-grade crossings in the City of Morgan Hill. The City has defined the at-grade crossings of the Union Pacific Railroad (UPRR) at East Dunne Avenue and Tennant Avenue for study. HDR will investigate options to provide a grade separated overpass and a grade separated underpass of the UPRR right-of-way at these locations. In addition HDR will provide cost estimates, renderings and a table showing pros and cons for each alternative. HDR will complete all work listed below within 4 months of receiving Notice to Proceed from the City. A detailed description of the Scope of Services is described below:

SERVICES PROVIDED BY HDR ENGINEERING

Task 1: Project Management

HDR will provide overall Project Management which includes management of the project team, including contract administration, budget, QA/QC. In addition, HDR will attend four meetings with the City to include, a project kick off meeting, draft concept review meeting, a meeting to review final concepts, pros and cons and estimates and a City Council meeting to assist City staff in presenting developed alternatives.

Task 1 Cost: \$8,000

Task 2: Conceptual Roadway Alternatives Development

HDR will provide conceptual designs to investigate the options to grade separate East Dunne Avenue and Tennant Avenue from the UPRR right-of-way. The team will look at a grade separated overpass and a grade separated underpass at each location using the at-grade High Speed Rail profile as well as a hybrid option involving elevating the railroad profile and providing an underpass at each location. In total there will be six roadway plan and profiles developed to show the potential limits of work needed.

Task 2 Cost: \$36,000

Task 3: Develop Conceptual Elevated High Speed Rail Profile

HDR will develop an elevated rail profile within the existing UPRR right-of-way from Butterfield Blvd overcrossing to north of Main Ave that will comply with the design standards set forth by the High Speed Rail Authority and UPRR. This profile will be used to determine a conceptual top of rail elevation which will be used for the hybrid option analysis noted in Task 2 above.

Task 3 Cost: \$15,000

November 16, 2018

Task 4: Identify Impacts and Mitigation Measures

HDR will identify potential impacts to private property access and circulation, public right-of-way impacts and vehicle, pedestrian or bike circulation impacts using available information and conceptual design alternatives. HDR will then develop conceptual solutions to mitigate these potential impacts. Two meetings will be held to review draft impacts and solutions and receive feedback from City staff for refinement of impacts and solutions. After the second meeting the conceptual refined impacts and solutions will be finalized to be shown on conceptual grade separation alternatives as well as listed in the pros and cons matrix.

Task 4 Cost: \$24,000

Task 5: Cost Estimate

HDR will develop conceptual cost estimates for each of the six options described in Task 2 above. A conservative approach will be used and assumptions will be made to cover areas of work where no detail is available at this time.

Task 5 Cost: \$9,000

Task 6: Pros and Cons

HDR will develop a matrix containing the pros and cons for each option listed in Task 2 above. This document will include traffic circulation constraints, right-of-way impacts and any other conflicts that may arise due to implementing any of the options.

Task 6 Cost: \$6,000

Task 7: Renderings

HDR will develop five renderings for delivery related to the options identified in Task 2 and will consist of: Two overpass renderings and two underpass renderings for the at-grade rail profile options for Tennant Ave and Dunne Ave respectively. In addition one rendering will be done of the hybrid option of either the Tennant Avenue or Dunne Avenue grade separation. All renderings will be an isometric visualization of the options over an aerial image to show the proposed options in relation to existing conditions.

Task 7 Cost: \$27,000

Total Cost: \$125,000



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

APPROVE OUTDOOR SPORTS CENTER OPERATOR AGREEMENT

RECOMMENDATION(S)

1. Authorize the City Manager to execute an operations and maintenance agreement with MHOSC, LLC. for the Outdoor Sports Center; and
2. Adopt resolution appropriating \$100,000 from the Park Impact Fund (301) and \$50,000 from the General Fund (010), a total of \$150,000, for improvements and repairs to the Outdoor Sports Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Economic Development and
Telecommunications
Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Economic Blueprint

REPORT NARRATIVE:

On May 17 and July 19, 2017, the City Council received updates on the Outdoor Sports Center (OSC) operations and provided staff with direction to issue a Request for Proposals (RFP) for the operations of the OSC. The primary concerns during those periods were the economic status of the current operator, and the maintenance of the OSC.

The current concessionaire agreement with the Morgan Hill Youth Sports Alliance (MHYSA) runs through June 2019. The schedule for the RFP process was established to allow for a new operator to be selected before the conclusion of the current agreement, and allow for a transition between operators. During the meetings, the Council provided direction and feedback on the development of the RFP. This included:

- Concern of ending up with the same business plan from RFP results
- Finding out what is “cutting edge” and innovative and looking for opportunities to move our facility in that direction
- Discussing revenue generation versus community access

- Facility improvements that could elevate the level of the facility
- Looking inward to determine City needs first

The Council approved the guiding principles of future operations to be Community Access and Economic Development. Specific outcomes were established to support these principles.

Basic Outcomes

1. Balance community access with regional use
2. Operate the OSC without any City subsidy
3. Maintain the facility at an exceptional level
4. Provide sustainable, fiscally responsible, and transparent operations
5. Ensure a diverse mix of field use by sport type
6. Coordinate and manage event parking plans
7. Operations that integrate with:
 - a. City facilities, including the adjacent Morgan Hill Dennis Kennedy Aquatics Center
 - b. Local businesses and hotel operators
 - c. The future planned Destination Management Organization

Additional Desired Outcomes

1. Propose innovative facility use approaches and improvements. Potential approaches may include, but are not limited to:
 - a. Facility improvements to the OSC
 - b. Facility development at the OSC or on adjacent and nearby City owned or private property
 - c. The ability to work with the City or other partners/operators in overall management of facilities
 - d. Joint capital funding opportunities
2. Development of a funding mechanism for future planned maintenance and replacement
3. Open public (non-organized) use hours at the facility

Using this information staff issued an RFP that was distributed locally, regionally, and nationally through local contacts and professional contacts in the sports tourism and management industry.

RFP Process

The RFP consisted of a two-part process with a request for Letters of Interest (LOI) from potential respondents, before requiring a complete proposal. This was designed to allow the City to receive an early look at which organizations would be able to bring varying attributes to the overall operation and move those organizations forward. This was also designed to allow for further innovative operational partnerships between organizations and the City.

Letters of Interest were received in November 2017 and reviewed by a review committee, and then brought to the City Council. The review committee moved the

organizations into two “buckets”. The first were those organizations proposing to operate the Outdoor Sports Center, which included:

1. San Jose Soccer Complex Foundation (SJSCEF) in partnership with the California Youth Soccer Association (CYSA) and Orchard Valley Youth Soccer (OVYS), which has established the Name NewCo for the collaboration
2. Sports Facilities Management (SFM)
3. Morgan Hill Youth Sports Alliance (MHYSA)
4. MC Elite

The second “bucket” was made up of organizations not proposing to operate the Center but proposing to partner with the City to develop sports facilities on City owned property.

1. Northern California Volleyball Association (NCVA)
2. Silicon Valley Cricket (SVC)

On January 17, 2018, the City Council directed staff to move forward and seek full proposals from the San Jose Soccer Complex Foundation (now using the name NewCo) and SFM. The Council also directed staff to move forward and investigate partnership opportunities with NCVA and SVC.

Following Council action on January 17, 2018, both organizations (NewCo and SFM) originally committed to submitting full proposals. However, SFM failed to submit a full proposal and instead sent a letter indicating they would not be submitting a proposal. NewCo did submit a full proposal.

On March 20, 2018, the Parks and Recreation Commission reviewed the final proposal and recommended that the City Council direct staff to negotiate an operator agreement with NewCo for operation of the Outdoor Sports Center. Individual Commissioners also shared considerations on development of the agreement, which included:

- A clear process on managing perceived bias that may accompany NewCo, as a soccer-based organization, when dealing with other sports groups;
- Accounting for “internal customer fees” when the fields are utilized by the partner organizations;
- A minimum income to the City in the shared profit model;
- A joint management approach, which involves the City as a “partner”; and
- Consult with the current operator management on agreement points.

On April 4, 2018 the City Council approved the Parks and Recreation Commission recommendation and directed City staff to develop an agreement with NewCo. Councilmembers provided further comments on interest in ensuring the guiding principles of the RFP are fulfilled and the possibility of a revenue split.

Over the past seven months City staff has worked with the NewCo group to negotiate an agreement to operate the facility. The NewCo group has formally incorporated as a limited liability corporation with the new name MHOSC. Staff believe the proposed agreement with MHOSC meets the RFP guiding principles, the direction of the Council and Commission, and is in the best interest of the City. The proposed agreement is included as Attachment 1. Below is the list of the agreement highlights:

Facility Use and Management

The operator is granted exclusive right and obligation to operate and maintain the OSC for sporting events and ancillary uses, and other appropriate uses at the OSC.

- This includes maintenance of the adjacent “Lomanto Property” area outside of the area used for Aquatics Center Parking.
- The City retains the right to reduce the area utilized by the operator on the “Lomanto Property” for future recreation use (Sand volleyball, etc).
- Non-sporting events and any events where alcohol is served shall require City approval in writing.
- City and operator shall work jointly to manage parking for the Outdoor Sports Center/Aquatics Center area. Operator shall have management responsibility for several parking areas, with the City having the ability to utilize when necessary.

Term of Agreement

The initial term of the agreement shall be 10 years. The City may terminate early without cause after 5 years, but would be responsible to pay for the depreciated value of the initial MHOSC \$400,000 investment.

Revenue Split

The operator shall pay 75% of its net profits to the City to be held in a reserve fund for replacement of major facility components (including artificial turf fields). The City shall have no responsibility for operator deficits.

Reporting

The operator shall provide biannual reports. Reports shall include a statement of revenue and expense, which coincides with the profit payment to be deposited in the reserve fund. Reports shall also include hours of usage by sport type and by user group. For major events (500 or more people) operator will provide more detailed information to support sports tourism management.

User Fees and Usage

The agreement includes several provisions that support the use by local user groups and a mix of sports types. This includes limitations on increases to existing fees and ongoing fees for local and existing users. This also includes required 50% local use and 10% non-soccer uses at the facility. The agreement further prevents the operator from reducing fees for its affiliate groups below the fees provided to other groups in the same categories.

Improvement Program

The operator has committed to spending \$400,000 on improvements to irrigation and turf within the facility, over the first five years of operation. This funding is above any routine maintenance funded through operational revenues. The City will commit to funding approximately \$150,000 in improvements at the OSC to help return the site to good condition. Additionally, funding from both

organizations would go towards adding an additional half soccer field on much of the area currently used for the maintenance yard, as well as fencing to secure parking on the adjacent “Lomanto Property”, and other improvements.

In addition to the many required stipulations outlined in the agreement, City staff is also excited about the operator’s willingness to think creatively in management of the site. MHOSC has appointed its Business Manager and is ready to begin operations. Should the Council authorize the City Manager to execute the agreement, City staff would immediately work with MHOSC and MHYSA to begin the transition of operations to take place July 1, 2019.

COMMUNITY ENGAGEMENT: Inform

City teammates have performed a variety of outreach to local sports organizations and the community in general through this process. Multiple local organizations submitted proposals. Coordination on this process has also involved our local business community through the Chamber of Commerce and local hotel coalition. If the agreement is approved, the City would support MHOSC in the transition from the current operator and in their outreach to the local sports user groups.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the agreement with the negotiated terms. Should the Council choose to do this, staff would need direction to further negotiate agreement terms or other direction. If direction to further negotiate is provided, MHOSC may choose to withdraw their intent to operate and the City would need to move towards finding an alternative operator, extending the agreement with the existing operator, or prepare to operate the facility using City resources.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- May 19, 2010 - Selected the MHYSA as the operator of the OSC
- June 16, 2010 - Approved the Concessionaire Agreement with the MHYSA
- June 19, 2013 - Approved First Amendment to Concessionaire Agreement with the MHYSA
- September 24, 2014 - Audits of MHYSA operations of OSC presented
- October 1, 2014 - Council received OSC operations update and directed staff to offer the MHYSA a one-year extension to the Concessionaire Agreement
- December 3, 2014 – Council approved Second Amendment to the Concessionaire Agreement with the MHYSA extending it for one year through June 2016
- February 17, 2015 – The Parks and Recreation Commission reviewed operations and made a recommendation to Council on future OSC operations
- March 4, 2015 – Council directed staff to negotiate an agreement extension with the MHYSA
- May 18, 2016 – City approved Third Amendment to the Concessionaire Agreement with the MHYSA extending it for an additional three years and updating various provisions.
- May 17, 2017 – City staff presented an update on OSC operations and made recommendations on future operations.

- July 19, 2017 – The City Council directed City Staff to issue an RFP for operations of the Outdoor Sports Center and approved the guiding principles for the RFP.
- January 17, 2018 – The City Council directed City Staff to request full proposals from NewCo and Sports Facilities Management.
- March 20, 2018 – The Parks and Recreation Commission recommended to the City Council that City staff move forward with negotiations with NewCo to operate the Outdoor Sports Center.
- April 4, 2018 – The City Council directed staff to negotiate an operator agreement with NewCo to operate the Outdoor Sports Center.

FISCAL AND RESOURCE IMPACT:

The proposed agreement requires one-time funding from the City. Appropriation of \$100,000 from the Park Impact Fund (301) will support the preparation of facility improvements at the site that will increase field space. The approved Capital Improvement Program had funding for Outdoor Sports Center Improvements Budgeted in FY 2019-20 and utilizing this funding a year earlier will not impact other approved projects. Appropriation of \$50,000 from the General Fund (010) via a transfer to the Park Impact Fund, for repairs to the Outdoor Sports Center will be used to fund needed repairs at the site.

The operating agreement is structured for the City to have no ongoing operating costs other than contract oversight and inspection costs. Should MHOSC be successful financially, the City would see funds contributed to the facility's replacement fund. Additionally, the capital improvements planned by the operator, and the operator's connections to numerous tournament organizers should result in increased sports tourism and related transit occupancy and sales tax revenues.

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. OSC Operating and Maintenance Agreement
2. OSC Agreement Exhibits - Reduced File Size
3. OSC Budget Amendment Resolution

AGREEMENT FOR THE OPERATION AND MAINTENANCE

OF

THE OUTDOOR SPORTS CENTER

Between

THE CITY OF MORGAN HILL

And

MHOSC, LLC

Dated: _____, 2019

Attachment: OSC Operating and Maintenance Agreement [Revision 1] (2112 : Outdoor Sports Center Operator Agreement)

**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE
OUTDOOR SPORTS CENTER**

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AGREEMENT FOR THE OPERATION AND MAINTENANCE

OF

THE OUTDOOR SPORTS CENTER

Between

THE CITY OF MORGAN HILL

And

MHOSC, LLC

This agreement is made and entered into on this day of _____, 2019, by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and MHOSC, LLC ("OPERATOR"), a California LLC and non-profit 501(c)(3) corporation. Collectively CITY and OPERATOR may be referred to as "PARTIES."

Recitals

The following recitals are a substantive portion of this Agreement:

1. The CITY issued a Request for Proposals ("RFP") for the operation and maintenance of the fields and related IMPROVEMENTS known as the Outdoor Sports Center ("OSC") and related PREMISES in September of 2017.
2. MHOSC, LLC submitted a Response to Request for Proposals through its' predecessor, NewCo, LLC in February 2018.
2. The Parks and Recreation Commission reviewed the responses to the RFP and recommended OPERATOR be chosen by the City Council.
3. The City Council determined that MHOSC, LLC was responsive to the RFP and was the best responsible proposer, and selected said proposer to operate the OSC in accordance with the terms and conditions of this Operations and Maintenance Agreement ("AGREEMENT").
4. MHOSC, LLC is a newly formed 501(c)(3) LLC created for the purpose of operating the OSC. MHOSC, LLC consists of three non-profit 501(c)(3) organizations which include: San Jose Soccer Complex Foundation ("SJSCF"), Orchard Valley Youth Soccer League ("OVYSL") and California Youth Soccer Association ("CYSA").
4. OPERATOR desires to enter into an agreement in accordance with the foregoing and undertakes to provide services of the type and character required by CITY for the benefit of the residents of the CITY and other users at the OSC.

5. The principal motivation for CITY to enter into this AGREEMENT is to serve the public by providing a well-maintained and operated sports field and related facilities and services.

6. CITY and OPERATOR intend to work together in good faith to ensure that the OSC is upgraded to become a first-class sports facility which is operated in a professional manner.

NOW THEREFORE, in consideration of the premises and of the terms, covenants, and conditions to be kept and performed by the PARTIES, the PARTIES agree as follows:

SECTION 1. DEFINITIONS

For the purpose of this AGREEMENT, the following capitalized words and phrases not defined elsewhere in this AGREEMENT are defined and shall be construed as set forth:

AGREEMENT: This "AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE OUTDOOR SPORTS CENTER" and Exhibits (A-M) attached hereto and incorporated herein.

BUSINESS MANAGER: OPERATOR'S representative appointed by OPERATOR to be the primary point of contact for City with respect to operations at the Facility. OPERATOR will notify CITY promptly upon any change of the appointed BUSINESS MANAGER.

CODE: Morgan Hill Municipal Code.

DIRECTOR: The City representative appointed by the City Manager to oversee the OSC. The City initially appoints the Public Services Director or his or her designee.

FACILITY: The entire set of fields, fixtures, and equipment found at the OSC including but not limited to soccer fields, restrooms, concession area, parking, irrigation, and locker rooms, including, but not limited to IMPROVEMENTS, as defined below.

FISCAL YEAR: The period from July 1 of one calendar year to June 30 of the next calendar year.

IMPROVEMENTS: All buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY owned facilities (such as buildings, turf, fences, posts, signs, electrical hook-ups, irrigation systems, plumbing, tracks, tanks, etc.).

PREMISES: The geographical area, as defined in Exhibit A, attached hereto and incorporated herein which is the subject of this AGREEMENT and in which the OSC may be operated.

SECTION 2. PERMISSION GRANTED

A. Permission for Entry: For and in consideration of the receipt of a portion of profits as described and subject to all of the terms and conditions of this AGREEMENT, CITY hereby grants to the OPERATOR the exclusive right and obligation to: schedule the use of the OSC ; and to operate and maintain the OSC for the purpose of hosting, organizing, or scheduling the OSC for sporting

events along with uses ancillary to the sporting events appropriate for the FACILITY, including, but not limited to football, soccer, lacrosse, field hockey, rugby, and cheerleading; and not for any other purpose without the prior written consent of DIRECTOR. OPERATOR may also schedule the use of the OSC for non-sporting events as described herein. The rights granted by this AGREEMENT shall be carried on solely within the limits and confines of the areas designated as PREMISES.

B. CITY'S Rights: CITY reserves the right to further develop or improve the PREMISES for the benefit of the OSC operation and enhancement of the sports related function at the facility, in its sole discretion, without interference or hindrance. CITY shall, however, consider the desires and views of OPERATOR. No other activity, service, or amenity shall be provided by OPERATOR unless related to the FACILITY and without the express written approval of DIRECTOR.

SECTION 3. PREMISES

A. The PREMISES (Exhibit "A") subject to this AGREEMENT is located at 16500 Condit Road, Morgan Hill, CA.

Overflow Lot 1 (Dirt lot off Condit Road)

Overflow Lot 2/New Corporation Yard Area (Undeveloped Property off Murphy Avenue as outlined in Exhibit "A"(includes one house).

B. The FACILITY:

The FACILITY includes, but is not limited to: artificial turf sports fields, natural grass sports fields, parking, landscaping, irrigation, water well, maintenance area, buildings including restrooms, concession area and storage, driveways, unimproved field/parking area, house and garage, and various fences and gates.

C. No Violation of Law: OPERATOR shall not use or allow the OSC or the PREMISES to be used, in whole or in part, for any use in violation of any present or future laws, ordinances, rules, and regulations of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include, but are not limited to those which relate to sanitation, public health, and safety.

D. CITY Resolution: At any time during the term of this AGREEMENT, CITY may, by resolution of the City Council, require the OPERATOR to surrender any portion of the PREMISES. If CITY imposes this requirement on OPERATOR, CITY shall attempt to provide OPERATOR with equivalent, in terms of net area, substitute space. The PARTIES shall negotiate in good faith to prepare an amendment to this AGREEMENT if the reduction in space results in less net revenue to the OPERATOR. The minimum size of the OSC, based upon net usable area shall not be reduced below the level shown on Exhibit "D" which is attached hereto and incorporated herein by this reference. If CITY reduces the net usable area of the OSC below the amount shown on Exhibit "D", OPERATOR may terminate this Agreement, pursuant to the terms of Section 19(F)(4). Notwithstanding this paragraph, CITY may widen Murphy Avenue based upon the

approximate dimensions shown in Exhibit "M", attached hereto and incorporated herein, including all street frontage improvements, without compensation to OPERATOR or change to this AGREEMENT.

SECTION 4. TERM OF AGREEMENT

A. Term: The term of the AGREEMENT shall be ten (10) years from July 1, 2019 subject, to early termination as set forth below. The AGREEMENT shall commence when formally executed by CITY.

B. Term Extension: The term may be extended on the same terms and conditions by up to two (2) additional five (5) year terms at the discretion of the CITY. The CITY shall not unreasonably withhold approval of either extension if OPERATOR has not breached AGREEMENT. OPERATOR shall provide eighteen (18) months' notice prior to any extension period should it wish to utilize the additional five (5) year terms. CITY shall notify OPERATOR of CITY'S approval or disapproval of the extension within ninety (90) days of OPERATOR'S notice, unless this time is extended based upon mutual agreement of the PARTIES.

C. Transition Period. The parties will meet and confer on a Transition Plan in good faith within 60 days after the execution of the Agreement.

D. Termination: The CITY may terminate this AGREEMENT upon an event of default as set forth herein.

E. Termination Provision: The CITY may terminate this AGREEMENT pursuant to Section 19.A.

SECTION 5. OPERATOR PAYMENT AND RESERVE FUND

A. OPERATOR Payment: Operator must make payments to CITY semiannually, no later than 60 days after the end of each six month period. OPERATOR shall pay CITY 75% of net profits ("PROFIT PAYMENT") from all income generated at the PREMISES. Net profits shall be determined by subtracting all reasonable, actual and necessary expenses incurred and paid for the management and operation of the OSC from the GROSS RECEIPTS generated, as described below.

Reasonable Expenses ("REASONABLE EXPENSES") are defined as follows:

1. For expenses to be considered paid for the management and operation of the OSC those expenses must have a direct nexus to operations and maintenance of the PREMISES or be directly related to the direct administration of operations and maintenance. Marketing and promotion of the OSC shall all be considered REASONABLE EXPENSES. OPERATOR shall use commercially reasonable procedures to ensure that losses due to any losses resulting from bad checks received from the consumers or dishonored payment to OPERATOR by customer or purchaser are minimized.

Capital acquisition of equipment or property over \$10,000 shall not be a REASONABLE EXPENSE unless approved in writing by the DIRECTOR prior to purchase. The standard DIRECTOR shall utilize in approving or disapproving the expense is whether the capital acquisition of equipment or property is an expense that is reasonably necessary for the operation of the FACILITY. Capital assets approved as a REASONABLE EXPENSE shall become the property of the City at the conclusion of the AGREEMENT.

The infrastructure investment outlined in section 10 shall not be included in REASONABLE EXPENSES.

Loan repayment shall not be considered as a REASONABLE EXPENSE unless approved in advance by the DIRECTOR.

B. GROSS RECEIPTS Defined: For the purposes of this section and this AGREEMENT, the term "GROSS RECEIPTS" shall mean the total amount of money OPERATOR received for the use of the PREMISES or OSC; the total amount of money OPERATOR received for sale of any goods, services (whether or not these services are performed as a part of or in connection with the sale of goods), and the total amount of money OPERATOR received for advertising in connection with the OSC and this AGREEMENT.

"GROSS RECEIPTS" shall not include:

1. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by OPERATOR.
2. California Redemption Value (CRV).
3. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
4. Receipts from the sale (at cost) of uniforms, clothing, or supplies to OPERATOR'S employees where such uniforms, clothing, or supplies are required to be worn or used by its employees.
5. Receipts from any sale in which the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by OPERATOR, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.
6. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

OPERATOR shall not reduce or increase the amount of GROSS RECEIPTS, as herein defined, as a result of any of the following:

1. Any discount or reduced-price programs (such as the "Home Field Program") so that the full price that would have been charged absent any discount or reduced-price program shall constitute the amount of GROSS RECEIPTS. This provision shall only apply when a discount is not provided to all groups in a particular category. (For example, if a regularly established rate is \$100, but the customer only pays \$75 through a discount or reduced-price program, the \$100 market rate will be used to calculate gross revenue.). The CITY'S

free usage is not a discount or reduced-price program and shall not be counted as GROSS RECEIPTS. Any error in cash handling by OPERATOR or OPERATOR'S employees or agents.

2. Any losses resulting from bad checks received from the consumers or dishonored payment to OPERATOR by customer or purchaser.
3. Any arrangement for a rebate, kickback, or hidden credit given or allowed to a customer.
4. Any arrangement where a partner 501(c)(3) or related party receives a reduced rate for usage of the OSC or PREMISES.

C. Biannual Reports:

1. OPERATOR shall transmit a Statement of Revenue and Expense in the form of a Profit and Loss Statement (Exhibit "I"), for every six month period during the Term. Along with the Statement of Revenue and Expense, OPERATOR must pay the PROFIT PAYMENT to the CITY

2. OPERATOR shall maintain and submit to the CITY monthly statistical information and reports semiannually (July-December and January-June) on the following: ongoing programs, hours of field reservations, participant levels, use by sports type, local vs. regional use levels, hours of use, GROSS RECEIPTS and net profits, expenses and revenues. OPERATOR shall provide statistics for all hosted major events, including estimated attendance, estimated percentage of overnight stays, average travel distance to reach the facility. MAJOR EVENTS are defined as those events where it is anticipated that there will be more than 500 attendees. At the request of CITY, OPERATOR shall provide an hour by hour booking schedule for the use of the FACILITY.

D. Reserve Fund: CITY shall establish a Reserve Fund into which it will place the PROFIT PAYMENTS from OPERATOR.

1. City shall have sole discretion over the use of the Reserve Fund. The intent of the Reserve Fund is to pay for future replacement of fields and equipment at the FACILITY. The Reserve Funds shall be spent on those items on Exhibit "L". CITY may only use the Reserve Fund for the benefit of the OSC.

2. CITY and OPERATOR shall in good faith agree to a Reserve Plan that funds the replacement of FACILITY components. It is the intention of the PARTIES that the Reserve Fund and the Reserve Plan provide the funding needed to replace or upgrade the FACILITY components as needed to maintain the FACILITY to the standard provided in Section 9, C. However, either PARTY may, but is not required to, provide additional funds from any available source.

3. OPERATOR may request that CITY utilize funds from the Reserve Fund to pay for items listed in the Reserve Plan and may request amendments to the Reserve Plan at any time. CITY will make a good faith effort to comply with these requests from OPERATOR.

SECTION 6. LATE PAYMENT

A. Late Payment: The failure of OPERATOR to pay any of the PROFIT PAYMENTS or other payments required by this AGREEMENT on or before the payment due date is a breach of the AGREEMENT. The CITY may terminate the AGREEMENT and take other legal action for such a breach as set forth herein.

B. Late Fees: Without waiving any rights available at law, in equity, or under the AGREEMENT, in the event of late or delinquent payments, OPERATOR recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, OPERATOR agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and or damages and loss resulting from the late or delinquent payments.

1. The charge for each late payment shall be \$200.00, for each month after the due date. In addition, OPERATOR shall pay interest calculated at the rate of eighteen percent (18%) per annum or one and one-half percent (1.5%) for each month, after the due date, assessed daily, on the balance of the unpaid amount, unless otherwise prohibited by law. Payments are past due if postmarked or electronically transferred after the fifth (5th) day on which payment was due.

SECTION 7. OSC USAGE, FEES AND CHARGES

A. Usage: Subject to the conditions set forth below, CITY agrees that OPERATOR, upon payment of the PROFIT PAYMENTS, and all other charges and payments due from OPERATOR under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, and provided that OPERATOR is not in breach or default of this AGREEMENT, shall lawfully and quietly hold, use, and enjoy the FACILITY during the term of and for purposes specified in this AGREEMENT. In the case of disputes, during the term of the AGREEMENT, about any conditions which may impede the OPERATOR'S quiet enjoyment of the FACILITY, the DIRECTOR and OPERATOR shall meet and confer to determine the solution to the dispute.

B. Usage Fees: OPERATOR has the right to determine field usage fees and other charges with the following limitations:

1. Fees for field usage for existing local users shall not increase by more than 5% from existing rate established by the previous operator within the first year of the AGREEMENT. Existing rates or charges are shown in Exhibit "B" attached hereto and incorporated herein by this reference. Fee increases in subsequent years shall not exceed the CPI increase of the prior year for the San Francisco/Oakland/San Jose CPI for Urban Consumers.

2. If OPERATOR combines parking charges and field usage fees, the annual change in fees may exceed 5%, subject to prior written approval by the DIRECTOR.

3. Fees for the July 4th Independence Day event shall not increase more than 5% annually.

4. There are no rate caps or increase caps on regional uses such as tournaments.
5. All fees shall not be excessively high, low, unreasonable, or discriminatory based upon the circumstances.
6. The OPERATOR may utilize alternate fee schedules such as a team participation fee instead of fee rental for special events subject to written permission from the DIRECTOR.
7. Notwithstanding the above limitations, DIRECTOR may, in DIRECTOR'S sole discretion approve additional changes in usage and other charges.

C. Charges and Pricing: OPERATOR shall have the right to charge and establish prices for the parking, entrance, advertising, and any other usage of the PREMISES permitted under this AGREEMENT. OPERATOR shall provide the DIRECTOR with a list of prices for all services and goods offered. OPERATOR shall update the list and provide a copy to the DIRECTOR whenever any prices are changed.

D. Scheduling: OPERATOR shall establish and implement a field reservation system and shall schedule OSC field usage for community use and other regional uses.

E. Local Entities: OPERATOR is required to schedule field use by local entities of at least 50% of the time, measured over a FISCAL YEAR. Local entities are defined as (1) entities having at least 50% of its participants with a City of Morgan Hill address; or (2) are entities on the Current Organization List, which is attached hereto and incorporated herein as Exhibit "C".

OPERATOR shall have the right to update Exhibit "C" annually, subject to DIRECTOR'S approval.

1. Alternatively, if local entity use falls below 50% and no local entity requests for weekday usage are denied, the local usage required under this subsection E will be deemed met.

2. Maximization of Use. OPERATOR shall make available the turf fields and grass fields in a manner that maximizes use of the OSC, while maintaining the OSC at the maintenance standards specified in this AGREEMENT. Nothing in this AGREEMENT shall require OPERATOR to make the FACILITY available on a fee basis below those charges specified in Exhibit "B" in order to maximize use..

3. Existing events shall receive booking priority by OPERATOR.

F. Non-Soccer Usage: OPERATOR is required to ensure that at least 10% of field use time is for non-soccer uses. For any FISCAL YEAR in which non-soccer usage is below 8% OPERATOR shall pay to the CITY a \$5,000.00 penalty payment for each percent below 8%. This penalty shall be due within 30 days from the end of the FISCAL YEAR.

1. If non-soccer use is less than 8%, but no significant non-soccer organization requests are denied then no penalty payment is due. A significant non-soccer organization shall be defined as an

organization that requests to book one or more fields for ten or more separate calendar days, within a calendar year.

G. City Use: CITY shall have the right to one hundred (100) hours of scheduled field use on the OSC at no charge to the CITY. CITY may use this free time for CITY sponsored or CITY partner programs. Each field's use shall be counted individually, and the total free time shall not exceed 100 hours during a calendar year. The CITY'S use shall not exceed one weekend day per year. OPERATOR shall use reasonable efforts to schedule the CITY'S request. If the CITY uses the OSC for hours over the free 100 hours, CITY shall pay the current non-profit rate to OPERATOR.

H. Parking Use: The improved and overflow parking lots are part of the PREMISES under this AGREEMENT. However, CITY shall have the right to utilize fifty percent (50%) of the overflow parking lots, which is unpaved and contains approximately 310 spaces during the Aquatics Center's ("AC") summer recreation swim season and during days when regional swim meets, or other large events are held at the AC. The City shall provide sufficient notice to OPERATOR when the overflow parking lot is needed. OPERATOR and the City shall provide each other with monthly calendars to ensure clear communication of when events are occurring at the OSC and AC. During shared use, a parking fee can only be charged for the portion of the lot for OSC customers, unless prior written approval is provided by the City. AC customers will be required to enter from the south gate and OSC customers will be required to enter from the paved parking lot gate. In the event that the City requires the use of both the improved parking lot and overflow parking lot for large community events and events at the AC, the City and OPERATOR will work in a good faith effort to accommodate the CITY'S request unless the parking is already needed for events occurring at the OSC. When the City utilizes any parking lot, parking fees shall not be allowed unless the PARTIES mutually agree. OPERATOR shall work in good faith with CITY to develop event parking plans to manage the OSC and AC parking in an integrated fashion. OPERATOR shall be responsible for updating parking plans for each weekend. CITY shall be responsible for management and clean-up of the Parking Lots during and at the conclusion of CITY'S use.

1. OPERATOR shall allow City to use its Parking Lots during times in which its use is not needed by OPERATOR. CITY shall be responsible for management and clean-up of the Parking Lots during and at the conclusion of CITY'S use.

2. OPERATOR shall utilize and manage Overflow Lot 1 and Overflow Lot 2. CITY shall have the right to utilize 50% of these parking areas if CITY requests usage no less than 30 days in advance. CITY shall be responsible for the management and clean-up of the Parking Lots during and at the conclusion of CITY'S use.

3. OPERATOR shall have the ability to use the San Pedro Avenue Parking area by request through a "no fee" special event permit, submitted no less than 60 days in advance of the need for parking. Exhibit "E" attached hereto and incorporated herein depicts the San Pedro Avenue Parking area.

OPERATOR shall be responsible for management and clean-up of the San Pedro Avenue Parking Area during and at the conclusion of OPERATOR'S use.

4. OPERATOR shall have the ability to use the Aquatic Center Parking when not in use by CITY by request through a "no fee" special event permit, submitted no less than 60 days in advance of the need for parking. OPERATOR shall be responsible for management and clean-up of the Aquatic Center Parking during and at the conclusion of OPERATOR'S use.

5. Any other closure of CITY streets for the use of OPERATOR'S patrons will require a special event permit at the usual fee. OPERATOR must apply for a special event permit no less than 60 days prior to the special event. OPERATOR shall be responsible for management and clean-up of any special use of CITY parking during and at the conclusion of OPERATOR'S use.

6. OPERATOR shall maintain the improved paved parking lot to the standard of a parking lot used for CITY'S recreation facilities. The overflow parking lot and any unpaved parking lots shall be maintained in a safe and appropriate condition for an unpaved public parking lot. OPERATOR shall grade or eliminate all significant ruts, holes, or hills as soon as practicable.

7. For events where OPERATOR charges fees for parking, OPERATOR shall provide parking management/control on adjacent City owned parking lots where fees are not charged to ensure parking at City facilities is not impacted.

I. Advertising: OPERATOR shall have the right to pursue advertising and sponsorship agreements and offer space and locations at the OSC for advertising that are consistent with the CITY'S approved policy. OPERATOR may have temporary advertising for alcohol products during "ADULT ONLY" tournaments occurring at the OSC, upon prior written pre-approval by DIRECTOR. ADULT ONLY tournaments are those tournaments or events where the participants are primarily adults. Revenues derived from this advertising and sponsorship agreements are GROSS RECEIPTS. All advertising and sponsorship agreements shall not extend beyond the term of this AGREEMENT. All online sponsorship or advertising income must be included in GROSS RECEIPTS.

J. Naming Rights: OPERATOR shall have the right to pursue and have the authority to enter into agreements for advertising naming rights for the fields, scoreboards, and other OSC amenities, provided that the term of any such agreement shall not continue beyond the term of this AGREEMENT. OPERATOR may also pursue naming rights agreements for the entire OSC; subject to approval by the City Council by resolution. CITY and OPERATOR shall share 50%/50% in all revenue from naming rights. CITY'S share of the revenue from naming rights will be placed in the Reserve Fund. OPERATOR and the CITY shall work together in good faith to negotiate the terms of any naming agreement with a third party.

K. Food and Beverage Concession Stand: OPERATOR shall have the right to establish or permit food and beverage sales at the concession stand or other areas on the PREMISES; provided that OPERATOR shall not sell any alcohol or tobacco products without prior written consent from

DIRECTOR. Revenues derived from all sales from the PREMISES shall be part of GROSS RECEIPTS. All food and beverage sales shall comply with local, state, and federal laws and regulations, including, but not limited to all County Health Department regulations or requirements. No products containing marijuana or marijuana extracts shall be sold at the OSC or on the PREMISES.

L. Vending Machines: OPERATOR shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of DIRECTOR. DIRECTOR shall have the right to order the immediate removal of any unauthorized machines. DIRECTOR shall not unreasonably withhold permission for the installation of vending machines.

M. Non-Sporting Events: OPERATOR shall not schedule any non-sporting events without the prior written permission of DIRECTOR. DIRECTOR shall not unreasonably withhold permission for events to be hosted.

N. Event Schedule: OPERATOR shall maintain an online schedule of events that is available to the CITY and the public. The schedule will show all MAJOR EVENTS.

L. Signage. OPERATOR may design and construct a permanent sign on the PREMISES to advertise the location of the OSC, subject to the approval of DIRECTOR. OPERATOR may design and install temporary signage concerning events at the OSC if the signage is professional in appearance and permitted under local and state laws.

SECTION 8. OPERATOR RESPONSIBILITIES

OPERATOR shall, at all times during the term of the AGREEMENT, comply with the following conditions:

A. Conduct: OPERATOR shall at all times conduct its business in a professional, and orderly manner to the reasonable satisfaction of DIRECTOR. OPERATOR shall use its best efforts to permit no intoxicated person(s), profane or indecent language, or boisterous or loud conduct in or about the PREMISES and shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES. OPERATOR shall make all reasonable efforts to ensure that all activities at the PREMISES do not constitute a public nuisance due to spillover effects upon adjacent properties or public safety response requirements.

B. Non-Discrimination: OPERATOR, in its operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person shall be excluded from the PREMISES or OSC or activities thereon or be denied the benefits of or subjected to discrimination on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation; (2) in the construction of any improvements on, over or under the PREMISES authorized to be improved herein and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination on the basis of race, color,

national origin, religion, ancestry, sex, age, physical disability, or sexual orientation. In addition, OPERATOR, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by OPERATOR shall contain a similar provision.

C. **Qualified Personnel:** OPERATOR will, in the operation of the OSC, employ or permit the employment of only personnel who will provide a high standard of service to the public and cooperation with CITY. All personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. OPERATOR shall make all reasonable efforts to ensure no person employed by OPERATOR, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee's conduct is not satisfactory, the DIRECTOR may direct OPERATOR to remove that person from the PREMISES and OPERATOR shall do so.

D. **Employees of Operator:** OPERATOR shall appoint a Business Manager, upon commencement of operation of the FACILITY for the management and operation of the FACILITY. If OPERATOR elects to subcontract the management of any of the portions of the operations to a managing entity or entities, the provisions of this section shall also apply to that entity. The person retained as Business Manager must be a qualified and experienced sports field manager or supervisor or sports field management, vested with full power and authority to accept service of all notices provided for herein. The Business Manager will be responsible for the appearance, conduct, and demeanor of OPERATOR'S agents, contractors, and employees. The Business Manager shall be available during regular business hours and, at all times during that person's absence, a responsible delegate or designee shall be in charge and available. The Business Manager shall have the authority to: hire, fire, and schedule personnel; order repairs, maintenance work, merchandise and materials; oversee inventory control and tracking; oversee field maintenance; implement a marketing plan; maintain accounting records; book parties and events; oversee operations; train employees (to include such areas as customer service) and have ultimate on-site decision-making responsibility.

E. **Business Manager:** The Business Manager shall be the single point of contact for the DIRECTOR. The Business Manager shall be available at all normal business hours and any hours in which the FACILITY is in use to be contacted by the DIRECTOR or his or her designee should that be necessary. If the Business Manager is unavailable, then an alternative employee shall be available for contact by the DIRECTOR. If, for reasons of ill health, incapacitation, or death, the Business Manager becomes incapable of performing all terms and provisions of the AGREEMENT and no substitute is immediately forthcoming from OPERATOR, DIRECTOR may, following seven days written notice in his or her sole discretion, terminate the AGREEMENT and all terms and conditions contained therein s

F. **Marketing and Promotion:** OPERATOR shall use its best efforts to market and promote the usage of the OSC and PREMISES for purposes permitted under this AGREEMENT. No later than

thirty (30) days after the first day of each FISCAL YEAR, OPERATOR shall provide the CITY with an annual marketing plan, which plan shall include goals to support local economic development activities. The CITY reserves the right to concurrently market and promote the use of the OSC.

G. Utilities: OPERATOR shall be responsible for all utility charges. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, water, heat, air-conditioning, and other utility services to PREMISES, and shall be paid in a timely fashion by OPERATOR regardless of whether utility services are furnished by CITY or by other utility service providers.

1. CITY will incur the cost of all refuse collection from the main dumpster during the term of this AGREEMENT. Notwithstanding the foregoing, OPERATOR agrees to pay the cost of refuse collection for the PREMISES if the CITY'S agreement with its current refuse hauler terminates.

2. OPERATOR hereby expressly waives all claims for compensation against CITY, for any loss or damage sustained by OPERATOR resulting from any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES from any cause, or from any loss resulting from water, earthquake, wind, civil commotion, or riot. OPERATOR hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of these causes. In addition to the foregoing waivers, any damage to any utility service line if caused by OPERATOR, its employees, contractors, sub-contractors, suppliers, agents, or invitees, OPERATOR shall be responsible for the cost of repairs and all damages incurred.

H. Safety: OPERATOR shall correct safety deficiencies and violations of safety practices as soon as reasonably possible after the condition becomes known or DIRECTOR notifies OPERATOR of the condition, if OPERATOR is unaware of the condition. OPERATOR shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer requiring emergency medical response, OPERATOR shall reasonably ensure that the injured person receives prompt and qualified medical attention. Notice to CITY within 48 hours or sooner if practicable shall be provided. Email is acceptable form of Notice under this provision. OPERATOR shall notify the CITY in writing describing the names of the person(s) injured, and the time, place, and nature of the injury. If OPERATOR fails to correct hazardous conditions specified by the DIRECTOR in a written notice, which have led, or in the opinion of CITY could lead, to injury, the DIRECTOR may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint the PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by OPERATOR to CITY on demand. OPERATOR is solely responsible for safety at the FACILITY.

I. Security: OPERATOR shall be responsible for the security of the PREMISES. OPERATOR may install equipment approved by the CITY, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any security equipment must be purchased, installed, and maintained by OPERATOR. OPERATOR is solely responsible for the security of the FACILITY

except for live security provided by the CITY during events which are solely run by the CITY or the CITY and its partner(s).

J. Environmental Sensitivity: The OPERATOR must operate the OSC in an environmentally sensitive manner and all operations must comply with CITY policies and ordinances regarding protection of the environment. OPERATOR shall not use or allow the use on the PREMISES of environmentally unsafe products. OPERATOR shall develop and submit a water conservation plan to the DIRECTOR.

K. Fund-Raising Activities: OPERATOR shall cooperate with CITY personnel on all matters relative to the conduct of fund-raising and/or special events.

L. Community Outreach: OPERATOR shall coordinate and cooperate with CITY to develop strategies to contact all members of the community, particularly those living in low-to-moderate income areas, fixed-income households, youth, the disabled, etc., to provide its services to these members of the community who may not otherwise have the opportunity to utilize the opportunities provided by OPERATOR.

SECTION 9. MAINTENANCE AND REPAIR

A. "As Is": OPERATOR acknowledges that it is taking control of the PREMISES in an "as is" condition.

B. Maintenance and Operating Standards: During all periods that the PREMISES are used or are under the control of the OPERATOR for the uses, purposes, and occupancy set forth in this AGREEMENT, OPERATOR shall maintain and operate the PREMISES and the OSC at its own expense, in compliance with law and, unless otherwise more specifically set forth, to a standard equal or better than standards in place as of the effective date of the AGREEMENT.

C. Maintenance Standards: The intent of this AGREEMENT is that within a two (2) year period, the OPERATOR will bring the maintenance standards of the PREMISES up to the level consistent with the Gilroy Soccer Park or the Fremont Central Park Sports Complex. CITY will provide OPERATOR with detailed specifications for artificial turf maintenance.

D. General Maintenance and Repair: OPERATOR shall be responsible for all necessary janitorial duties and damage and maintenance repairs, to the reasonable satisfaction of DIRECTOR

E. Fields: OPERATOR shall, at its own expense, keep and maintain the turf field and the grass field to a high standard required for adult amateur soccer league play. OPERATOR shall maintain and operate all IMPROVEMENTS, fixtures, irrigation system, and utility systems which may now or hereafter exist on said fields, whether installed by CITY or OPERATOR.

F. Improvements: OPERATOR shall, at its own expense, keep and maintain IMPROVEMENTS. OPERATOR'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior and exterior painting that may be required to properly maintain

the premises in a safe, clean, operable, and attractive condition. OPERATOR shall perform all repairs, replacements, rebuilding, and restoration as may be required by DIRECTOR'S prior written request. Those duties shall also include maintenance of the electrical, mechanical, and plumbing systems in the interior of the PREMISES, including, but not limited to, light fixtures, toilets, and faucets. Director's request shall be reasonable.

G. Pest Control: OPERATOR shall be responsible for pest control in and around the PREMISES, including but not limited to, abatement of insects, roaches, ants, spiders, rodents, vermin, and other nuisance pests.

H. Correction of Conditions Leading to Damage: If OPERATOR fails, after written notice, to correct any conditions which have led or, in the opinion of CITY, could lead to significant waste or damage to CITY property, DIRECTOR may at his or her option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate, or paint any part(s) of such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by OPERATOR to CITY on demand.

I. Property Damage and Theft Reporting: OPERATOR shall notify the CITY in writing of any damage or destruction to the PREMISES and/or CITY-owned property within 48 hours of OPERATOR'S discovery thereof, or sooner if practicable. Notice by email under this provision shall be sufficient.

J. Damage or Destruction to Premises:

1. Partial Damage: If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided. If the damage is caused by the negligent acts or omissions of OPERATOR, its agents, officers, or employees, OPERATOR shall be responsible for reimbursing CITY for the cost and expense incurred in making the repairs.

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable or unusable for its primary purpose, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense, subject to the following limitations: The damage must be a covered claim under the City's insurance and the damage must not be from a Federal, State or locally declared disaster. If the damage is caused by the negligent acts or omissions of OPERATOR, its agents, officers, or employees, OPERATOR shall be responsible for the cost and expenses incurred in making the repairs and shall be responsible for ensuring that CITY continues to receive the PROFIT PAYMENTS at the same level based upon the average level of payment for the prior 12 months.

2. Complete Destruction: In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable or unusable for its primary purpose and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct the

PREMISES. This provision only applies to Complete Destruction or destruction of a substantial portion of the PREMISES. If the damage or destruction to the PREMISES has not been repaired or reconstructed within 4 months, OPERATOR may terminate this AGREEMENT in its entirety as of the date of the damage or destruction. Notwithstanding the foregoing, if the PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of OPERATOR, its agents, officers, or employees, OPERATOR shall pay to CITY the PROFIT PAYMENTS for one year or however long the facility is unavailable, whichever is less at the same level based upon the average level of payment for the prior 12 months. CITY may, in its discretion, require OPERATOR to repair and reconstruct the same within twelve (12) months of the destruction and OPERATOR shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. OPERATOR shall continue paying CITY the PROFIT PAYMENTS at the same level based upon the average level of payment for the prior 12 months monthly during the rebuilding of the facility.

3. Limits of CITY'S Obligation Defined: In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as received by OPERATOR at the commencement of its operations.

SECTION 10. INFRASTRUCTURE IMPROVEMENT PROGRAM

A. Infrastructure Improvements: OPERATOR shall improve the OSC by adding in ground irrigation and IMPROVEMENTS totaling not less than \$400,000 in cost. OPERATOR shall submit to CITY bills, invoices and other documentation to show the actual cost of IMPROVEMENTS paid for by OPERATOR. The CITY and OPERATOR shall negotiate in good faith to develop and agree by June 30, 2019, upon a 5-year infrastructure improvement program for the PREMISES and OSC. The program shall set forth the needed infrastructure IMPROVEMENTS to be made within the 5-year program and the responsibilities of the OPERATOR to fund and complete this program.

1. Any improvements or alterations to the FACILITY must receive prior written approval from DIRECTOR.
2. CITY shall fund and install the maintenance projects listed in Exhibit "F" attached hereto and incorporated herein within the first year of the term of the AGREEMENT. This time period may be extended upon written agreement of the PARTIES.
3. CITY shall fence off overflow parking area 2 as shown in the fence plan attached hereto and incorporated herein by this reference as Exhibit "K".
4. CITY shall prepare an inventory of all capital equipment, fixtures, and structures on the PREMISES to be attached hereto and incorporated herein as Exhibit "G". OPERATOR shall have sole use and control over same during the term of this AGREEMENT.

SECTION 11. LIABILITY

A. Indemnification:

1. Except for the active negligence or willful misconduct of CITY, OPERATOR undertakes and agrees to defend, indemnify, and hold harmless CITY and its officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including OPERATOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this AGREEMENT on the part of OPERATOR, its officers, agents, employees, or sub-contractor of any tier.
2. Except for the active negligence or willful misconduct of CITY, The OPERATOR, in consideration of the granting of this AGREEMENT, agrees to hold the CITY harmless for any and all claims or rights of action for damages which may or might arise or accrue to the OPERATOR or, its officers, agents, servants, employees, or others who may be at the FACILITY as part of an OSC event or for any other reason by reason of injury to the property, or the persons of any of them resulting from the entry upon or the use of the PREMISES, by the CITY at any time, for any purpose necessary or convenient in connection with the FACILITY.
3. No member, official or employee of CITY shall be personally liable to OPERATOR, or any successor in interest, in the event of any default or breach by CITY or for any amount which may become due to OPERATOR, or on any obligations under the terms of this Agreement. OPERATOR hereby waives and releases any claim it may have against the members, officials, or employees of CITY with respect to any Default or breach by CITY or for any amount which may become due to OPERATOR under the terms of this Agreement.

B. Insurance Required: OPERATOR shall, at its own cost and expense, purchase and maintain throughout the term of this AGREEMENT the insurance listed in Exhibit "H":

SECTION 12. PROHIBITED ACTS

OPERATOR shall not:

- A. Rent, sell, lease, or offer any space for storing of any articles whatsoever within or on the PREMISES other than as specified herein, without the prior written approval of DIRECTOR;
- B. Do or permit to be done any act or thing upon the FACILITY which will invalidate, suspend or increase the cost of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES;
- C. Use, create, store, or allow any hazardous materials as defined in Title 26, Section 13-1160.3(d) of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment. No products containing

glyphosate may be used on the PREMISES. Nothing contained herein shall preclude OPERATOR from bringing, keeping, or using on or about the PREMISES, materials, supplies, equipment, and machinery as are appropriate or customary in carrying on its business, except that all hazardous materials must be stored and used in compliance with all city, state and federal rules, regulations, ordinances, and laws; or

D. Use the PREMISES in any manner that will constitute waste.

SECTION 13. PERFORMANCE, DEPOSIT, AND ASSURANCES

A. Performance Deposit: OPERATOR shall pay to the CITY Five Thousand Dollars (\$5,000) to guarantee payment of fees and as a damage deposit to be used in accordance with the default provisions of this AGREEMENT. This deposit shall be returned to OPERATOR after the expiration or earlier termination of the AGREEMENT and any exit audit(s) performed in conjunction with the AGREEMENT. The CITY reserves the right to deduct from the deposit, any amounts up to and including the full amount of the deposit owed to the CITY by OPERATOR as shown by any exit audit(s) performed by CITY, or as compensation to CITY for failure to adhere to the terms and conditions of the AGREEMENT.

B. Financial Assurances: OPERATOR represents to the CITY that it has sufficient capital, credit, and investment available to it for the purposes of meeting its obligations set forth in this AGREEMENT. In order to demonstrate the OPERATOR'S financial capacity to perform under this AGREEMENT, OPERATOR shall provide to the CITY evidence of its source of capital and operational funding upon the CITY'S request.

SECTION 14. INDEPENDENT CONTRACTORS/CONSULTANTS

The OPERATOR is acting as an independent contractor and not as an agent or employee of the CITY. The OPERATOR shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

SECTION 15. PERMITS, TAXES, AND LICENSES

A. Permits: OPERATOR shall obtain and maintain at its sole expense any approvals, permits, or licenses that may be required in connection with the operation of the OSC including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

B. Taxes: OPERATOR shall pay all taxes of whatever character that may be levied or charged upon the rights of OPERATOR to use the PREMISES, or upon OPERATOR'S improvements, fixtures, equipment, or other property thereon or upon OPERATOR'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest may be subject to property taxation. OPERATOR, as the party to whom the Possessory Interest is vested, may be

liable for the payment of the property taxes levied by the state and county upon such interest. If OPERATOR becomes subject to any tax including, but not limited to a Possessory Interest Tax due to its entry into this Agreement, OPERATOR shall be solely liable for the payment of these taxes.

C. Business License: During the entire term of the AGREEMENT, OPERATOR must hold a current Morgan Hill Business License as required by the CODE Section 5.04.110 and pay applicable fees and taxes pursuant to Chapter 5.04 of the CODE.

D. City's Increase in Taxes Due: If OPERATOR'S operation of the OSC results in any additional property, income, or other taxes to CITY, those obligations shall be OPERATOR'S.

SECTION 16. ASSIGNMENT, SUBLEASE, BANKRUPTCY

Prohibition of Sublease: OPERATOR shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the rights and obligations under this AGREEMENT or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the FACILITY upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor, or purchaser. CITY is contracting with OPERATOR due to the professional, voluntary and business experience of the OPERATOR. These are individual characteristics of the OPERATOR and organizations involved. These characteristics require that this AGREEMENT, or any portion of it, cannot be assigned to another entity without the prior written approval of CITY, which CITY may withhold in its sole discretion.

SECTION 17. BUSINESS RECORDS

A. Record Retention: During the term of the AGREEMENT and for 3 years thereafter, OPERATOR shall maintain all of its books, ledgers, journals, and accounts in which are kept all entries reflecting the GROSS RECEIPTS received or billed by it, and expenses recorded from the business transacted pursuant to the AGREEMENT. These books, ledgers, journals, accounts, and records shall be available for inspection and examination by DIRECTOR, or a duly authorized representative of the CITY, during ordinary business hours at any time during the term of this AGREEMENT and for at least three (3) years thereafter.

B. Cash and Record Handling Requirements: If requested by DIRECTOR, OPERATOR shall prepare a description of its cash handling and sales recording systems and equipment to be used for all operations of the OSC and PREMISES, which shall be submitted to DIRECTOR for

approval. OPERATOR shall be required to maintain a method of accounting of all operations which shall correctly and accurately reflect the GROSS RECEIPTS and disbursements received or made by OPERATOR from the operation of the OSC and PREMISES. OPERATOR shall maintain records of all booking revenue and all other revenue received from any other operation at the PREMISES. These accounts shall be maintained as directed by CITY in order to facilitate any audit. OPERATOR shall reconcile all revenue received from bookings and all revenue received from all other operations. The method of accounting, including bank accounts, established for OSC and PREMISES shall be separate from the accounting systems used for any other business operated by OPERATOR or for recording any of the constituent non-profit organizations or the OPERATOR'S 501(c)(3) financial affairs.

C. Annual Statement of GROSS RECEIPTS and Expenses: OPERATOR shall transmit a Statement of GROSS RECEIPTS and Expenses (Profit and Loss Statement) for the operations specified in this AGREEMENT in a form acceptable to the DIRECTOR, on or before September 30th after the end of each fiscal year during the term of the AGREEMENT. The Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by OPERATOR or retain an independent auditor to conduct the audit function and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of GROSS RECEIPTS made by OPERATOR to CITY shall be found to be less than the amount of GROSS RECEIPTS disclosed by such audit and observation, OPERATOR shall pay CITY within 30 days after billing any additional gross revenue due City and disclosed by the audit. If discrepancy exceeds 2% and no reasonable explanation is given for such discrepancy, OPERATOR shall also pay the cost of the audit.

D. Termination for Failure to Meet Performance Goals: Based on the annual progress reports, OPERATOR shall demonstrate that it has met the performance goals by spending no less than \$400,000 for infrastructure IMPROVEMENTS to the OSC over the first five years of this AGREEMENT. The City Council may determine by a resolution, within ninety (90) days of the CITY'S receipt of the annual FISCAL YEAR progress report, that, based on the annually progress reports, OPERATOR has or has not met the performance goals for infrastructure spending in this AGREEMENT. Upon a determination by the City Council that the OPERATOR has not met the performance goals, the OPERATOR shall be deemed in default of this AGREEMENT and the CITY may terminate this AGREEMENT following a 30-day notice to the OPERATOR.

SECTION 18. REGULATIONS AND INSPECTIONS

A. Regulations: The operations conducted by OPERATOR pursuant to the AGREEMENT shall be subject to:

1. Any applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the FACILITY;

2. Any orders, directions or conditions issued, given, or imposed by DIRECTOR with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any applicable laws, ordinances, statutes, rules, regulations or orders, including the CODE, and of any governmental authority, federal, state or municipality, lawfully exercising authority over the OPERATOR'S operations;
4. Any applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons, including the Americans with Disabilities Act; and
5. OPERATOR acknowledges that the OSC is a smoke-free facility and shall remain so.

B. Permissions:

Any permission required by the AGREEMENT shall be secured in writing by OPERATOR from CITY or the DIRECTOR and any errors or omissions therefrom shall not relieve OPERATOR of its obligations to faithfully perform the conditions. OPERATOR shall immediately comply with any written request or order submitted to it by CITY or DIRECTOR provided the request or order is consistent with the terms of this AGREEMENT.

C. Right of Inspection:

CITY and the DIRECTOR, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of OPERATOR'S operation.

1. CITY shall provide a written inspection report to OPERATOR no more than monthly. OPERATOR shall repair any item in the inspection report needing repair in an expeditious manner. If the corrections identified are safety related or are necessary to preserve the long term value of the PREMISES and OPERATOR fails to repair in an expeditious manner, then CITY or its contractor may make the repair and bill OPERATOR for the cost of the repair.

SECTION 19. TERMINATION

A. Termination By CITY:

CITY may not terminate this Agreement without cause within the first five years of the Agreement. CITY may terminate without cause starting at the end of the fifth year of the Agreement or thereafter without cause, following a one year written notice of termination.

For any event of default under this Agreement, with the exception of those listed below, CITY may, by 30-day written notice, terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law. However, no such notice, default or event of default shall

occur until OPERATOR is provided with written notice of the event of default and fails to cure within ten (10) days after the date of the written notice from CITY. If the default cannot reasonably be cured within ten (10) days or fulfillment of OPERATOR'S obligation requires activities over a period of time, OPERATOR shall timely commence performance and such performance shall be diligently pursued without interruption.

The following listed events of default shall include the written notice and time period to cure (if any) described within each event of default:

1. OPERATOR fails to pay a PROFIT PAYMENT, or any other payment obligation due under this AGREEMENT and OPERATOR fails to pay within twenty-one (21) days after the date of a written notice of default from the CITY;
2. OPERATOR fails to keep, perform, and observe any promise, covenant, and condition set forth in the AGREEMENT and OPERATOR fails to perform following thirty (30) days written notice of the event of default and then OPERATOR fails to cure within ten (10) days after the date of the written notice from CITY. If the default cannot reasonably be cured within ten (10) days or fulfillment of OPERATOR'S obligation requires activities over a period of time, OPERATOR shall timely commence performance and such performance shall be diligently pursued without interruption.;
3. OPERATOR'S interest in the AGREEMENT is assigned, transferred, passed to or devolved upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of DIRECTOR;
4. OPERATOR becomes, without the prior written approval of DIRECTOR, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
5. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with OPERATOR'S use of the FACILITY or with its operations under the AGREEMENT;
6. OPERATOR becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the PREMISES;
7. By order or decree of court, OPERATOR is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of OPERATOR seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;

8. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against OPERATOR and is not dismissed within one hundred twenty (120) days;

9. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of OPERATOR;

10. Cessation or deterioration of service for any period which, in the reasonable opinion of DIRECTOR, materially and adversely affects the operation or service required to be performed by OPERATOR under the AGREEMENT following thirty (30) days written notice of the event of default and then OPERATOR fails to cure within ten (10) days after the date of the written notice from CITY. If the default cannot reasonably be cured within ten (10) days or fulfillment of OPERATOR'S obligation requires activities over a period of time, OPERATOR shall timely commence performance and such performance shall be diligently pursued without interruption.

11. Any lien is filed against the PREMISES because of any act or omission of OPERATOR and the lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days written notice; or

12. OPERATOR voluntarily abandons, deserts, vacates, or discontinues its operation of the business herein authorized.

No acceptance by CITY of the PROFIT PAYMENT or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by OPERATOR, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY including the right to terminate the AGREEMENT on account of such default.

B. Payment to OPERATOR following Termination by CITY.

If CITY terminates this AGREEMENT without cause, OPERATOR shall be entitled to a repayment of the proportionate share of its infrastructure improvement costs not to exceed \$400,000. If CITY terminates this AGREEMENT without cause at the end of the in the six year of the Agreement, OPERATOR is entitled to 40%% of its actual infrastructure investment returned. For each subsequent year of the term, the percentage repaid will be reduced by 10%. For example, in the tenth year of this AGREEMENT, OPERATOR shall be entitled to a repayment of 10% of its infrastructure improvement costs and upon the expiration of the first ten years of this AGREEMENT, OPERATOR would not be entitled to any repayment for its infrastructure improvement costs.

C. CITY'S Right of Reentry:

CITY shall, as an additional remedy, upon an event of default as provided above, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any persons present and may regain and resume possession either with

or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of OPERATOR under the AGREEMENT.

D. Additional Rights of CITY:

CITY, upon termination of the AGREEMENT, or upon reentry, regaining, or resumption of possession of the PREMISES, may occupy the PREMISES and shall have the right to permit any person, firm, or corporation to enter upon the PREMISES and use it. This occupation by others may be of only a part of the PREMISES, or the whole or a part of together with other space, and for a period of time the same as or different from the balance of the term remaining in this AGREEMENT, and on terms and conditions the same as or different from those set forth in the AGREEMENT.

E. Survival of OPERATOR'S Obligations:

In the event the AGREEMENT is terminated by CITY for cause, or in the event CITY reenters, regains, or resumes possession of the PREMISES, all of the obligations of OPERATOR shall survive and shall remain in full force and effect for the full term of the AGREEMENT. Subject to CITY'S obligation to mitigate damages, the amount of the PROFIT PAYMENT shall become due and payable to CITY to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place, for a period not to exceed one year. CITY may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency. The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any PROFIT PAYMENT or any other payment received by CITY from a succeeding operator, shall be the amount of the estimated amount of reduction in the PROFIT PAYMENT which would have been due had OPERATOR continued to operate the FACILITY properly for the balance of the term of the AGREEMENT. The damages specified above shall not affect or be construed to affect CITY'S right to damages in the event of termination, reentry, regaining, or resumption of possession where OPERATOR has not received any actual GROSS RECEIPTS under the AGREEMENT.

F. Termination By OPERATOR:

The AGREEMENT may be terminated by OPERATOR, by a 30-day written notice, upon the happening of one or more of the following events of default:

1. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission of OPERATOR, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
2. Any exercise of authority under the AGREEMENT which so interferes with OPERATOR'S use and enjoyment of the PREMISES as to constitute a termination of the AGREEMENT by operation of law in accordance with the laws of the State of California; or

3. The default by CITY in the performance of any material covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from OPERATOR of written notice to do so and then CITY fails to cure within ten (10) days after the date of the written notice from OPERATOR. If the default cannot reasonably be cured within ten (10) days or fulfillment of CITY'S obligation requires activities over a period of time, CITY shall timely commence performance and such performance shall be diligently pursued without interruption..

4. If OPERATOR terminates for cause, OPERATOR is entitled to have its investment returned to it at 100% for the first year, declining to 10% in the 10th year.

SECTION 20. SURRENDER OF POSSESSION

OPERATOR agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by OPERATOR or CITY, normal use and wear and tear thereof excepted. No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and OPERATOR. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by OPERATOR under the AGREEMENT.

OPERATOR shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the AGREEMENT. If OPERATOR fails to remove the property within that thirty (30) days, the property shall be considered abandoned and CITY may dispose of the property as it sees fit.

SECTION 21. WAIVER

A waiver of a default of any part, term, or provision of the AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

SECTION 22. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the AGREEMENT due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, earthquakes, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage.

SECTION 23. REMEDIES ARE NON-EXCLUSIVE AND MEDIATION REQUIREMENT

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of these rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity. No litigation may be filed concerning this Agreement unless both parties have participated in non-binding mediation prior to the filing of a lawsuit.

SECTION 24. LAW OF CALIFORNIA APPLIES

The laws of the State of California shall govern the performance and enforcement of this AGREEMENT.

SECTION 25. VENUE

Venue of any action brought in connection with the AGREEMENT shall lie in Santa Clara County Superior Court.

SECTION 26. SEVERABILITY

If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 27. ATTORNEY'S FEES

Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of the action shall be entitled to reasonable attorneys' fees, court costs, and other such costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

SECTION 28. NOTICES

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY shall be addressed to the Department of Community Services, Attn: Department Director, 17555 Peak Avenue Morgan Hill, CA 95037.

All notices may either be delivered personally or may be deposited in the United States mail, properly addressed with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt. This address may be used for service of process.

CITY shall provide OPERATOR with written notice of any address change within thirty (30) days of the occurrence of said address change.

B. To OPERATOR:

All notices may either be delivered personally to the OPERATOR or to any officer or responsible employee of OPERATOR or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt. This address may be used for service of process.

Written notices to OPERATOR shall be addressed to OPERATOR as follows:

MHOSC, LLC

c/o

Rodney Robinson

12238 Via Arline Road

Los Altos Hills, CA 95330

OPERATOR shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

SECTION 29. INTERPRETATION

OPERATOR and CITY agree that the AGREEMENT shall be deemed to have been jointly drafted and shall be construed according to its fair meaning and not strictly for or against either CITY or OPERATOR. The section headings are for the convenience of CITY and OPERATOR, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT. If any provision of the AGREEMENT is determined to be void by any court of competent jurisdiction, then this determination shall not affect any other provision of the AGREEMENT, and all such other provisions shall remain in full force and effect; and it is the intention of the PARTIES that if any provision of the AGREEMENT is capable of two

constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The use of any gender shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

SECTION 30. AGREEMENT CONTAINS ENTIRE AGREEMENT

The provisions of the AGREEMENT contain the entire agreement between the PARTIES and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and OPERATOR.

SECTION 31. TIME OF THE ESSENCE

Time is of the essence for all provisions of the AGREEMENT

SECTION 32. INCORPORATION OF DOCUMENTS

This AGREEMENT and incorporated documents represent the entire integrated agreement of the PARTIES and supersedes all prior written or oral representations, discussions, and agreements.

IN WITNESS WHEREOF, THE CITY OF MORGAN HILL has caused this AGREEMENT to be executed on its behalf by its duly authorized representative and OPERATOR has executed the as of the date first written above.

CITY:

CITY OF MORGAN HILL, a California municipal corporation

By:

Christina Turner, City Manager

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

ATTEST:

By:

Irma Torrez, City Clerk

OPERATOR:

MHOSC, LLC

a California Limited Liability Company and 501(c)(3)

By:

Name:

Bob Joyce
Bob Joyce

Its:

By:

Name:

Lela Huenergardt
Lela Huenergardt

Its:

By:

Name:

Allison Bass
Allison Bass

Its:

Exhibits:

"A": Map of PREMISES

"B": Existing Rates

"C": Current Organization List

"D": Minimum Size of OSC (Reduced Premises)

"E": San Pedro Parking

"F": CITY Improvement Plan

"G": Capital Equipment List

"H": Insurance Requirements

"I": Profit and Loss Statement

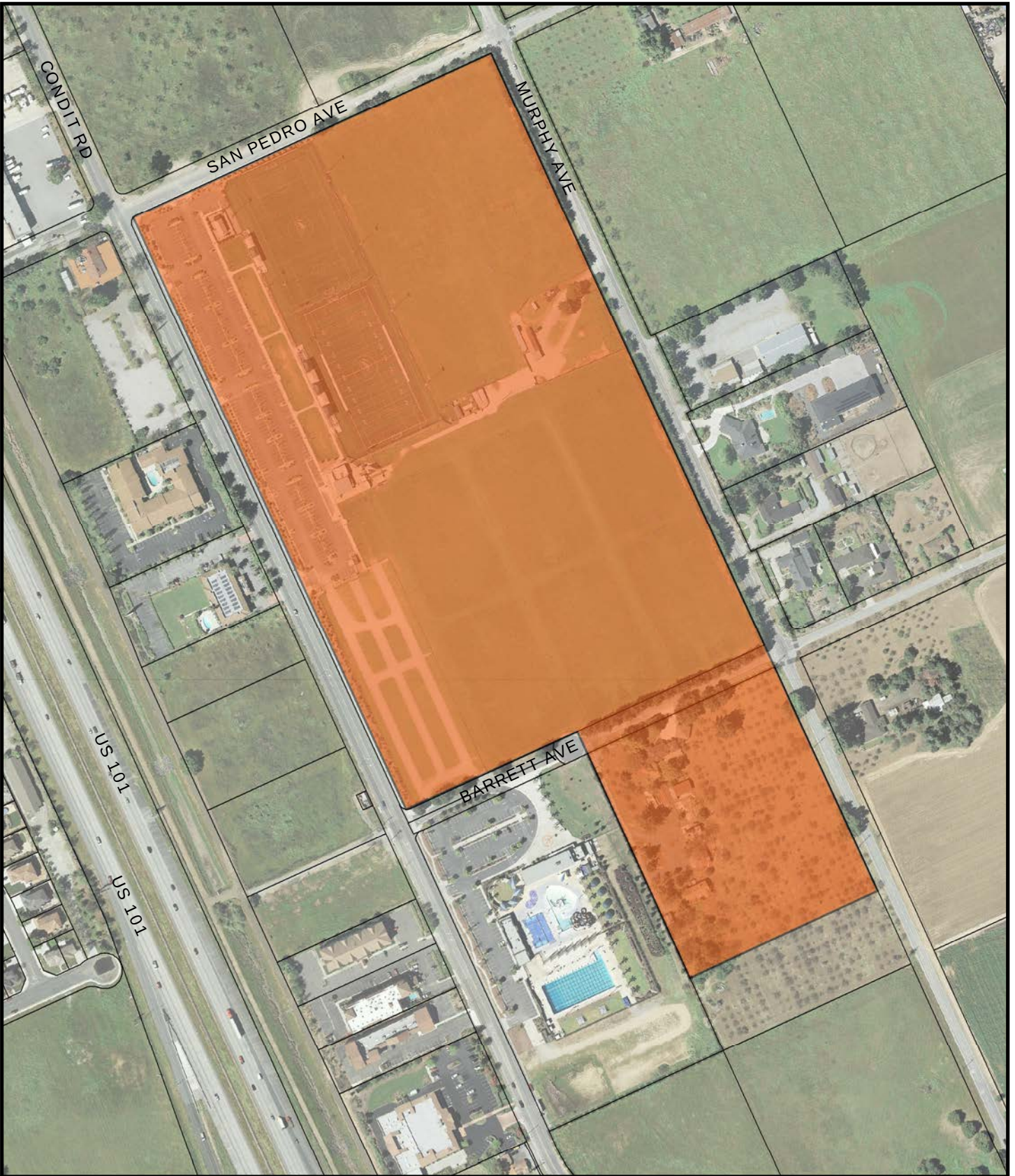
J: Complete Parking Map

K: Fence Plan

L: Reserve Fund

M: Murphy Avenue Potential Future Expansion.

Operating and Maintenance Agreement for Outdoor Sports Center FINAL execution version 12-11-18

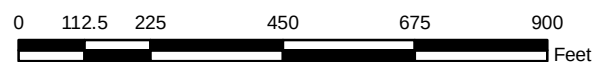


Attachment: OSC Agreement Exhibits - Reduced File Size (2112 : Outdoor Sports Center Operator Agreement)



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EXHIBIT A- MAP OF PREMISES



	MH Non Profit		MH Resident		Visitor Non Profit		Visitor	
	Turf	Grass	Turf	Grass	Turf	Grass	Turf	Grass
1-2 Fields	\$ 50	\$ 40	\$ 60	\$ 50	\$ 75	\$ 60	\$ 95	\$ 70
3-5 Fields	\$ 45	\$ 35	\$ 55	\$ 45	\$ 70	\$ 55	\$ 90	\$ 65
6-8 Fields	\$ 40	\$ 30	\$ 50	\$ 40	\$ 65	\$ 50	\$ 85	\$ 60
9-11 Fields	\$ 35	\$ 25	\$ 45	\$ 35	\$ 60	\$ 45	\$ 80	\$ 55

Rates are hourly

Exhibit C - Current Organization List

List of Existing Local Sports Groups and Regular Users

Local Users:

Morgan Hill Pop Warner Raiders –

- Football turf priority August through October, with option for November
- Four Saturdays starting in late August with option for fifth

Morgan Hill Youth Sports Alliance, Inc.

- Poppy Jasper Cup Entire Facility Last weekend in March
- 49ers Play 60 Camp Turf Fields Saturday before Father's Day
- So. County Outlaws Football Turf August-May as needed, if avail.
- CSMP Football Turf 3-6pm, Tues/Thurs. as avail.

South Valley Youth Rugby

- Football Turf November-April, Tues./Thurs.

Independence Day Celebration, Inc.

- Fireworks on the Green
- Set up South Fields July 3rd , 10am to 3pm
- Event Entire Facility July 4th, 6am to Midnight
- Clean up Grass Fields July 5th, 7am to 5pm

Sobrato High School

- Turf fields, Nov-Feb, 3-6pm as needed

Oakwood School

- Turf fields, Nov-Feb, 3-6pm, weekdays as needed

Britton Middle School

- Turf fields, Nov-Feb, 3-6pm, weekdays as needed

Charter School of Morgan Hill

- Turf fields, Jan-Mar., 3-6pm, weekdays as needed

Jackson Academy Turf fields

- Dec-Mar, 3-6pm, weekdays as needed

SBAL

- Turf Field Sept-Oct., 3-5pm, weekdays as needed

City of Morgan Hill

- Youth Triathlon, Parking Areas prior to 10am one Saturday per year

Regional Users:

Silicon Valley Cricket Group

- League Play South grass fields, Sat.-Sun, March- Sept.
- Tournaments South grass fields, last 2 weeks in June, 1st week in July

Tenacity Sports

- Western Winners Turf fields, Fields A and B June mid-month, four days
- Bonanza Entire facility - First weekend in November

Surf San Jose

- Entire facility – First weekend in March

CYSA Cal North

- National C Course Turf fields – July 30-Aug. 9, 2nd Dec. weekend Fri.-Sun.
- Jr. Cup South grass fields, 2nd Dec. weekend Sat.-Sun.
- CRL (Back in 2018) Entire facility – middle two weekends in March

All West Lacrosse

- Entire facility – Third weekend in July

CVYSL Magic Cup

- Entire facility – Third weekend in August

Alianza de Futbol

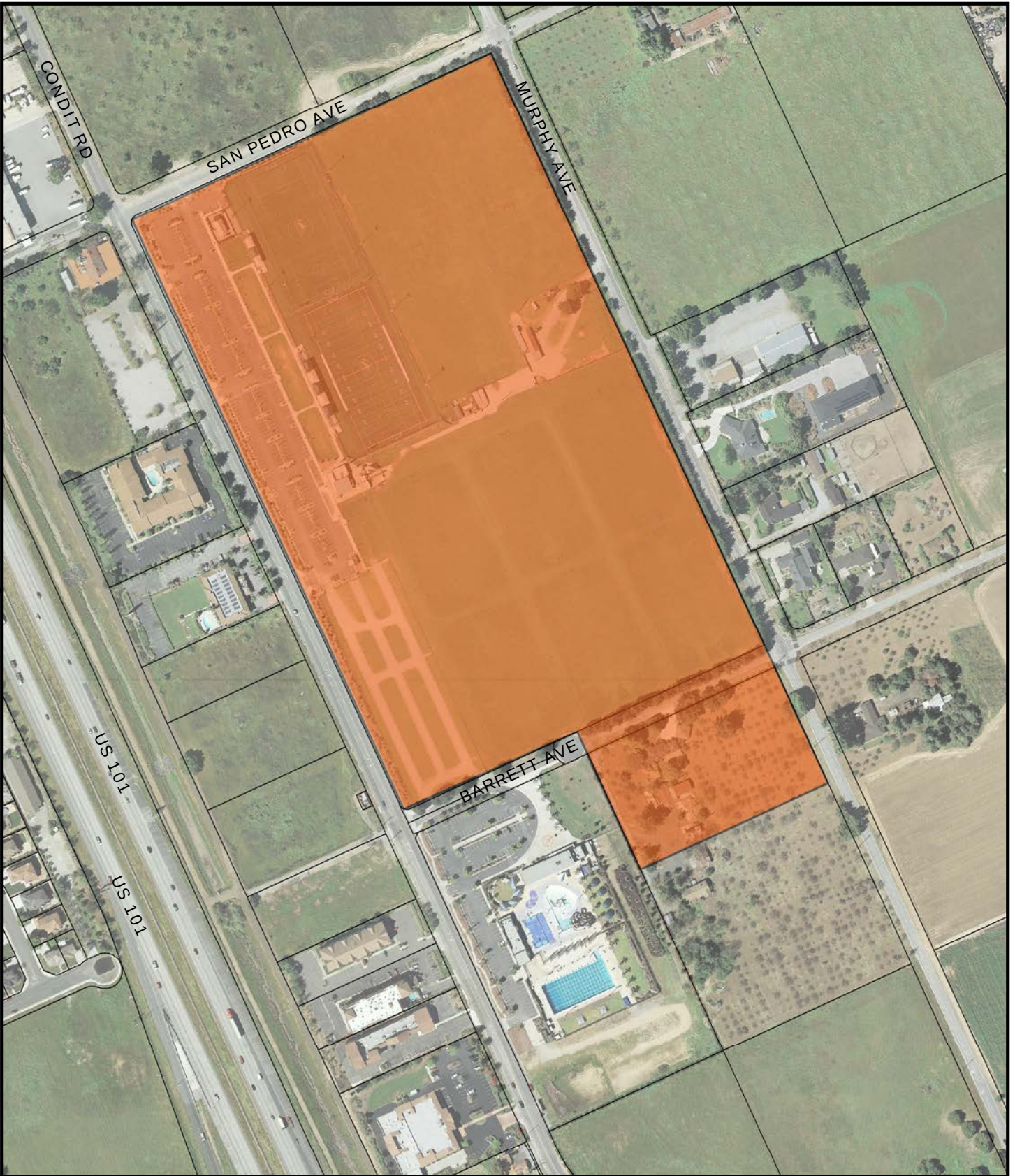
- Entire facility – Varies July-September

Univision

- South grass fields, One Saturday in July-September (Date varies)

International Rugby 7s

- South grass fields – Last week of Oct./first week of Nov.



Attachment: OSC Agreement Exhibits - Reduced File Size (2112 : Outdoor Sports Center Operator Agreement)



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EXHIBIT D-
**MINIMUM SIZE OF OSC
REDUCED PREMISES**

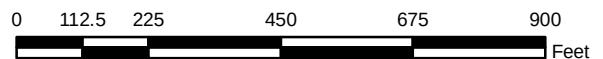
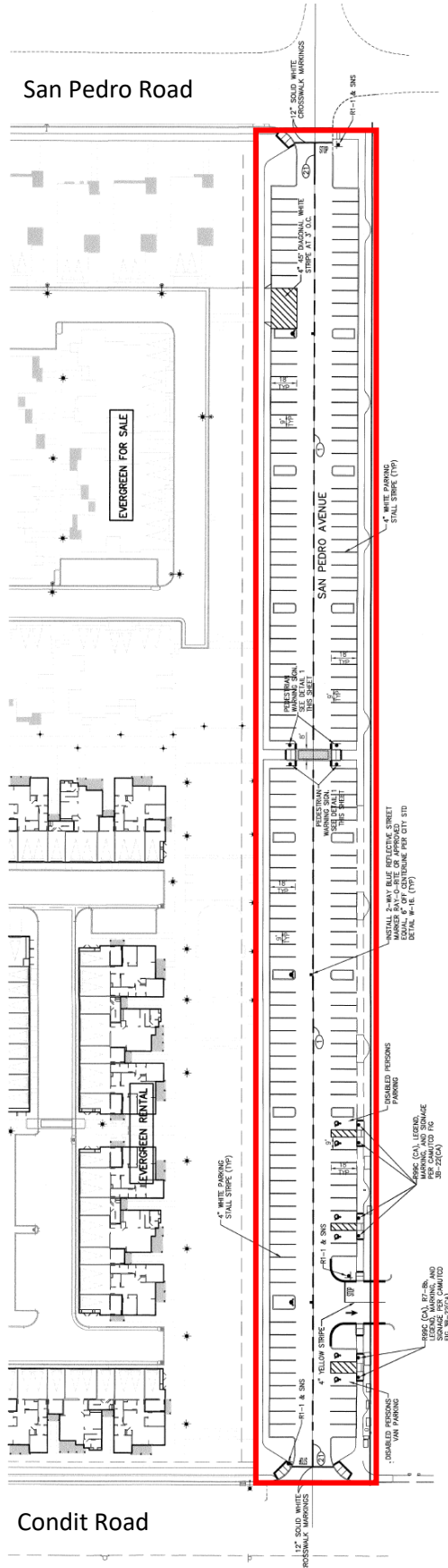


EXHIBIT E – San Pedro Parking



Outdoor Sports Center

Exhibit F – City Improvement Plan

- Replace five 20' x 30' shade canopies covering fields #1 bleachers and three 18'x 23' shade canopies covering field #2 bleachers including fabric, attachments, and installation
- Power wash two sail canopies over picnic area, de-rust structure, and repaint structure where rusted.
- Remove building in current maintenance yard.
- Repair and repaint interior walls, ceilings, doors and trim as required on Main Building. Repair or replace any damaged fixtures, and/or hardware as may be required in both restrooms, both family restrooms, office, and kitchen/concession building.
- Service the two existing scoreboards on field #1 and #2 and ensure they are operational
- Ensure the two drinking fountains at the turf fields are operational.
- Ensure gates for the parking lot and both synthetic turf fields are operational.

Exhibit G - Outdoor Sports Center Equipment List			
Item	Qty		Notes
Sythetic Turf Fields	2		
- Field Light Poles with 7 Lights Each	8		
- Large Bleacher for 600 with Shade Structure	1		
- Small Bleachers for 200 with Shade Structure	1		
- Drinking Fountains	2		
- Electronic Scoreboards with Wireless Controllers	2		
- Players Team Benches	8		
- PA System w/ 4 Speakers and Control Box, Amp, and Mic	1		
- Lacrosse Goals	4		
- Soccer Goals Type 1	4		
- Field Hockey Goals	2		
- Metal Recycle and Trash Can Covers with Plastic Cans	6		
- Concrete Trash Receptacles	25		
- Field End Ball Stop Nets (Poor Condition)	3		
- Football Uprights with Pole Pads	2		
Parking Lot (325 Spaces) with Landscaping/Parking Lot Lights/Trash receptacles	1		
OSC Building w Kitchen, Meeting Room, Restrooms, Hallways, Storage Rooms	1		
- Electrical Control Panels with Lighting Controller	1		
- Fire Alarm System	1		
- Burglar Alarm System	1		
- Meeting Room Chairs	17		
- Meeting Room Table	1		
- Manitowoc Ice Machine	1		
- Bunn Double Coffee Machine	1		
- Double Door True Freezer	1		
- Double Door True Refrigerator	1		
- Double Door True Glass Front Refrigerator	1		
- Conform Portable Sink Unit	1		
- Crown Variety Commercial BBQ	1		
- Fire Extinguisher	3		

- Sink, Counters, Shelves attached to Kitchen	1		
Grass Warm Up Field Areas	3		
BBQ Patio Area	1		
- Picnic Tables	6		
- Fenced BBQ Enclosure with Gas Valve	1		
- Picnic Tables	6		
- Outdoor Tables	2		
- 4 Door Free Standing Display Case	1		
Trash Enclosure	1		
Acres of Grass Fields	23		
Metal Bleachers on Grass Area	2		
Fenced Maintenance Enclosure	1		
- Shade Covering	1		
- Large Tough Sheds	2		
- Small Tough Shed	1		
- Well Pump	1		
- Booster Pump	1		
- Facility Electrical Controls/Breakers/Field Light Controller/etc	1		

EXHIBIT H: Required Insurance

OPERATOR 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 OPERATOR, including its subcontractors, for liability arising out of or relating to OPERATOR's use or occupancy of the OSC or the conduct of its operations under this AGREEMENT, and must remain in full force and effect at all times during the period covered by this Agreement, including any extensions of time as may be granted. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by CITY. OPERATOR further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to OPERATOR, at any time as deemed necessary to protect the interests of CITY.

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

- (1) Commercial General Liability Insurance ("CGL"): OPERATOR shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a "per location" basis, or (ii) the maximum amount of such insurance available to OPERATOR under OPERATOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (2) Workers' Compensation Insurance and Employer's Liability: OPERATOR shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to OPERATOR under OPERATOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If OPERATOR is self-insured, OPERATOR must provide its Certificate of Permission to Self-Insure, duly authorized by the State of California Department of Industrial Relations.
- (3) Automobile Liability: OPERATOR shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if OPERATOR does not own automobiles, then OPERATOR shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such

insurance available to OPERATOR under OPERATOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

(1) ALL Policies:

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

(2) ALL Policies except Workers Compensation:

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

(3) General Liability:

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

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

(c) Subcontractors. OPERATOR must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Exhibit H as appropriate based on each subcontractor's scope of work, with respect to the management or operations of the OSC, including all required endorsements.

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

(e) Certificates. OPERATOR shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the OPERATOR's agreement with the CITY shall be reduced, cancelled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to CITY, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

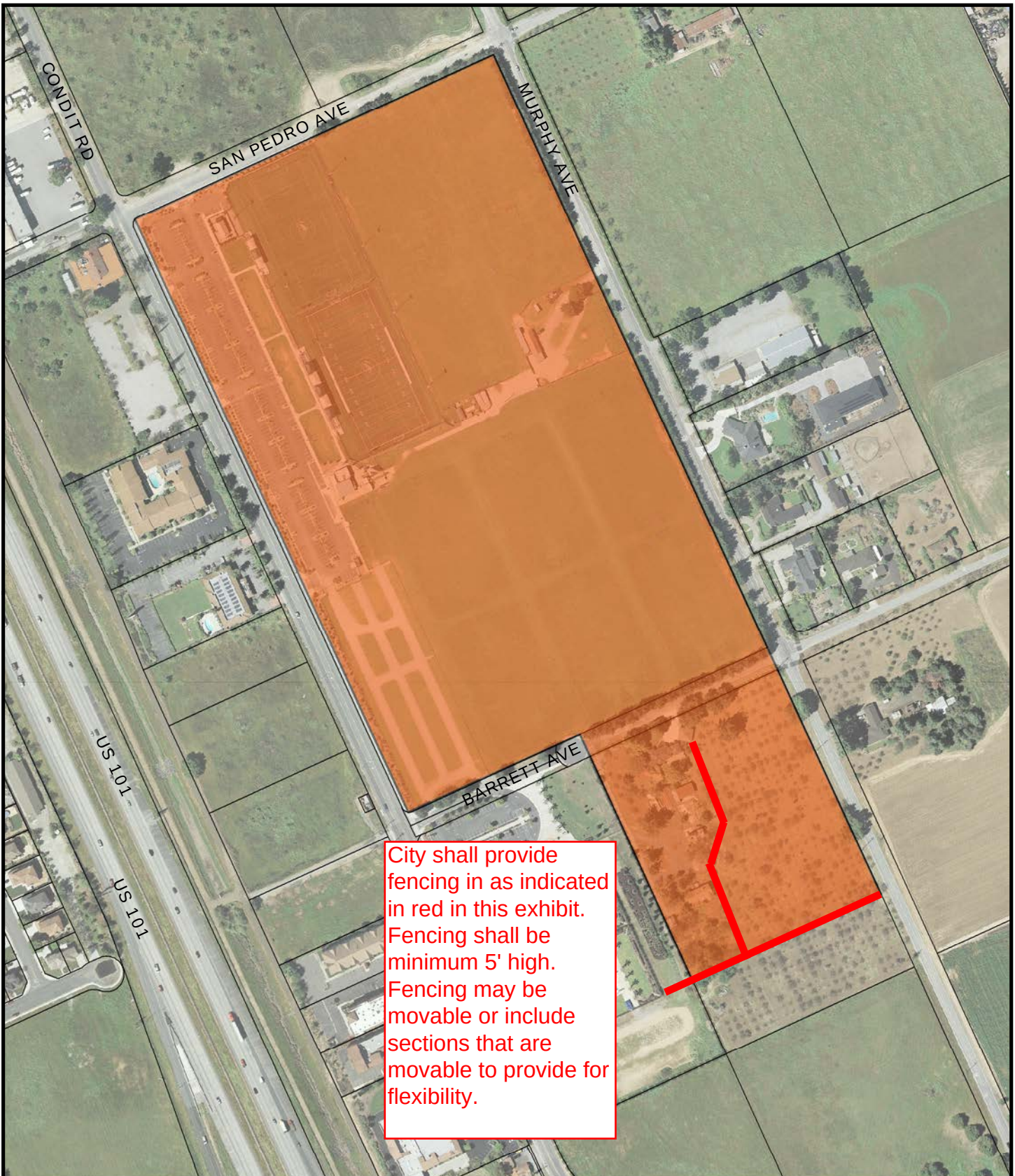
CITY of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

Exhibit I - Profit and Loss Statement Format

Sales	
Food	
Wine	
Beer	
N/A Beverages	
Merchandise	
Catering	
Total SALES	
Cost of Goods Sold (COGS)	
Food	
Wine	
Beer	
Beverages	
Merchandise	
Catering	
Total COGS	
Gross Profit	
Labor Cost	
Operating Costs	
Rent	
Utilities	
Property Tax	
Waste Removal	
Insurance	
Equipment Repairs	
Total Operating Cost	
Net Profit/Loss	

Exhibit J – Complete Parking Map





Attachment: OSC Agreement Exhibits - Reduced File Size (2112 : Outdoor Sports Center Operator Agreement)



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EXHIBIT K - FENCE PLAN



0 112.5 225 450 675 900
Feet

Exhibit L - Reserve Fund**Outdoor Sports Center Replacement Plan****Projects Eligible for use of Reserve Fund**

Parking Lot Seal and Striping

Outdoor Turf Fields

Outdoor Turf Underlayment/Drainage System

Well Pump

Building HVAC - Replacement not repair

Building Flooring

Building Roofing

Netting Goals and Goal Posts (Turf Fields Only)

Storage Sheds

Shade Canopies

AV Equipment

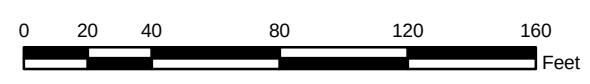
Fencing

Exhibit M - Murphy Ave Future Expansion



**EXHIBIT M - MURPHY AVENUE
FUTURE EXPANSION**

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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 APPROPRIATING A TRANSFER OF \$50,000 FROM THE GENERAL FUND (010) AND AN EXPENDITURE OF \$150,000 IN THE PARK IMPACT FUND (301) FOR MAINTENANCE AND IMPROVEMENTS AT THE OUTDOOR SPORTS CENTER

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 19th day of December 2018 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, 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 19, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

023

FUND:

DEPARTMENT:

OBJECT:

301	Park Impact Fund
8051	Park Development
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

12/19/18
OSC Operator Agreement

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,780,195	7,959,013	8,136,375	2,602,833
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	23,000	-	23,000
RECOMMENDED ACTION	-	50,000	150,000	(100,000)
RESULT OF RECOMMENDED ACTION	<u>2,780,195</u>	<u>8,032,013</u>	<u>8,286,375</u>	<u>2,525,833</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

024

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
1900	Transfers
49209	TRANSFER OUT-301 (PARK DEVELOPMENT)

AGENDA DATE:

AGENDA ITEM TITLE:

12/19/18
OSC Operator Agreement

	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	622,571	(297,821)
RECOMMENDED ACTION	-	-	50,000	(50,000)
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,589,299</u>	<u>42,331,060</u>	<u>16,945,291</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

APPROVE MAGICAL BRIDGE MORGAN HILL PLAYGROUND CONCEPT DESIGN

RECOMMENDATION(S)

Approve the updated conceptual design for the Magical Bridge Inclusive Playground at Community Park.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

The City has partnered with the Magical Bridge Foundation for the last year to fundraise and write grants for the development of an inclusive playground in Morgan Hill. More recently, on October 17, 2018, the City entered into an agreement for design of the playground with the Magical Bridge Foundation. This design includes value engineering the previous concept design and then working to develop design and construction documents to be put out to bid. Over the last two months the concept design has been updated and is now ready for review by City Council.

The updated concept design includes changes to the playground that impact the layout, but contain all previous major components of the design. Cost savings will be obtained through several changes. The first is by reducing the amount of grading needed and using the natural topography to build upon. The design also reduces the amount of concrete walkways throughout the playground. Other design changes, such as shifting and reducing the number of plantings throughout the playground, also support cost savings. The overall footprint of the park is also slightly smaller. The new concept design is included as Attachment 1, and the original concept is included as Attachment 2.

Should the Council elect to move forward with the concept, Magical Bridge and its sub-consultants would begin preparing construction documents, with the intent to bid the project in early 2019. Time is of the essence due to grant fund timing requirements.

The current project budget is outlined in the following table.

Project Expense Estimates		
Design/Fundraising Costs	Costs	
Concept Designs (Already Complete)	\$ 100,000	Paid
Fundraising/Marketing/Design Input	\$ 200,000	Paid
Design/Construction Docs/Construction Support	\$ 150,000	
Subtotal	\$ 450,000	
Project Costs		
Playground Construction	\$ 4,200,000	
Parking Lot Improvements	\$ 250,000	
Other City Costs	\$ 115,000	
Project Implementation (CIP Admin)	\$ 300,000	
Subtotal	\$ 4,865,000	
Total Project Budget	\$ 5,315,000	

This proposed budget uses the existing allocated funds from the City, donations, and grants. The proposed budget further anticipates \$100,000 in additional fundraising through the Magical Bridge Foundation, totaling \$300,000 prior to the park opening. The following table outlines the current estimated funding.

Estimated Funding	
State Grants	\$ 220,000
County Park Grant	\$ 150,000
Fundraising with Community Foundation	\$ 70,000
Park Impact Fund*	\$ 2,630,000
County Playground Grant	\$ 2,000,000
Magical Bridge Fundraising	\$ 300,000
Project Total Funding	\$ 5,370,000

*\$1,730,000 in FY 2018-19, \$200,000 in FY 2019-20 and \$700,000 appropriated in prior years.

COMMUNITY ENGAGEMENT: Consult

This project was brought forward by community members and was initially driven by community members. The initial design process was developed and coordinated by the Morgan Hill Inclusive Playground Committee volunteers. This group of community members will again be consulted at the upcoming community meeting.

A community meeting is scheduled to be held on Monday, December 17, and the Parks and Recreation Commission is scheduled to review the updated concept design on Tuesday, December 18. Comments and recommendations from those meetings will be provided to the City Council as supplemental items to this report.

ALTERNATIVE ACTIONS:

The Council may choose to provide direction on minor updates to the concept design, while still moving the process forward. The Council may also provide direction on major changes to the design, which would require the item to return at a future Council meeting.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

May 17, 2016 – Council approved the concept designs for the Inclusive Playground Project.

June 21, 2017 – Council approved updates for the Capital Improvement Plan, including funding in FY 2017-18 for the Inclusive Playground Project.

July 19, 2017 – Council approved an agreement with the Magical Bridge Foundation for support in fundraising, grant writing, and design for the Morgan Hill Inclusive Playground.

October 4, 2017 – Council authorized the City Manager to apply for the County of Santa Clara All Inclusive Playground Grant, which the City ultimately was awarded \$2 million towards the playground.

October 17, 2018 – The City Council authorized the City Manager to enter into a design agreement with the Magical Bridge Foundation for the completion of designs for the playground project.

FISCAL AND RESOURCE IMPACT:

The proposed action would not create any unplanned fiscal impacts associated with the park design, as funding has already been appropriated for this design work. The value engineering of the playground is proposed to meet the budget constraints of the project.

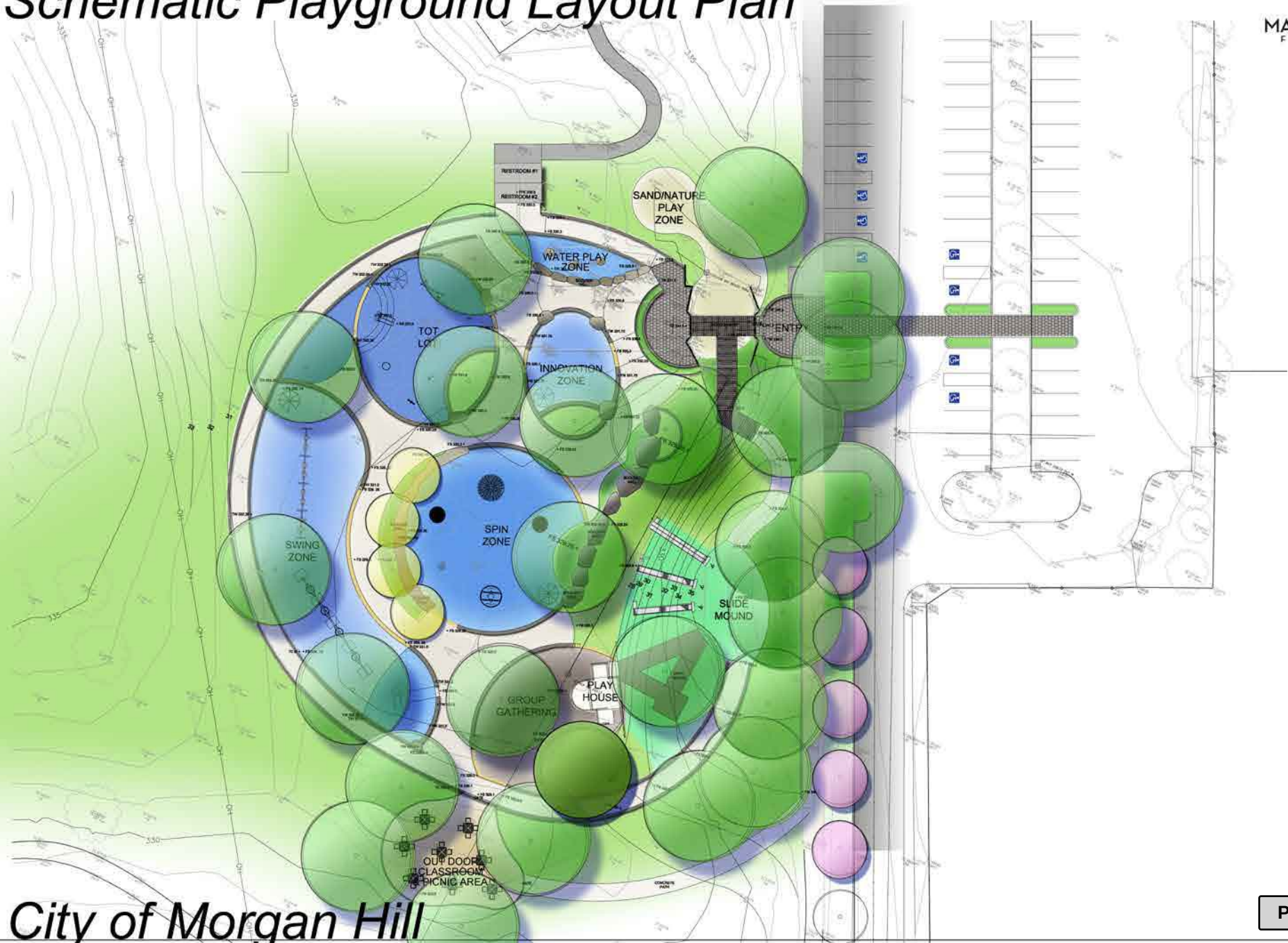
CEQA (California Environmental Quality Act):

A Notice of Exemption was filed for the project in October 2017 based on the categorical exemptions 15301. Existing Facilities, 15304. Minor Alterations to Land and 15311. Accessory Structures.

LINKS/ATTACHMENTS:

1. Magical Bridge Schematic Plan - Concept Plan
2. Original Concept

Schematic Playground Layout Plan



Attachment: Magical Bridge Schematic Plan - Concept Plan (2114 : Approve Magical





Inclusive Playground
Final Concept - Natural Stones, Trees And Animals
Morgan Hill Community Park
Morgan Hill, CA

Attachment: Original Concept (2114 : Approve Magical Bridge Morgan Hill Playground Concept Design)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

ADOPT POLICY FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AGRICULTURAL PRESERVATION EXEMPT SET-ASIDES, TRANSFER OF DEVELOPMENT RIGHTS AND/OR AUCTION

RECOMMENDATION(S)

1. Adopt a policy for Agricultural Set-A-Sides, Transfer of Development Rights, and/or Auction process;
2. Establish number of Agricultural Set-A-Sides Available for Auction in 2019; and
3. Authorize 2019 Auction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving Our Cultural Heritage

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

1. Should the City Council establish an auction process for the disbursement of Agricultural Preservation Set-Asides allotments established by Measure S (RDCS), in years when no Transfer of Permitted Residential Development Rights (TDRs) occur, to provide a reliable revenue source with which to acquire Agriculture Conservation Easements (ACE) within the City's Priority Conservation Area (map attached) identified in the Morgan Hill 2035 General Plan and RDCS update?
2. The RDCS includes a set-aside of up to 35 competition-exempt allotments annually (300 total through 2035), in furtherance of the City's agricultural preservation goals. Should the City auction 2017 and 2018 allotments, for a total of 70?

REPORT NARRATIVE:

The TDR is a mechanism that the City has used successfully for many years to implement policies of the Open Space and Conservation Element of the General Plan. In 1981, the City established the transfer of development rights from hillside lots of considerable slope to affect the preservation of open space and view shed on the hills surrounding the community. The TDR provision is designed to ease the restriction of prohibited construction on slopes of over 20% by granting affected property owners development rights based upon the unused density afforded to them. The TDR policy allowed a developer to negotiate with property owners in other residential areas of town

to sell those development rights to increase the density permitted on those other properties.

In support of the City's agricultural preservation goals, Measure S established an annual set aside of up to 35 RDCS competition-exempt allotments, up to a maximum of 300, to encourage the preservation of agricultural land in the City's Priority Conservation Area (Morgan Hill Municipal Code Section 18.78.060). Developers can negotiate and obtain ACE commitments by their own initiative within the Priority Conservation Area and receive allotments in return for those easements. This would occur on a first come, first served basis, up to 35 allocations per year. The City has created a Conservation Easement template, and once an agricultural easement seller is identified by the developer, the City will assist with the negotiation of the form of easement. All ACE's will have permanent stewardship provisions. In 2019, one ACE acre will yield 6 development allotments (or cost \$16,666 per allotment) with one allotment awarded to compensate for Agricultural Trust stewardship costs associated with ACE acquisition.

To accomplish the goals of the General Plan and provide the development community the opportunity to receive these exempt Agricultural Preservation Set-aside allotments, it is recommended that at the end of each calendar year, if the TDR's are unused via developer-initiated easement acquisition, that the City auction the unclaimed exempt allotments to provide funds to replenish the Open Space and Agricultural Conservation Fund, generating dollars for staff-initiated ACE acquisition.

It is proposed that each January, the City would auction unclaimed Preservation Set-Aside allotments. As with Downtown Exempt allotments, projects are exempt from RDCS competition, but must achieve a minimum score required to receive allotments. To maximize revenue from the sale of the allotments, a base price shall be set, and a process created to allow for open bidding for the purchase of the allotments.

Terms of the sale would:

- Set a minimum base bid
- Set an auction and bidding schedule
- Limit the resale of the exempt allotments to unrelated entities
- Allow assignment of the allotments to entities substantially formed from the originating purchaser
- Require termination and re-purchase by the City if not used within 3 years from time of award
- TDR allotments do not provide credit for Ag Mitigation required by Ordinance; rather they are in addition to mitigation required by conversion of agricultural lands which include residential, commercial, and industrial properties within the City.

The process contemplated would:

- Require bidders to register with the City and receive a bidder Identification number
- Provide public view of auction process results on City Web Page
- Bidders will be given a deadline to submit bids, including the number of

allotments requested; City will publicly post bids

- Bidders will be allowed to submit revised bids if desired by date certain, after which bidding closes
- City awards allotments to highest bidder
- City processes a TDR certificate, similar to the Open Space TDR certificate currently in use.

It is proposed that the City establish a base price of \$20,000 per allocation for auction. This price is based upon the following assumptions:

A one-acre ACE costs between \$85,000 and \$100,000, depending upon the development potential of the agricultural property that will be removed. One acre is 43,560 sf. Based upon a lot size of 7,500 square feet, a one-acre lot can yield a net of 5 residential lots. When using \$100,000 and dividing by 5 allotments the base price is \$20,000. (One acre divided by 5 is 8,712 sf; subtracting for streets and common space the assumption is that the land will net 5 – 7,500 sf lots.) If this price were held constant for the next 10 years, the set aside sale will raise \$6,000,000 for the Agriculture and Open Space Fund (306).

COMMUNITY ENGAGEMENT:

This report is intended to inform the community. Subsequently, a summary of the program will be created and circulated to the development community. Value consideration was made by consulting an agricultural appraisal expert and testing the price with a member of the local commercial real estate community.

ALTERNATIVE ACTIONS:

Measure S makes provisions for the use of agricultural preservation exempt allotments, with a limit of not more than 35 set-a side allotments available within a single year, up to a maximum of 300 allotments. The Council could choose to exercise these exemptions through developer-initiated ACE's alone as an alternative. This could limit the actual preservation of land and would limit the City's ability to acquire "at-risk" property or provide leverage to match other local preservation efforts. Assuming ACE easements utilize a constant valuation as proposed in this report, it is recommended that one ACE acre yield 6 development allotments instead of 5, to compensate for the cost associated with ACE acquisition with associated stewardship provision costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Agricultural preservation and conservation are key policies contained within the City's General Plan. The City has created and adopted an Agricultural Preservation Program (Ordinance), requiring all agricultural land within the City to mitigate 1:1, created a stay-ahead provision to ensure that efforts are prospective and not reactive, and identified a Priority Conservation Area to target acquisition efforts.

FISCAL AND RESOURCE IMPACT:

It is proposed that the City establish a base price of \$20,000 per auction allotment. This price is based upon the assumptions described above. It is also proposed that the base price will be set each year, based upon the City's experience with appraisal and

acquisition of ACE's in the Priority Conservation Area. If the price were held constant for the next 10 years, the set aside sale will raise \$6,000,000 for the Agriculture and Open Space Fund (306).

CEQA (California Environmental Quality Act):

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15378 the administrative actions taken to implement this policy are exempt from California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. [PriorityAgriculturalConservationArea](#)
2. [Draft TDR Program Outline 4.0](#)

City of Morgan Hill

16.a

USA

Highway 101

Tennant Ave

E Dunne Ave

UGB

Barrett Ave

Murphy Ave

Fisher Ave

Hill Rd

Maple Ave

San Martin

Priority
Agricultural
Conservation
Area

33.6 ac

37 ac

12.5 ac

City ACE
Areas

Potential
ACE Area

AGRICULTURAL PRESERVATION TRANSFER OF DEVELOPMENT RIGHTS (TDRS)

Agricultural preservation and conservation are key policies contained within the City's General Plan. The City has created and adopted an Agricultural Preservation Program Ordinance, requiring all agricultural land within the City to mitigate 1:1, creating a stay-ahead provision to ensure that efforts are prospective and not reactive, created Agricultural Preservation Set-aside allotments through the Residential Development Control System (RDSCS) and identified a Priority Conservation Area to target agricultural conservation easement (ACE) acquisition efforts.

HISTORY

The Transfer of Permitted Residential Development Rights (TDRs) is a mechanism that the City has used successfully for many years to conserve open space. TDR's have been used by the City to implement policies of the Open Space and Conservation Element of the General Plan, preserving over 500 acres of open space and view shed. In 1981, the City established the transfer of development rights from hillside lots of considerable slope to effect the preservation of open space and view shed on the hills surrounding the community. These TDR provisions were designed to ease the City's restriction of prohibiting construction on slopes of over 20%. The TDR policy allowed a developer to negotiate with a property owner in the hillside areas of town to purchase the development rights on the hillside property in exchange for receiving the right to increase the density permitted on the developer's property.

2016 RDSCS MEASURE AUTHORIZATION

Use of the transfer of development rights tool was expanded from just open space to include agricultural conservation when Measure S was approved in 2016. To accomplish the agricultural conservation goals of the General Plan, Measure S set aside 35 annual Residential Development Control System (RDSCS) competition-exempt allotments, up to a maximum of 300 through 2035. The exemption is meant to encourage the transfer of development rights from agricultural land in the City's Priority Conservation Area for the preservation of agricultural land at risk of development near the City's urban edge (Morgan Hill Municipal Code Section 18.156.060).

There are two ways to use the exemption: Agricultural Conservation Easement acquisition and purchase of exempt allotments by auction.

AGRICULTURAL CONSERVATION EASEMENT ACQUISITION

Developers are encouraged to negotiate and obtain ACE commitments by their own initiative within the Priority Conservation Area (map attached) to receive allotments in return for those easements. This will occur on a first come, first served basis, up to 35 allocations per year. The City has created a Conservation Easement template, and once an agricultural easement seller is identified by the developer, the City will assist with the negotiation of the form of easement. All ACE's will have permanent stewardship provisions. In 2019, one ACE acre will yield 6 development allotments (or cost \$16,666 per allotment) with one allotment awarded to compensate for Ag Trust stewardship costs associated with ACE acquisition. Upon identification of ACE property, developer must specify development to which the TDR will be applied and present Easement in an execution ready form acceptable to the City Attorney, and/or deposit 10% of ACE value to hold allotment commitment for up to 3 years, in which case ACE must be executed prior to issuance of construction permits.

At the end of each calendar year, if Agricultural Preservation TDR's are unused by developer-initiated easement acquisition, the City will auction the unclaimed exempt allotments to provide funds to replenish the Open Space and Agricultural Conservation Fund, generating dollars for City-initiated ACE acquisition.

AUCTION

In January of each year, the City will hold an auction of unclaimed agricultural conservation exempt allotments. As with Downtown Exempt allotments, Ag TDR projects are exempt from competition, but must achieve the minimum score required to otherwise receive allotments. To maximize revenue from the sale of the allotments, a base price shall be set each January, and a process created to allow for open bidding for the purchase of the allotments.

Terms of the sale:

- Minimum base bid set by City for each allotment (Jan. 2019, \$20,000) or 5 allotments per acre.
- Auction and bidding schedule determined and posted by Jan. 5
- To mitigate speculation, resale of the exempt allotments to unrelated development entities will not be permitted. Purchasing developer must use allotments for projects which form an LLC or other legal entity in which developer is the controlling member.
- Assignment of allotments to entities substantially formed from the originating purchaser permitted
- Allotments terminate, and City required to refund deposit, minus a 10% administrative fee, if allotments not exercised with building permit within 3 years of time of deposit.
- TDR allotments do not provide credit for Ag Mitigation required by Ordinance; rather they are in addition to mitigation required by

conversion of ag lands which include residential, commercial and industrial properties within the City.

- Unused allotments accrue to the pool of allotments to be available until 2035, but are subject to the RDCS limit of no more than 35 allotments available per year.

Process:

1. Bidders register with City and receive bidder identification number by January 15, 2019 and pick up simple bid form.
2. Bidders will be given a deadline (January 23) to submit bids on City simple bid form, including the number of allotments requested;
3. City will publicly post bid results on City Web Page by January 25, 2019
4. Bidders will be allowed to submit revised bids if desired by January 30, after which bidding closes. In the event of a tie high bid, one final round of bids will be taken from tied parties.
5. City awards allotments to highest bidder upon receipt of 10% of bid price no later than 30 days from January 30 or tie breaking bid round date. Should apparent high bidder fail to post deposit, allotments will be sold to second highest bidder.
6. City processes a TDR certificate, similar to the Open Space TDR certificate currently in use to memorialize bid. Successful bidder pays for balance of allotment upon issuance of building permit and TDR certificate is retired.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES

RECOMMENDATION(S)

Receive report and provide direction to staff on follow-up recommendation for Block-Level Master Plan Alternative for two Monterey Road Corridor projects.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The purpose of this item is to provide staff's recommendation on the processes for fulfilling the General Plan requirement that, prior to development of residential or mixed-use projects within the Mixed-Use Flex designation, a Block-Level Master Plan (BLMP) must be prepared to identify how commercial uses will be incorporated within the development of a block, and how individual development projects will connect with each other.

This is a continuation of the City Council discussions held on November 28, 2018 and December 5, 2018. See attached staff reports for background information (Attachment No. 1 & 2).

At the December 5, 2018 meeting, City Council agreed that the process for developing a BLMP should not be driven by the goal of allowing projects to participate in the 2018-19 Residential Development Control System (RDCS) competition.

The City Council did acknowledge that two Monterey Corridor applicants have submitted the mandatory RDCS Preliminary Application for their proposals, which is a prerequisite for submitting a formal RDCS application in March 2019. The City Council requested staff bring back a proposal that allows these two Monterey Corridor applicants to compete, and establishes the basic expectations (e.g., amount/placement of commercial/non-residential, public gathering places, etc.) for each block. The City Council emphasized that the two applicants should be aware of, and understand, the risks involved in pursuing RDCS allotments without knowing if a BLMP would be approved for their block or in a manner that supports their desired project.

Staff Recommendation

1. Staff will resume working with our consultant team from Lisa Wise Consulting, Inc. (LWC) on the preparation of a comprehensive BLMP for the Mixed-Use Flex designated portions of the Monterey Road Corridor. Through this process, staff can explore a City Council suggestion regarding focusing or prioritizing the BLMP effort on certain blocks that are closer to Downtown or that are more likely to develop/redevelop. Staff can also explore opportunities for addressing the public right-of-way.

2. To allow the two Monterey Corridor applicants to proceed in advance of the comprehensive BLMP, and possibly allow them to compete in the upcoming RDCS, staff proposes that the City initiate Zoning Amendments to establish a Planned Development (PD) district for both blocks (Blocks One and Four) that include the two proposed projects.

The PDs would establish the basic expectations and specific requirements for development of both blocks. If approved, the PDs would serve as the required BLMPs allowing the Monterey Corridor applicants to compete in the RDCS.

Subsequently, the applicants would submit PD Master Plans (Zoning Amendments) for their respective blocks to provide the necessary details of how their specific project is consistent with the BLMP PD and will contribute to the General Plan vision of transforming Monterey Road into a vibrant mixed-use corridor.

As with all Zoning Code Amendments, the amendments to establish the BLMP PDs and the subsequent amendments to establish the PD Master Plans would require both Planning Commission and City Council hearings.

An example draft BLMP PD Ordinance with Exhibit A and General Plan map for Block One is attached (Attachment No. 3 & 4). An example draft Exhibit A and General Plan map are also attached for Block Four (Attachment No. 5).

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.

ALTERNATIVE ACTIONS:

N/A

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 (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.

LINKS/ATTACHMENTS:

1. 11/28/18 Staff Report (web link)
2. 12/5/18 Staff Report (web link)
3. Draft BLMP PD Ordinance Block One
4. Sample Draft Exhibit A - Block One
5. Sample Draft Exhibit A - Block Four
6. Correspondence

Example Block-Level Master Plan Planned Development Ordinance for
Monterey Corridor Block One

ORDINANCE NO. XXXX, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ESTABLISHING A BLOCK-LEVEL MASTER PLAN PLANNED DEVELOPMENT (BLMP PD) COMBINING DISTRICT FOR MONTEREY ROAD CORRIDOR BLOCK ONE, AN APPROXIMATELY 8.55-ACRE SITE LOCATED ON THE EAST SIDE OF MONTEREY ROAD BETWEEN BURNETT AVENUE AND THE CITY LIMITS (APN 725-01-032, 725-01-033, AND 725-01-018)

WHEREAS, on July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan; and

WHEREAS, the Morgan Hill 2035 General Plan Land Use Map designates certain properties Mixed Use Flex; and

WHEREAS, the Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The Mixed Use Flex designation allows 7 to 24 units per acre (residential) and a maximum FAR of 0.5 (commercial) and density should transition from higher near Downtown to lower at the ends of the Monterey Road corridor; and

WHEREAS, the Morgan Hill 2035 General Plan requires that, prior to development of residential or mixed-use projects within the Mixed Use Flex designation a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other; and

WHEREAS, the Block-Level Master Plan requirement applies to those segments of the Monterey Road Corridor north and south of Downtown that include properties that have a Mixed Use Flex General Plan Land Use designation. Blocks may include properties with a variety of General Plan designations (e.g., Commercial, Residential Attached Low, Public Facilities, Mixed Use Flex, etc.) and Zoning Districts (e.g., CG General Commercial, RAL 3,500, PF Public Facilities, MU-F Mixed Use Flex, etc.);

WHEREAS, Section 18.30.050 of the Zoning Code states that the purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD combining district provides land owners with enhanced flexibility to take advantage of unique site characteristics and develop projects that will provide public benefits for residents, employees, and visitors; and

WHEREAS, Section 18.114.020 of the Zoning Code states that the City Council, Planning

Example Block-Level Master Plan Planned Development Ordinance for
Monterey Corridor Block One

Commission, or Community Development Director may initiate Zoning Map and Text amendments; and

WHEREAS, in addition to the underlying base zoning district requirements, specific requirements are shown/listed in **Exhibit A: Block-Level Master Plan Map – Block One** and **Exhibit B: Block-Level Master Plan Land Use Regulations - Block One**; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill’s Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074) was prepared for the Zoning Code Update project pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164, and the Addendum concludes that the proposed project will not result in any new impacts that were not already identified in the Morgan Hill 2035 EIR or any impacts of greater severity than were already addressed; and

WHEREAS, a visioning and goal setting workshop was held on September 25, 2018 where members of the public and various stakeholders provided feedback that facilitated the crafting of preliminary guiding principles for the development of the Monterey Corridor; 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; and

WHEREAS, the Block-Level Master Plan Planned Development (BLMP PD) ordinance for Monterey Corridor Block One, was considered by the Planning Commission at their regular meeting of February 12, 2019, at which time the Planning Commission recommended City Council consider the Addendum to the Morgan Hill 2035 EIR in accordance with the California Environmental Quality Act (CEQA) and approval of the Zoning Amendment to establish a BLMP PD for Monterey Corridor Block One; and

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

SECTION 1. The proposed Monterey Road Corridor Block-Level Master Plan Planned Development (BLMP PD) is consistent with the Morgan Hill 2035 General Plan.

SECTION 2. The Amendment to establish this BLMP PD is required in order to serve the public convenience, necessity, and general welfare as provided in Section 18.114.060 of the Municipal Code.

SECTION 3. The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).

SECTION 4. Exhibit A: Block-Level Master Plan Map – Block One.

SECTION 5. Exhibit B: Block-Level Master Plan Land Use Regulations - Block One.

SECTION 5. Severability. If any part of this Ordinance is held to be invalid or inapplicable to

Example Block-Level Master Plan Planned Development Ordinance for
Monterey Corridor Block One

any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 6. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 27th DAY OF FEBRUARY 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF MARCH 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

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

APPROVED:

Mayor, Rich Constantine

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective April 19, 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. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 20th day of March 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Draft BLMP PD Ordinance Block One (2108 : BLMP Alternatives)

Example Block-Level Master Plan Planned Development Ordinance for
Monterey Corridor Block One

Exhibit A: Block-Level Master Plan Map – Block One

See Attached

Example Block-Level Master Plan Planned Development Ordinance for Monterey Corridor Block One

Exhibit B: Block-Level Master Plan Land Use Regulations - Block One

I. Land Use Regulations

A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District.

B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.

1. Residential Density. 7 to 24 du/ac. Consistent with General Plan Policy CNF-9.2, residential uses shall be feathered toward the northern Sphere of Influence (SOI) boundary with San Jose. Feathering can be achieved through a combination of measures including lowering the density and stories/height of the residences and including substantial open space setbacks closest to the SOI boundary.
2. Floor Area Ratio. For non-residential and vertical mixed-use projects, the maximum floor area ratio (FAR) is 0.5.
3. Setbacks. The setbacks identified in Zoning Code Table 18.22-3 are required setbacks around the project perimeter.
4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050.

C. Commercial Requirements

1. Corner Lot Commercial/Non-Residential. Commercial uses (retail, services, office) and/or other non-residential (public/quasi-public) uses are required at the northeast corner of Burnett Avenue and Monterey Road. These commercial or non-residential uses may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
2. Historic Preservation. The existing building located on the northeast corner of Burnett Avenue and Monterey Road (19500 Monterey Road) constructed c. 1929 shall be preserved/retained for commercial or non-residential use.

D. General Specifications

1. Primary entrances for new buildings should be oriented toward the street.
2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.
5. Building depth for non-residential uses: 35-feet minimum.
6. Urban Form Characteristics:

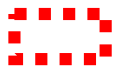
Example Block-Level Master Plan Planned Development Ordinance for
Monterey Corridor Block One

- a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
- 7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
 - 1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 - 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 - 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
 - 4. Seating. Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
 - 5. Year-round Use. Open space must be usable year-round with features such as awnings, wind breaks, sun shades, and umbrellas, or other similar features that provide shelter from the elements.
- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

EXHIBIT A – BLOCK ONE



Block



Tilton Ave / Burnett Ave Re-Alignment



Preserve Historic Building for Commercial Use



Residential or Commercial

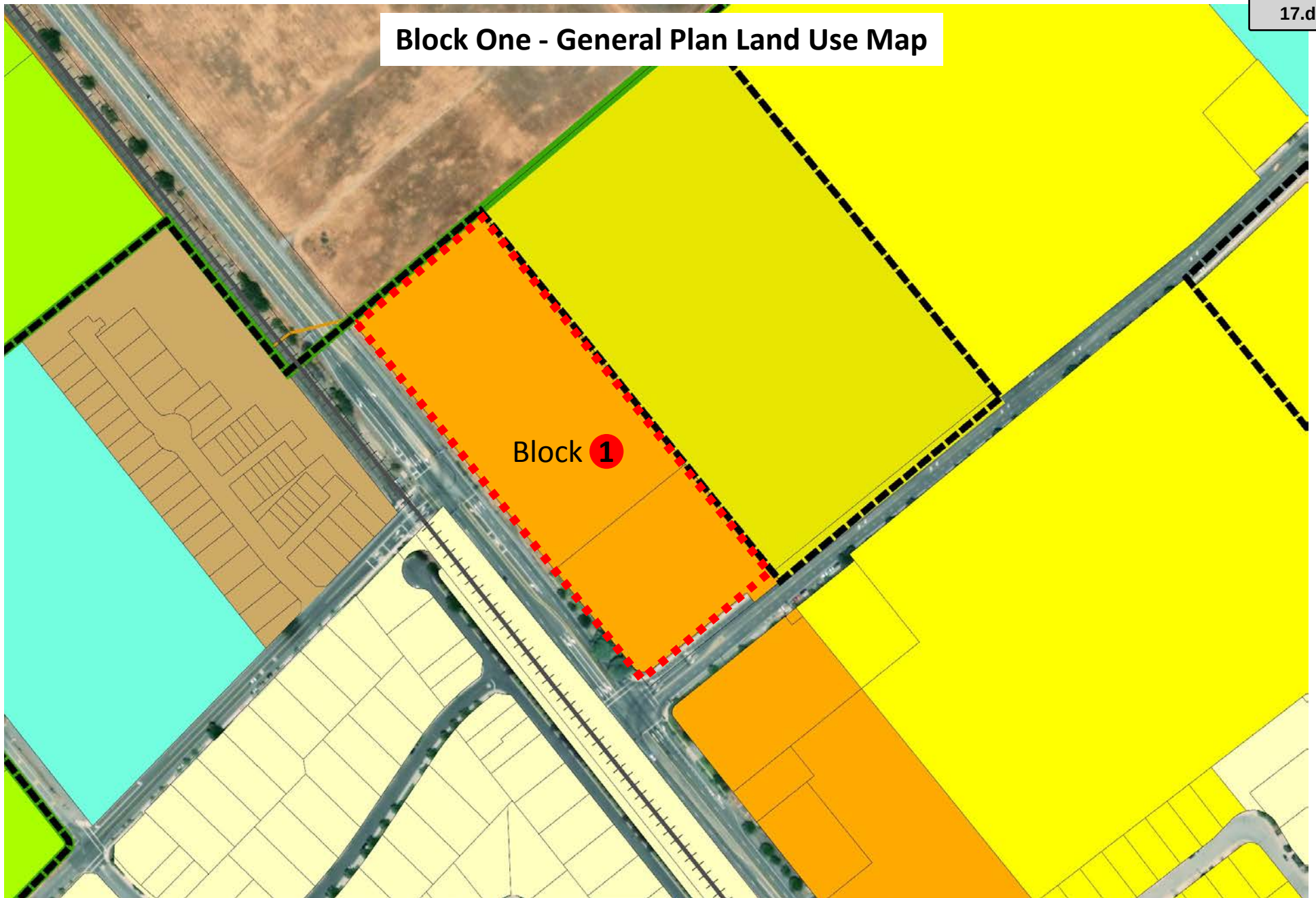


Commercial or Mixed-Use



Open Space Buffer

Block One - General Plan Land Use Map



General Plan Designations

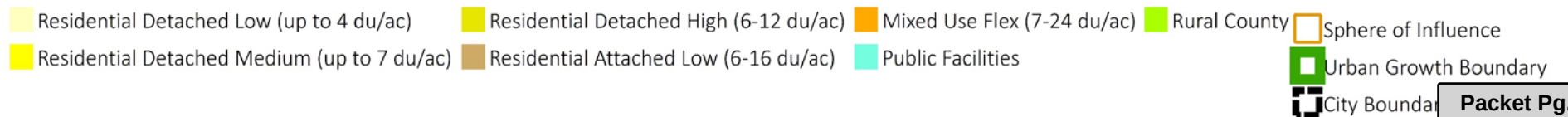
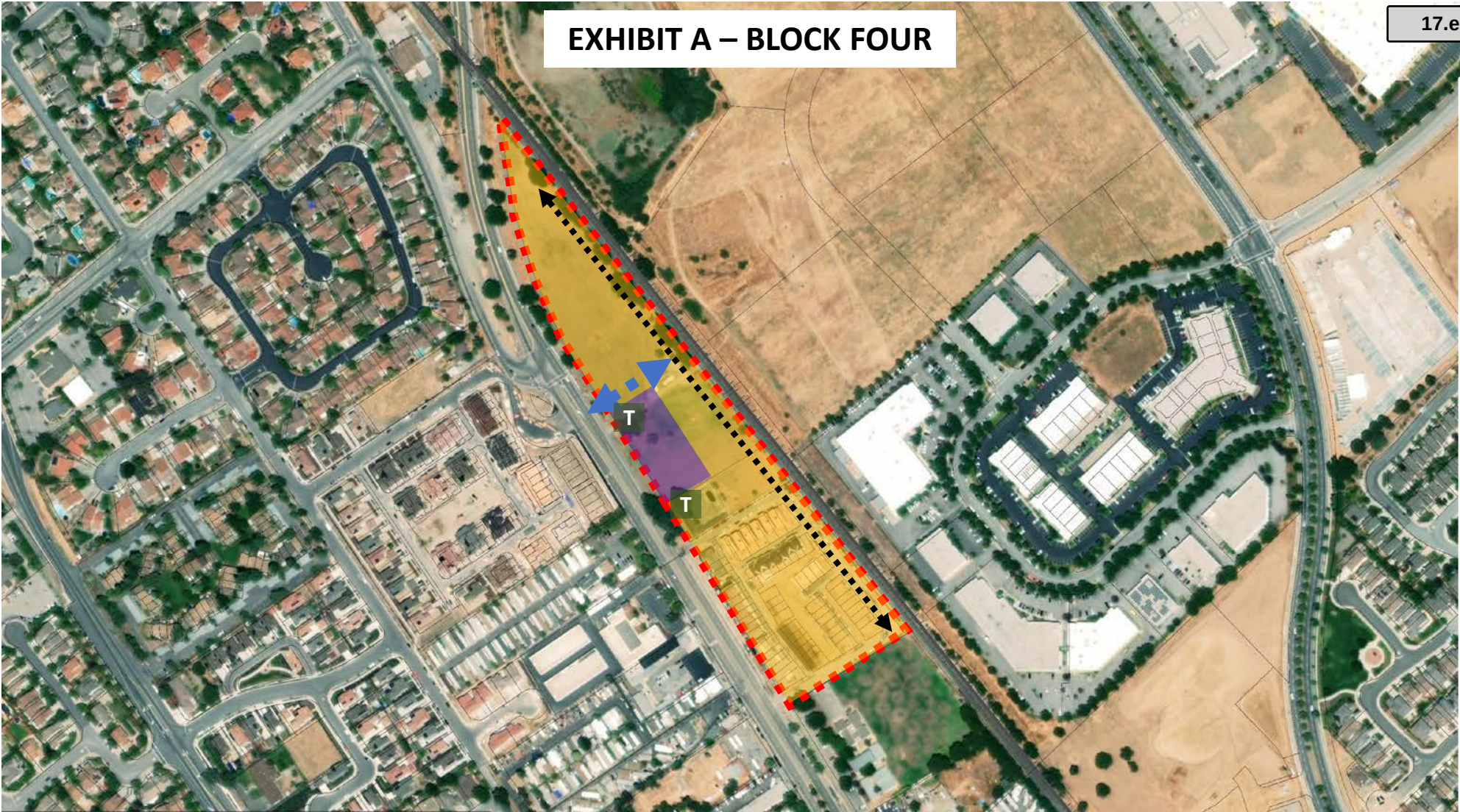


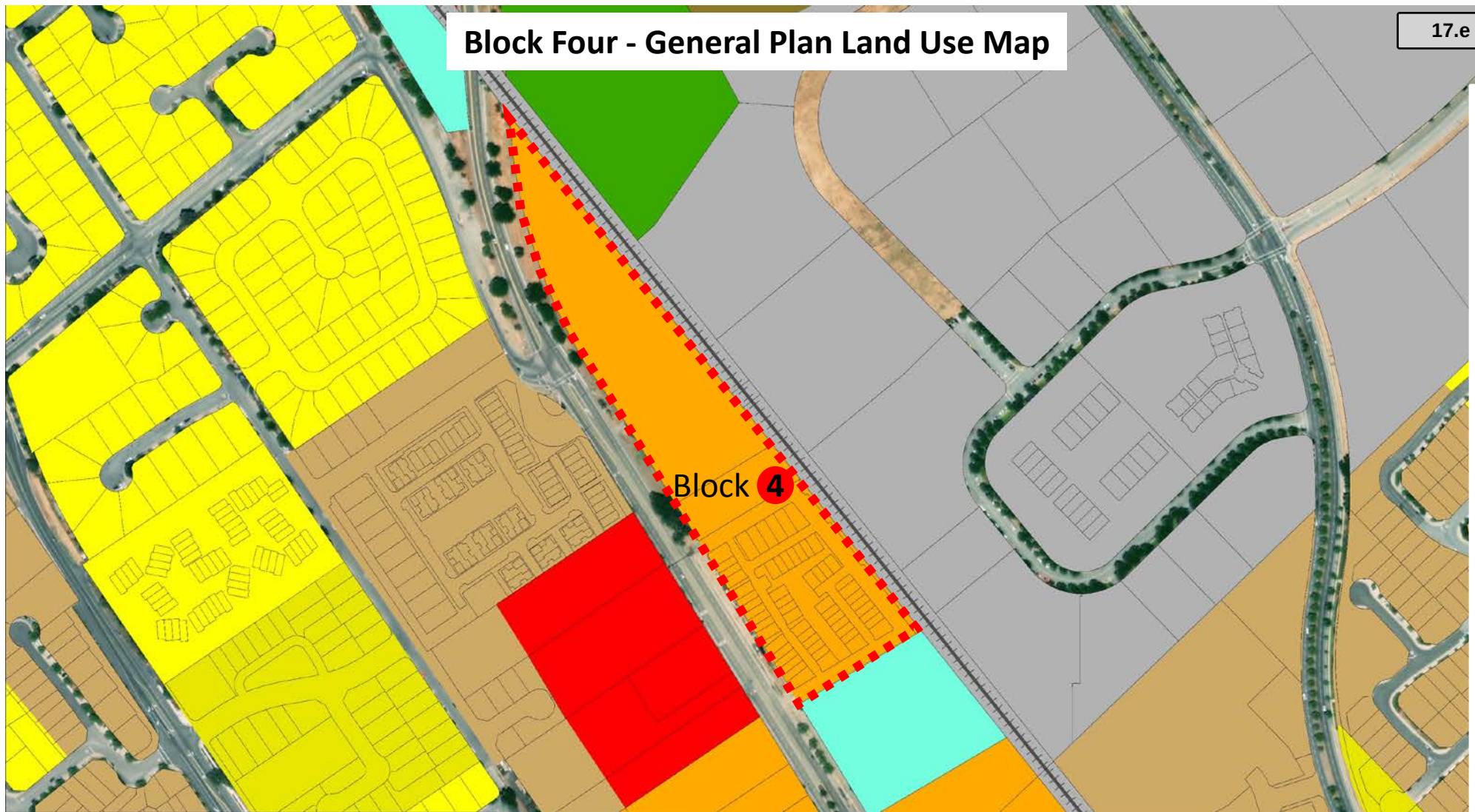
EXHIBIT A – BLOCK FOUR



-  Block
-  East Leg of Old Monterey Rd / Monterey Rd
-  Landscape/Private Street Buffer
-  Residential or Commercial
-  Commercial or Mixed-Use
-  Preserve Specimen Tree

Block Four - General Plan Land Use Map

17.e



General Plan Designations

- | | | | | |
|--|---|--|--|--|
| Residential Detached Medium (up to 7 du/ac) | Residential Attached Low (6-16 du/ac) | Mixed Use Flex (7-24 du/ac) | Industrial | Open Space |
| Residential Detached High (6-12 du/ac) | Residential Attached Medium (16-24 du/ac) | Commercial | Public Facilities | Sphere of Influence |

Attachment: Sample Draft Exhibit A - Block Four (2108 : BLMP Alternatives)

From: [Dick Oliver](#)
To: [John Baty](#); [Gina Paolini](#)
Subject: Staff Report for the City Council Agenda for December 19th: Monterey Corridor Block Level Master Plan
Date: Friday, December 14, 2018 7:57:17 AM
Attachments: [Scan0583.pdf](#)

John and Gina: Please attach this email and attachment be included with your Staff Report for December 19th:

Re: Block Level Master Plan for Block #1 of the Monterey Corridor Block Level Master Plan

Honorable Members of the City Council:

I respectfully request that Block # One, be allowed to compete in this year's Measure S Competition, by allowing us to submit a Block Level Master Plan for Block #1, with our final application for allocations by the required date in March of 2020.

The Master Block Level Plan for Block #1 will include both parcels that are within Block #1.

The Northern Parcel (for which a preliminary application for Measure S was timely permitted, and for which a zoning amendment has been filed) will be noted as appropriate for residential use under the MUF Zoning with a 50% Lot Coverage requirement, subject to Measure S.

The Corner Parcel will be restricted to Commercial Use (as recommended by the City's consultant and as currently shown on the Block #1) with a 50% FAR requirement. This Parcel shall also be noted as currently being a commercial use (Jeffery's Bakery) which is also a listed Historical Site, as indicated on the attached Primary Record. The Master Level Plan for Block #1 will contain a note that any modification or change to this commercial site is restricted by the current provisions/policies of the City regarding historical sites and will require evaluation and approval by the City which will also include any provisions that will be adopted in the overall Block Level Master Plan for the Monterey Corridor as to commercial use that might be applicable to this historical site.

We have waited through the General Plan process and for the past two years during the study of the Monterey Corridor and the staff and we had hoped and encouraged us to be able to compete in this years Measure S.

The Corner Parcel is and has been for many years, an existing commercial use. It is in use today. There is no current intent that the use change. Any change (even without the Block #1 Master Plan) is currently constrained by existing City provisions, procedures or policies, by having a requirement for further evaluation due to the historic nature of the building (I believe it was Barrett School, one of the earliest, if not the earliest, schools in Morgan Hill). Those requirements would include all the protections and intent and goals that are planned to be achieved in the on-going deliberation by the Council on the Monterey Corridor. It is our considered opinion that the City will in no way be prejudiced or lose any ability to achieve its goals for the Monterey Corridor by allowing Block #1 to compete in the Measure S competition because of the existing constraints of the Corner Parcel being a current and active commercial

use which is required to have further evaluation approval prior to any change in use or design due to it being a listed historic building.

This Corner Parcel is therefore someone unique and allowing us to compete in this year's competition would not create any precedence, nor harm any other parcel. By being able to compete, it would contribute to a more robust competition since there are few applicants that will be competing. It would also be fair to us and our land owner who have be patient and have complied with every request of the Staff in paying all the required fees and submitting all the required applications to be able to compete.

Thank you.

Dick Oliver

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State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary #
HRI #
Trinomial
NRHP Status Code 7R

Other Listings
Review Code

Reviewer

Date

Page 1 of 1

*Resource Name or #: 4

$\pm$ 5,760 ft in 1929

P1. Other Identifier:

*P2. Location: ☐ Not for Publication ☒ Unrestricted

*a. County: SANTA CLARA COUNTY and (P2b and P2c or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad:

Date:

T

R

;

of

of

Sec

;

M.D.

B.M.

c. Address: 19500 MONTEREY RD

City: MORGAN HILL

Zip: 95037

d. UTM: Zone: 10 ; mE/ mN (G.P.S.)

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate) Elevation:

APN: 72501017

P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

19500 Monterey Road is a one-story, wood frame commercial building. The building has an irregular floor plan, is clad with stucco and has a flat roof. The center volume is flanked at each side by a recessed circular entry tower and adjacent rectangular wing. The center volume has a band of five windows separated by slender ionic columns and the rectangular wings exhibit a decorative stucco recess with central window openings flanked by spiral columns. Long rectangular vents with ornamental sills ornament the towers and an arched opening provides access to the main entries. Other distinguishing characteristics include modern plate glass windows, attached stucco planters and circular tile vents. There are several rear additions to the building that appear to be of later construction. The property also includes two mature conifers at the front of the property. The building appears to be in fair condition. This property should be evaluated prior to any changes or alterations.

*P3b. Resource Attributes: HP6 - 1-3 Story Commercial Building

*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ District ☐ Element of District ☐ Other (Isolates, etc.)



P5b. Description of Photo: Front View

*P6. Date Constructed/Age and Sources: ☒ Historic

☐ Prehistoric

☐ Both

Not Available (Assessor Records)

*P7. Owner and Address:
Not Available

*P8. Recorded by:
Sheila McElroy
Circa: Historic Property
Development
One Sutter Street, Suite 910
San Francisco, CA 94104

*P9. Date Recorded: 12/13/2006

*P10. Survey Type:
Reconnaissance Survey

*P11. Report Citation: Morgan
Hill Citywide Survey

*Attachments: ☒ NONE ☐ Location Map ☐ Sketch Map ☐ Continuation Sheet ☐ Building, Structure, and Object Record
☐ Archaeological Record ☐ District Record ☐ Linear Feature Record ☐ Milling Station Record ☐ Rock Art Record
☐ Artifact Record ☐ Photograph Record ☐ Other (List):
DPR 523A (1/95)

*Required information

Attachment: Correspondence (2108 : BLMP Alternatives)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

SELECT CITY COUNCIL MAYOR PRO TEMPORE AND REVIEW CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

RECOMMENDATION(S)

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01; and
3. Review and discuss the listing of City Council Appointments to Outside Agencies.

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

REPORT NARRATIVE:

The City Council has an adopted policy, which sets forth the criteria for the selection of Mayor Pro Tempore annually for a one-year term. The adopted policy is intended to provide every Council Member with the opportunity to serve as Mayor Pro Tempore. Nomination for the Mayor Pro Tempore seat is generally based on: (1) the length of time that an individual has served on the City Council, and (2) whether or not the nominee has previously had the opportunity to serve as Mayor Pro Tempore. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. The Mayor or any member of the City Council may nominate a member to serve as Mayor Pro Tempore. A copy of the Council Policy CP-99-01 is attached and the recent Mayor Pro Tempore history is as follows:

CITY COUNCIL MAYOR PRO TEMPORE RECENT HISTORY

	From:	To:
Council Member Constantine	January 18, 2012	December 5, 2012

Council Member Siebert	December 5, 2012	January 15, 2014
Council Member Librers	January 15, 2014	December 3, 2014
Council Member Carr	December 3, 2014	December 2, 2015
Council Member Constantine	December 2, 2015	December 14, 2016
Council Member Carr	December 14, 2016	January 17, 2018
Council Member Constantine	January 17, 2018	December 19, 2018

In addition, annually, the City Council reviews the listing of appointments to outside agencies and the City Council subsequently approves the appointments.

The listing can be found at the following link:

<http://www.morgan-hill.ca.gov/DocumentCenter/View/12020/City-Council-Outside-Agency-Appointments-?bidId=>

Staff will return to the City Council at the goal setting workshop on January 25 and 26, 2019 to further discuss the appointments.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the process for selection of the Mayor Pro Tempore, as well as provide a listing of the City Council appointments to outside agencies.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council takes action to select a Council Member to serve as the Mayor Pro Tempore and to appoint Council members to outside agencies annually.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts.

CEQA (California Environmental Quality Act):

Selection of a Mayor Pro Tempore and reviewing the appointment listing are administrative governmental activities that will not result in direct or indirect physical changes in the environment. Appropriate environmental review will occur as projects are identified, designed, and implemented.

LINKS/ATTACHMENTS:

1. CP-99-01 Selection of Mayor Pro Tem 12-19-16.pdf
2. -City Council Appointments to Outside Agencies (weblink)

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 99-01

(Rescinded CP 94-05, CP 98-03)

SUBJECT: SELECTION OF MAYOR PRO TEMPORE**DATE: December 17, 1999, Reviewed 6/27/07,****AMENDED: August 24, 2005, December 19, 2016**

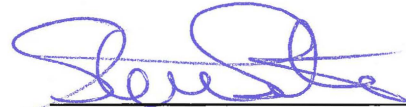
It is the policy of the City Council of the City of Morgan Hill to annually nominate and select a member to serve as Mayor Pro Tempore for a one year term. The Mayor or any member of the City Council may nominate a member, who shall be selected by majority vote.

In order to provide every member with an opportunity to serve as Mayor Pro Tempore, it is the policy of the City Council that nominations be made on the basis of the length of time that a nominee has served on the City Council, and whether or not the nominee has previously had the opportunity to serve. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. If more than one individual is nominated, the first person to receive a majority of the votes shall be selected to serve.

Selection of Mayor Pro Tempore shall occur at the first regular meeting of the City Council held after the general municipal election, and after the new members have been sworn in and have taken their seats; or at the second regular meeting in November in each year that a general municipal election is not held.

The Mayor Pro Tempore shall serve at the pleasure of the City Council and may be removed from the appointed position by a majority vote of the Council. The City Council shall fill all vacancies for Mayor Pro Tempore in accordance with the selection procedure set forth herein.

This policy shall remain in effect until modified by the City Council.

APPROVED:**STEVE TATE, MAYOR**

Attachment: CP-99-01 Selection of Mayor Pro Tem 12-19-16.pdf (2121 : Selection of Mayor Pro Tem)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

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

ACCEPT PUBLIC COMMENT REGARDING THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID)

RECOMMENDATION(S)

Receive and accept public comment on the formation of a Morgan Hill TBID.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications
Financial Stewardship
Regional Initiatives

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
Public Safety Master Plan

REPORT NARRATIVE:

On July 18, 2018, the City Council directed staff to proceed with the creation of a Morgan Hill Tourism Business Improvement District (MHTBID). On November 7, 2018 the City Council approved the District Management Plan (Plan) (Attachment No. 1) that identifies the proposed MHTBID's boundary, budget, services, and governance and directed staff to circulate the MHTBID Petition Form. On November 28, 2018, the Council approved the Resolution of Intention that directed staff to notice and set a Public Hearing for January 23, 2019, at which time the Council will consider adoption of a resolution establishing the MHTBID.

The purpose of this agenda item is to provide an additional opportunity for public comment prior to the Public Hearing scheduled for January 23, 2019. No Council action is required at this time.

If approved, the MHTBID will establish an annual assessment rate of 1.5% of gross short-term room rental revenue, producing an annual budget of approximately \$410,000. These funds will be managed by a non-profit board and will be used for

marketing and sales promotions as well as sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales at assessed lodging businesses.

BACKGROUND:

Tourism Business Improvement District (TBID)

In California, Tourism Business Improvement Districts (TBIDs) for general law cities are formed under the provisions of both the Property and Business Improvement District Law of 1994 and, the Parking and Business Improvement Area Law of 1989. California TBIDs are also subject to other laws designed to ensure approval by business owners paying the assessment and accountability by the managing body to those business owners.

TBIDs are formed by a majority of assessed businesses consenting and with local government approval. Funds raised through TBIDs are returned to a non-profit corporation which contracts with the local government to manage those funds. Several accountability mechanisms ensure funds are spent in accordance with a specifically defined Management District Plan that includes marketing and sales programs approved by the businesses paying into the MHTBID.

Reasons for TBIDs' growing popularity among tourism-related businesses are:

- ☐ Funds cannot be spent on programs that do not benefit the businesses paying the assessment
- ☐ Funds cannot be diverted by local government for other programs
- ☐ The TBID's Owners Association (Visit Morgan Hill) Board of Directors approves the expenditure and use of the funds

Establishing the proposed MHTBID will help fund and attract sports/recreation events that are designed to increase overnight visitation and room night sales to assessed lodging businesses. Because MHTBID programs are designed to increase visitation to the City, there may be an increase in transient occupancy tax and sales tax collections. In preparation for the creation of a MHTBID, the City contracted with Civitas Advisors, Inc. (Civitas), one of the leading entities assisting with creation of Tourism Business Improvement Districts in California.

Management District Plan

A Management District Plan (Plan) identifies the proposed MHTBID's boundary, budget, services, and governance. Below is a summary of the parameters of the proposed MHTBID's Plan:

- ☐ **Boundary**: All lodging businesses located within the boundaries of the City of Morgan Hill.
- ☐ **Term**: Five (5)-year assessment beginning January 1, 2019 through December

31, 2023, with an annual 30-day period of protest for termination by assessed businesses.

- **Budget**: Annual assessment rate of 1.5% (on top of the existing 10% TOT) of gross short-term room rental revenue producing an annual budget of approximately \$410,000.
- **Mission**: Marketing and sales promotions as well as sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales at assessed lodging businesses.
- **Governance**: A new non-profit corporation, Visit Morgan Hill, is proposed to be formed to serve as the “Owner’s Association” charged with management of funds and implementation of the MHTBID Management District Plan. An annual report is required to be provided to the City Council within 90 days of the anniversary of the effective date of the MHTBID assessment.

The proposed MHTBID Management District Plan proposes most of the funds (70%) be allocated to Sales and Marketing, 15% to Administration and Operations, 11% to Sports Facility Management, 2% to City (as a service fee for administering and collecting the MHTBID assessment) and 2% for Contingency/Reserve.

The City Council has the right, pursuant to Streets and Highway Code §36651, to identify the body that shall implement the proposed program (Owner’s Association).

Owners’ Association Makeup (Visit Morgan Hill Board of Directors):

The Owner’s Association, Visit Morgan Hill, will be a private entity, separate from the City of Morgan Hill. The proposed make-up of the Visit Morgan Hill Board of Directors includes four (4) lodging representatives, two (2) City of Morgan Hill representatives and three (3) community representatives that represent areas associated with wineries, tourism, and sports recreation tourism. On November 28, 2018, the City Council appointed the Public Services Director and the Economic Development Director as the two City representatives to the Owner’s Association Board.

On December 4, 2018, the hotels discussed the corporate formation process, bylaw parameters and selected the following hotel representatives to the Owner’s Association Board:

- Andrew Firestone, La Quinta Hotel
- Michael Meredith, Hampton Inn
- Bina Roy Desai, Holiday Inn Express
- Karen Mendez, Marriott Hotels

The remaining directors will be appointed by the Visit Morgan Hill Board of Directors. The City and MHTBID steering committee are currently soliciting interest from the community for the three community seats and is scheduled to hold interviews on January 23, 2019.

Oversight

The Owner's Association is required to present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650, within ninety (90) days of the MHTBID's anniversary (January 1). The annual report shall include:

- ☐ Any proposed changes to the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- ☐ The improvements and activities to be provided for that fiscal year.
- ☐ An estimate of the cost of providing the improvements and the activities for that fiscal year.
- ☐ The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- ☐ The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- ☐ The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

The MHTBID is expected to generate \$410,000 annually. City Council will need to enter into a contract with the Owner's Association and through this contract the City can stipulate the repayment of the commitments made by the lodging businesses, including repayment of the costs associated with the creation of the MHTBID (\$45,000) and 50% of the 2018 Amgen Tour of California expenses (\$27,500).

COMMUNITY ENGAGEMENT: Inform

Staff met on several occasions with hotel representatives, as well as, representatives from the Morgan Hill Chamber of Commerce related to the MHTBID.

ALTERNATIVE ACTIONS:

The City Council could decide to not move forward with the establishment of a MHTBID.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 7, 2018, received an update on the Economic Blueprint activities, which highlighted a general consensus between the lodging operators and Morgan Hill around the need and desire to create a TBID/Destination management organization. Staff contracted with Civitas, leading consulting firm for implementing TBIDs. Council directed staff to pursue a community survey on Revenue measures for the November 2018 ballot.

On April 18, 2018, Council received community survey results from Godbe Research, regarding the revenue measures of Cannabis and TOT.

On July 18, 2018, City Council approved placing the transient occupancy tax increase of 1% on the November 2018 ballot, and directed staff to continue steps to establish a TBID. Since then, the City staff has worked with Civitas and hotel representatives to develop and fine tune the Management Plan.

On July 18, 2018, the City Council directed staff to proceed with the creation of a Morgan Hill Tourism Business Improvement District (MHTBID).

On November 7, 2018 the City Council approved the Management District Plan (Plan) that identifies the proposed MHTBID's boundary, budget, services, and governance and directed staff to circulate the MHTBID Petition Form.

On November 28, 2018, the Council approved the Resolution of Intention that directed staff to issue MHTBID Public Notice and set the Public Hearing for January 23, 2019.

FISCAL AND RESOURCE IMPACT:

The costs to establish the MHTBID are included in the FY 2018-19 General Fund budget.

If the City approves the creation of a MHTBID with a 1.5%, gross short-term room rental assessment rate, the MHTBID is estimated to generate \$410,000 annually. These funds could only be used for tourism promotions and be managed by the private non-profit corporation (Owner's Association). The City will retain a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration.

In the first year, the City expects reimbursement of \$27,500 for the 2018 Amgen Tour of California related expenses, and \$45,000 for the costs associated with the creation of the MHTBID.

CEQA (California Environmental Quality Act):

Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are exempt activities.

LINKS/ATTACHMENTS:

1. MHTBID Plan (web link)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Terry Linder, Senior Planner
APPROVED BY: City Manager

DEVELOPMENT AGREEMENT APPLICATION DA2018-0002: E. DUNNE-YOUNG: REQUEST FOR APPROVAL OF A DEVELOPMENT AGREEMENT FOR THE FIRST 20 UNITS OF A 46-UNIT, THREE STORY, MULTI-FAMILY RESIDENTIAL CONDOMINIUM PROJECT PROPOSED ON A 3.5 ACRE PARCEL LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE, ADJACENT TO THE NORTH SIDE OF THE MORGAN HILL KINDER CARE LEARNING CENTER AT 605 E. DUNNE AVENUE.

RECOMMENDATION(S)

1. Open and close public hearing;
2. Waive the first and second reading of Development Agreement Ordinance; and
3. Introduce the Development Agreement Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Community Engagement and Messaging

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATION:

Is the Development Agreement consistent with the required findings?

PROJECT DESCRIPTION:

Diana Dunne Investors, LLC proposes a 46-unit, three-story, condominium project on an undeveloped, 3.5-acre site located on the north side of East Dunne Avenue, adjacent to the north side of Kinder Care Learning Center. A Development Agreement to incorporate awarded Residential Development Control System (RDACS) allotments is proposed to memorialize the RDACS public benefit commitments for the first phase, incorporating 20 Fiscal Year (FY) 2019-20 allotments. The Development Agreement outlines the benefits provided to the City, specifies the project duration, permitted uses of the subject property, and the general location and density or intensity of the uses.

The project proposes 16.8 dwelling units per net acre which complies with the Residential Attached Medium General Plan designation requiring 16-24 dwelling units per acre. The project will introduce three story (39 feet) multi-family attached units into the area between Diana and East Dunne Avenue. The project as proposed meets all

zoning requirements and exceeds the minimum parking required for Residential multi-family development.

The Transportation Impact Analysis (TIA) completed for the adjacent Las Colinas project to the south, included a review of three alternative circulation plans for the area between Diana Avenue, Dunne Avenue, and west of Walnut Grove Drive. Alternative No. 3 (preferred plan) was adopted for the project. The circulation proposed within the current project is consistent with the preferred TIA Alternative No. 3.

On November 27, 2018, the Planning Commission adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project. The Commission also approved a non-vesting tentative map subdividing the property into three parcels each representing a phase of the project: Parcel 1/Phase 1 (1.83 acres) would include 20 condominium units, completion of Andalusia Drive from East Dunne Avenue north to Saint Anthony Drive, the extension of Saint Anthony Drive west to east and the construction of two tot-lots and common area on the north side of Saint Anthony Drive. Parcel 2/Phase 2 (1.06 acres) would include 15 condominium units and common open space. Parcel 3 (0.58) acres would include 11 condominiums and associated parking improvements. Pursuant to Morgan Hill Municipal Code Section 18.116.040 (C), Consideration of proposed Development Agreement—Recommendation by Planning Commission, the Commission reviewed the required findings and has recommended the City Council adopt the proposed Development Agreement. A weblink to the Planning Commission staff report and related exhibits is included in this report (Attachment No. 2).

COMMUNITY ENGAGEMENT: Involve/Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division requirements.

ALTERNATIVE ACTIONS:

The City Council could decide to deny the request for approval of the Development Agreement. This action could result in the loss or delay in the exercise of 20 FY 2019-20 allotments.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 17, 2018, the City Council adopted Ordinance No. 2266 amending the zoning designation on the property from R-2 3,500/RPD to R-3 to achieve consistency with the General Plan adopted in July 2016.

On June 20, 2018, the City Council adopted Resolution No.18-050 reaffirming the Planning Commission's award of 20, FY 2019-20 residential building allotments for RDCS2017-0012: E. Dunne-Young.

On November 27, 2018, the Planning Commission unanimously (5-0-2 vote, McKay and Martinez-Beltran recused themselves) approved the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, and tentative map, and recommended

City Council approval of the project's phase one development agreement.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act): Project

An Initial Study and Mitigated Negative Declaration (IS/MND) have been completed and approved by the Planning Commission as part of the subdivision application approval in accordance with the requirements of CEQA. The project results in no significant environmental impacts with the inclusion of Mitigation Measures for Biological Resources (Burrowing owl, Raptors and Tree protection) and Noise to address short-term construction impacts.

LINKS/ATTACHMENTS:

1. Development Agreement Ordinance
2. Planning Commission Staff Report (web link)

ORDINANCE NO. , NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING
A DEVELOPMENT AGREEMENT DA2018-0002: E. DUNNE-
YOUNG FOR A 20-UNIT PORTION OF A 46-UNIT RESIDENTIAL
DEVELOPMENT ON A 3.5-ACRE SITE LOCATED ON THE
NORTH SIDE OF THE KINDERCARE FACILITY LOCATED AT
605 DUNNE AVENUE. (APN 726-02-007)****THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, awarded 20 building allotments for application RDCS 2017-0012: EAST DUNNE-YOUNG for FY 2019-20.

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance number 1594, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide 46, multi-family residential units. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 6. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing development project is a permitted use within the Residential Attached Medium zoning district and is compatible with the surrounding residential and commercial uses.

SECTION 7. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 8. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 9. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study and the Mitigated Negative Declaration and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 11. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 12. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 13. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 96933 of the Government Code.

City of Morgan Hill
Ordinance No. , New Series
Page 3 of 3

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 19th DAY OF DECEMBER 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF JANUARY 2019, 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:

Attachment: Development Agreement Ordinance (2095 : E. Dunne-Young DA)

❧ CERTIFICATION ❧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the ____ day of _____ 2019.

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

DATE:

Attachment: Development Agreement Ordinance (2095 : E: Dunne-Young DA)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

DIANA DUNNE INVESTORS LLC

REGARDING

ANDALUSIA RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Development Agreement Ordinance (2095 : E: Dunne-Young DA)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
DIANA DUNNE INVESTORS LLC REGARDING THE ANDALUSIA RESIDENTIAL
DEVELOPMENT PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Diana Dunne Investors, a **California limited liability company**, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. **RDCS Application:** RDCS 2017-0012: E. Dunne-Young, 20 FY 2019-20 allotments
2. **EA 2018-0014: E. Dunne-Young;**
3. **SD 2018-0004: E. Dunne-Young;**

Attachment: Development Agreement Ordinance (2095 : E. Dunne-Young DA)

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On June 20, 2018, the Morgan Hill City Council confirmed the award of allotments for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

G. On October 23, 2018, November 13 and November 27, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1 **ADMINISTRATION**

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that this Agreement's provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) "**Director**" shall mean the Director of Community Development, and his or her designee.

- (5) **“Existing Approvals”** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **“Existing City Laws”** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) **“Impact Fees”** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.
- (8) **“Legal Effect”** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) **“New City Laws”** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **“Legal Effect”** after the Effective Date of this Agreement, and that applies City wide.
- (10) **“Project”** means the development containing 20, three story, condominium units and .83 acres of open space, as more particularly described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **“Project Approvals”** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **“Property”** shall mean that certain real property consisting of approximately 3.5 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **“RDCS”** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **“Second Notice”** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) **“Subdivision Document”** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (16) **“Subsequent Approvals” and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 **Term.**

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2 APPLICABLE LAW

2.01 **Applicable Law—Generally.**

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Existing Approvals.
- (3) The Subsequent Approvals provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

- (5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent

of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("Commitments") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or

higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS application – RDCS 2017 – 0012: E. Dunne-Young approved on June 20, 2018, by the City Council and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations,

and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3 PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("Other Entity") as may be necessary to the development of, or the provision of services and facilities to, the Project ("Other Permits").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the

ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement. Future minor amendments, such as allotment adjustments for ongoing projects, shall be approved by Planning Commission resolution.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, Substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director and approved by the City Attorney and signed by the Developer.

ARTICLE 4 **DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT**

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the

manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist, and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute

informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs) and shall indemnify and hold harmless

City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement

("Assignee"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5 GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of

liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:
 Per Occurrence \$1,000,000
 Limit of Liability for Property Damage:
 Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Tel: (408) 779-7259
 Fax: (408) 779-3117

With a Copy To: City Attorney
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Tel: (408) 779-7271
 Fax: (408) 779-1592

With a Copy To: Community Development Director
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Tel: (408) 779-7271
 Fax: (408) 779-1592

If to Developer: Diana Dunne Investors LLC
 c/o Dick Oliver
 385 Woodview Ave, Suite 100
 Morgan Hill, CA 95037

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

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

Attachment: Development Agreement Ordinance (2095 : E. Dunne-Young DA)

(0) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties are on the following page.

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IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Diana Dunne Inv. LLC

s/ _____

James Pedicini
President

Date: November 28, 2018

Corporate entities must provide a second signature:

s/ _____

Name/Title [print]

Date: _____

Adopted by Ordinance No. _____
by action of City Council on _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)

Attachment: Development Agreement Ordinance (2095 : E. Dunne-Young DA)

NOTARY ACKNOWLEDGEMENT

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

State of California
County of Santa Clara

On November 28, 2018 before me, Jamie Jessel, Notary Public
(insert name and title of the officer)

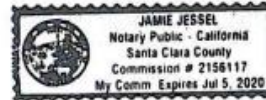
personally appeared James A. Pedicini

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

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

WITNESS my hand and official seal.

Signature Jamie Jessel (Seal)



ROA- Diana Dunne Inv. LLC

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED

LEGAL DESCRIPTION

Real property in the City of Morgan Hill , County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN THE CITY OF MORGAN HILL OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PORTION OF LOT 71 MORGAN HILL RANCH, MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 21, 1986 IN BOOK 560 OF MAPS, AT PAGE 1.

PARCEL TWO:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THE NORTHEAST 30 FEET OF PARCEL B, AS SHOWN ON PARCEL MAP ABOVE REFERRED TO.

APN: 726-02-007

Attachment: Development Agreement Ordinance (2095 : E: Dunne-Young DA)

EXHIBIT B**DESCRIPTION OF PROJECT**

PHASE 1 (20 UNITS) OF RDCA APPLICATION 2017-0012: E. DUNNE YOUNG.

Attachment: Development Agreement Ordinance (2095 : E. Dunne-Young DA)

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to Phase 1 (20 units) of the Development proposed in RDCS application 2017-0012 E. Dunne -Young and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.	Schools			
4.	Student Transportation Improvements	\$5000 per unit to contribute to the City's Safe Access to Schools Fund	Prior to issuance of building permit	\$5000/Unit
2.	Location			
6.a	Water distribution lines	Local water distribution lines are of sufficient size to serve the proposed project. The project does not require replacing existing local water distribution lines with larger diameter pipes. New water mains to serve the site do not need to be installed.	NA	NA
6.b	Wastewater collection	The existing wastewater collection system is sufficient to serve the proposed project. The project does not require extending or replacing existing sewer pipes or lift stations outside of the project site.	NA	NA
6.c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the project.	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.	Affordable Housing			
2.	Voluntary Contribution to Housing Fund	NA	NA	NA
3.	Development of Affordable Units	Developer committed to 4 BMR's - 3 at 80% AMI and 1 at 90% AMI. Phase 1 BMR's will be located in Bldg. #2 - unit #7 and Bldg. #4 - unit #15. Unit type for BMR's is AZ – approximately 1628 sq. feet (the same size as Unit type A - Market Rate Units) The Project shall provide in Phase 1 at least 2 units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. Applicant commits as part of phase one, two (2), low income BMR(s): 3-bedroom, 2 bath and approximately 1628 sq. ft of living area. BMR sales price determination is based on median income and household size. All BMR units, including Moderate BMRs are deed restricted. Final BMR sales price is based on verification of property zoning and housing types. Low Income for this BMR commitment is defined as 80% Area Median Income and Moderate Income for this BMR commitment is defined as 90% Area Median Income (as determined and updated annually by the State HCD). Individual unit prices are dependent on unit sizes/bedroom counts and subject to the prices shown in the City of Morgan Hill's "New BMR Sales Pricing Index" table. BMRs are also subject to the requirements listed under "Additional Requirements" and as referenced per the Affordable Housing Agreement (AHA).	Prior to issuance of a building permit.	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		BMR units are subject to the following development standards: 1. Location. BMR units shall be distributed evenly throughout the project. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home. 6. Minimum Interior standard finishes will be as follows a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener 7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. At least one (1) BMR unit shall be constructed before or concurrently with every 11th market rate unit constructed. The last two (2) market rate units to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units		
4.	Housing Diversity			
1.	Accessory Dwelling Units	NA	NA	NA
2.	Diversity of Housing Types	Commits to two (2) different types of Housing - Triplex or Quadplex and Multi-Family	Design Permit approval	NA
3.	Variation in Housing Size	10 units will be 2 bedroom and approximately 1628 sq. ft. 3 units will be 3 bedroom and approximately 1850 sq. ft. 7 units will be 4 bedroom and approximately 1725-1845 sq. ft.	Design Permit approval	NA
4.	Small Units	NA	NA	NA
5.	Housing Stock Diversity	100% Owner Occupied Multi-Family Housing	NA	NA
6.	Single-Story Homes	NA	NA	NA
5.	Parks and Open Space			
1.	Park Fund Contribution	NA	NA	NA
2.	Excess Park Land	NA	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.	Agricultural Conservation or Open Space Easement	NA	NA	NA
4.	Agricultural Buffer	NA	NA	NA
5.	Agricultural Preservation or Open Space Fund Contribution	The project contributes to the City's agriculture preservation or open space fund beyond the minimum requirement. The project shall pay \$3,899.09 per unit.	Paid prior to unit occupancy	\$3,899.09 per unit
6.	On-Site Recreational Amenities	As part of phase one (20 units) project shall provide one of the two tot lots each with a minimum of three age-appropriate activities.	Design Permit approval	NA
7.	Amenities for Age Group	Project provides an outdoor picnic/ barbeque area for adults. The second "gathering area" would be a space for grandparents to watch their grandchildren plan. Seniors could also use the first "gathering area."	Future Phases	NA
8.	Public Gathering Places	Gathering place #1 with seat wall, trellis, wind-break, adjacent to public street, visible to Plaza, for public, residents, senior, adults and guests. Gathering Place #2 also. Cost is at least \$1,000/unit.	Design Permit approval	\$1000/unit
9.	Proximity to Public Parks	Project is within 1/4 mile of Diana Park and Stone Creek Park.	NA	NA
10.	Open Space Design	Project will maintain appropriate open space size, edges of Plaza are the buildings and landscaping. A plaza visible from street & at least 6-units. 2nd tot lot (for toddlers) is provided which is viewable from units and away from streets for safety. Pedestrian walks are provided for access.	Future Phases	NA
6.	Environmental Protection			
1.	Energy Efficiency	Project will provide a 5% reduction in its energy budget compared to the standard design building, as calculated by Title 24, Part 6 Compliance Software certified by the California Energy Commission.	Prior to issuance of a building permit.	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.	On-site Solar Energy Generation	NA	NA	NA
3.	Indoor Water Use	projects that exceed the minimum indoor water efficiency and conservation requirements by 5%. Project shall demonstrate attainment of water efficiency standards utilizing methods consistent with Cal Green and industry standards.	Prior to issuance of a building permit.	NA
4.a	Natural Turf	Less than 50% of landscaped area contains natural turf.	Prior to issuance of a building permit.	NA
4.b	No Natural Turf Outside Common Areas	Project will contain no natural turf outside common areas used for active play	Prior to issuance of a building permit.	NA
4.c	Exceeds Outdoor Water Efficiency 10%	NA	NA	NA
4.d	Exceeds Outdoor Water Efficiency 20%	NA	NA	NA
4.e	Exceeds Outdoor Water Efficiency 30%	NA	NA	NA
4.f	Subsurface Irrigation	NA	NA	NA
5.	Sustainable Site and Building Design	Project agrees to a minimum of 94 BIG points, over the minimum required by Chapter 15.65 of the City of Morgan Hill Municipal Code.	Prior to issuance of a building permit.	NA
7.	Transportation			
1.	Bicycle and Pedestrian Improvements	NA	NA	NA
2.	Transit Improvements		NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		NA		
3.	Off-Site Street and Parking Improvements or Fund Contribution	NA	NA	NA
4.a	Transportation Demand Management fund	NA	NA	NA
4.b	Transportation Demand Management (rental projects)	NA	NA	NA
5.a	Aligns and connects streets	The project aligns and connects streets intersecting the project boundary with all adjoining streets.	Subdivision Map approval	NA
5.b	Extends Streets	The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	Subdivision Map approval	NA
5.c	Off-street bicycle and pedestrian connections	The project provides off-street bicycle and pedestrian connections to adjacent destinations, including parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the general public.	Improvement Plan approval	NA
6.a	Complete Streets	The project incorporates “complete streets” that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities.	Design Permit approval	NA
6.b	Enhanced bicycle and pedestrian improvements	The project incorporates enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage.	Design Permit approval	NA
6.c	Direct pedestrian connections	The project provides direct pedestrian connections from units to common open space, recreational facilities, and other project amenities.	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.d	Neighborhood traffic management techniques	The project incorporates neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulb-outs, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Design Permit approval	NA
7.	Electric Vehicle Charging Stations	Project will provide four publicly available charging stations	Design Permit approval	NA
8.	Municipal Infrastructure			
1.	Water Infrastructure	NA	NA	NA
2.	Wastewater Infrastructure	NA	NA	NA
3.a	Reduces off-site storm water flows	The project reduces the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	Building permit approval	NA
3.b	Off-site storm water improvements	The project provides off-site stormwater infrastructure improvements beyond minimum requirements.	Improvement Plan approval	\$1000/unit
4.	Infrastructure and Services Fund Contribution	Project will contribute to the City's infrastructure and Services Fund.	NA	NA
5.a	Installs broadband conduit in public right-of-way	The project installs broadband conduit in the public right-of way.	Improvement plan approval	NA
5.b	Installs broadband conduit to home/buildings	The project installs broadband conduit from the public right-of-way to each home or occupied building in the project.	Building permit approval	NA
5.c	Pre-installs indoor conduit	The project pre-installs indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	Building permit approval	NA
5.d	Provides primary broadband service	NA	NA	NA
9.	Project Quality			
1.a	Front Porches	A minimum of 50 percent of homes facing a street or common interior courtyard include a front porch. Porches must be part of the	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		home's primary entrance, connected to the front yard or common interior courtyard, a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard.		
1.b	Balconies Facing Street or Courtyard	A minimum of 25 percent of homes facing a street or common interior courtyard include a balcony overlooking a public space. Balconies must provide usable private outdoor space for residents, be in full view of a street or common interior courtyard, and face away from neighbors' yards to maintain privacy. 25 percent of upper floor units facing a street or common interior courtyard include a balcony.	Design Permit approval	NA
1.c	Balconies Facing Alleys	A minimum of 25 percent of homes abutting a shared alley include a balcony overlooking the alley, parking area, or drive aisle.	Design Permit approval	NA
1.d	Façade Articulation and Finishes	Front building facades feature quality façade articulation and finishes to break up blank, flat walls and provide visual interest.	Design Permit approval	NA
1.e	360-degree Architecture	The project features full and consistent articulation and design detail on all building facades.	Design Permit approval	NA
1.f	Corner Treatments	For projects where the side or rear of a home faces a street or common courtyard street, the project incorporates enhanced treatments of these side and rear facades to support a welcoming and visually interesting public realm.	Design Permit approval	NA
1.g	Colors and Materials	The project incorporates a mix of exterior finish materials and colors that is compatible with the architecture of the homes and enhances visual interest.	Design Permit approval	NA
1.h	Multi-family Ground Level Entrances	Project provides as many private, exterior ground-level entries to individual units as possible.	Design Permit approval	NA
1.i	Individual Residences-Attached Projects	Large buildings are architecturally subdivided so that they appear as individual residences or small groups of units. Buildings incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	Design Permit approval	NA
1.j	Residential-Scale Design	Buildings incorporate design details, including but not limited to	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
	Elements- Attached Projects	porches, projections, eaves, bay windows, and other similar architectural elements, that provide residential scale and help to break up the building mass.		
2.a	Entrance Orientation-Collector and Residential Streets	The primary entrance of homes face streets along the project perimeter	Design Permit approval	NA
2.b	Entrance Orientation-Single-Family Detached Projects/Arterial Streets	NA	NA	NA
2.c	Variation in Building Height	The project incorporates variation in building heights to minimize monotony and enhance visual interest.	Design Permit approval	NA
2.d	Variation in Building Placement	The project incorporates variation in building front setbacks and placement on lots to minimize monotony and enhance visual interest.	Design Permit approval	NA
2.e	Roof Line Variation	Variation in roof lines through changes in roof height and form break of building massing and create visual interest.	Design Permit approval	NA
2.f	Upper Floor Setback-Detached Homes	NA	NA	NA
2.g	Upper Floor Setback-Attached Homes	NA	NA	NA
2.h	Height and Project Edge-Attached Projects	NA	NA	NA
2.i	Separate Structures-Attached Projects	Divides units into multiple separate structures. Maximum 10 units maximum per structure	Design Permit approval	NA
2.j	Adjacent Building Types-Attached Projects	NA	NA	NA
3.a	Landscaping-Parkway Design	The project provides a landscape parkway along the street 50 percent wider than the minimum required for the street type. Street trees and pedestrian-scale lighting within or adjacent to the parkway exceed minimum requirements and help create a distinctive and	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		memorable design environment.		
3.b	Landscaping-Visual Relief	Landscaping is placed and designed to minimize the appearance of building bulk and mass and to emphasize building features that create visual interest and support a pedestrian-friendly environment.	Design Permit approval	NA
3.c	Exterior Lighting	Exterior lighting fixtures are architecturally integrated with the primary building's design, style, material, and colors	Design Permit approval	NA
3.d	Entrance Pathways	No more than 50 percent of multi-family homes feature an identical garage configuration. Garage configuration may include front loaded attached, front loaded detached, side loaded, and rear loaded garages.	Design Permit approval	NA
3.e	Public/Private Transitions	NA	NA	NA
3.f	Mechanical Equipment	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA
4.a	Garage Door Orientation	Garage doors do not face the front street. Garages are configured on the site such that garage doors face either the side or rear of the property.	Design Permit approval	NA
4.b	Garage Door Design-Minimizing Visual Dominance	NA	NA	NA
4.c	Garage Door Design-Detailing	Garage doors feature enhanced windows or architectural detailing consistent with the main dwelling.	Design Permit approval	NA
4.d	Garage Configuration	NA	NA	NA
4.e	Parking-Attached Projects	The project locates parking lots serving attached residential units at the rear or side of the site to allow a majority of dwelling units to front on the street or an internal courtyard. Parking is not located between a building and any public sidewalk or street.	Design Permit approval	NA
4.f	Screening	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.g	Landscaping-Attached Projects	The project incorporates landscaping to soften the appearance of off-street parking areas and private drive aisles in attached single family and multi-family projects	Design Permit approval	NA
4.h	Setback Areas	NA	NA	NA
4.i	Pavement Design	Areas for vehicle parking and circulation feature enhanced paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	Design Permit approval	NA
4.j	Cluster Units	NA	NA	NA
5.	Public Art	NA	NA	NA
6.a	Home Automation	The project installs home automation devices within units.	Prior to unit occupancy	\$2000/unit
6.b	Home Automation (reduce energy)	The project installs home automation devices within units that reduce energy consumptions, such as devices that automatically adjust lighting, heating, and air conditioning.	Prior to unit occupancy	\$1000/unit

R:\PLANNING\WP51\Land Agreements\DA\2018\DA2018-0002 E. Dunne - Young\PC CC Rpts\CC Ord w DA.docx

Attachment: Development Agreement Ordinance (2095 : E. Dunne-Young DA)

From: [D. Muirhead](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: Morgan Hill City Council Meeting December 19, 2018 Item #7: Main Avenue Bike Lane and Sidewalk Project [comment]
Date: Monday, December 17, 2018 3:21:17 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 19, 2018
Item #7: Main Avenue Bike Lane and Sidewalk Project
Thank you for your consideration.

A) I would like staff to identify, using a map with insets, where sidewalks are to be installed as part of this project and where other sidewalks are appropriate but appear not to be part of this project.

B) It appears to me that, in spite of claims that this is consistent with the CIP and Bikeways, Trails, Parks and Recreation (BTPR) Master Plan, that we do not know

- 1) what kind of bike lanes are being created (BTPR has two types)
- 2) what is the length of this project (it is much less than those envisioned by the BTPR master plan)

C) I will end with how this item could have been stronger as a non-Consent advocacy message. With changes on the Council and at the Police Department, this was a missed opportunity to remind us that we have committed to Vision Zero and what we must do to accomplish those objectives.

-----+-----+-----+-----+-----+-----+-----+-----+

A) The Staff Report Narrative states that the project includes 306 lineal feet of road widening and new sidewalk (approximately 2,034 square feet of right of way will be acquired). It refers to CIP Project 580018, but the CIP says the project will widen two sections of roadway to install pedestrian sidewalks, then only identifies the addition of sidewalks on Main Avenue next to El Toro School.

The Staff Report map shows the "306' Road Widening", which I believe is from Grand Prix Way at Main to El Toro school boundary fence.

- 1) There is no sidewalk for approximately 300 feet on the north side on Main between Serene Drive and Laurel Road, just bare dirt next to marked shoulder.

Note that the street is wider and has a sidewalk on the south side of Main at that location.

- 2) The north-side west approach to the 101 bridge is approximately 300 feet of mostly dirt starting at Laurel but with some old asphalt at the bridge transition. From memory, the south-side approach is open dirt.
- 3) The north-side east approach to the 101 bridge is approx 400 feet ending at Condit of dirt next to the roadway and old asphalt farther from the road edge. From memory, the south-side approach is open dirt.

4) The bridge has a sidewalk on the north side, but not on the south side.

-----+-----+-----+-----+-----+-----+-----+-----+-----+
B) The Staff Report Narrative identifies new bike lanes, but not their type, along Main Avenue between Butterfield Boulevard and Condit Road. The funding agreement also omits lane type in describing a project to construct bicycle lanes on Main Avenue between Butterfield and Condit Roads. The CIP just says to install bike lanes on Main Avenue between Butterfield Boulevard and Condit Road.

Chapter 4 of BTPR recommends

Protected Bike Lanes (Class IV)

B-A1: E. Main Avenue from Butterfield Blvd to Hill Rd
and Chapter 5 recommends

Protected Bike Lanes: E Main Ave from Monterey Rd to Hill Rd
(Live Oak High School Access and Coyote Creek Connection)
(Interim step Buffered Bike Lanes)

The CIP Project Justification says the bike lane project is a recommended high priority connection project and lists the BTPR and Vision Zero as Strategic Planning Documents.

-----+-----+-----+-----+-----+-----+-----+-----+-----+
C) From your Vision Zero planning document of January 2018, a core principle that guides Vision Zero is:

2) Human life takes priority over mobility and other objectives of the road system. The street system should be safe for all users, for all modes of transportation, in all communities, and for people of all ages and abilities.

This project implements the Bikeways, Trails, Parks and Recreation Master Plan Policy Highlight to

Coordinate development of the bikeways and trail network with regional partner agencies and organizations

This project implements one Current Vision Zero Action for Engineering to Work collaboratively with the Morgan Hill Unified School District and County of Santa Clara Roads to identify locations where Safe Routes to Schools can be improved

This project implements one Current Vision Zero Action for Education and Engagement to

Continue to seek grant opportunities and legislative actions that support Vision Zero initiatives

The Staff Report Narrative says it is anticipated that this could reduce the number of single occupant vehicles on the road, reduce emissions, and promote a healthy lifestyle. I would like to see some effort in pre-project usage counts and anticipated usage estimates. Then couple that with Current Vision Zero Action for Evaluation to

Moving forward, the improved data collection analytics will help demonstrate how the implementation of Vision Zero Morgan Hill principles have decreased the number of injuries, until ultimately, we reach ZERO fatalities!

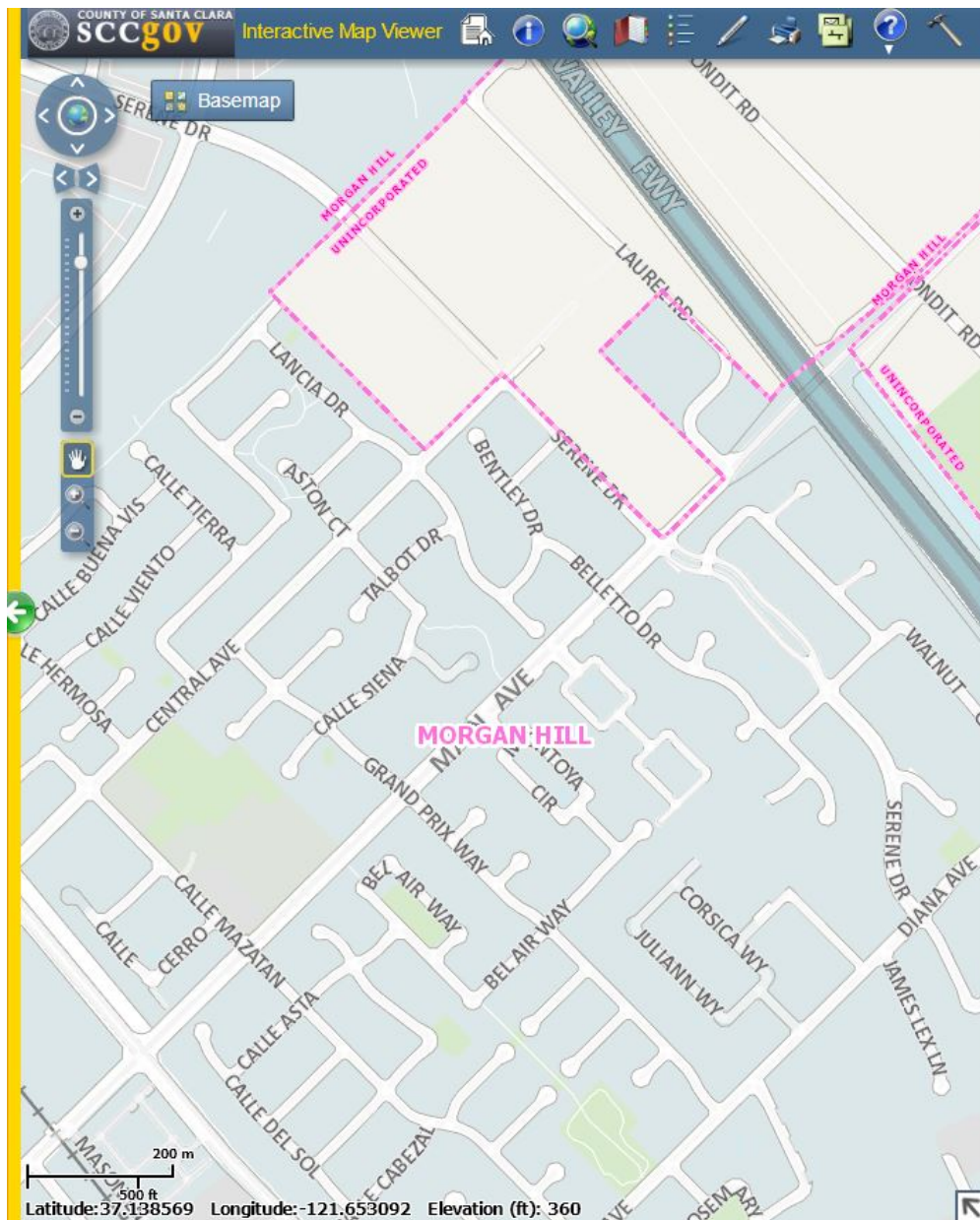
The Staff Report Narrative says that the proposed bikeway improvements are intended to encourage walking and biking. I am not aware of any

claim that bike lanes encourage walking, unless you walk in a bike lane because there is no sidewalk?

The Staff Report Narrative says the project between Butterfield Boulevard and Condit Road will provide a safer east/west connection to El Toro Elementary School, Live Oak High School, Butterfield Linear Path and Downtown. The BTPR has two extents, one from Butterfield Blvd to Hill Rd and the other from Monterey Rd to Hill Rd to provide access to Live Oak High School and connecting to Coyote Creek parkway. How about a consistent length and then sub-divide if multiple projects?

-----+-----+-----+-----+-----+-----+-----+-----+
MEETING DATE: December 19, 2018
PREPARED BY: David Gittleson, Associate Engineer

COMMUNITY ENGAGEMENT: Inform
During the design process, project information will be available via NextDoor, the City's email subscribers, and the City's website.



High Speed Rail

December 19, 2018 Item 13



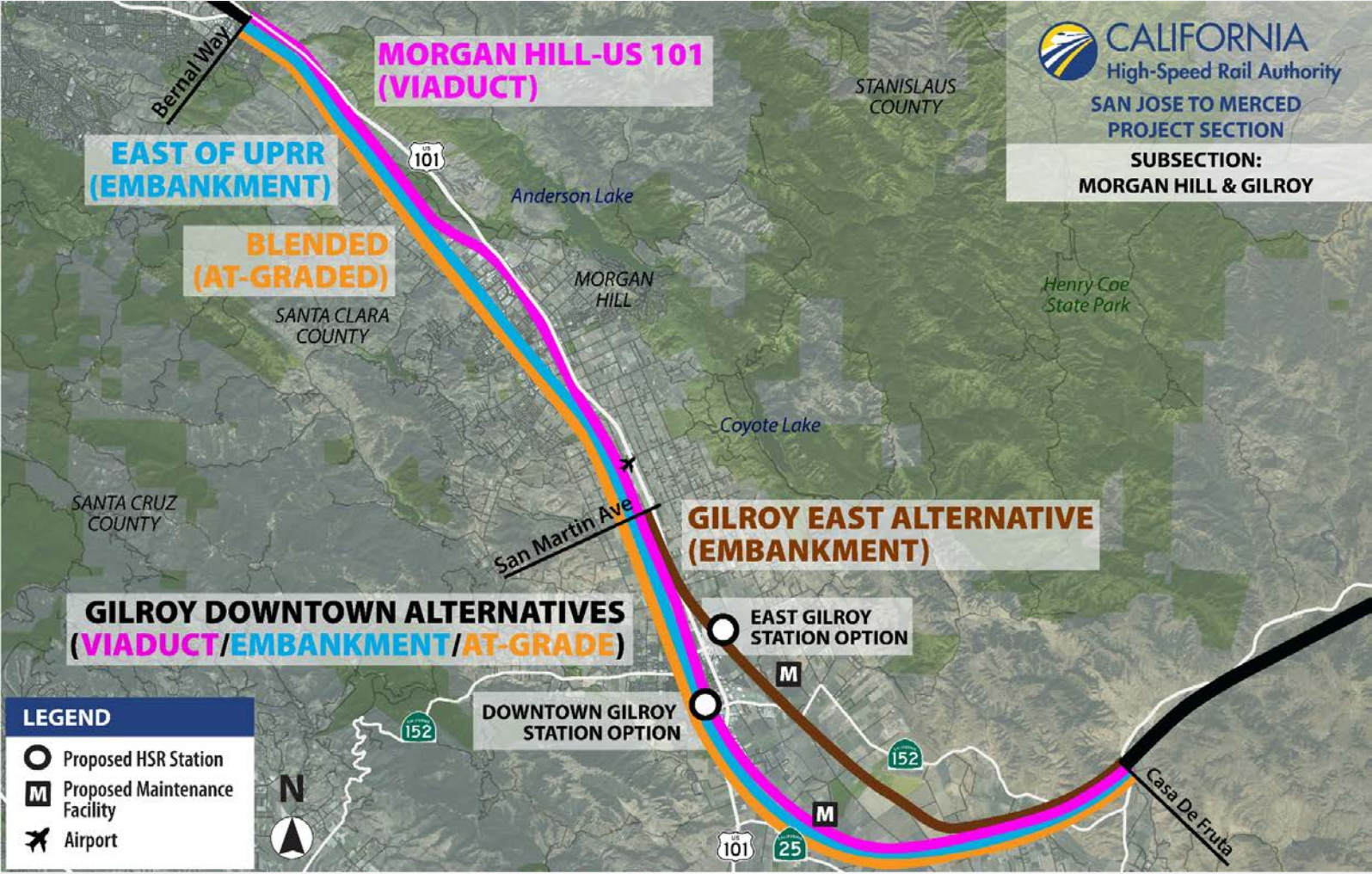
Agenda



Review HSR Alignment Options & Receive Project Update

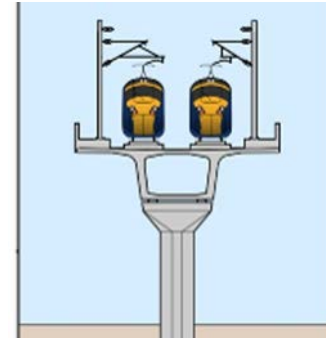


Discuss the need/opportunity for studying Grade Separations at Dunne and Tennant Avenues



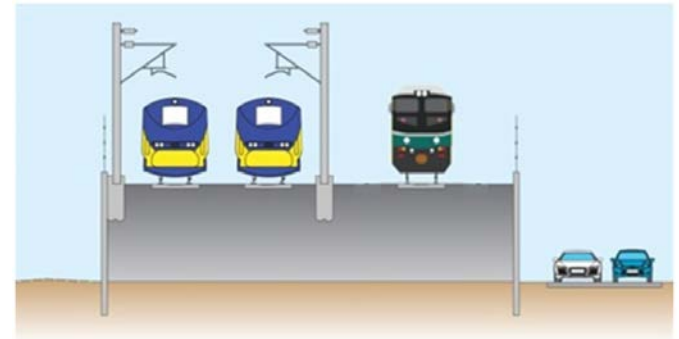
Viaduct Option

- Along west side of Hwy 101 (Morgan Hill)
- East of UPRR (San Martin)
- HSR on viaduct (35-75 ft high)



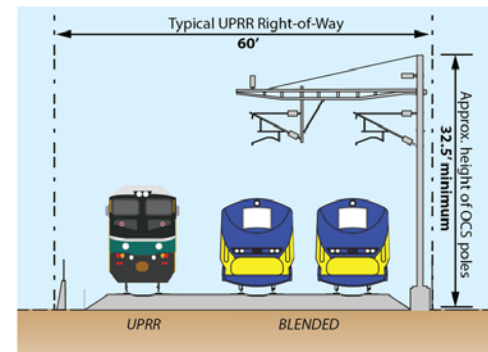
Embankment Option

- Adjacent to east side of UPRR corridor
- HSR and UPRR on retained fill (0-15 ft high)

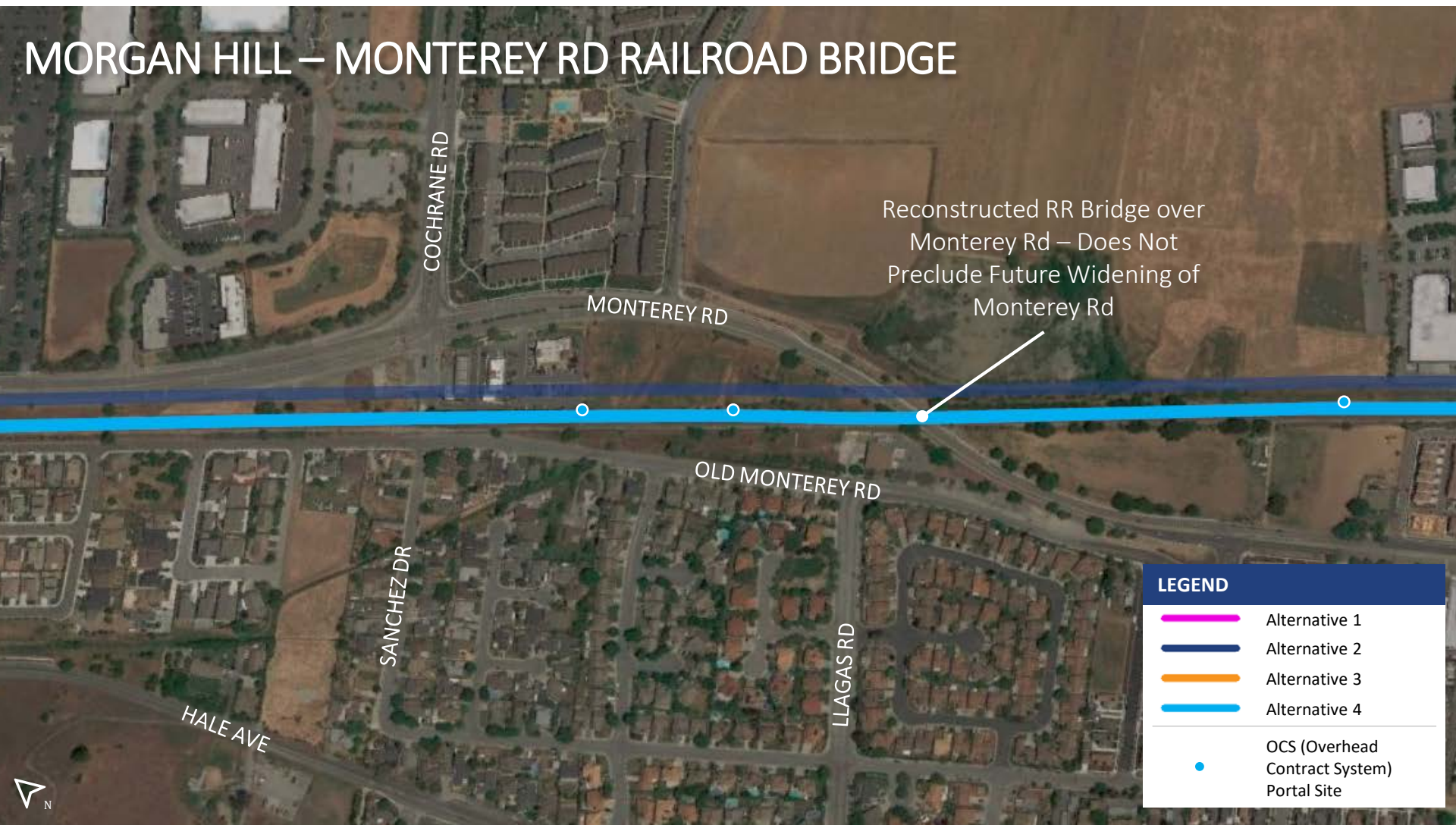


Blended Option

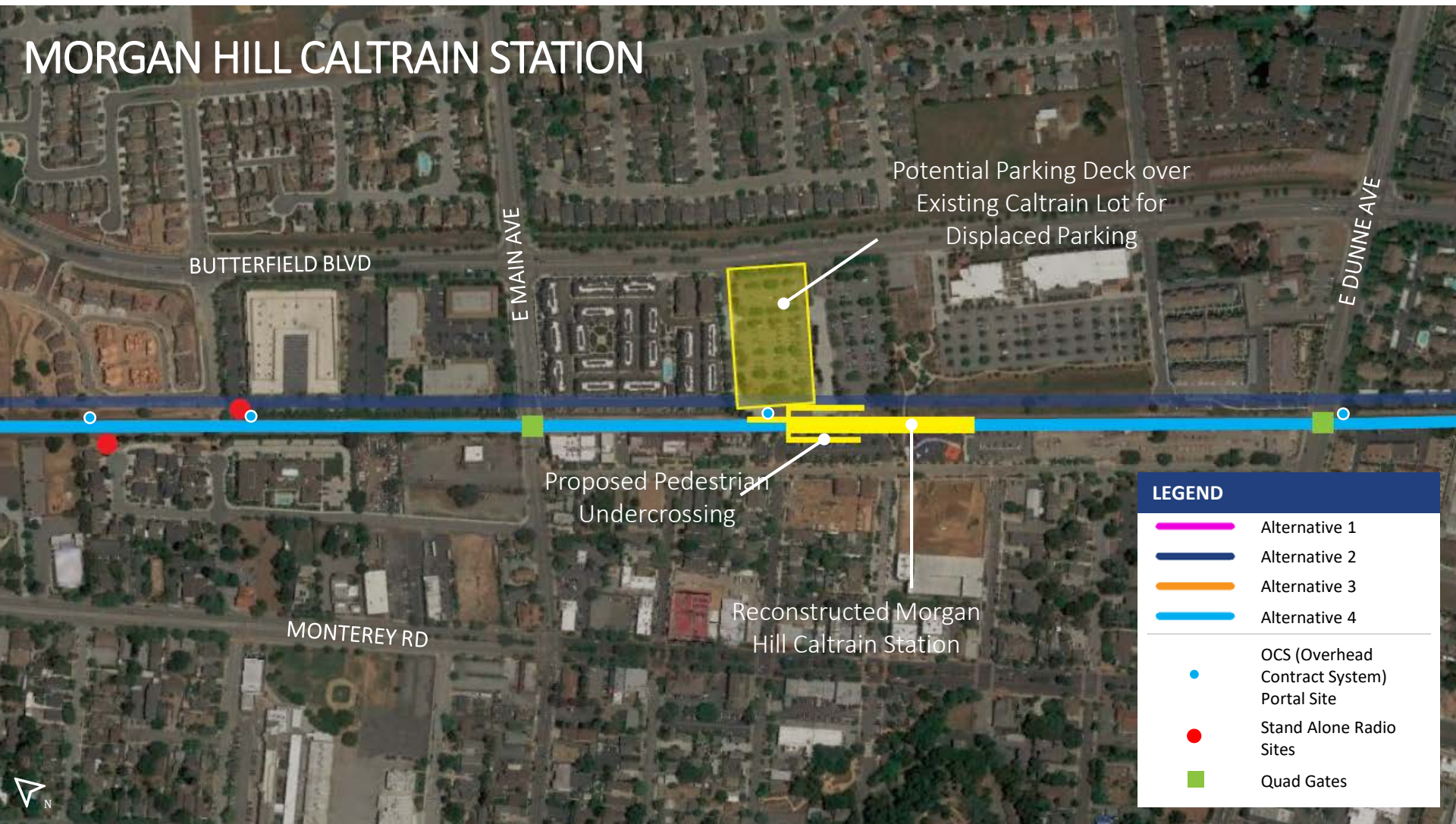
- Two electrified tracks and one conventional track
- Predominantly within the existing railroad ROW
- At-grade tracks with quad gates at each road crossing



MORGAN HILL – MONTEREY RD RAILROAD BRIDGE



MORGAN HILL CALTRAIN STATION



Why Study Grade Separations?

- HSR projecting between 8-10 trains per hour
- Caltrain service to increase in South County
- Tennant & Dunne Avenues have high ADT crossings
- Multi-modal Safety was #1 concern during HSR community meetings

Benefits of Study

- Better understanding of impacts
- Ability to indicate preference to CHSRA
- Opportunity to update Transportation Documents
- Position City for Transportation Grants
- Problem-solve design and engineering issues



Underpass Example



© 2018 Google

Google earth

Overpass Example

37°20'39.66" N 121°55'05.71" W elev 68 ft eye alt 931 ft



Embankment Example

Recommendation



1. Authorize City Manager to execute a contract with HDR Engineering, Inc., in the amount of \$125,000 to study roadway grade separations at Dunne Avenue and Tennant Avenue; and
2. Adopt resolution approving a three-year interfund loan in the amount of \$125,000 to the Traffic Impact Fund from the Local Drainage Impact Fund and amend the City's adopted Fiscal Year 2018-19 budget in funds No. 303 and 309 for related expenditures.

Questions?



From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Fwd: High Speed Rail City Council item for 12/19- Contract w/HDR Engineering
Date: Wednesday, December 19, 2018 11:46:51 AM

From: Matt Bell <himattbell@yahoo.com>
Sent: Tuesday, December 18, 2018 4:04 PM
To: John Lang <John.Lang@morganhill.ca.gov>
Subject: Fw: Fwd: High Speed Rail City Council item for 12/19- Contract w/HDR Engineering

Hi John,

Thank you for all you do for Morgan Hill...

But frankly I wish you all would spend more time helping those of us who commute TO SJ every day. I wish you would spend more time helping get two more lanes going north and south to San Jose and all the way to Gilroy and Hollister...

This high speed rail idea will never work and will never even pay for itself. It will be a large government failure like Cal Train which loses millions every year due to lack of ridership...I am all for mass transit in cities like NY and downtown SF. but THIS will not and cannot work in the suburbs...

Don't waste our cities money doing this research, let the feds do it...

I am an outside sales rep and I need to travel from MH to Fremont, to Napa to Marin, and in no way could I ever use the HSR. As with most of us who live in Morgan Hill, Gilroy and Hollister....You guys want cleaner air right? well keeping us residents at speeds of 5-15 MPH from Bernal to San Martin is causing so much pollution...Cars run most clean at speeds of 45-65, yet every night you can see a back up of 10-20 miles long bumper to bumper as noted above...

I strongly oppose any further monies spent on the HSR, you guys all know it is a failure before it even starts....NO one will ride it...

Please share my note at your meeting this week.

AND AGAIN, PLEASE SPEND ALL YOUR TIME GETTING US MORE LANES IN AND OUT OF SAN JOSE TO MH...WE ARE IN A DESPARATE SITUATION, AND WITH SO MUCH AMPLE ROOM on 101 TO BUILD 4 MORE LANES THERE IS NO REASON TO DELAY....THIS COULD AND SHOULD BE APPROVED IMMEDIATELY...

THANKS FOR LISTENING...

.

.

Matt Belluomini
408-776-2020

On Tuesday, December 18, 2018 3:15 PM, C Bell <chris.belluomini@gmail.com> wrote:

From: [John Lang](#)
To: [Michelle Bigelow](#)
Subject: FW: VIDEO RELEASE: California High-Speed Rail Program Highlights Major Accomplishments of 2018
Date: Tuesday, December 18, 2018 4:32:59 PM
Attachments: [BITEtheBULLETtrain12162016.pdf](#)
[BulletTrainTrojanHorse.pdf](#)
[CAHSRAcritiqueByWendellCox.pdf](#)
[DISPATCH12-23-16.BERSERKTRANSIT.pdf](#)
[HSRApanaceaVShell.pdf](#)
[HSRPROFITABLE-HOWTODOIT021810.pdf](#)
[KOPP021696.HSR1.wpd.pdf](#)
[LINDSEY.Lt1.pdf](#)
[MORSHED.LT2.pdf](#)
[MORSHED.LT3.pdf](#)

Regarding Item #13 City Council agenda item

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Tuesday, December 18, 2018 4:25 PM
To: John Lang <John.Lang@morganhill.ca.gov>; Steve Tate <Steve.Tate@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Shawna Freels <shawna.freels@ci.gilroy.ca.us>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; Mary Dinkuhn <mary@sanbenitocog.org>; Pat Loe <donpatloe@att.net>; Jim Gillio <jim.gillio@hollister.ca.gov>; Sally Bettencourt <sallybettencourt@gmail.com>; Benito Chapter <sanbenitochapter@yahoo.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; Tammy Brownlow <president@gilroyedc.org>; Senator Cannella <senator.cannella@senate.ca.gov>; Carl DeMaio <carl@reformcalifornia.org>; Jon Coupal <jon@hjta.org>; Barry Holtzclaw <bholtzclaw@newsmedia.com>
Subject: Fw: VIDEO RELEASE: California High-Speed Rail Program Highlights Major Accomplishments of 2018

Dear Mr. Lang,

Thank you for reaching out and contacting me about your Morgan Hill-CAHSRA Agenda Item for 12/19/18. I repeat what I've said previously about this subject in Guest Editorials and Letters published in the three towns' newspapers,

Morgan Hill, Gilroy and Hollister (see attached) for the past 20 years or so.

Please direct your staff to include these remarks as part of the official record of your proceedings, so that future generations will know that local leaders were warned about their transit follies.

Thank you.

Joseph P. Thompson, Esq.

Past-President 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Charter Member, SBCCOG Citizens Rail Advisory Committee

Charter Member, SBCCOG Citizens Transit Task Force

Post-Doctoral Student, Transportation Law & Policy, Norman Y. Mineta International Institute for Surface Transportation

Policy Studies, SJSU; Transportation Research Board, Georgetown U.; and Library of Congress

Member, Transportation Lawyers Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

----- Forwarded Message -----

From: Joseph Patrick Thompson <translaw@pacbell.net>

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; Sbccog <info@sanbenitocog.org>; Sbcrc Balers <onemorejones@yahoo.com>; Mary Dinkuhn <mary@sanbenitocog.org>; Marty Richman <mgr42@charter.net>; Sally Bettencourt <sallybettencourt@gmail.com>; Pat Loe <donpatloe@att.net>; Jim Gillio <jim.gillio@hollister.ca.gov>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; cityclerk@hollister.ca.gov <cityclerk@hollister.ca.gov>; Shawna Freels <shawna.freels@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; Tammy Brownlow <president@gilroyedc.org>; Steve Tate <steve.tate@morganhill.ca.gov>; Jon Coupal <jon@hjta.org>; Carl DeMaio <carl@reformcalifornia.org>

Sent: Thursday, December 13, 2018, 11:16:54 AM PST

Subject: Fw: VIDEO RELEASE: California High-Speed Rail Program Highlights Major Accomplishments of 2018

PUBLIC COMMENT: NEXT MEETING, PUBLIC, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP":

On the Road to Serfdom, Faster Than a Speeding Bullet, CAHSRA's Bullet Train Plummets to Fiscal Insanity faster than the transit agencies do?

Who's more insolvent, CAHSRA, or the COG, VTA, TAMC, SCCRTC, etc., transit agencies, who must increase gas & diesel taxes to keep their bankrupt-from-conception boondoggles running? You'd never know by reading their financial reports, which are prepared using Enron-style, Bernie Madoff-style, "off book" accounting, not GAAP accounting that the rest of us are required by federal and state tax regs to use. And governing without the consent of the governed because they are appointed to office, not elected, at the JPAs (joint power authorities).

Again, the first official act of the New Year will be to violate the due process and equal protection rights of the citizens by appointing "Directors" who have no accountability, and no transparency, not subject to voters' recall remedies, and falsifying their financial reports to conceal the full extent of their losses with public sector transport.

How high will gas & diesel taxes have to go to keep the boondogglers' boondoggles running?

Caveat viator.

Joseph P. Thompson

(408) 848-5506

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

e-Mail: TransLaw@PacBell.Net

cc: Barry - Merry Christmas & Happy New Year - Here's a Guest Editorial for your three newspapers. jpt

----- Forwarded Message -----

From: California High-Speed Rail <news@hsr.ca.gov>

To: "translaw@pacbell.net" <translaw@pacbell.net>

Sent: Thursday, December 13, 2018, 11:00:41 AM PST

Subject: VIDEO RELEASE: California High-Speed Rail Program Highlights Major Accomplishments of 2018

To view this email as a web page, go [here](#).



News Release

December 13, 2018

Annie Parker
(916) 403-6931 (w)
(916) 203-2960 (c)
Annie.Parker@hsr.ca.gov

California High-Speed Rail Program Highlights Major Accomplishments of 2018

SACRAMENTO, Calif. - The California High-Speed Rail Authority (Authority) experienced changes, challenges and made significant progress on the nation's first high-speed rail program in 2018. Starting with the appointment and new direction provided by Chief Executive Officer Brian P. Kelly in early 2018, the Authority demonstrated it's committed to advancing the high-speed rail program by reaching several important milestones in the areas of construction in the Central Valley, as well as environmental reviews and local and regional partnerships in Northern and Southern California.

"The Authority has made significant progress on delivering high-speed rail to California in 2018, and we are well positioned to build on that progress going into 2019," said Authority Board Chair Dan Richard. "While we have a lot more work ahead of us, and challenges remain, we have taken steps to put high-speed rail on solid ground moving forward, while at the same time investing in local and regional projects that will provide immediate and long-term benefits for the millions of Californians who already use these systems."

The end-of-year video includes several highlights such as:

- Adoption of the 2018 Business Plan
- 2,000th worker dispatched in the Central Valley
- Environmental decisions in Southern California

Watch the program highlight here:



Click to See Video

SEE MORE AT WWW.HSR.CA.GOV

California High-Speed Rail Authority

770 L Street, Suite 620
Sacramento, CA 956814
info@hsr.ca.gov
(916) 324-1541



This email was sent by: California High-Speed Rail Authority
770 L Street Suite 620, Sacramento, CA, 95814 US

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OPINION

Bite the Bullet Train

From the viewpoint of history, I agree with Hon. Norm Mineta, former Secretary of Commerce for President Clinton, former Secretary of Transportation for President Bush II, former Congressman and chairman of the House Public Works & Transportation Committee, former Mayor of San Jose, we Californian's must ask ourselves "the crucial question." In 1995, shortly before leaving the House to join Lockheed-Martin, he said, "The crucial question in transportation today is: What should government do, and what should it leave to others?" I think that is still the crucial question.

Learning from our mistakes with Amtrak, Caltrain, and other government transport boondoggles, California voters voted for self-sufficient high speed rail by approving Prop. 1A in 2008.

Both the President's Blue Ribbon Commission on transport funding, and the California Transportation Commission, concluded that "user fees funding" is how we should fund transport. Simple: the users pay for the costs of their transport.

But we don't follow our own advice; we have a double standard in transport funding. Motorists, truckers and motorcyclists pay 102% of the costs of our transport, including road construction and maintenance. But transit systems' riders pay only about 1% of the fully amortized costs of their rides.

Why do we allow this double standard? It's contrary to the policy adopted by both the Federal and California State governments.

Our professed transport funding policy is sound, sustainable self-sufficient transport. Our conduct in making motorists, truckers and motorcyclists pay 99% of the cost of public transit by all modes is not.

So, since the California High Speed Rail Authority is acting in direct violation of the California voters' decision in 2008, and contrary to the funding policy recommendations of the Federal and State transport Commissions, we ought to do what Florida voters did: repeal our vote, and

LETTERS

terminate the taxpayer-subsidized Frankenstein.

The correct answer to Secretary Mineta's "crucial question" is private sector, not public sector. If we put enough UPS, Fedex and Postal Service tonnage on the Bullet Train, then we would not need to ask taxpayers for a dime. The profits the taxpayers had from the original land grant railroads can be exceeded if we follow Lincoln's decision to reject public ownership of the transcontinental railroads in 1864. We saw the wisdom in his decision when we nationalized the Nation's railroads during WWI, and saw the government run the railroads to a halt, unable to move. We forgot his decision when Congress created the North American Passenger Rail Corporation (Amtrak), when Congressmen stood in the House and promised that Amtrak would be "self-sufficient" in three years. 46 years later Amtrak remains a Black Hole consuming billions of taxpayers' dollars that we must borrow from foreign investors, e.g., China.

Unless we stop the CAHSRA's Bullet Train, its losses will make Amtrak, Caltrain, VTA Light Rail and bus transit look profitable. We must stop putting our credit card transit debt on the backs of our children and grandchildren.

The first priority "shovel ready" infrastructure job facing us is to bury the Bullet Train. Caveat viator.

JOSEPH P. THOMPSON, ESQ.

Gilroy

JOSEPH P. THOMPSON
Attorney at Law
8339 Church Street, Suite 112, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-Mail: TransLaw@PacPell.Net

Fax (408) 842-2206

January 28, 2004

Editor

The ***Dispatch***

6400 Monterey Road
Gilroy, CA 95020

Re: Bullet Train or Trojan Horse?

Dear Editor,

When Amtrak was formed in 1970, Congressmen promised that it would be profitable in three years. Well, after 33 years, taxpayers have paid \$31 billion in subsidies, with no end in sight. As ***Traffic World*** reported, that is a stack of \$100 bills higher than the World Trade Center stood. Supporters of the Bullet-in-the-Brain train will make profit building and operating it, just as VTA does operating Black Hole Lite Rail. However, taxpayers will be the losers. The galley slaves will need to quicken their strokes so that the recipients of their labors will enjoy their rides. Will Rod be successful in converting us to a socialist society, living in concrete high-rise Dirodonominiums like the USSR's "affordable housing"? Until Rod was appointed to HSRA, they had projected a \$900 million annual operating loss (truth probably doubles their estimate), but now they project a profitable operation. "Profitable" in the same definition of VTA's "profit." I do not swallow this big lie. Do you?

As with Caltrain, Lite Rail, and Amtrak, taxicabs and limousines would be cheaper for the taxpayers. But have we learned anything from the history of the last Century? If we defeated the USSR, then why are we adopting their philosophy?

I appeared before the High Speed Rail Commission (before it became an "authority") five times and told the commissioners that if they put enough Fedex, UPS, and Postal Service tonnage on their train, then they would not need to ask the taxpayers for a dime. Instead of following a capitalist model, they insist (with Bechtel Corporation's—the builder—support) that California must have a Soviet-style horizontal elevator. Well, if voters believe that B.S., then they deserve to wear this albatross around their necks. But ask yourselves, do our children and grandchildren deserve the consequences of our compulsive spending disorder? Are we building the future for them, or welcoming a monster Trojan Horse? ***Caveat viator.***

Very truly yours,

JOSEPH P. THOMPSON

Candidate: American Society of Transportation & Logistics

Member: Legislation Committee, Transportation Lawyers Assn.

Editor: this was published in Orange County Register Wednesday, June 14, 2006. Please publish again for Gilroy & Morgan Hill raped taxpayers, about to be re-screwed by utopian insanity by Bullet Train. The author is one of the Nation's top transport policy men.

Joe Thompson

Gilroy

(408) 848-5506

1. Taking taxpayers for a ride California focus

Proposed state high-speed rail system would cost too much to do too little

There has been considerable discussion about the proposed California High Speed Rail project. California taxpayers are being subjected to grandiose claims about reduced traffic congestion and cost-effective alternatives to flying and driving.

The HSR system, which would connect Los Angeles, San Francisco, San Diego, Sacramento and areas in between, would require as a down payment a \$10 billion bond issue that voters may consider as soon as November. The California High Speed Rail Authority says the system could cost much more – \$37 billion. Reality is more like \$75 billion.

Luckily, the Assembly last month passed a bill that would delay the bond election until 2008. That bill is now in the Senate Appropriations Committee, where there is no clear indication whether it will come to a vote anytime soon. However, there is evidence the Assembly's caution is justified, and the Senate should follow its lead.

First, the HSR system is likely to cost much more than advertised. Cost projections for large transportation projects are notoriously inaccurate. Boston's two-decade "Big Dig" racked up three times its projected cost, even after accounting for inflation. Across the country, transit megaprojects have escalated in cost after approval; these are not isolated cases.

What's more, it appears these overruns are not accidental. Research by Bengt Flyvbjerg of the University of Aalborg (Denmark) published in the Journal of the American Planning Association demonstrates these projects routinely surpass estimated costs due to "strategic misrepresentation." Planners and proponents underestimate costs in hopes of obtaining project approvals that would otherwise be impossible.

As a Los Angeles County transportation commissioner, I witnessed costs escalate for the Blue Line light rail from Los Angeles to Long Beach eventually exceeding three times original projections (inflation-adjusted). At no point did anyone seriously question the increases, because the taxpayers had already committed to the project. There was simply no incentive to keep costs down. Why should we expect the HSR project to be any different?

Flyvbjerg and others also have found that ridership estimates tend to be overstated. The Los Angeles Red Line subway even today carries less than one-half the ridership that was projected when we approved it.

Ridership is important because the California high-speed rail system is advertised as not needing its operations subsidized by taxpayers. But this claim is likely based on an overestimation of the ridership and an underestimation of the operating costs. Amtrak's high-speed Acela service between Washington, D.C., and New York City carries little more than one-tenth the passengers that proponents promise for the California system, despite serving a larger market. So it is likely taxpayers will need to keep their checkbooks open indefinitely to subsidize HSR operation.

All this would be irrelevant if we needed such a system. The California HSR has been touted as a strategy for reducing highway congestion. In fact, projections indicate that traffic congestion along the rail corridors will still increase 26 percent by 2020, even with the high-speed trains. Without them the increase by 2020 would be 31 percent.

Claims of reduced air traffic congestion are similarly flawed. Most air travel between the San Francisco Bay Area and Southern California already avoids the busy San Francisco International and Los Angeles International airports, and their share of travel is declining. Planners delude themselves into believing HSR will take away half of air traffic volume. But last year Amtrak said its New York-to-Washington high-speed service lost ridership to stronger airline competition. Planners assume airlines will stand idly by as their customers jump on the train. In fact, airlines will compete, and compete hard.

Much has been made of HSR's purported cost-effectiveness, with claims that highway improvements would cost more than twice as much as the rail project. But the highway alternative would produce four times the congestion relief, making it twice as cost-effective, even without the inevitable cost escalations for high-speed rail.

Thus, for California, the question is not whether high-speed rail would be nice – it would be. The fundamental question is whether it is worth the tens of billions it could cost. At this point, there is every reason to believe this project would be, quite simply, a waste of money.

EDITOR: Please publish this letter that I sent to you on 3/2/03:

JOSEPH P. THOMPSON

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March 2, 2003

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Editor

The ***Dispatch***

6400 Monterey Road

Gilroy, CA 95020

Re: Downtown Gilroy and Soviet-Style Transportation Policy

Dear Editor,

Could it be that our government intends to oust UP from its right-of-way through downtown Gilroy, supplanting it with Soviet-style Bullet Train and Son-of-Amtrak Caltrain? With VTA's Ministry of Truth touting Gilroy as its newest land-use planning (i.e., Sovietized) poster child, will we see an end to the history of private-sector railroads here? How many jobs will that kill-off? How much commerce will we lose if the VTA-led socialist-communist scheme is crammed down on us? The malignant tumor of socialism-communism is being stimulated by Politico-Transit Alliance advocates in our local government, our County government, and our State government, so will small business owners be able to stop this socialistic train wreck? We've seen the canneries go bankrupt and close their gates. The Black Hole Frankenstein "transit hub," where empty buses stop so public-sector union drivers can rest from the tedium of transporting empty seats around town, is growing—who knows where the socialist policy will stop? If we don't stop runaway government now, how will our children or grandchildren ever stop it? Where is an elected leader with the guts to fight back for us? I believe that it is time for us to retake our government away from the socialist small business killers. *Caveat viator!*

Very truly yours,

JOSEPH P. THOMPSON

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section Santa Clara County Bar Assn.

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Member, Association for Transportation Law, Logistics & Policy

Member, SBC Citizens Rail Advisory Committee

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Winner, AST&L's Best Research Paper Award 1997

Past-President, Gilroy-Morgan Hill Bar Assn.

DISPATCH

OPINION

DECEMBER 23, 2016

LETTERS

Public Transit Doesn't Pay for Itself

California law requires that the transit agencies earn 10% of their expenses from their "farebox" meaning what their riders pay. It is like Safeway or K-Mart accepting 10% of the sales price as payment in full. Such pricing by any business would soon plunge it into Bankruptcy Court.

The bankrupt transit agencies, conceived insolvent, born bankrupt, and kept running by massive taxpayer subsidies from motorists, truckers and motorcyclists, keep up their boondoggle operations thanks to the deaf, dumb and blind management by their so-called "Directors."

But what if they violated their "farebox recovery rate" mandated by the Legislature, and earned less than 10% from their patrons?

Well, they do, if you use generally accepted accounting principles in calculating their farebox recovery rate. They don't use Generally Accepted Accounting Principles accounting, which everyone is required to use by federal and State tax regulations.

The transit agencies use Enron-style, "off-book" accounting, which our Supervisor, San Benito Council of Governments Chairman said was "generally accepted government accounting."

By using non-legal accounting, they falsify their financial performance, and our local government officials condone this governance abuse of the taxpayers.

You have a double standard in transport policy; one for transit agency boondoggles like VTA and Council of Governments, and one for the rest of us.

SBC BOS have repeated their requirement of "full cost recovery" for a variety of government enterprises that they do. But with COG, it's not "full cost recovery" from County Transit users. Instead, it's "fool cost recovery" where the "fool" is the taxpayer who is forced to subsidize the bankrupt transit (actually two of them in San Benito County) operation.

Do your readers a service and report his gang-rape of the taxpayers. We're about to be treated to a new exhibition of this COG governance abuse when the BOS, as its first official act of 2017, makes what they call "committee appointments" to COG. The truth is that COG is a joint power authority, not a "committee," which governs without voter consent, and thus violates the civil and constitutional rights of the citizens.

JOE THOMPSON

Gilroy

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August 24, 2007

Editor

Email: editor@garlic.com, editor@gilroydispatch.com

The *Dispatch*

6400 Monterey Road

Gilroy, CA 95020

Re: **Bullet Train: Tourists' Panacea, Taxpayers' Hell**

Dear Editor,

The proposal to build the Bullet Train in California is proof that socialists have taken-over our government. Based on past cost overruns, the price tag on this extreme boondoggle is about \$75-\$80 billion in today's dollars. Paid back interest on these bonds will also burden our children and grandchildren and great-grandchildren will billions more. Annual operating losses will exceed those of all Lite Rails combined. Fares won't cover 1% of operating expenses, estimated at \$1 billion/year. Bond debt will bury us.

Technology exists to build it, but how do we pay the construction costs, and operating costs? It's technologically incompatible with existing railroads, so it will need BART-like right-of-way. Eminent domain power, included in the legislation creating it, ensures that it will plow through Gilroy and Morgan Hill and any other place, regardless of opposition. But it cannot cross the UPRR's tracks because the Class I railroads' eminent domain trumps Bullet Train's eminent domain power, according to UP's top commerce counsel on the West Coast. Tourists will ride it, but enjoy a 99% taxpayer subsidy for rides that will cost more than those on the Concorde Supersonic Jets. Local small business owners will pick-up the tab, maybe getting 10% back from tourist dollars if we're lucky.

In 1970 Congressmen stood up in Congress and proclaimed that Amtrak would be "self-sufficient in three years." Yeh. By 9/11/01 taxpayers had thrown about \$30 billion in subsidies down that black hole, but did we have adequate airport security?

In 1863 General Granville Dodge, who was later UPRR's top civil engineer, and who discovered the Sherman Pass over the Continental Divide, was summoned to the White House. He later said that he told the President that the government should own and operate the transcontinental railroad. Lincoln, who as a young member of the Illinois Legislature had seen government owned railroads in Eastern and Midwestern States go bust and shutdown operations in the 1830's and 1840's, said no. He said that private enterprise must do it, although the government would assist with

When will we ever learn?

development incentives (my words, not his). They did it. And what did taxpayers receive in the deal? They got about \$460 million (measured in 1940 dollars) more than the value of the land granted to the railroad corporations because of Section 22 in the original Interstate Commerce Act (lower freight rates for government shipments).

A hundred years ago the Progressive Movement, led by William Jennings Bryan, sought nationalization of the railroads and other industries, but their passion was rejected by voters.

When the railroads were nationalized in 1917 during the Administration of Woodrow Wilson, government genius so botched-up shipping that rail traffic came to a standstill. That experiment failed, just as Lincoln predicted it would. In the Transportation Act of 1920 the railroads were de-nationalized, and came to be the envy of the world's nations today; the backbone of our nation's commerce.

Instead of making taxpayers pay for Bullet Train, like we pay for County Transit, Caltrain, Amtrak, Lite Rail, etc., etc., while motorists are paying 100% of their own transport costs, seeing our politicians rewarding transit wastefulness, why not use the unlimited power of capitalism? Have you been on I-5 lately to see the uninterrupted 24-7 tonnage flowing North-South in California? I appeared before the Bullet Train commission five times over the last decade and told them that if they put enough UPS, Fedex and Postal Service tonnage on their trains, then they would not need to ask the taxpayers for a dime. Did they listen?

Like Amtrak's promoters, their pie-in-the-sky predictions show that they did not listen, nor did they learn from history, either United States or world history in the last century and one-half. So, hold on for the ride, and warn your children and grandchildren, our leaders will strap taxpayers to the rocket to Hell. We'll be paying unimaginable sums to attempt what Lenin, Trotsky, Stalin and the USSR failed to achieve, despite all their promises to their citizens that socialism could bring utopia. If they fund it with gas taxes, be prepared to see \$10/gallon for gas at the pumps. They'll tax motorists out of their cars, leaving them to ride our Trojan Horses, and bike or walk the rest of the way.

Caveat Viator!

Respectfully yours,
JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA
Member, Legislation Committee, Transportation Lawyers Assn.
Member, Association for Transportation Law, Logistics & Policy
Candidate, American Society of Transportation & Logistics
Winner, AST&L's Best Research Paper Award 1997
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When will we ever learn?

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February 18, 2010

Editor and Editorial Board

Email: editor@garlic.com, editor@gilroydispatch.com

The ***Dispatch***

6400 Monterey Road
Gilroy, CA 95020

Re: MyBulletTrain: Profitable for who?

Dear Editor,

Bullet Train blitzkrieg, multi-million dollar campaign, using taxpayers' money to sell them on the boondoggle claims that it will be profitable. Yeh, but for whom? The planners, consultants, ad men, bond salesmen, foreign equipment manufacturers. The bankruptcy of all State-owned railroads in the USA in 1830's ought to tell us something about the right way to build a railroad. The American experience with nationalization of the railroads in 1918, the collapse of the USSR, and the world-wide privatization revolution of the 1990's should teach us a valuable lesson in railroad building. The insolvency of Amtrak, Caltrain. The bankruptcy last month of the Las Vegas Monorail, etc.—lessons abound from our history, but will we learn from them?

Sustainable rail transport hinges on the bottom line on the balance sheet; do revenues exceed costs? If we use VTA government-style accounting methods, we won't see a sustainable Bullet Train. We have to use the same accounting used by the world's most successful railroads, UP, BNSF, CSX, etc., America's Class One Railroads. If you lose money moving passengers, then you have to make-up your losses by moving freight. Intermodal tonnage on Bullet Trains, moved on separate trains during non-peak commute hours is how I've told the California High Speed Rail Commission, now High Speed Rail Authority, to do it. If the taxpayers purchase the infrastructure for the Bullet Train's owners, it will be like financing the Interstate Highway System, and the State Highways, for the trucking industry.

Transport me as a tourist, and I'll need a 99% fare subsidy. But transport me as a deceased traveller, and my estate, or relatives, have to pay 100% of the cost of moving the dead freight. So, to create a sustainable Bullet Train, you have to think like railroaders, not horizontal elevators in communist nations.

Why do our leaders want to grow bigger government, when common sense people, e.g., Editorial Board of Gilroy Dispatch, say we should be doing just the opposite? Do we have leaders who give a damn about the harm their decisions inflict? Why do we tolerate such hypocrites?

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA

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February 16, 1996

**The Honorable Quentin Kopp
CALIFORNIA STATE SENATE
2057 Capitol Building
Sacramento, CA 95814**

Re: California Transportation Policy

Dear Senator Kopp,

While the need for high speed passenger trains in California, and the entire Nation, is obvious to any student of transportation, it appears to me that the HSR Commission is completely ignoring the only viable alternative to providing them.

Instead of using the existing railroads, staying with private enterprise, which past generations bequeathed to us, the Commission seems to be hypnotized by socialism. At a time when privatization around the world is correcting the mistakes of publicly-owned transportation, e.g., Australia, Canada, New Zealand, England, Western Europe, etc., the Commission seems to be falling under the fatal attraction of a ruinous fiscal belief that cost does not matter.

Do we have the ability to learn from our history? Will we ignore it and be condemned to follow the course of the Soviet Union? HSTPS Executive Director Ron Diridon, addressing the students at SJS, said that transportation decisions hinge on three things, "Finance, finance, finance." Rather, I believe it hinges on policy, because the latter predetermines the former.

The legislative findings in SCR 6 are undoubtedly true, but the solution currently being proposed by the Commission is a nightmare, which, if brought into existence, will certainly plunge us down the path followed by the Soviet Union.

Why not consider changing policy to attain the same goal? Why seek to ruin California's economy in a search for "finance," when by adherence to the nation's transportation policy, and its rail transportation policy, we could have bullet trains without spending tax dollars? If this country had adhered to these national policies since the end of WWII, would we have seen thousands of miles of

track abandoned? Would we have invested untold billions in the creation of the interstate highway system? Would we be addicted to automobiles today? Are we in denial about our addiction, which blinds us to our violation of our own national transportation policies?

If the law said: (1) freeze truck lengths, (2) prohibit triples, (3) return weight limits to something that would not break concrete freeways, (4) reverse the intercity freight trend since WWII, then how much less money would we need for such things as: (1) highway maintenance, (2) fuel, (3) injury, death, property damage expenses? If policy were made by wiser men than we seem to have had in charge since the end of WWII, would we have (1) cleaner air, (2) less highway congestion, (3) lower health care costs?

If the government is in control, why not set transportation policy and tell each mode what it was going to do based on decisions favorable to the people? If we can move freight profitably, but not passengers, then why not mix the two in one revenue stream to attain satisfactory corporate profit levels? Divorcing rail passenger from rail freight in 1970 was a big policy mistake, and some in Congress seem to have recognized that now by enacting legislation requiring Amtrak to break-even in seven years. Of course, without the freight revenues it can never do so in the face of highway and airline competition, and the vast federal subsidies given to those modes.

The solution lies in equal treatment by government of the different modes, and in freight revenue subsidizing the unprofitable passenger fares, just as earlier generations, who faced these same decisions, learned. While it might come as a shock to the Commission's staff and members, we have railroads. The trouble is that we ignore them and have favored their competitors with billions of dollars of subsidies. Our policy makers apparently prefer our citizens to use four times as much fuel to move our freight, and to sit on congested freeways, rather than establish transportation policy which capitalizes on the inherent advantages of the railroads. Amazingly, the stated policy is already in the statutes, but in practice we do not follow it! Why?

The Commission's current study suffers from myopic concentration on a fantasy, rather than realistic appreciation for the wisdom of earlier generations. Why are the Commissioners not investigating the obvious solution of using our railroads to accomplish this goal? French and Japanese transit systems, like

Hon. Quentin Kopp
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those in this Country, operate at a huge loss, requiring taxpayer subsidies of ever more scarce tax dollars.

Instead of trying to imagine millions and billions of dollars, this needs to be put in terms that are understandable, and revealed to the voters for what it is. For example, when Amtrak was formed in 1970 it was cheaper to send a passenger from LA to NY by taxi, and pay the cabby a \$100 tip, than to send him by Amtrak. When METRO was built in Washington, D.C., it was cheaper for each rider to be furnished with a Mercedes than to ride public transit. For BART, the riders could have two BMW's and the taxpayers were better off.

Of course, these solutions are just as stupid as the ones our decision makers and planners gave us. The arrogance of today is to forget the wisdom of the past. Who gained by selling those cars, building those interstate highways?

Harvey Levine's seminal work, National Transportation Policy: A Study of Studies, ought to be required reading for both the Commissioners and the staff, not to mention our decision makers.

When we needed a transcontinental railroad, did we opt for government-owned railroads? Whenever WWI's demands caused nationalization of the railroads, did we keep them that way? Does government owned business work in the long run? Do we want to go the same way as the Soviet Union?

No!

When I testified 2/2/96 before the Commission in Fresno, I showed them the Harvard doctoral dissertation by John D. Donahue, The Privatization Decision (1989), and reminded them of the Wall Street Journal special edition on privatization that was published in October. I said that if they were a board of directors of a corporation then they would have been terminated. They did not effectively cross-examine the experts brought before them by their own staff. They did not realize that the "profits" displayed by the French Officials were for a trunk line route, and that the truth is that system-wide the French experience is no better than that of the best American public transit system. They are considering borrowing billions to create a line that will require \$800 million annually just to service the debt (bonds) it creates! There can be no doubt that Big Brother's slogan pales in comparison with this proposal: "WAR IS PEACE, FREEDOM IS SLAVERY, IGNORANCE IS STRENGTH."

As I said to Mr. Mineta, we are, I believe, about half nationalized and half free-enterprise in transportation. Can this situation last? It is not unlike an earlier period in our history:

"If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed.

A house divided against itself cannot stand."

At this point, too, we are at a crucial stage of evolution in the nation's history: We are a house divided.

The Lincoln administration decided that our railroads would be privately owned, with construction financed by government-backed securities. Today we appear to have rejected the policy of free-enterprise ownership because we continually create "authorities" and "agencies" to own and operate our rail passenger mode. The same is true with bus transportation. Now I hear that Amtrak will be moving freight. We have abandoned not only thousands of miles of rail, but as a nation we have also abandoned the policy of private ownership of transportation. Our elected officials boast about what they have done, but not one of them will tell you how much it costs per passenger (or per passenger-mile) to transport people by bus or rail. Deregulation during the past 15 years has rendered the private transportation sector a virtual graveyard. So where are we, and where are we going? How can we have nationalized industry and reduce the budget deficit?

To paraphrase Mr. Lincoln, if we could first know where we are, and "whither we are tending," we could better judge what to do, and how to do it. Our national transportation policy was initiated with the "avowed object" and confident promise of creating a sound national transportation system. Under the operation of that policy,

one national goal is to make the county competitive on the global arena. In my opinion, it will not happen until a crisis shall have been reached and passed.

Today we are at a point where we are half slave to public ownership of transportation, and half free-enterprise. The trend, however, runs counter to private ownership. Reversing the trend becomes increasingly difficult as we commit vast resources of our society to nationalized modes.

Again to paraphrase, I believe that the nation's transportation system "cannot endure permanently half slave and half free." I do not expect the nation will be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of nationalization will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike in all modes of transportation.

We will then have arrived at the stage of development, and an experience similar to that of the demise of the Soviet Union must ultimately follow because government-owned industry does not work in the long-run. Great Britain and other western European countries, Canada, Australia and New Zealand are all privatizing previously nationalized industries because they have realized the truth in this. Nevertheless, our elected representatives push for more government-owned transportation modes each passing year.

Today we could send six passengers by limousine from Gilroy to San Jose cheaper than it costs us to send them on Caltrain. Yet if private industry moved those passengers and a fair share of the available freight tonnage, the burden on the taxpayers would lessen, road congestion, health care costs, and air pollution would decline. Local government would enjoy another source of tax revenue.

Since WWII, creation of the interstate highway system has diverted a greater percentage of intercity freight traffic away from the rails each passing year. Separating freight from passengers on the railroads was a decision rejecting earlier generations' investments, and plunging us along a course toward Soviet-style industry, and we know how well that system worked. I

Hon. Quentin Kopp
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page 6

keep asking our elected officials: If government ownership of industry failed in the Soviet Union, then why are we trying it? promoting it? How can America compete in "global markets" if it is saddled with deadweight nationalized transportation modes?

The Emperor has no clothes! We cannot afford to borrow billions to build a rail passenger line that loses millions each year. This is especially true when we have an existing alternative that will not cost the taxpayers any money at all. All it takes is someone strong enough to enforce the nation's transportation policies that are already on the books. We need not reinvent government to accomplish this goal, but rather, merely keep this a government of, by, and for the people.

Thank you for giving me an opportunity to make this comment. My formal response to the Commission will follow as soon as I complete it.

Respectfully yours,

JOSEPH P. THOMPSON

Encl.

cc: Hon. Henry Mello
cc: Hon. Dean R. Dunphy
cc: Hon. Peter Frusetta
cc: Commissioners
cc: Executive Director Daniel S. Leavitt
cc: Rod Diridon, IISTPS

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January 15, 2003

FAX (916) 653-2134

Honorable R. Kirk Lindsey, Chairman

California Transportation Commission

1120 N Street, P.O. Box 942873 (MS-52)

Sacramento, CA 94273-0001

Re: Transportation Funding Crisis Workshop Jan. 17, 2003

Dear Mr. Lindsey,

Thank you for sending notice of the CTC's funding issues workshop and for inviting public comment regarding the State's fiscal "crisis." It was a pleasure meeting you at the CTC's meeting in San Jose at the Fairmont Hotel last month. Congratulations on becoming Chairman of the CTC. One cannot help but sense the irony in a trucking company CEO being CTC's chairman when our chickens are coming home to roost. At Mr. Lawrence's invitation I addressed the CTC in December 2001 at the PUC in San Francisco on the subject of intermodal transportation infrastructure improvements for the State, and although I cannot attend the workshop on the 17th of this month, I would like to offer my recommendations.

1. Author. I have 39 years experience in transportation industry (trucking and railroad). I am a post-doctoral student of transportation law and policy. I am a member of the Transportation Lawyers Association, and serve on TLA's legislation, intermodal, arbitration and freight claims committees. I am also a member of the Association for Transportation Law, Logistics & Policy, and a candidate for the American Society of Transportation & Logistics.

2. Background. For additional background, please refer to my paper that I presented to the CTC and handed to Mr. Remen at the CTC's meeting at the PUC in San Francisco, December, 2001.

3. Official Record. Will you please direct your staff to include these remarks as part of CTC's official records.

4. Summary. In response to your call for public comment on the current "funding crisis", I once again give my conclusions reached six years ago during debate on ISTEA reauthorization. *See*, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997), and "ISTEA Reauthorization and the National Transportation Policy:

***Recommendations to CTC Re:
Transportation Funding "Crisis"***

Overlooked Externalities and Forgotten Felt Necessities,” *Transportation Lawyer* (Dec. 1997). A copy of the former is enclosed for your ready review, although I previously submitted it to you in December 2001.

5. Recommendations. The CTC should first frame the fundamental issue facing it, which was identified by Transportation Secretary Mineta while he was serving as Chairman of the Surface Transportation Committee in the House of Representatives: *“The crucial question in transportation today is: What should government do and what should it leave to others?”*

Governor Davis’ call for “structural reform” should focus CTC on Secretary Mineta’s “crucial question.” The answer that CTC gives to Governor Davis and Secretary Mineta will shape the solution for our transportation “funding crisis,” and the future of transportation in California.

These issues are also pending in the 108th Congress as it takes up the subject of reauthorization legislation for Transportation Equity Act for the 21st Century (TEA-21). Please refer to my recommendations to USDOT dated 8-23-02 on this issue (see copy enclosed).

Rather than a band-aid approach to the “funding crisis,” I recommend that CTC strive to achieve “structural reform” in the basic approach that we take to the for-hire carriage of passengers. I believe that CTC should have no “sacred cows” immune from this search and rescue mission. Like waking-up with a hangover, California must swear-off its former excesses.

The Emperor Transit First is stark naked. Unremunerative fares yield insolvent carriers, of both passengers and freight. Deficits piled on top of deficits bring predictable results. Farebox recovery rates that fail to cover fully allocated costs produce a result which does not surprise transportation students or history students. Such public-sector transit systems are not “going broke” in California (or elsewhere), they were conceived insolvent, born bankrupt, and kept operating only with massive blood transfusions from the taxpayers. No member of CTC should be surprised at the present “funding crisis” because we have intentionally navigated the State to this destination, one in which California’s deficit exceeds that of all other States’ combined deficits. We asked for it; we demanded it, even if it meant damning future generations into decades of debt. Bankrupt operations, bankrupt carriers, bankrupt policies, are the result of our myopia. Increasing insolvent transit systems’ operations undermine our financial capability to build and repair transportation infrastructure. Their growing demands have reached a predictable breakingpoint. We must look into the mirror and recognize the problem staring back at us.

There has been occurring a world-wide “privatization revolution” as described by the *Wall Street Journal*, special edition 10-2-95, yet we have steered a contrary course of nationalization, statism, and public-ownership. Only a hypocrite would feign surprise at arriving at our present destination of fiscal “crisis.”

CTC and California must ask itself this question if it wants to be cured: “Why did Canada, Mexico, Great Britain, Australia, New Zealand, and many other nations denationalize their publicly-owned transportation industries during the past 25 years?”

We must ask ourselves, if we truly want to bring permanent relief to this and future generations of Californians: “If all of the USSR’s Five Year Plans were such raving successes, then why did the USSR collapse in revolution?”

Why should we adopt the Marx-Engels-Lenin-Trotsky-Stalin theory of government when our Founders placed its foundations on Adam Smith’s theory? Did the USSR win the Cold War, or did we win it? If we defeated the USSR, then why should we adopt their failed economic philosophy?

Answering Governor Davis’ “structural reform” challenge, answering Secretary Mineta’s “crucial question,” learning the lessons of the history of the past century, CTC and California must recognize the error of our policies, unless we have no intention of solving the “funding crisis.” Phony efforts of “reform” will just be wheel-spinning in mud—wasted motion. Genuine “reform” means going back to American free-enterprise in transportation, personal responsibility, not transit welfare. Our galley slaves, i.e., taxpayers, are beyond the breaking point. Our policies have burdened the taxpayers under unsustainable loads. Like overloaded trucks, our axles are breaking. Bankruptcies are at historic highs, both business and individual. Small business failure rates are at 80% on average during the first five years. *Traffic World*’s report that more than 10,000 trucking companies (with 20 or more trucks) either filed for bankruptcy protection or closed during the last two years illustrates what plight business owners are bearing from our ill-conceived government policies. Did you ever think you’d live to see PG&E, United Airlines, and Consolidated Freightways in bankruptcy? We are killing the goose to steal her eggs, but what will our children eat?

The fallacy in our current transport policy can be shown by comparing fares paid to move a 200 pound box with fares paid to move a 200 pound man. The shipper of the former pays 100% of his carrier’s fare; but a passenger on public-sector transit (bus or rail) pays only for the first two pounds, and the taxpayers are expected to pay for 198 pounds (applying generally accepted accounting principles, not the Enron-style accounting method our Legislature authorized for transit agencies’ financial reporting).

“Structural reform” of this unsound policy must be approached in the same manner as Great Britain accepted under the administration of Margaret Thatcher—privatization of nationalized industry. Keeping the *status quo* will only mire us further in misery. Flatboats, bullet trains, rickshaws, lunar escalators, i.e., any mode of transport, must charge user fees (fares) that are remunerative, unless we want to see it fail in the long run. Refer to my letter to HSRA’s former Chairman enclosed.

William Jennings Bryan and the Populists were wrong, just as Marx & Engels were, as government nationalization of the railroads proved during World War I.

Neither CTC nor California should be surprised by the “crisis” resulting from this fallacy (or lunacy) in our transport policy. Do we have the will power to reform our policy, or will we take the same route as did the USSR? I pray that God will give you and your fellow Commissioners the wisdom and courage to make a course correction for California now, before it is too late.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl. [Article; Letters]

JOSEPH P. THOMPSON
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March 23, 2009

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letter to you dated 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see copies enclosed).

Summary. The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should government do, and what should it leave to others."¹ The sound, sustainable answer to Secretary Mineta's "crucial question" lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail's owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

¹Joseph P. Thompson, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*, pp. 87-*etseq.* (1997).

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

The north-south tonnage flows in California, on Hwy. I-5, US 101, and Hwy. 99, represent a source of funding that could, in a private-sector model, duplicate and exceed taxpayers’ subsidies in the public-sector model as proposed in the EIR. The French government has announced that it will have Fedex freight transported by that nation’s HSR starting next year, so those with experience in operating HSR in Europe have apparently resorted to freight revenue as a source of funding. We could reduce air pollution, traffic congestion, and road and bridge support deterioration and maintenance expenses if we diverted some of that tonnage onto HSR. I have said this to the HSRA since before its creation when it was a Commission.

I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

As the LAO’s Report states (page 5), the HSR service should “not require an operating subsidy.” A feasible “funding source . . . for future years . . .” (page 6, LAO’s Report) exists now and will exist into the future: freight revenue. As with freight moving in the bellies of airliners, HSR can transport freight, thereby decreasing air pollution because the fuel savings per ton/mile is about 75% compared with rubber tires hauling freight on concrete or asphalt. The profit made moving freight can offset the losses sustained transporting passengers. Overnight shipments between Northern and Southern California can be transported without interfering with daytime, commute hours.

Comment: UP’s Property Rights.

In addition to those aspects identified by Cox and Moore (“Reason Report”), the UP’s Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its to own, for its shareholders’ benefit. The Nation’s national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP’s tracks in the SF Peninsula, San Jose, and South Bay

Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

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January 5, 2010

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's second (judicially-required) EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letters to you dated 3/23/09 and 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see attached to my letter to you 3/23/09).

Summary. Lenin convinced his fellow countrymen that Marx & Engels were right, with Trotsky's help, and Stalin's "persuasion" tactics. Did that make his philosophy right? No. Just like Lenin, CAHSRA's proponents are wrong. You remind me of heroin addicts who refuse to admit their addiction. Revelations since the election show what a disastrous idea you have proposed for this sad State, dominated by radical socialists in our Legislature, the League of California Cities, and the California State Association of Counties, and the public transit agencies and their public-sector unions. I think that history will be just as kind to the CAHSRA's proponents as it's been to Lenin. The people of California will rue the day that the Trojan Horse was approved in the guise of the Bullet Train.

As I said before, "The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should

government do, and what should it leave to others.”¹ The sound, sustainable answer to Secretary Mineta’s “crucial question” lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail’s owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

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I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

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Comment: UP's Property Rights.

In addition to those aspects identified by Cox and Moore ("Reason Report"), the UP's Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its to own, for its shareholders' benefit. The Nation's national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP's tracks in the SF Peninsula, San Jose, and South Bay Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!"

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: [transport-policy] NY Mag: California's Bullet Train Hurtling Towards Disaster
Date: Wednesday, December 19, 2018 11:54:21 AM

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Wednesday, December 19, 2018 9:59 AM

To: John Lang <John.Lang@morganhill.ca.gov>; Steve Tate <Steve.Tate@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Barry Holtzclaw <bholtzclaw@newsymedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rtdillon@garlic.com>; Pat Loe <donpatloe@att.net>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; Sbccog <info@sanbenitocog.org>; Mary Dinkuhn <mary@sanbenitocog.org>; Sbcrc Balers <onemorejones@yahoo.com>; Benito Chapter <sanbenitochapter@yahoo.com>; Sally Bettencourt <sallybettencourt@gmail.com>; Jim Gillio <jim.gillio@hollister.ca.gov>; cityclerk@hollister.ca.gov; Jon Coupal <jon@hita.org>; Carl DeMaio <carl@reformcalifornia.org>

Subject: Fw: [transport-policy] NY Mag: California's Bullet Train Hurtling Towards Disaster

PUBLIC COMMENT: CAHSRA MEETING AGENDA ITEM TODAY 12/19/18; FUTURE MEETING AGENDAS: REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP" VTA&COG:--

Please add this to the meeting agenda for "public comment" regarding the supermassive Black Hole Boondoggle CAHSRA's Bullet-in-the-Brain Train, which ought to inspire local government leaders to demand truth in transportation on behalf of the taxpayers, motorists, who are burdened with 99% of the total cost of government sector transport in the USA, including local boondoggle leaders at VTA&COG a/k/a "Mobility Partnership."

Please direct you staff to add this to the public record of the Meeting so that future generations will know that our local leaders were warned.
Emperor Transit First is stark naked.

Joseph P. Thompson, Esq.
(408) 848-5506
e-Mail: TransLaw@PacBell.Net

----- Forwarded Message -----

From: Phil Hayward best_intentions2@yahoo.co.nz [transport-policy] <transport-policy@yahoogroups.com>
To: Yahoogroups <transport-policy@yahoogroups.com>
Sent: Wednesday, December 19, 2018, 12:37:16 AM PST
Subject: [transport-policy] NY Mag: California's Bullet Train Hurtling Towards Disaster

<http://nymag.com/intelligencer/amp/2018/12/californias-bullet-train-is-hurtling-towards-disaster.html>

Off-Schedule and Over-Budget, California's Bullet Train Is Hurtling Towards Disaster

By [Ed Kilgore](#)

As Jerry Brown prepares to leave office after his second eight-year stint as Governor of California, he's leaving his chosen successor Gavin Newsom a strong legacy, including a state with renewed [economic and fiscal health](#) and a [Democratic super-majority](#) in both chambers of the state legislature.

But there is at least one thing Brown's leaving behind that will likely be a major headache for Newsom: a much-delayed and extremely expensive [high-speed rail project](#) that has bled public support as rapidly as dollars. Veteran California journalist Dan Walters succinctly describes the problem:

The messiest bit of unfinished business Governor Jerry Brown will bequeath to successor Gavin Newsom is one of the outgoing governor's pet projects, a north-south bullet train project.

One could even say it's a hot mess, given the revelations of [a new audit](#) of the multi-billion-dollar project's first phase.

That initial segment — 100-plus miles of track in the mostly flat, sparsely populated San Joaquin Valley, from Chowchilla to an orchard near Shafter, north of Bakersfield — was supposed to be the easiest to design and build.

State Auditor Elaine Howle told the Legislature that the High-Speed Rail Authority's "flawed decision making regarding the start of high-speed rail system construction in the Central Valley and its ongoing poor contract management for a wide range of high-value contracts have contributed to billions of dollars in cost overruns for completing the system."

The San Joaquin segment was supposed to be finished by 2022, and the whole enchilada by 2029. But it's not looking good, and if that first deadline is missed, the state could be exposed to the clawback of up to 3.5 billion in federal funds [awarded the project in 2010](#) as part of the Obama administration's economic stimulus program. And the project is already looking at an estimated total cost (expected to continue to go higher) of 77 billion dollars. Things have steadily gone south since California voters authorized the initiative in 2008, as Los Angeles *Times* columnist Steve Lopez recently [observed](#):

In 2008, voters approved what was supposed to be a \$33-billion railroad completed by 2020. Today — and check back tomorrow, because these numbers could change — the cost has exploded to an estimated \$77 billion and the current completion date estimate is 2033.

Of the three funding sources, state money isn't nearly adequate, federal money is no guarantee and private investment is nonexistent.

Hundreds of lawsuits over environmental concerns and the rail authority's condemnations have jammed court dockets for years.

Even if the very first phase of the project in the San Joaquin Valley is finished, the next phase northwards will involve tunneling through mountains. And even if the line under construction is linked to existing rail lines running up to San Francisco and down to Los Angeles, the passenger service won't be "high-speed," and that [could endanger](#) some state-issued bonds requiring big improvements in speed.

With vocal opposition to the project ranging from fiscal hawks to farm and environmental groups, public support has flagged considerably. A [new PPIC statewide survey](#) shows that nearly three-fourths of Californians oppose making high-speed rail a major fiscal priority for the state. And that sour opinion is held pretty consistently across party and regional lines.

Gavin Newsom has long been on record supporting Brown's bullet train, but as he approaches the governorship, he seems to be sending signals that he might reconsider it all, as indicated in [remarks last week](#) during an appearance in Fresno, which will be served by the first phase of the project if it's ever completed:

I've been a long time supporter and I continue to support the Valley to Valley segment but I also think it's time for a fresh start its time to take a more sober, honest assessment of what it is and what it isn't and that's what I intend to do. And frankly I've been critical of some of the financing plans over the past few years but I hope to get it done but with a lot more transparency and a lot more accountability.

"Fresh start" is one of those euphemisms politicians use at the beginning of a U-turn. But for all the obstacles that exist to completing anything like the original scheme, there remain boosters with enduring dreams if not fantasies:

Congressman Jim Costa, a long time high speed rail supporter, applauds Newsom's call for a fresh start and believes congress and the President will get behind an infrastructure spending bill that will provide money for high speed rail projects around the country.

Costa is the rare Democrat who still thinks Donald Trump is going to wind up backing a big bipartisan infrastructure program — one, moreover, that includes a big public transit component. Meanwhile, Trump's California Republican friends are always gathering petitions for a [2020 ballot initiative](#) that would kill the bullet train altogether.

Newsom has a tricky problem to solve. This project was not just the fond aspiration of train geeks like [Cal Tech's fictional scientist Sheldon Cooper](#). It has become integral to the state's overall transportation, economic development, and environmental plans (those trains would take a lot of carbon out of the atmosphere). But getting passengers into seats and showing tangible benefits has to happen fairly soon before the missed deadlines and soaring costs make it all a legendary train wreck.



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shawna.freels@ci.gilroy.ca.us; gary@custom-1.com; ehoward1965@gmail.com; president@gilroyedc.org;
steve.tate@morganhill.ca.gov; jon@hjta.org; carl@reformcalifornia.org

Date: Thursday, December 13, 2018, 11:16 AM PST

PUBLIC COMMENT: NEXT MEETING, PUBLIC, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP,
PRIVATE RETREAT, AND/OR NON-BROWN ACT
COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP":

On the Road to Serfdom, Faster Than a Speeding Bullet, CAHSRA's Bullet Train Plummets to Fiscal Insanity faster than the transit agencies do?

Who's more insolvent, CAHSRA, or the COG, VTA, TAMC, SCCRTC, etc., transit agencies, who must increase gas & diesel taxes to keep their bankrupt-from-conception boondoggles running? You'd never know by reading their financial reports, which are prepared using Enron-style, Bernie Madoff-style, "off book" accounting, not GAAP accounting that the rest of us are required by federal and state tax regs to use. And governing without the consent of the governed because they are appointed to office, not elected, at the JPAs (joint power authorities).

Again, the first official act of the New Year will be to violate the due process and equal protection rights of the citizens by appointing "Directors" who have no accountability, and no transparency, not subject to voters' recall remedies, and falsifying their financial reports to conceal the full extent of their losses with public sector transport.

How high will gas & diesel taxes have to go to keep the boondogglers' boondoggles running?

Caveat viator.

Joseph P. Thompson
(408) 848-5506

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

e-Mail: TransLaw@PacBell.Net

cc: Barry - Merry Christmas & Happy New Year - Here's a Guest Editorial for your three newspapers. jpt

----- Forwarded Message -----

From: California High-Speed Rail <news@hsr.ca.gov>

To: "translaw@pacbell.net" <translaw@pacbell.net>

Sent: Thursday, December 13, 2018, 11:00:41 AM PST

Subject: VIDEO RELEASE: California High-Speed Rail Program Highlights Major Accomplishments of 2018

To view this email as a web page, go [here](#).

News Release

MYTH BUSTERS: WHO YA' GONNA' CALL? ROADS & BRIDGES DETERIORATING IN CALIFORNIA, WHILE WE SQUANDER BILLIONS ON WASTEFUL TRANSIT, DIVERTING GAS & DIESEL TAXES TO BANKRUPT BOONDOGGLES

LIKE COG + VTA.

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: bholtzclaw@newsmedia.com; senator.cannella@senate.ca.gov; eddie.mendoza@mail.house.gov; info@sanbenitocog.org; sbcsuper@supervisor.co.san-benito.ca.us; jim.gillio@hollister.ca.gov; cityclerk@hollister.ca.gov; sanbenitochapter@yahoo.com; mary@sanbenitocog.org; donpatloe@att.net; sallybettencourt@gmail.com; president@gilroyedc.org; ehoward1965@gmail.com; gary@custom-1.com; allcouncilmembers@ci.gilroy.ca.us; steve.tate@morganhill.ca.gov; john.lang@morganhill.ca.gov; carl@reformcalifornia.org

Date: Friday, November 9, 2018, 1:04 PM PST

PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PRIVATE RETREAT, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF SO-CALLED "MOBILITY PARTNERSHIP"

Dear Mr. Holtzclaw,

If you believe opponents of Prop. 6, roads and bridges are deteriorating in California because we don't pay enough in taxes&fees.

Could the reason be that our leaders divert massive amounts of taxes&fees from highways and bridges to boondoggle bankrupt transit

fiascoes, which are conceived insolvent, born bankrupt, and kept running by ever-increasing transfusions of gas&diesel taxes and vehicle

fees by bad public policy?

Take SBC for example. What percentage of annual passenger trips are taken by private vehicles? Answer: 99.6% based on the last

COG data I reviewed for one of your predecessors. What percentage of annual passenger trips are taken by public sector transit? Answer:

Less than one-half percent. What percentage of total cost is paid by transit riders? Answer: 1% using legal accounting, not transit agency

accounting. What percentage of total transport costs do motorists pay? Answer: 102% including highway construction and maintenance,

on about 4.2 T annual passenger miles nationwide, SBC's motorists included.

If you doubled COG's "ridership" nine times, how much money would COG spend on its boondoggle passenger fiasco? Answer:

An amount greater than SBC's annual budget based on the last COG data I reviewed. I gave all this to your predecessor, when I served

on COG's Citizens Transit Task Force and COG's Citizens Rail Advisory Committee.

My friends in SBC said, So Joe, what is the answer? I've said it before, and I'll say it again. Privatization.

If you want to take a bus ride, then you pay for your fare, and you don't ask your neighbors to pay for your ride.

Rail: same answer.

Lunar Escalator: same answer.

I traced the consequences of the unsound, unsustainable transport policy in a paper I wrote while studying transportation law and

policy at the Norman Y. Mineta International Institute for Surface Transportation Policy Studies at SJSU, "ISTEA Reauthorization and

the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," 25 *Transportation Law Journal*, pp. 87-et seq.

(1996), published in shortened version in *Transportation Lawyer* in 1996.

We are subjected to unaccountable, non-transparent governance abuse by unelected "directors" at the transit agencies, e.g., COG,

MTA, etc., who govern without voter consent because they are appointed, not elected, to the agency. They cover up the full extent of

their boondoggle losses by using non-GAAP accounting methods like Enron did, like Bernie Madoff did, called "off-book" accounting,

where capital and fixed costs are omitted from their financial reports, making it look like they are not as deep in deficit spending as they really are. They violate the Unfair Business Practices Act by pricing services below cost, thus forcing taxpayers to make-up the difference. They call it "success." In reality, it is just the opposite.

So, they have us on the Road to Serfdom, and so long as they reward their special interest friends who make out like bandits with the insolvent transit operations they refuse to reform.

If you want to know where this will end, just take a look at the history of the USSR.

Why don't you report truth in transportation? We don't get it from our local leaders.

Caveat viator.

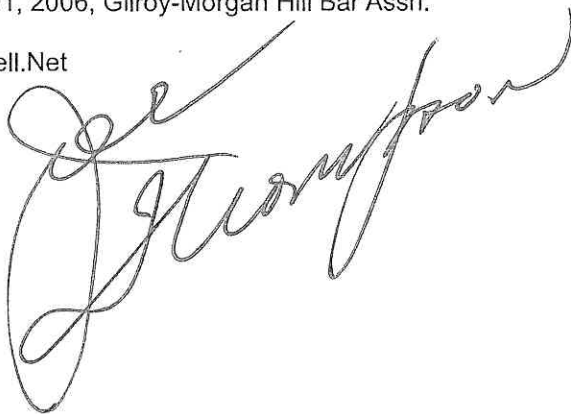
Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

(408) 848-5506

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A handwritten signature in black ink, appearing to read "Joe Thompson". The signature is fluid and cursive, with the first name "Joe" written in a large, stylized loop.

JOSEPH P. THOMPSON

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January 17, 2002

+ 16 YEARS =
STILL
SHAFTING
TAXPAYERS
WITH
TRANSIT
BOONDOGG

FAX (831) 636-4160
Honorable Rita Bowling, Chairwoman
San Benito County Council of Government
481 Fourth Street
Hollister, CA 95023

FAX (831) 636-4310
Mr. George Lewis, Executive Director
San Benito County Council of Government
375 Fifth Street
Hollister, CA 95023

Re: Public Comment on EIR for SBC 2001 RTP

Dear Mrs. Bowling and Mr. Lewis,

Thank you for inviting public comment on the Environmental Impact Report (EIR) for the San Benito County (SBC) 2001 Regional Transportation Plan.

Please add this letter to the responses to the EIR that form the public record of your proceedings, and instruct your staff to include copies of the 50 letters regarding SBC's transportation policy that I sent to COG's Directors between Jan. 21, 1999 and Dec. 29, 2001, together with the documents that I presented to you and the COG Directors and staff at the hearing.

1. Author: I am a member of the Association for Transportation Law, Logistics & Policy (formerly Interstate Commerce Commission Practitioners Association), Citizens for Reliable and Safe Highways (CRASH), Transportation Lawyers Association, Citizens Rail Advisory Committee, Safe Kids Coalition, SBC Citizens Transit Task Force, Conference of Freight Counsel, and other professional organizations. These remarks are personal and not made on behalf of a client or any professional or governmental organization to which I belong or for which I serve my community. I have done post-doctoral study of transportation law and policy at the Norman Y. Mineta International Institute for Surface Transportation Policy Studies.

2. Background Materials Supplementing These Remarks: The background for these remarks may be found in my paper "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal* pp. 87-*et seq.* (1997). Additional background for these remarks is found in my paper that I wrote while serving on the Government Review Council of two local chambers of commerce in response to Valley Transportation Authority's invitation for public response to the widening of U.S. 101 between San Jose and Morgan Hill, entitled, "El Camino Real 2000: A Transportation Business and Logistics Perspective on the Proposed Widening of U.S. Highway 101."

I previously gave copies of these two papers to each Director of COG, and will you please direct your staff to add them to these remarks for the formal record of these proceedings. Additionally, as you know I wrote an extensive paper while serving on the SBC Citizens Rail Advisory Committee, entitled, "***INTERMODAL FACILITY for HOLLISTER BRANCH LINE: A Private Sector, Sustainable, User-Fees Funded Transportation Solution for the 21st Century.***"

I respectfully request that you direct your staff to add that paper, too, to the formal record of these proceedings.

3. Major Flaws to EIR for SBC's 2001 RTP: I have identified 22 major flaws in the EIR which justify your rejecting it, sending it back to TAC for revision, or else subjecting the County to substantial litigation expenses by a likely challenge to it for violation of the applicable law, e.g., California Environmental Quality Act (CEQA). Rather than approve a defective EIR and RTP, I urge you to see that these flaws are eliminated by further revision of the EIR and RTP.

1. The EIR is premised, like the RTP, on unstated assumptions, which are similar to those I pointed out to COG's Directors in my second reply to the COG's consultants' Caltrain extension working paper and my letter to you dated Feb. 20, 1999 (see copies in materials I handed to you at the public hearing).

2. The EIR and RTP do not mention private sector transportation alternatives based on presently-existing technology.

3. The EIR and RTP would impose an urban transit model on a rural, ag-based economy.

4. The EIR and RTP presume tax and population bases which do not exist here to support urban mass transit solutions based on taxpayer-funded public transit that history has shown do not work in the long run.

5. The EIR and RTP make no mention of international law, i.e., North American Free Trade Agreement (NAFTA) and its adverse consequences for SBC's residents.

6. The EIR and RTP make no mention of the High Speed Rail Authority's Bullet Train, which is proposed to run through this County (either over Panoche Pass or Pacheco Pass) and the tax burdens that it will impose on our residents.

7. The EIR and RTP make no mention of passenger stage corporations (PSC's) or transportation charter parties (TCP's), which are authorized by the California Public Utilities Code to perform for-hire carriage of people, nor does it mention private-sector shuttles.

8. The EIR and RTP make inadequate mention of the adverse effects that public-

sector transportation has on local small businesses, and the adverse effect it has on affordable housing by imposition of additional "traffic impact fees" on house prices to support public-sector transit.

9. The EIR and RTP fail to distinguish between transportation infrastructure and transportation business operating on the infrastructure, i.e., for-hire carriage of property and people.

10. The EIR and RTP fail to mention restoration of intermodal facilities for this Region has recommended by Transportation Secretary Mineta, the Director of Caltrans Highway Programs, as I recommended to the California Transportation Commission (with positive response by the CTC's Chairman) at the CTC's meeting in December 2001 at the PUC in San Francisco.

11. The EIR and RTP propose an unfeasible transportation alternative in high-density apartments and condominiums (4,000 units in ten years) built around two railroad stations on the Hollister Branch Line north of Hollister, and fails to mention the cost of \$20-\$40 million that the taxpayers would be forced to absorb to refurbish the track to passenger-carrying condition, nor does it mention the massive annual operating subsidies required to operate the passenger service.

12. The EIR and RTP make no mention of viable alternatives available by reliance upon members of the American Shortline Railroad Association.

13. The EIR and RTP make no mention of the decision of the Amtrak Review Council to liquidate Amtrak, and the remarks of Senator John McCain of Arizona who said that Amtrak is a failed experiment, and that Caltrain is equally flawed as Amtrak, and doomed as is all socialist transportation in the long-run.

14. The EIR and RTP make no mention of the massive financial losses sustained each year by SBC's County Transit, and fails to disclose that in Year 1999-2000 County Express provided heavily-subsidized passenger service for only 101.6 people/day, nor does it reveal the fully-amortized cost of such public-sector transit, or that it would be cheaper to buy ever rider their own automobile, and that the government monopoly is anti-competitive, discriminatory, and prone to massive waste, especially if the operation is unionized (like BART, VTA, etc.). It does not disclose that the riders enjoy nearly free (99% fully-amortized costs paid by taxpayers, not fares) rides while forcing motorists to pay for all of their own transportation expenses, too.

15. The EIR and RTP make no mention of the \$24 billion losses sustained by Amtrak, nor reveals the losses sustained by Caltrain (*Mercury News*' Mr. Roadshow Gary Richards reported that only 11% of operating costs for Caltrain are paid for by fares--the percentage would be much lower if capital costs were included), yet it irrationally contains an alternative transportation plan to extend Caltrain to this relatively poor agricultural County.

16. There is no mention of the \$20-\$40 million estimated cost to refurbish the UP's Hollister Branch Line being imposed on taxpayers and given to the 154th largest corporation in America, which would be a disgraceful form of corporate welfare that would bankrupt every homeowner and small business owner in the County.

17. There is inadequate discussion of freight movement in SBC and on the Central California Coast Region, which is unacceptable to the public because axle weight is the single largest factor in road maintenance expenses.

18. There is no mention of the adverse effects from the federal government's decision to allow entry of Mexican trucks onto our highways, and US101 is a "NAFTA route" under TEA-21. Those big rigs from Mexico will use Highways 25 and 156 to travel between the Salinas and San Joaquin Valleys, right through our County.

19. There is no mention of the U.S. Supreme Court's decisions supporting the federal governments preemption of commerce on our highways, e.g., (1) NAFTA-harmonized gross vehicle weights (GVW), and (2) long combination vehicles (LCVs), three 27-ft. trailers, or two 53-ft. trailers, pulled by one tractor.

20. There is no mention of the increase of GVW to Canadian or Mexican GVW, which is likely when TEA-21 is reauthorized (*Traffic World* is already reporting on "TEA-3"), effective in three years from now, and which will pulverize the inadequate new concrete being poured on the new lanes of US 101 north of Morgan Hill.

21. There is no mention of the adverse effects on ag-related business in the County or Region and what introduction of Mexican trucks with NAFTA-harmonized GVW and LCVs will have on local truckers, who will be driven into bankruptcy.

22. There is more attention given to endangered species of flora and fauna than to the adverse consequences for the human beings, e.g., SBC's gets only 11 cents back from Sacramento, similar to all rural counties, whose money is diverted to LA, SF, San Jose, Oakland, and other urban areas where their transit riders get about \$500,000 annual subsidies courtesy of the rural counties' taxpayers.

When I get a chance I will send you the additional minor flaws that I see in the EIR and RTP, e.g., "without bankrupting the family" should read "without bankrupting all the families in the County" (page 4 of RTP).

Very truly yours,

JOSEPH P. THOMPSON

cc: COG Board of Directors
cc: Citizens Rail Advisory Committee
cc: SBC Board of Supervisors

WORSE TODAY
J. P.T.

Remarks to the Council of Governments of San Benito County
by
Joseph P. Thompson, Esq.

*Unmet Needs Hearing 2017: Emperor Transit First is Stark Naked-
COG is Taking us Places That we Don't Want to go, While
Making our County Unlivable & Unaffordable, and the
Small Business Killing Fields-*

*COG's Directors Refuse to Make Highway Safety COG's Top Priority-
While "partnering" with VTA & TAMC & AMBAG to Ruin the Region,
but they Refuse to Abolish COG, Remove the Malignant Cancer, and will
Not Even Consider Reform by Privatization and Free Enterprise Solutions
COG's Directors, Like the Bell, California City Council, Ought
to be Prosecuted for Fraud and Violation of their Fiduciary Duty
to the Taxpayers of San Benito County*

Mr. Chairman, and Directors, ladies & gentlemen, thank you for allowing me to address the Joint Powers Authority (unelected and unresponsive and unaccountable to the voters) on the subject of unmet needs of the residents of our community for transportation services. My name is Joe Thompson. I am here volunteering my time to help you with this important issue. I am not here on behalf of any clients. I am not being paid. I have no ulterior motive or hidden agenda. I am here because I promised you that I would give you the benefit of my small sum of transportation experience and knowledge to help you achieve the right answers for our transportation needs.

I am attaching my previous remarks for previous years for your shameful ugly dog and pony show you, like the hypocrites you are, describe as the "unmet transit needs" hearing, another indication of why California is bankrupt, its Counties are bankrupt, and its Cities and Towns are bankrupt. Your policy was conceived insolvent and born bankrupt, but you all pat yourselves on the back proclaiming "success" and watch as COG gives itself "A" on its "report card" (Baloney-BS). While you cling to your radical socialist policy, we have become the worst State, and one of the worst Counties in the worst State, in America, and you'll continue to make this County unlivable for our children and grandchildren. Your "success" is our ruin. Why aren't you ashamed of yourselves? How can we get you out of office ASAP?

I am a former charter member of COG's Transit Task Force, COG's Citizens Rail Advisory Committee, Citizens for Reliable and Safe Highways, and I served on the executive committee of the debtor-creditor-commercial law section of the SCCBA. I am also a member of the Association for Transportation Law Logistics & Policy, the legislation (Past-Chair), arbitration, intermodal, freight claims and bankruptcy committees of the Transportation Lawyers Assn., and a candidate for the American Society of Transportation & Logistics. I have also been a member of Gavilan Employers Advisory Council and am founder of the SBC Small Business Incubator. I have given you a copies of my petitions, position papers and letters, including the transportation infrastructure proposal for restoration of intermodal facilities for the Central California Coast Region, and my various letters regarding the amendments and revisions to the

Regional Transportation Plan service to Hollister. I have also provided you with a copy of my paper, "ISTEA Reauthorization and the National Transportation Policy," which was published by the *Transportation Law Journal* and in *Transportation Lawyer* in 1997.

Summary of Petition to COG for Strategic Transportation Planning

COG's unconstitutional Directors' conduct has sold-out the County's taxpayers and citizens so that they can curry favor with their special interests, e.g., public sector union employees, subsidy recipients, and the employees of the Joint Power Authority who reward themselves with taxpayers' money to feather their nest, and plump their salaries, benefits and pensions, lying all the way and laughing at anyone who begs for truth in transport.

Our local government's growing reliance on our taxes and the ever-increasing number of tax-based districts, authorities, joint powers boards, agencies, etc., combined with the imposition of new taxes, fees, assessments, grants, subsidies, premiums, surcharges, bonds, etc., falls especially hard on small businesses. As a result, the small business failure rate (4 out of 5 in the first five years, up 81% over the previous year, and the family farmers and personal bankruptcy rates (dramatically higher) are increasing, destroying jobs, investments, savings and lives. Hopelessly oppressed small business owners cannot pay their rent and their mortgage payments. Families are torn asunder by the emotional turmoil of foreclosures and evictions which accompany their failed businesses. The victims of the failed businesses and destroyed families become more dependent on local government for assistance. Thus, a spiraling effect grows in our community like a Black Hole or a malignant tumor. It is time to break this cycle and halt Black Hole Government before it is too late. The growth of the public sector tumor must be eradicated if we hope to survive to compete in the global economy of the coming new century. We must take back our government from the bureaucrats and Soviet-style planners who feast off OPM (other people's money). We must bring an end to the creeping socialism that breeds in out-of-control government and its dependence upon money from taxpayers. Otherwise, our fate will be the same as the USSR. When government is the largest employer in the county, the burden on small business and families is fatal. We must demand a return to private sector solutions with user-fees replacing taxpayers' dollars, and thereby reduce government's excesses before we kill-off all small businesses and ruin the capitalistic formula of America's successful past. This petition raises issues which must be addressed by our elected representatives before undertaking further strategic transportation planning for our County. This is a "reality check" and may require a "paradigm shift."

Definitions Previously Adopted by COG

Transportation needs of a community always have, and always will, exceed the community's resources. Defining the terms, e.g., "unmet needs," "transit," "reasonable," "cost," "benefit," establishes both the target of our efforts and their scope. For example, if you include a resident's need to travel to Hawaii for his vacation as an "unmet need" for his transit convenience, then the target becomes much larger. There is a direct correlation between the target we define and the cost of meeting the goal. The broader you define the "unmet needs," the greater will be the need for money to pay for the transportation services you decide to offer. This is true for all modes of transportation, air, water, rail and highway.

There is no “free” transportation in any mode; a cost must be borne to provide the service. How to pay for the inevitable cost is the problem once you determine what service you will provide. Who should pay? Whether the transportation service is owned by private investors or the public, this funding issue is inescapable. Equipment, labor, fuel, supplies, insurance, maintenance, administration, etc., all must be paid or else no service can be offered by the carrier. COG recognized this when it voted unanimously to privatize County Transit.

The truth in transportation costs and benefits must be disclosed to both those who use the service and those who pay for the service. Concealing or distorting costs and benefits is unacceptable policy, especially when the taxation power of government is employed to subsidize insolvent transportation operations.

COG’s definitions are unsound and irrational because they do not result in a reasonable burden on those who pay for the service compared with the benefit to the user of the service. COG’s definitions are not based on truth in transportation costs. For example, “unmet needs” is defined by excluding the needs of those who pay for the service. It is illogical to define society’s needs by excluding the needs of those who make it possible for a service to be provided. Furthermore, it is unreasonable to require the taxpayers to furnish 98% of the funds (fully-amortized amount) while the user of the service pays only a 2% “co-pay.” The layers of government overhead deflect the money paid by the taxpayers from reaching the goal, so it has been said that for every \$100 of federal taxes paid, only \$5 is returned to local government to fund transit services. This increases the insolvency, bankruptcy and small business failure rate in the community, which causes an increase in “unmet needs” for transportation. This vicious cycle kills the goose that lays the “Golden Egg.” In other words, by adopting a model of government-ownership of transportation services, the source of the subsidies is diminished as the service increases. Eventually, there is too much for the middle-class taxpayer to bear, paying for both his own transportation, and the riders on government-owned transportation service. Amtrak is a perfect example, and application of this model to Amtrak has resulted in its collapse, and caused the \$2 billion re-bailout by Congress. Recent decisions by Congress and the Surface Transportation Board to allow Amtrak to haul freight reveal how the genesis of the revenue issue brings us back to the truth in transportation costs. But think of the social costs that society had to endure between 1970, when Amtrak was formed, to the future when it is hoped that it will become “self-sufficient.” You can better meet the “unmet needs” of the community if you adopt a private-sector model for transportation solutions. Instead of killing the Goose That Lays the Golden Egg, the taxpayers will be better able to assist local government in its effort to address all the “unmet needs” of the community you serve. The federal government’s decision to privatize Amtrak is a lesson for local governments like ours. We must now implement COG’s decision.

Proposed Redrafting of Definitions

I believe that we ought to redraft the definitions that the COG Board previously adopted to reflect the truth about transportation costs and benefits. Fairness to the taxpayers requires it; history of public sector transportation fiascoes demands it. COG’s transportation definitions ought to adhere to the California Transportation Commission’s mandate to local governments to plan future transportation infrastructure improvements on “user fees” rather than on higher taxes.

I again refer you to the study by the Harvard University Professors, José A. Gómez-Ibáñez and John R. Meyer, *Going Private: The International Experience with Transport Privatization* (Wash, D.C.: Brookings Institution, 1993), which I mentioned in my letter to you and which I have shown you at previous COG Board meetings. The revised definitions ought to be based on a full disclosure of all the costs that public-ownership of transportation services imposes on the largest segment of the population. It must include the personal insolvencies, bankruptcies, and business failures that excessive and abusive taxation causes. I believe that we ought to be guided in our effort by studies that have shown us the most efficient methods of providing vital services to our community, e.g., John D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989), which I have also shown you at previous COG meetings. If you ignore the truth about transportation costs and benefits in your transportation definitions, then you will condemn future generations to certain failure of the infrastructure so vital to success of our economy. We must not tolerate those who would conceal the truth from the public, or seek to mislead the taxpayers, without whom your effort to satisfy “unmet needs” would be futile.

Conclusion

I support your efforts to help our residents satisfy as many of their “unmet needs” as is feasible, while not undermining the work by utilizing the wrong tools for the job. You would not perform a surgery with a dirty scalpel. You would not fight an epidemic by spraying Ebola Virus in the air. You would not throw gasoline on a fire to extinguish it. So why try to satisfy “unmet needs” with socialism. History has shown that it will not work; it will backfire on you, and then we will have more “unmet needs” than before you started. Remember, there are no “Welfare-to-Work” trains running in the USSR today. We are creating “unmet needs” with the socialist transit policy of urban counties, when we should be following COG’s unanimous decision to privatize passenger bus transportation. We will only worsen budget deficits with the socialist system.

I’ve said this over and over again each passing year, yet COG’s Directors do absolutely nothing to reform and change the sick, unsound, unsustainable transport policy that dooms the future of our County. History will condemn our memories for this failure, while the mass transit radicals will proclaim your “success” right up to the collapse of our government. Shame on the COG Directors for their steadfast refusal to change and restore our free-enterprise roots in transport that helped make America great. It is a sad, despicable thing to see ones friends and neighbors kow-towing to Emperor Transit First, while sacrificing the health and safety of more than 99% of the County’s residents. Shame.

Joe Thompson

FINANCING ALTERNATIVE “A” FOR PASSENGER (BUS & TRAIN) SERVICE (Santa Clara County & VTA & COG & TAMC & AMBAG, Etc., Model-Soviet Style)

EXCESS TAXATION → →

**INSOLVENCY & BANKRUPTCY & SMALL BUSINESS FAILURES & HIGHER
TRAFFIC IMPACT FEES & MORE UNAFFORDABLE HOUSING → →**

UNMET NEEDS → → HIGHER TAXES

FINANCING ALTERNATIVE "B" FOR PASSENGER (BUS & TRAIN) SERVICE
(Taxpayer-Friendly Model-Capitalism)

INCREASED RELIANCE ON FREE ENTERPRISE → →

LOWER TAXES & TRAFFIC IMPACT FEES &

**MORE AFFORDABLE HOUSING, FEWER BANKRUPTCIES & SMALL BUSINESS
FAILURES → →**

FEWER UNMET NEEDS → → LOWER TAXES → →

MORE BUSINESS ENTERPRISE → →

Why COG won't make highway safety our top transport priority? Here in this statute they have discretion to do so, but they refuse to do it. Why?

Section 99401.5 of the California Public Utilities Code:

Prior to making any allocation not directly related to public transportation services, specialized transportation services, or facilities provided for the exclusive use of pedestrians and bicycles, the TPA shall annually do all of the following:

- a. Consult with SSTAC
- b. Identify the transit needs of the jurisdiction . . .

c. Identify the unmet transit needs of the jurisdiction and those needs that are reasonable to meet. . . . The definition adopted by the TPA for the terms “**unmet transit needs**” and “**reasonable to meet**” shall be documented by resolution or in the minutes of the agency. The fact that an identified transit need cannot be fully met based on available resources shall not be the sole reason for finding that a transit need is not reasonable to meet. An agency's determination of needs that are reasonable to meet shall not be made by comparing unmet transit needs with the need for streets and roads.

d. Adopt by resolution a finding for the jurisdiction . . The finding shall be that

- (1) there are no unmet transit needs,
- (2) there are no unmet transit needs that are reasonable to meet, or
- (3) there are unmet transit needs, including needs that are reasonable to meet.

e. If the TPA adopts a finding that there are unmet transit needs, including needs that are reasonable to meet, **then the unmet transit needs shall be funded before any allocation is made for streets and roads within the jurisdiction.**

[So, why don't COG's Directors define “reasonable” in terms of millions of dollars of subsidies. For example, they could limit the subsidies to \$9 million (level in 2001), or today's level (how many millions of dollars?), and say NO to any more wasteful deficit spending. In that way COG's Directors could place a cap, a ceiling on the waste. If they don't, where will it end?]

jpt

Analysis of County Transit Primary Effects
on San Benito County

Pros:

Subsidy recipients get welfare (minimal fares)
COG employees get salaries and benefits (99% from taxes)
MV Transportation, Inc.'s shareholders get profits (ditto)
“”””” employees get union wages & benefits (ditto)

Cons:

Taxpayers pay 99% of all transit riders' costs
Air pollution from empty buses (98% of seats move empty)
Congestion added to highways and streets for no benefit
Road surface maintenance costs increased for no benefit
Private sector carriers put out of business, by COG's
uncompetitive business practices of setting fares lower than total
costs in violation of the Unfair Business Practices Act, which
deters other carriers from entering the marketplace for carriage
of passengers

Conceals massive deficit spending with non-GAAP
accounting methods (same as those used by Enron's executives)

Hides taxpayers tax subsidies under “other revenue” in
their financial statements

Causes gas prices to be higher by robbing gas taxes from
motorists to pay for mass transit boondoggles

Undermines economy of the County by adding
confiscatory levels of taxes&fees to pay for socialist mass
transit, destroying the small and very small business owners'
livelihoods, making housing unaffordable, and the County
unlivable for tax payers (while subsidy recipients and trough
feeders thrive under the current socialist policy)

JPT

WORSE TODAY
J.P.T.

DID YOU KNOW THAT ACCORDING TO A COG DIRECTOR, BOS SUPERVISORS, COG'S FAREBOX RECOVERY RATE IS BORDERING ON THE ILLEGAL (10% OF OPERATING COSTS PAID BY FARES) ACCORDING TO COG'S LAST (JUNE 2007) FINANCIAL REPORT. IF DISPATCH AND MHT ARE REPORTING VTA'S ABUSE OF THE TAXPAYERS, THEN WHY DOESN'T FREELANCE REPORT IT HERE? WE ARE A MUCH SMALLER COUNTY THAN SANTA CLARA COUNTY, SO THE PAIN INFLICTED BY COG IS A GREATER INTENSITY THAN WHAT VTA INFLICTS ON TAXPAYERS THERE. IS THERE A COVER-UP THAT YOU REFUSE TO REPORT?

[TRY THIS WITH CURRENT COG DATA, BUT BE SURE TO INCLUDE ALL COSTS, CAPITAL AND FIXED PLUS OPERATING, OR ELSE YOU WILL NOT GET A TRUTHFUL ANSWER.]

Analysis of County Express "Ridership"
COG's PUBLIC SECTOR BUS SERVICE
(Hypothetical Model of 10,000 Riders/Month)

[Ask yourself why we don't have the taxis & shuttles doing this to reduce taxpayers' subsidies? And why do we have two transit agencies?]

10,000 riders/month → →

333 riders/day (30 day month)

500 riders/work & school day (20 days) =

250 roundtrips/work & school day

If each person takes 6 trips/day x 20 days =

120 trips/month, then 10,000/120 =

83 people per month ride County Express

If each person takes 4 trips/day x 20 days =

80 trips/month, then 10,000/80 =

125 people per month ride County Express

If each person takes 2 trips/day x 20 days =

40 trips/month, then 10,000/40 =

250 people per month ride County Express

Annual Operating Subsidy/Person:

\$750,000/250 = \$3,000/person

\$750,000/125 = \$6,000/person

\$750,000/83 = \$9,036/person

SO, WHAT IS IT TODAY? AND WHAT IS THE TREND? Jpt

YOU NEVER REPORTED THIS. WHY? DON'T CONFUSE RESIDENTS WITH RIDERS.

BE MORE ACCURATE WITH YOUR REPORTING. DEMAND THAT COG'S FINANCIALS

BE PREPARED WITH LEGAL ACCOUNTING METHODS, NOT BERNIE MADOFF

METHODS. TERMINATE COG'S DOUBLE STANDARD: ONE FOR THEM, AND ONE FOR THE REST OF US. THIS IS NOT THE USSR.

Joe Thompson

Tres Pinos [I sent this to you in 2001 or 2002]

JOSEPH P. THOMPSON
Attorney at Law
8339 Church Street, Gilroy, CA 95020
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January 6, 2012

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Re-Revised Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Referring to my letters to you (copies enclosed), why are you ignoring truth in transportation? Why are you ignoring sound railroading? Why are you ignoring history? Why are you ignoring the will of the voters of California? Why are you ignoring the legislation from our State Legislature signed into law by our State Governor?

Please include these remarks as part of your official record of proceedings and these enclosed supplemental remarks about the re-revised EIR for the SF-San Jose-Gilroy-Merced Segment.

You remind me of the public sector transit advocates and supporters who cram taxpayer-funded transit down our throats so that public sector transit welfare recipients and public sector union employees and joint power authorities staff can enjoy our blood regardless of the damage that it does to our State. Like addicts who refuse to admit their addiction, you seem Hell-bent on your Leninism even though history, both world-wide and American and North American railroad history proves that your concept is fatally flawed and is not sound nor sustainable. I repeat what I said to the High Speed Rail Commission and then State Senator Quinten Kopp: High Speed Rail can only work in the private-sector. Otherwise, you'll just stick another blood-sucking leech on us like Amtrak, Caltrain, Lite Rail, and other public-sector boondoggles that fail every place, and every time that they've been tried around the world.

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl.

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January 15, 2003

FAX (916) 653-2134
Honorable R. Kirk Lindsey, Chairman
California Transportation Commission
1120 N Street, P.O. Box 942873 (MS-52)
Sacramento, CA 94273-0001

Re: Transportation Funding Crisis Workshop Jan. 17, 2003

Dear Mr. Lindsey,

Thank you for sending notice of the CTC's funding issues workshop and for inviting public comment regarding the State's fiscal "crisis." It was a pleasure meeting you at the CTC's meeting in San Jose at the Fairmont Hotel last month. Congratulations on becoming Chairman of the CTC. One cannot help but sense the irony in a trucking company CEO being CTC's chairman when our chickens are coming home to roost. At Mr. Lawrence's invitation I addressed the CTC in December 2001 at the PUC in San Francisco on the subject of intermodal transportation infrastructure improvements for the State, and although I cannot attend the workshop on the 17th of this month, I would like to offer my recommendations.

1. Author. I have 39 years experience in transportation industry (trucking and railroad). I am a post-doctoral student of transportation law and policy. I am a member of the Transportation Lawyers Association, and serve on TLA's legislation, intermodal, arbitration and freight claims committees. I am also a member of the Association for Transportation Law, Logistics & Policy, and a candidate for the American Society of Transportation & Logistics.

2. Background. For additional background, please refer to my paper that I presented to the CTC and handed to Mr. Remen at the CTC's meeting at the PUC in San Francisco, December, 2001.

3. Official Record. Will you please direct your staff to include these remarks as part of CTC's official records.

4. Summary. In response to your call for public comment on the current "funding crisis", I once again give my conclusions reached six years ago during debate on ISTEA reauthorization. *See*, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*,

***Recommendations to CTC Re:
Transportation Funding "Crisis"***

pp. 87-*et seq.* (1997), and "ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," *Transportation Lawyer* (Dec. 1997). A copy of the former is enclosed for your ready review, although I previously submitted it to you in December 2001.

5. Recommendations. The CTC should first frame the fundamental issue facing it, which was identified by Transportation Secretary Mineta while he was serving as Chairman of the Surface Transportation Committee in the House of Representatives: "*The crucial question in transportation today is: What should government do and what should it leave to others?*"

Governor Davis' call for "structural reform" should focus CTC on Secretary Mineta's "crucial question." The answer that CTC gives to Governor Davis and Secretary Mineta will shape the solution for our transportation "funding crisis," and the future of transportation in California.

These issues are also pending in the 108th Congress as it takes up the subject of reauthorization legislation for Transportation Equity Act for the 21st Century (TEA-21). Please refer to my recommendations to USDOT dated 8-23-02 on this issue (see copy enclosed).

Rather than a band-aid approach to the "funding crisis," I recommend that CTC strive to achieve "structural reform" in the basic approach that we take to the for-hire carriage of passengers. I believe that CTC should have no "sacred cows" immune from this search and rescue mission. Like waking-up with a hangover, California must swear-off its former excesses.

The Emperor Transit First is stark naked. Unremunerative fares yield insolvent carriers, of both passengers and freight. Deficits piled on top of deficits bring predictable results. Farebox recovery rates that fail to cover fully allocated costs produce a result which does not surprise transportation students or history students. Such public-sector transit systems are not "going broke" in California (or elsewhere), they were conceived insolvent, born bankrupt, and kept operating only with massive blood transfusions from the taxpayers. No member of CTC should be surprised at the present "funding crisis" because we have intentionally navigated the State to this destination, one in which California's deficit exceeds that of all other States' combined deficits. We asked for it; we demanded it, even if it meant damning future generations into decades of debt. Bankrupt operations, bankrupt carriers, bankrupt policies, are the result of our myopia. Increasing insolvent transit systems' operations undermine our financial capability to build and repair transportation infrastructure. Their growing demands have reached a predictable breaking point. We must look into the mirror and recognize the problem staring back at us.

There has been occurring a world-wide "privatization revolution" as described by the *Wall Street Journal*, special edition 10-2-95, yet we have steered a contrary course of nationalization, statism, and public-ownership. Only a hypocrite would feign surprise at arriving at our present destination of fiscal "crisis."

*Recommendations to CTC Re:
Transportation Funding "Crisis"*

CTC and California must ask itself this question if it wants to be cured: “Why did Canada, Mexico, Great Britain, Australia, New Zealand, and many other nations denationalize their publicly-owned transportation industries during the past 25 years?”

We must ask ourselves, if we truly want to bring permanent relief to this and future generations of Californians: “If all of the USSR’s Five Year Plans were such raving successes, then why did the USSR collapse in revolution?”

Why should we adopt the Marx-Engels-Lenin-Trotsky-Stalin theory of government when our Founders placed its foundations on Adam Smith’s theory? Did the USSR win the Cold War, or did we win it? If we defeated the USSR, then why should we adopt their failed economic philosophy?

Answering Governor Davis’ “structural reform” challenge, answering Secretary Mineta’s “crucial question,” learning the lessons of the history of the past century, CTC and California must recognize the error of our policies, unless we have no intention of solving the “funding crisis.” Phony efforts of “reform” will just be wheel-spinning in mud—wasted motion. Genuine “reform” means going back to American free-enterprise in transportation, personal responsibility, not transit welfare. Our galley slaves, i.e., taxpayers, are beyond the breaking point. Our policies have burdened the taxpayers under unsustainable loads. Like overloaded trucks, our axles are breaking. Bankruptcies are at historic highs, both business and individual. Small business failure rates are at 80% on average during the first five years. *Traffic World*’s report that more than 10,000 trucking companies (with 20 or more trucks) either filed for bankruptcy protection or closed during the last two years illustrates what plight business owners are bearing from our ill-conceived government policies. Did you ever think you’d live to see PG&E, United Airlines, and Consolidated Freightways in bankruptcy? We are killing the goose to steal her eggs, but what will our children eat?

The fallacy in our current transport policy can be shown by comparing fares paid to move a 200 pound box with fares paid to move a 200 pound man. The shipper of the former pays 100% of his carrier’s fare; but a passenger on public-sector transit (bus or rail) pays only for the first two pounds, and the taxpayers are expected to pay for 198 pounds (applying generally accepted accounting principles, not the Enron-style accounting method our Legislature authorized for transit agencies’ financial reporting).

“Structural reform” of this unsound policy must be approached in the same manner as Great Britain accepted under the administration of Margaret Thatcher—privatization of nationalized industry. Keeping the *status quo* will only mire us further in misery. Flatboats, bullet trains, rickshaws, lunar escalators, i.e., any mode of transport, must charge user fees (fares) that are remunerative, unless we want to see it fail in the long run. Refer to my letter to HSRA’s former Chairman enclosed.

William Jennings Bryan and the Populists were wrong, just as Marx & Engels were, as government nationalization of the railroads proved during World War I.

Neither CTC nor California should be surprised by the “crisis” resulting from this fallacy (or lunacy) in our transport policy. Do we have the will power to reform our policy, or will we take the same route as did the USSR? I pray that God will give you and your fellow Commissioners the wisdom and courage to make a course correction for California now, before it is too late.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl. [Article; Letters]

*Recommendations to CTC Re:
Transportation Funding “Crisis”*

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March 23, 2009

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Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letter to you dated 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see copies enclosed).

Summary. The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should government do, and what should it leave to others."¹ The sound, sustainable answer to Secretary Mineta's "crucial question" lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail's owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

¹Joseph P. Thompson, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997).

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

The north-south tonnage flows in California, on Hwy. I-5, US 101, and Hwy. 99, represent a source of funding that could, in a private-sector model, duplicate and exceed taxpayers’ subsidies in the public-sector model as proposed in the EIR. The French government has announced that it will have Fedex freight transported by that nation’s HSR starting next year, so those with experience in operating HSR in Europe have apparently resorted to freight revenue as a source of funding. We could reduce air pollution, traffic congestion, and road and bridge support deterioration and maintenance expenses if we diverted some of that tonnage onto HSR. I have said this to the HSRA since before its creation when it was a Commission.

I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

As the LAO’s Report states (page 5), the HSR service should “not require an operating subsidy.” A feasible “funding source . . . for future years . . .” (page 6, LAO’s Report) exists now and will exist into the future: freight revenue. As with freight moving in the bellies of airliners, HSR can transport freight, thereby decreasing air pollution because the fuel savings per ton/mile is about 75% compared with rubber tires hauling freight on concrete or asphalt. The profit made moving freight can offset the losses sustained transporting passengers. Overnight shipments between Northern and Southern California can be transported without interfering with daytime, commute hours.

Comment: UP’s Property Rights.

In addition to those aspects identified by Cox and Moore (“Reason Report”), the UP’s Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its to own, for its shareholders’ benefit. The Nation’s national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP’s tracks in the SF Peninsula, San Jose, and South Bay

Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

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January 5, 2010

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Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's second (judicially-required) EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letters to you dated 3/23/09 and 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see attached to my letter to you 3/23/09).

Summary. Lenin convinced his fellow countrymen that Marx & Engels were right, with Trotsky's help, and Stalin's "persuasion" tactics. Did that make his philosophy right? No. Just like Lenin, CAHSRA's proponents are wrong. You remind me of heroin addicts who refuse to admit their addiction. Revelations since the election show what a disastrous idea you have proposed for this sad State, dominated by radical socialists in our Legislature, the League of California Cities, and the California State Association of Counties, and the public transit agencies and their public-sector unions. I think that history will be just as kind to the CAHSRA's proponents as it's been to Lenin. The people of California will rue the day that the Trojan Horse was approved in the guise of the Bullet Train.

As I said before, "The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should

government do, and what should it leave to others.”¹ The sound, sustainable answer to Secretary Mineta’s “crucial question” lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail’s owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

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Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!"

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

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November 10, 2010

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Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Referring to my letter to you (copy enclosed), I am enclosing my supplemental remarks about the EIR for the SF-San Jose-Gilroy-Merced Segment.

Will you please add this supplement to the official record of these proceeds.

Future generations must know that you were warned.

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

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August 24, 2007

Editor

Email: editor@garlic.com, editor@gilroydispatch.com

The ***Dispatch***

6400 Monterey Road
Gilroy, CA 95020

Re: Bullet Train: Tourists' Panacea, Taxpayers' Hell

Dear Editor,

The proposal to build the Bullet Train in California is proof that socialists have taken-over our government. Based on past cost overruns, the price tag on this extreme boondoggle is about \$75-\$80 billion in today's dollars. Paid back interest on these bonds will also burden our children and grandchildren and great-grandchildren will billions more. Annual operating losses will exceed those of all Lite Rails combined. Fares won't cover 1% of operating expenses, estimated at \$1 billion/year. Bond debt will bury us.

Technology exists to build it, but how do we pay the construction costs, and operating costs? It's technologically incompatible with existing railroads, so it will need BART-like right-of-way. Eminent domain power, included in the legislation creating it, ensures that it will plow through Gilroy and Morgan Hill and any other place, regardless of opposition. But it cannot cross the UPRR's tracks because the Class I railroads' eminent domain trumps Bullet Train's eminent domain power, according to UP's top commerce counsel on the West Coast. Tourists will ride it, but enjoy a 99% taxpayer subsidy for rides that will cost more than those on the Concorde Supersonic Jets. Local small business owners will pick-up the tab, maybe getting 10% back from tourist dollars if we're lucky.

In 1970 Congressmen stood up in Congress and proclaimed that Amtrak would be "self-sufficient in three years." Yeh. By 9/11/01 taxpayers had thrown about \$30 billion in subsidies down that black hole, but did we have adequate airport security?

In 1863 General Granville Dodge, who was later UPRR's top civil engineer, and who discovered the Sherman Pass over the Continental Divide, was summoned to the White House. He later said that he told the President that the government should own and operate the transcontinental railroad. Lincoln, who as a young member of the Illinois Legislature had seen government owned railroads in Eastern and Midwestern States go bust and shutdown operations in the 1830's and

When will we ever learn?

1840's, said no. He said that private enterprise must do it, although the government would assist with development incentives (my words, not his). They did it. And what did taxpayers receive in the deal? They got about \$460 million (measured in 1940 dollars) more than the value of the land granted to the railroad corporations because of Section 22 in the original Interstate Commerce Act (lower freight rates for government shipments).

A hundred years ago the Progressive Movement, led by William Jennings Bryan, sought nationalization of the railroads and other industries, but their passion was rejected by voters.

When the railroads were nationalized in 1917 during the Administration of Woodrow Wilson, government genius so botched-up shipping that rail traffic came to a standstill. That experiment failed, just as Lincoln predicted it would. In the Transportation Act of 1920 the railroads were de-nationalized, and came to be the envy of the world's nations today; the backbone of our nation's commerce.

Instead of making taxpayers pay for Bullet Train, like we pay for County Transit, Caltrain, Amtrak; Lite Rail, etc., etc., while motorists are paying 100% of their own transport costs, seeing our politicians rewarding transit wastefulness, why not use the unlimited power of capitalism? Have you been on I-5 lately to see the uninterrupted 24-7 tonnage flowing North-South in California? I appeared before the Bullet Train commission five times over the last decade and told them that if they put enough UPS, Fedex and Postal Service tonnage on their trains, then they would not need to ask the taxpayers for a dime. Did they listen?

Like Amtrak's promoters, their pie-in-the-sky predictions show that they did not listen, nor did they learn from history, either United States or world history in the last century and one-half. So, hold on for the ride, and warn your children and grandchildren, our leaders will strap taxpayers to the rocket to Hell. We'll be paying unimaginable sums to attempt what Lenin, Trotsky, Stalin and the USSR failed to achieve, despite all their promises to their citizens that socialism could bring utopia. If they fund it with gas taxes, be prepared to see \$10/gallon for gas at the pumps. They'll tax motorists out of their cars, leaving them to ride our Trojan Horses, and bike or walk the rest of the way.

Caveat Viator!

Respectfully yours,
JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA
Member, Legislation Committee, Transportation Lawyers Assn.
Member, Association for Transportation Law, Logistics & Policy
Candidate, American Society of Transportation & Logistics
Winner, AST&L's Best Research Paper Award 1997
Past-President, Gilroy-Morgan Hill Bar Assn.
Post-Doctoral Student, Transportation Law & Policy

When will we ever learn?

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Fax (408) 842-2206
Editor
The *Dispatch*
6400 Monterey Road
Gilroy, CA 95020

January 28, 2004

Re: Bullet Train or Trojan Horse?

Dear Editor,

When Amtrak was formed in 1970, Congressmen promised that it would be profitable in three years. Well, after 33 years, taxpayers have paid \$31 billion in subsidies, with no end in sight. As *Traffic World* reported, that is a stack of \$100 bills higher than the World Trade Center stood. Supporters of the Bullet-in-the-Brain train will make profit building and operating it, just as VTA does operating Black Hole Lite Rail. However, taxpayers will be the losers. The galley slaves will need to quicken their strokes so that the recipients of their labors will enjoy their rides. Will Rod be successful in converting us to a socialist society, living in concrete high-rise Dirodonominiums like the USSR's "affordable housing"? Until Rod was appointed to HSRA, they had projected a \$900 million annual operating loss (truth probably doubles their estimate), but now they project a profitable operation. "Profitable" in the same definition of VTA's "profit." I do not swallow this big lie. Do you?

As with Caltrain, Lite Rail, and Amtrak, taxicabs and limousines would be cheaper for the taxpayers. But have we learned anything from the history of the last Century? If we defeated the USSR, then why are we adopting their philosophy?

I appeared before the High Speed Rail Commission (before it became an "authority") five times and told the commissioners that if they put enough Fedex, UPS, and Postal Service tonnage on their train, then they would not need to ask the taxpayers for a dime. Instead of following a capitalist model, they insist (with Bechtel Corporation's—the builder—support) that California must have a Soviet-style horizontal elevator. Well, if voters believe that B.S., then they deserve to wear this albatross around their necks. But ask yourselves, do our children and grandchildren deserve the consequences of our compulsive spending disorder? Are we building the future for them, or welcoming a monster Trojan Horse? *Caveat viator.*

Very truly yours,

JOSEPH P. THOMPSON
Candidate: American Society of Transportation & Logistics

Member: Legislation Committee, Transportation Lawyers Assn.

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August 24, 2007

Editor

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When the railroads were nationalized in 1917 during the Administration of Woodrow Wilson, government genius so botched-up shipping that rail traffic came to a standstill. That experiment failed, just as Lincoln predicted it would. In the Transportation Act of 1920 the railroads were de-nationalized, and came to be the envy of the world's nations today; the backbone of our nation's commerce.

Instead of making taxpayers pay for Bullet Train, like we pay for County Transit, Caltrain, Amtrak, Lite Rail, etc., etc., while motorists are paying 100% of their own transport costs, seeing our politicians rewarding transit wastefulness, why not use the unlimited power of capitalism? Have you been on I-5 lately to see the uninterrupted 24-7 tonnage flowing North-South in California? I appeared before the Bullet Train commission five times over the last decade and told them that if they put enough UPS, Fedex and Postal Service tonnage on their trains, then they would not need to ask the taxpayers for a dime. Did they listen?

Like Amtrak's promoters, their pie-in-the-sky predictions show that they did not listen, nor did they learn from history, either United States or world history in the last century and one-half. So, hold on for the ride, and warn your children and grandchildren, our leaders will strap taxpayers to the rocket to Hell. We'll be paying unimaginable sums to attempt what Lenin, Trotsky, Stalin and the USSR failed to achieve, despite all their promises to their citizens that socialism could bring utopia. If they fund it with gas taxes, be prepared to see \$10/gallon for gas at the pumps. They'll tax motorists out of their cars, leaving them to ride our Trojan Horses, and bike or walk the rest of the way.

Caveat Viator!

Respectfully yours,
JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA
Member, Legislation Committee, Transportation Lawyers Assn.
Member, Association for Transportation Law, Logistics & Policy
Candidate, American Society of Transportation & Logistics
Winner, AST&L's Best Research Paper Award 1997
Past-President, Gilroy-Morgan Hill Bar Assn.

When will we ever learn?

Post-Doctoral Student, Transportation Law & Policy

When will we ever learn?

JOSEPH P. THOMPSON
Attorney at Law
8339 Church Street, Suite 114, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-Mail: TransLaw@PacPell.Net

Fax (408) 842-2206

February 18, 2010

Editor and Editorial Board

Email: editor@garlic.com, editor@gilroydispatch.com

The ***Dispatch***

6400 Monterey Road

Gilroy, CA 95020

Re: MyBulletTrain: Profitable for who?

Dear Editor,

Bullet Train blitzkrieg, multi-million dollar campaign, using taxpayers' money to sell them on the boondoggle claims that it will be profitable. Yeh, but for whom? The planners, consultants, ad men, bond salesmen, foreign equipment manufacturers. The bankruptcy of all State-owned railroads in the USA in 1830's ought to tell us something about the right way to build a railroad. The American experience with nationalization of the railroads in 1918, the collapse of the USSR, and the world-wide privatization revolution of the 1990's should teach us a valuable lesson in railroad building. The insolvency of Amtrak, Caltrain. The bankruptcy last month of the Las Vegas Monorail, etc.—lessons abound from our history, but will we learn from them?

Sustainable rail transport hinges on the bottom line on the balance sheet; do revenues exceed costs? If we use VTA government-style accounting methods, we won't see a sustainable Bullet Train. We have to use the same accounting used by the world's most successful railroads, UP, BNSF, CSX, etc., America's Class One Railroads. If you lose money moving passengers, then you have to make-up your losses by moving freight. Intermodal tonnage on Bullet Trains, moved on separate trains during non-peak commute hours is how I've told the California High Speed Rail Commission, now High Speed Rail Authority, to do it. If the taxpayers purchase the infrastructure for the Bullet Train's owners, it will be like financing the Interstate Highway System, and the State Highways, for the trucking industry.

Transport me as a tourist, and I'll need a 99% fare subsidy. But transport me as a deceased traveller, and my estate, or relatives, have to pay 100% of the cost of moving the dead freight. So, to create a sustainable Bullet Train, you have to think like railroaders, not horizontal elevators in communist nations.

Why do our leaders want to grow bigger government, when common sense people, e.g., Editorial Board of Gilroy Dispatch, say we should be doing just the opposite? Do we have leaders who give a damn about the harm their decisions inflict? Why do we tolerate such hypocrites?

Caveat Viator!

Respectfully yours,

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Post-Doctoral Student, Transportation Law & Policy

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December 19, 2018 Item 15

Morgan Hill Magical Bridge Playground



Background



- May, 2016
Original Concept Design Approved
- January, 2018
City awarded \$2 Million County Grant
- October, 2018
Design Contract with Magical Bridge Approved
- October – December 2018
Concept Design Updated

Project Schedule



- Community Review of Updated Design – December, 2018
- Parks and Recreation Review - December, 2018
- Council Review - December, 2018
- Construction Drawing Phase – January – February of 2019
- Construction Bidding – April 2019
- Award Construction Contract – May 2019
- Start Playground Construction – June 2019

Recommendations



- Parks and Recreation Commission Recommendation.
- City staff recommends approval of the updated concept designs by the City Council.

Playground Location



Existing Site Images



Existing Site Images



Schematic Design Layout



Inclusive Playground
Final Concept - Natural Stones, Trees And Animals
Morgan Hill Community Park
Morgan Hill, CA

Schematic Design Elements

Playground Play Zones

- Spin Zone
- Swing Zone
- Sliding Zone
- Music Zone
- Tot Zone
- Water Play Zone
- Outdoor Classroom
- 2 Story Playhouse
- Entry Plaza
- Sand Play (separate)
- Loop Path

Amenities

- Sway Bridge
- Perimeter Fence
- Restroom
- Drinking Fountain
- Expanded Parking

Playground & Amenities Cost: \$6.1M

With 15% Construction Cost Increase From Original Bid

Revised Schematic Design Elements



Playground Play Zones

- Spin Zone
- Swing Zone
- Sliding Zone
- Music Zone
- Tot Zone
- Water Play Zone
- Outdoor Classroom
- 2 Story Playhouse
- Entry Plaza
- Sand Play (separate)
- Loop Path

Amenities

- Sway Bridge
- Perimeter Fence
- Restroom
- Drinking Fountain
- Expanded Parking

Playground & Amenities Cost: \$4.2M

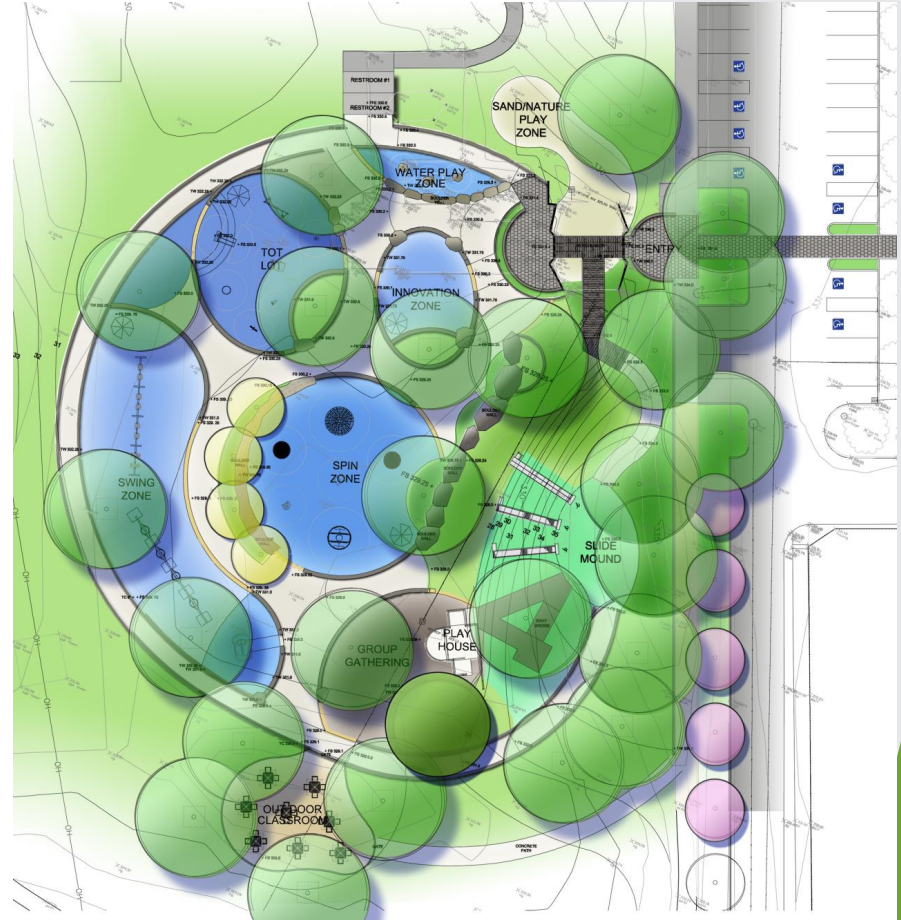
Additional costs:

Parking \$250K, Classroom \$150K (Alternate Funding)

Revised Design Comparison



Previous Schematic Design
4,725 sq.ft.



Revised Schematic Design
4,150 sq.ft. (575 sq.ft. difference)

Design Modifications



Design Savings

- Reduce perimeter retaining wall by 200 ln.ft. (+)
- Reduce overall site grading by 60%
- Reduce overall ramping and stairs to lower level
- Reduce playhouse/tree house structure from 2 to 1
- Reduce faux rock work finish by 90%
- Reduce landscape areas by 50%
- Reduce fencing ln.ft. by 10%

Anticipated Savings from design modifications \$800,000 to \$1M

Design Modifications



Benefits of Modified Design

- Utilizes existing site grade to reduce soil import
- Larger open Swing & Spin Zones for additional equipment
- Enhanced accessibility by reducing perimeter grade change
- Relocate slide mound to provide clear sight lines of playground
- Use existing site slopes to create expanded slide and climbing area
- Utilize shade of existing tree at group gathering area
- Provides larger buffer from high voltage power lines

Magical Bridge Playground Morgan Hill



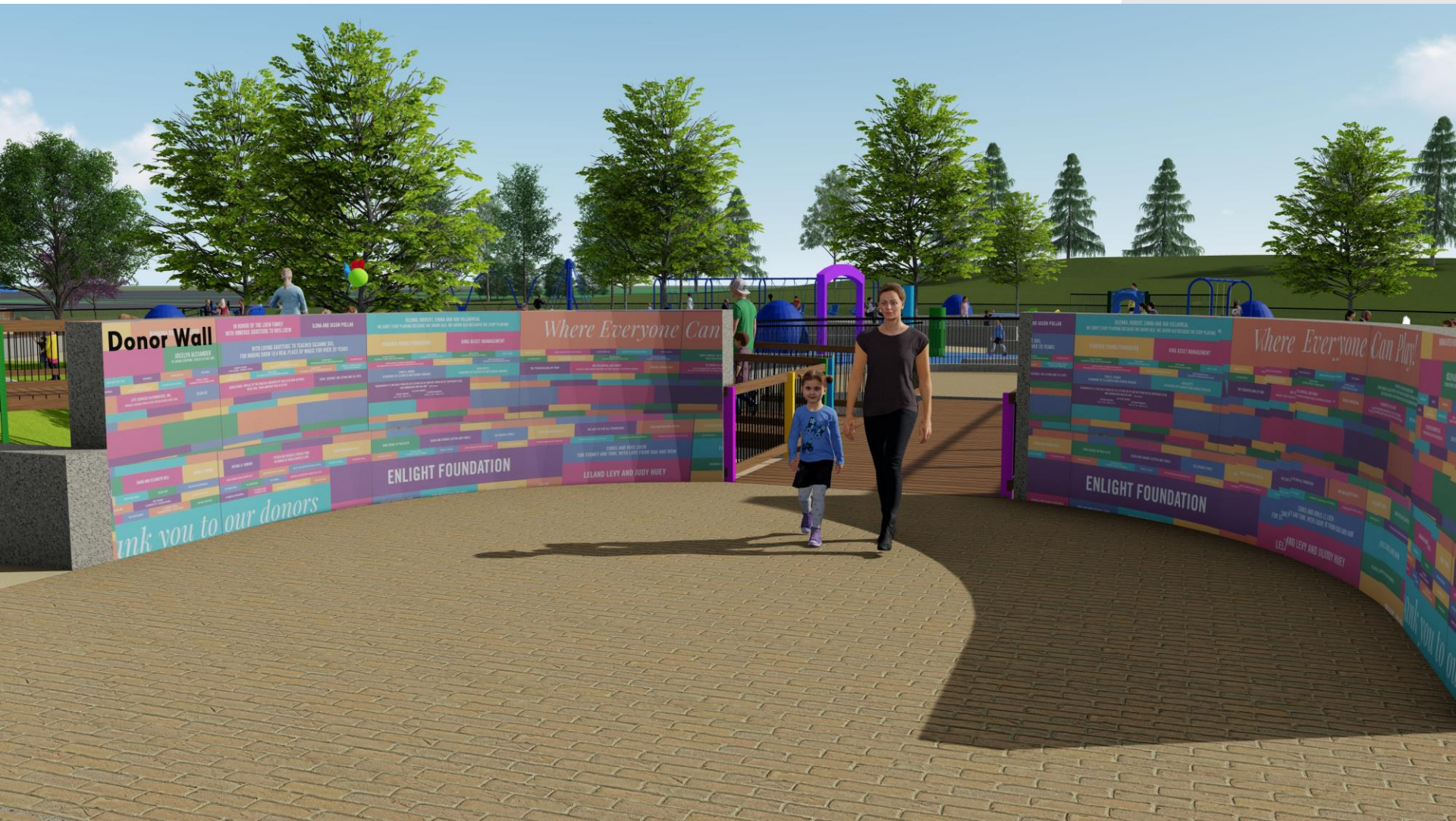
Magical Bridge Playground Morgan Hill



Magical Bridge Playground Morgan Hill



Entry Plaza



Slide Zone



Spin Zone



Swing Zone



Playhouse & Gathering Space



Tot Zone



Innovation Zone (Music)



Water Play Zone



Magical Bridge Playground



Questions?

**Magical Bridge Morgan Hill
Concept Design Review Community Meeting
Meeting Notes
12/17/18**

Attendance: 11 Residents, 4 staff/consultants

Questions:

- What do we do for heat on playground? Shade structures, trees, cool surfacing.
- Is slide mound as high as the playground in Palo Alto? Yes.
- Wheelchair swing is not included. Does the wheelchair swing not work in public space? It would need to be in an alternate location outside the playground to be safe. Alternatively, there are other wheelchair amenities included the sway boat, walking areas, laser harp and other features.
- Is there a stage area in classroom? Yes, elevated area will be included.

Comments:

- Water features, limited spray, not recycled water.
- Want a toned-down version of the restroom at the Railroad Park. One not as busy.
- Vine entry with farm house theme is good. Just not too rustic.
- People like the Magical Bridge Donor Wall, possibly them with vine/farm entry.
- Like crosswalk like the one on Monterey
- Plenty of shade needed.

**Parks and Recreation Commission Meeting
Magical Bridge Morgan Hill Concept Design Review
Recommendation and Comments
12/18/18**

Recommendation: The PRC recommends approval of the updated concept design for the Morgan Hill Magical Hill Bridge Playground.

Comments:

- Request the Youth Action Council provide feedback on Playhouse Theme within the Playground.
- Look in enhancements to the design to help “shelter” the music zone area.

From: [Chris Ghione](#)
To: [Michelle Bigelow](#)
Subject: FW: for City Council Meeting tonight. December 19 2018
Date: Wednesday, December 19, 2018 4:17:31 PM

Supplemental item

From: Kristina Sermersheim <kristykms@yahoo.com>
Sent: Wednesday, December 19, 2018 4:00 PM
To: Chris Ghione <Chris.Ghione@morganhill.ca.gov>
Subject: for City Council Meeting tonight. December 19 2018

Dear Mayor and City Council,

I am writing to support the plan for Morgan Hill's Magical Bridge Playground, item 15 on tonight's agenda.

This beautiful all-inclusive playground is going to be the most wonderful thing in Morgan Hill, which is already the most wonderful city to live in. I have been volunteering since the beginning, and I am very supportive of the changes and the new improved plans for the playground. We can't wait for ground can be broken. This action today will move us forward.

When this playground is completed my special needs niece (age 23 now) and all her friends will really appreciate it and my 4-month-old great nephew will be just old enough to begin to enjoy it with her on visits.

Thank you for your support so far, and please approve this action tonight so we can make this happen.

Kristy Sermersheim.
Cascades Court Morgan Hill

From: [Chris Ghione](#)
To: [Michelle Bigelow](#)
Subject: FW: 12/19/18 Agenda number 15: Message in support of Magical Bridge Playground
Date: Wednesday, December 19, 2018 4:18:11 PM

Another supplemental item for Magical Bridge

From: Andrea G. <andrea_goldsmith@yahoo.com>
Sent: Wednesday, December 19, 2018 3:54 PM
To: Chris Ghione <Chris.Ghione@morganhill.ca.gov>
Cc: Olenka Villarreal <olenka@magicalbridge.org>; Jill Asher <jill@magicalbridge.org>
Subject: 12/19/18 Agenda number 15: Message in support of Magical Bridge Playground

Dear Chris:

My family and friends are totally in support of the Magical Bridge Playground and have been from the beginning of the project. We have seen the latest plan and we are really excited that it is coming closer to fruition.

We belong to a large, informal group of parents and families of special children and adults. We participate in parties at the CRC, Pony Baseball and Bowling plus other local events. All of us are looking forward not only to visiting the park but also to supporting it in the future. There are several of us who would make really good Kindness Ambassadors!

We will be very happy when the City of Morgan Hill approves the Magical Bridge Playground.

Thank you!

Andrea Goldsmith
408 Cascades Court
Morgan Hill, CA 95037



Item 16
AGRICULTURAL PRESERVATION:
TRANSFER OF DEVELOPMENT
RIGHTS (TDRs)



Agricultural Preservation

Key Provisions



- Priority Agricultural Conservation Area
- Minimum 1:1 mitigation for conversion of agricultural land (Dept. of Conservation FMMP)
- Agricultural preservation in-lieu fee and management/monitoring fee
- “Stay Ahead” conservation easements in advance of development of agricultural lands
- RDCS Agricultural Preservation Set-asides - up to 35 allotments/year (300 through 2035)

City of Morgan Hill

USA

Highway 101

E Dunne Ave

Tennant Ave

UGB

Barrett Ave

Murphy Ave

Fisher Ave

Hill Rd

Maple Ave

San Martin

Priority
Agricultural
Conservation
Area

33.6 ac

37 ac

12.5 ac

City ACE
Areas

Potential
ACE Area

History of Preservation and Conservation



1. Transfer of Development Rights since 1981; over 500 acres of hillside and viewshed preserved from development
2. One of only 3 cities, countywide, member of Habitat Conservation Plan raising \$ 2,770,000 over 5 years for wildlife habitat conservation
3. Agricultural Preservation program; Agricultural Conservation Easement acquisition; over \$4M committed
4. Model Water conservation program

Agricultural Conservation Easement (ACE)



- Up to 35 per year (already assumed in allotment competition process for 2019)
- Developer identifies eligible mitigation land in Priority Agricultural Conservation Area and agrees to acquire easement
- City assists to provide ACE document
- Easement requires “stewardship fee” to benefit permanent “Ag Trust” entity
- City recognizes Transfer of Development Rights (TDRs) to Developer inside of City boundary
- City awards 6 allotments per ACE acre; City gains 6 acres annually

Agricultural TDR Auction



- Auction unused allotments at the end of each calendar year to raise dollars for City initiated ACE acquisition (approx. \$700,000 per year/35 allotments)
- Set base bid and allow bidding to produce maximum benefit
- Mitigate speculation to limit resale of exempt allotments
- Allotments expire within 3 years if not used to limit spiking
- Credits cannot be used to mitigate for agricultural land conversion

Process



- Bidders register with City Jan. 15, 2019
- Bidders submit bid Jan. 23; bids will be posted on website Jan. 25
- Bidders will be given one subsequent opportunity to bid by Jan. 30
- Bidding closes; bids are posted
- City awards to apparent high bid with the receipt of 10% of bid price no later than 30 days from January 30 or tie breaking bid round (if applicable)
- City processes a TDR Certificate, similar to the Open Space TDR Certificate to memorialize bid. Successful bidder pays for balance upon issuance of building permit and Certificate retired

Questions



From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: RDCS and ag easements Agenda item 16
Date: Wednesday, December 19, 2018 11:42:11 AM
Attachments: [untitled](#)

From: john@scountyrealty.com <john@scountyrealty.com>

Sent: Monday, December 17, 2018 2:24 PM

To: Leslie Little <Leslie.Little@morganhill.ca.gov>

Subject: RDCS and ag easements Agenda item 16

Hi Leslie, I will not be able to attend the city council meeting of December 19th but did want to comment on agenda item 16 (RDCS and set asides for ag easements). Would you kindly forward this email to the council members for their review.

I would like to enthusiastically commend staff's efforts on the shared goal of creating multiple ways to achieve agricultural conservation easements around our city boundaries. As I have spent the last several years working with local farmers and land owners and various governmental groups to deliver on these goals I can certainly attest for the difficulties of actually accomplishing these elusive easements. In my opinion the city's efforts and plans such as these are light years ahead of others in this regard. While there is much "happy talk" and "wishful thinking" by others, the city of Morgan Hill is the only one to actually step up and make things happen.

This agenda item is yet another example of the city's creative attempts at creating the multi faceted tools necessary to be successful at creating permanent ag easements. I feel it is a good additional step towards these shared local goals, however I have a few observations regarding the staff report that I would like to share.

1. It is hard to know if the proposed numbers (costs) that RDCS applicants would extend in order to qualify for said set asides will incentivize these applicants enough to participate, never-the-less it is a good starting point. I do worry that with the recent adoption of the mandatory inclusionary housing policy that the costs for RDCS commitments, that may have worked a year ago, are now further complicated by these fairly substantial new housing costs. Time will tell if it is proven effective but frankly time is not a friend as we have seen the conversion to McMansions and other loss of ag to approximately another approx. 60 acres over the last 2 years. This program if adopted will need to be monitored closely and should remain nimble moving forward and should be adjusted yearly as needed to remain relevant and more likely to have success than not.

2. In that light , it is my opinion that it would be very important to have an annual report showing what this program has accomplished, how many acres actually placed in easements, how much money put into the ag bank so to speak. I think it is important to not just have a robust ag bank account but rather more so to have been successful actually placing and creating these easements. The other benefit to a thorough annual report would be to show how we have as a city preserved ag land in comparison to the county and others moving forward. I think a city program such as this has potential to be much more successful than our friends and colleagues from the north will be, especially if they rely mostly on state money and the strings attached (DGS) given the relatively high land costs in our area. I am not suggesting that we go it totally on our own its just that to date the regional approach has proven to be mostly just feel good talk with little to show that is encouraging or suggestive of any real success, just my opinion of course.

3. Lastly, hopefully this program does not inadvertently "rule out" or ignore other creative ways to achieve ag preservation goals. I know of several people including myself who are presently working on some additional creative ideas regarding key agricultural parcels in our area. Hopefully the city would be open minded to at least explore some other possible future ideas that accomplish the overall goals here. It remains my opinion that we need to have a broad and varied tool box available to us in which to draw from in order to successfully apply towards these efforts. One size does not fit all, given the many variables involved.

Again, I would like to commend city staff, planning commission and city council for these types of creative efforts and to really be "doers" instead of merely "big talkers" as we have seen way too much of lately. Congratulations on your efforts here.

Regards, John Telfer





Wednesday, December 19, 2018

Mayor Rich Constantine and City Council Members
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

**Re: Agenda Items 16 – Adopt Policy for Residential Development Control System (RDCS)
Agricultural Preservation Exempt Set-Asides, Transfer of Development Rights and/or Auction**

Dear Mayor Constantine and Council Members,

Committee for Green Foothills (CGF) appreciates the City's desire to permanently protect agricultural lands in the City's Priority Conservation Area within the Southeast Quadrant (SEQ) and to find feasible and appropriate funding mechanisms by which to do so.

CGF has previously commented on the Agricultural Preservation Set-Asides sub-section of the RDCS (Measure S), specifically in ascertaining what the rationale was for the total number (300) of allotments set-asides and the lack of identifying sending and receiving sites.¹

After reviewing the Staff Report and attachments for the above noted agenda item, we respectfully provide the following comments to aid in your deliberation of staff's recommendations. Some of our comments, expressed in previous letters and public comment to Council over the years, are shared by other agencies and organizations as evidence by their past communications with the City.

Participation of qualifying entity required before adoption of policy. The Staff Report and Attachment 16 b. Draft Agricultural Preservation Transfer of Development Rights (TDRS) program outline do not make mention of a qualifying implementing entity. If the City does not intend to be the holder and steward of the agricultural conservation easements (ACE), ostensibly acquired through implementation of the proposed policy, then a qualifying implementation entity must be identified *before* the policy is adopted.

¹ Letter to City Council dated 07/17/16

At the December 5, 2018 Council meeting (Agenda Item 13), the Santa Clara Valley Open Space Authority and the Land Trust of Santa Clara Valley communicated the need for either entity to be “involved at the outset” of the development of an ACE. Both entities are accredited by the national Land Trust Alliance and must adhere to Land Trust Standards and Practices. These best practices include front-end involvement in the identification and negotiation of conservation easement projects.

As written, the Staff Report and Attachment 16 b. do not recognize the need to include a qualified implementing entity from the onset of any negotiations. Indeed they only point to the City assisting “with the negotiation of the form of the easement” which would include “permanent stewardship provisions”.

Since both these accredited land trusts have expressed reservations with holding an ACE in the City’s Priority Conservation Area, the City’s overall agricultural preservation strategy, and with the City’s Agricultural Lands Program,² involving them in the development of this policy and any other agricultural related policy should be a priority for the City. Incorporating the knowledge, expertise, and operating needs (e.g. “Agricultural Trust stewardship costs”) of an accredited regional land trust is in the best interest of the City and that of the public trust. Several entities have requested the City take such action dating back to 2012.

Clarify feasibility of ACE Acquisition. Staff proposes a 6:1 TDR for the Agricultural Conservation Easement Acquisition option. Given that the total allowable annual Agricultural Set-Asides is 35 allotments, a <6 acre ACE would theoretically result from that ratio on a yearly basis ($35/6=5.83$).³ This size easement may not be optimal unless the proposed easement would be adjacent to an existing ACE. Is the City anticipating that this will be the case or that a developer would purchase a larger ACE with the understanding of receiving set-aside allotments in future years?

Termination of TDR allotments appears to provide no guarantee to willing ACE seller. Attachment 16 b. draft TDR program outline indicates that the developer/purchaser could deposit 10% of ACE value to hold allotment commitments for up to 3 years. However, should the allotments not be exercised within that timeframe, the City would terminate the allotments

² See letters from land trust letters dated 2/17/12 and 2/18/14 for a sample of concerns expressed related to the Agricultural Lands Program.

³ Under the Auction option, a 5:1 TDR ratio would theoretically result in a 7 acre ACE on a yearly basis.

and refund the deposit (minus a 10% administrative fee). This option appears to provide no guarantee to the willing ACE seller that the negotiated ACE will be executed. Is the City planning to and/or is the City prepared to purchase these 'pending' ACEs should termination of the allotments occur?

Council should consider holistic review of City's agricultural strategy prior to adoption of this policy. At the Council's Annual Goal Setting Workshop in January, you will purportedly discuss potential new policy considerations related to land use in the SEQ. This proposed policy is tied to the City's agricultural strategy that in turn is tied to the City's land use plan in the SEQ. We encourage Council to have the discussion proposed to Council in October 2018 at the Goal Setting Workshop first, taking into consideration the recent feedback they have received from regional agencies and land trusts.

We believe addressing past concerns will result in prudent and robust agricultural preservation goals and outcomes and include the full support and services of a qualifying implementing entity.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie Hutcheson".

Julie Hutcheson
Director of External Affairs and Advocacy



December 19, 2018 Item #17

Monterey Corridor Block-Level Master Plan Alternatives



Monterey Corridor - BLMP



Recommendation

Receive report and provide direction to staff on follow-up recommendation for Block-Level Master Plan Alternative for two Monterey Road Corridor projects.

Background



- MH2035 General Plan Adopted – Block-Level Master Plan requirement (July 2016)
- Block-Level Master Plan Process (2018)
 - April Market Analysis and Land Use Capacity Study / Implementation Options
 - June Zoning Code Update Adopted – MU-F Zoning District
 - Sept Visioning and Goal Setting Stakeholder Workshop
 - Oct Joint City Council / Planning Commission Workshops
 - Nov/Dec City Council Meetings

Staff Recommendations



1. Resume working with LWC on preparation of Comprehensive Block-Level Master Plan (BLMP)
2. City-initiated BLMP Planned Development (PD) Zonings for Blocks One and Four

EXHIBIT A – BLOCK ONE



Block



Tilton Ave / Burnett Ave Re-Alignment



Preserve Historic Building for Commercial Use



Residential or Commercial



Commercial or Mixed-Use



Open Space Buffer

Exhibit B: Block-Level Master Plan Land Use Regulations - **Block One**

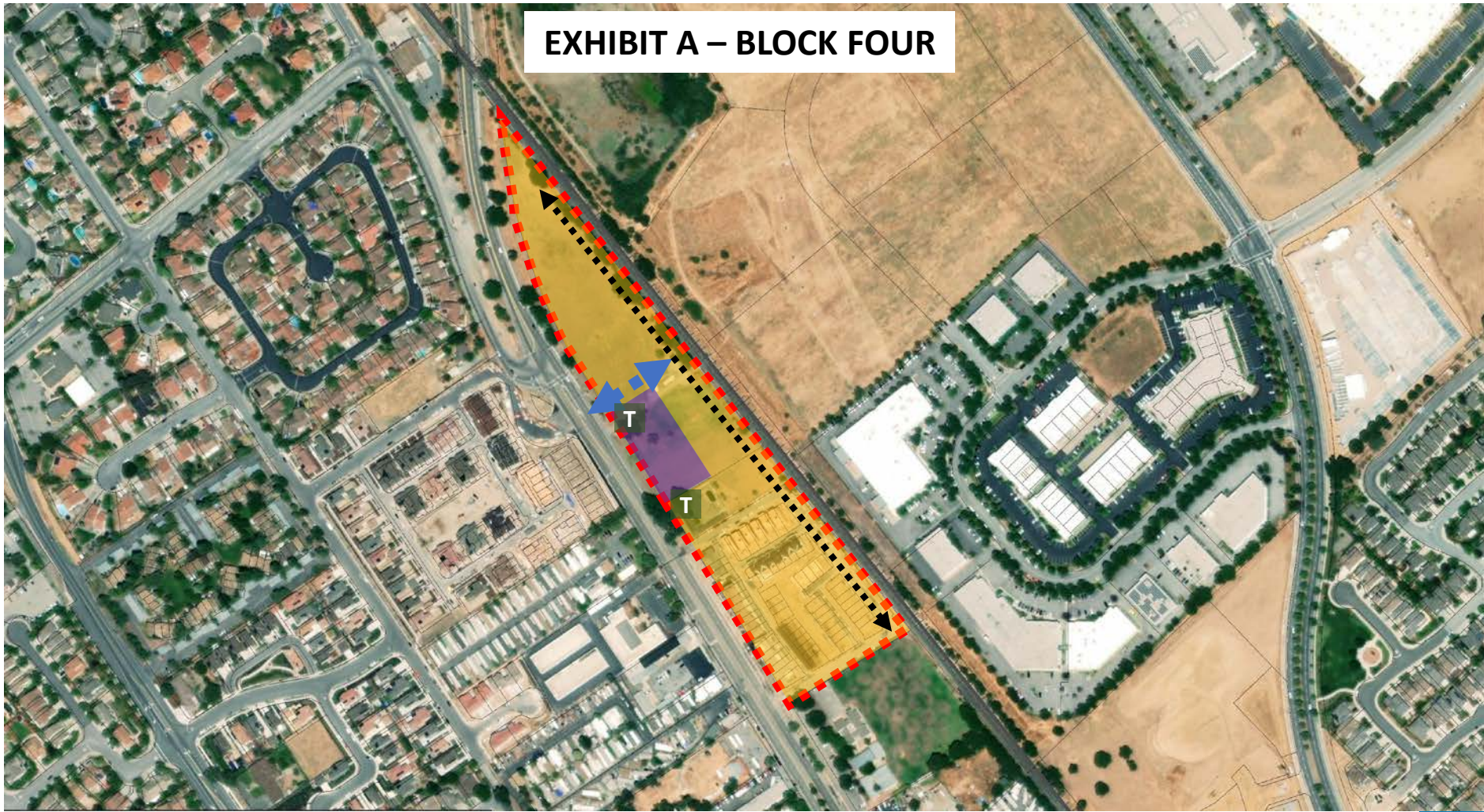
I. Land Use Regulations

- A. Permitted Uses
- B. Development Standards
- C. Commercial Requirements
- D. General Specifications
- E. Public Gathering Places
- F. Temporary Uses.

II. Subsequent Approvals

- A. Zoning Amendment/PD Master Plan
- B. Design Review

EXHIBIT A – BLOCK FOUR



-  Block  East Leg of Old Monterey Rd / Monterey Rd  Landscape/Private Street Buffer
-  Residential or Commercial  Commercial or Mixed-Use  Preserve Specimen Tree

Exhibit B: Block-Level Master Plan Land Use Regulations - **Block Four**

I. Land Use Regulations

- A. Permitted Uses
- B. Development Standards
- C. Commercial Requirements
- D. General Specifications
- E. Public Gathering Places
- F. Temporary Uses.

II. Subsequent Approvals

- A. Zoning Amendment/PD Master Plan
- B. Design Review

Tentative Schedule: BLMP PDs / RDCS

Block-Level Master Plan PDs	RDCS Schedule
Jan. 22, 2019 – PC Study Session / Hearing (BLMP PDs)	
Feb. 6, 2019 – CC Hearing (Introduce BLMP PDs)	
Feb. 8, 2019 – Preliminary PD Master Plan Submittals	
Feb. 20, 2019 – CC Hearing (Adopt BLMP PDs)	
	Mar. 8, 2019 – RDCS Application Date
Mar. 12, 2019 – PC Review Preliminary PD Master Plans	
Mar. 22, 2019 – BLMP PDs Effective	Mar. 25, 2019 – Staff GP/Zoning Consistency Determin.
Apr. 3, 2019 – CC Review Preliminary PD Master Plans	Apr. 4, 2019 – GP/Zoning Consistency Appeal to CC

Monterey Corridor - BLMP



Recommendation

Receive report and provide direction to staff on follow-up recommendation for Block-Level Master Plan Alternative for two Monterey Road Corridor projects.

Thank You



CITY OF MORGAN HILL

	Planned Development (PD) Zonings as Block-Level Master Plans (BLMPs)	Residential Development Control System (RDCS) 2018/2019
1		Nov. 12, 2018 – Pre-Application Submittal Due
2		Dec. 12, 2018 – Pre-Application Review Letter
3	Dec. 19, 2018 – City Council Direction to Initiate Planned Development Zonings (BLMP PDs) for Blocks 1 and 4	
4	Jan. 22, 2019 – Planning Commission Study Session & Hearing (BLMP PDs)	
5	Feb. 6, 2019 - City Council Hearing (Introduce BLMP PD Ordinances)	
6	Feb. 8, 2019 - Block 1 and 4 Applicants Submit Preliminary Plan Reviews for PD Master Plans	
7	Feb. 20, 2019 - City Council Hearing (Adopt BLMP PD Ordinances)	
8		Mar. 8, 2019 – RDCS Application Date
9	Mar. 12, 2019 - Planning Commission Review of Preliminary PD Master Plans for Consistency with BLMP PDs	
10	Mar. 22, 2019, Planned Development Zonings (BLMP PD Ordinances Effective)	Mar. 25, 2019 – Staff GP & Zoning Consistency Determination
11	Apr. 3, 2019 - City Council Review of Preliminary PD Master Plans for Consistency with BLMP PDs	Apr. 4, 2019 - Deadline to File GP & Zoning Consistency Appeal to City Council
12		May 1, 2019 – GP & Zoning Appeal City Council
13		May 3, 2019 - Staff Scoring of Applications / Recommendations to Planning Commission
14		Jun. 11, 2019 - Planning Commission Finalize Scores
15		Jun. 21, 2019 - Deadline to File Scoring Appeal to City Council
16		Jul. 17, 2019 - Scoring Appeal Heard by City Council
17		Jul. 19, 2019 - Staff Recommendations Award of Allotments
18		Jul. 23, 2019 - Planning Commission Award of Allotments
19		Aug. 2, 2019 - Deadline to File Allotment Appeal to City Council
20		Aug. 21, 2019 - Allotment Appeal Heard by City Council
21	Applicants Submit PD Zoning Amendments for Block 1 and Block 4 PD Master Plans	



Agenda Item 20

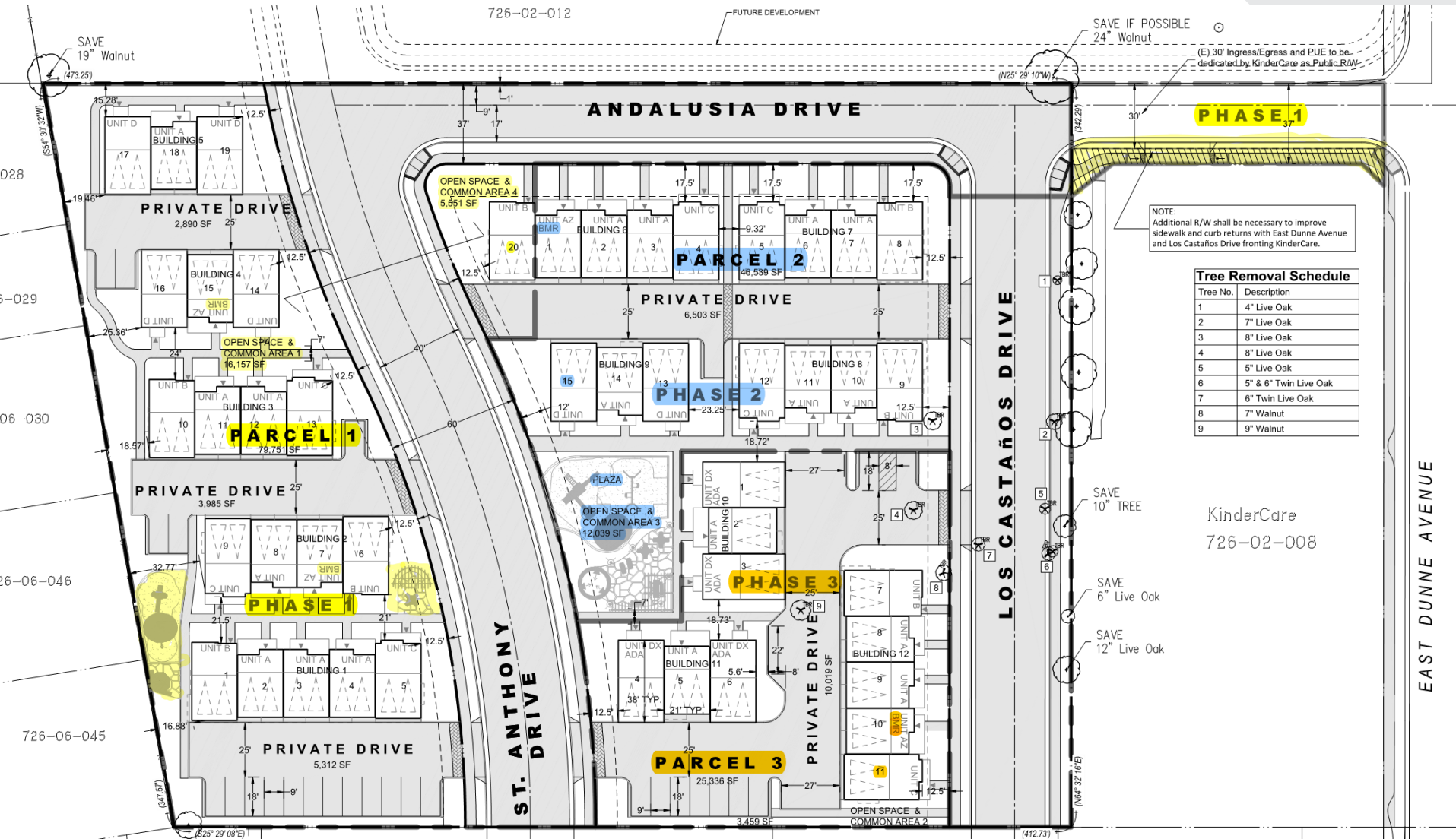
Development Agreement DA2018-0002: E. Dunne-Young



CITY OF MORGAN HILL

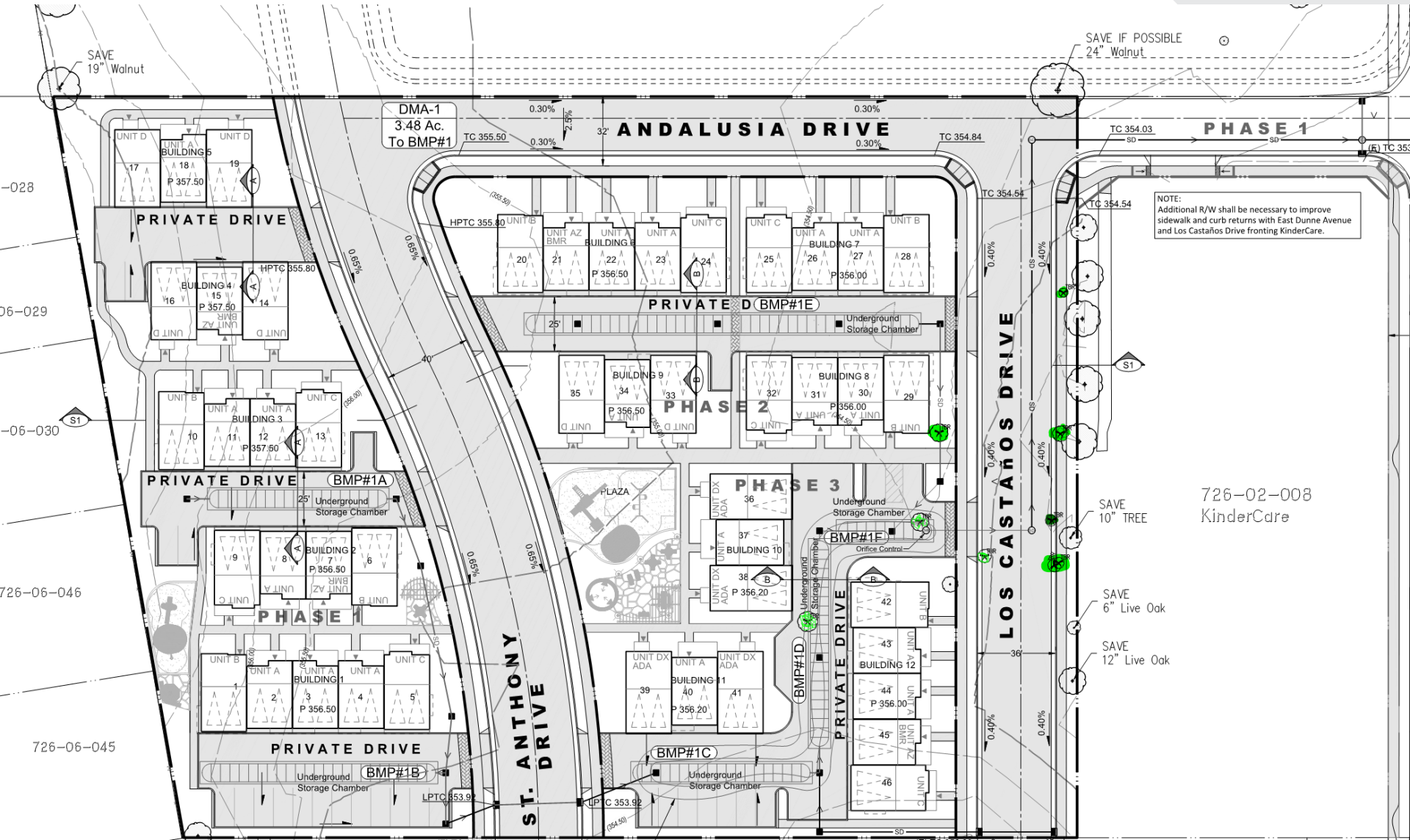


Development Agreement: Memorialize the public benefit commitments for the 20, FY2019-20 allotments.



Project Description

Environmental Assessment: Mitigated Negative Declaration containing mitigation for removal of significant trees and construction noise and dust.



Recommendation



Approve the Development Agreement incorporating the RDCS public benefit commitments

Thank you





UNIT B

FRONT ELEVATION (PASEO)

X K

5-UNIT
ELEVATION B
BUILDING (1,6,12)



REAR ELEVATION (ALLEY)



RIGHT ELEVATION



LEFT ELEVATION



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member
Rene Spring - Council Member

Wednesday, December 19, 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 Constantine)

ROLL CALL ATTENDANCE

(Deputy City Clerk Bigelow)

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

Morgan Hill Community Library, Heather Geddes

YAC PRESENTATION ASSET # 39 - SENSE OF PURPOSE

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. ACKNOWLEDGE NO BIDS FOR PARKING STRUCTURE SAFETY ENHANCEMENT PROJECT AND DIRECT STAFF TO NEGOTIATE CONTRACT FOR SERVICES

Recommendation:

1. Adopt resolution appropriating up to \$220,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$420,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

2. APPROVE AGREEMENT WITH HINDERLITER, DE LLAMAS AND ASSOCIATES (HdL), FOR SALES AND USE TAX AUDIT AND BUSINESS LICENSE ADMINISTRATION SERVICES

Recommendation:

1. Approve an agreement with Hinderliter, de Llamas and Associates (HdL), for sales and use tax audit, and business license administration services;
2. Authorize the City Manager to execute and administer that certain agreement; and
3. Adopt resolution authorizing certain City officials and HdL to examine the sales, use, and transaction tax records of the State of California Department of Tax and Fee Administration.

3. ACCEPT GRANT FUNDING FOR AN EMERGENCY BACKUP GENERATOR FOR THE CENTENNIAL RECREATION CENTER AND AUTHORIZE THE PURCHASE AND INSTALLATION OF THE GENERATOR

Recommendation:

Adopt resolution to amend the City's Fiscal Year (FY) 2018-19 adopted budget, to appropriate \$235,000 from the Community/Recreation Centers Impact Fund (360) for the purchase and installation of an emergency back up generator for the Centennial Recreation Center, subject to reimbursement of \$140,249.80 from the State of California Hazard Mitigation Program.

4. ACCEPT DONATION FROM COMMUNITY LAW ENFORCEMENT FOUNDATION

Recommendation:

Adopt a resolution:

1. Accepting a donation from the Community Law Enforcement Foundation in the amount of \$25,439, for the purchase of ballistic plates and carriers for first responders, enhanced communication equipment for our tactical team, and integration costs for a community engagement and evaluation program;
2. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund (010) to recognize the CLEF donation as revenue, and appropriate \$25,439 in the Police Department budget for associated expenditures; and
3. Appropriating a transfer of \$15,840 from the Asset Seizure Fund (225) and to the General Fund (010) for the annual program subscription services.

5. APPROVE AGREEMENT WITH OUTREACH SERVICES IN PARTNERSHIP WITH THE COUNTY OF SANTA CLARA

Recommendation:

1. Approve an agreement with the County of Santa Clara Office of Supportive Housing for Homeless Services to continue support for joint Rapid Re-Housing and Homeless Outreach Services specifically for South County; and
2. Authorize the City Manager to execute and administer the certain agreement.

6. REJECT BID PROTEST AND AWARD NEW COMMUNITY GARDEN INSTALLATION PROJECT

Recommendation:

1. Reject bid protest;
2. Award contract to Castlewood Construction Company, Inc. in the amount of \$195,000 for Community Garden construction;
3. Authorize the expenditure of contingency funds not to exceed \$19,500; and
4. Authorize the City Manager to execute and administer that certain construction contract with Castlewood Construction Company, Inc.

7. APPROVE AGREEMENT FOR TRANSPORTATION FUND FOR CLEAN AIR (TFCA) FUNDING FOR THE MAIN AVENUE BIKE LANE AND SIDEWALK PROJECT

Recommendation:

Adopt resolution:

1. Approving the Santa Clara Valley Transportation Authority's funding agreement for the Bay Area Air Quality Management District TFCA grant program for up to \$65,100 towards the construction of the Main Avenue Bike Lane and Sidewalk Project;
2. Amending the adopted Fiscal Year (FY) 2018-19 budget in School Pedestrian and Traffic Safety Fund (355) to recognize the TFCA Grant as revenue; and
3. Authorizing the Public Services Director to execute and administer the TFCA agreement.

8. APPROVE STORMWATER BEST MANAGEMENT PRACTICES OPERATION AND MAINTENANCE AGREEMENT FOR THE RESIDENTIAL CARE FACILITY FOR THE ELDERLY AT 16515 BUTTERFIELD BLVD (APN: 817-57-049)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Residential Care Facility for the Elderly at 16515 Butterfield Blvd. (APN: 817-57-049); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

9. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - CONNEMARA PHASE 2 - TRACT NO. 10357

Recommendation:

1. Accept the Subdivision Public Improvements for Connemara Phase 2 – Tract No. 10357;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

10. APPROVE PHASE 1 RECORDS RETENTION SCHEDULE UPDATE

Recommendation:

Approve changes to the City's Records Retention Schedule.

11. APPROVE THE DECEMBER 5, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

12. APPROVE THE DECEMBER 12, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

13. RECEIVE HIGH SPEED RAIL (HSR) UPDATE AND APPROVE HDR ENGINEERING INC. CONTRACT FOR GRADE SEPARATIONS STUDY

Recommendation:

1. Authorize City Manager to execute a contract with HDR Engineering, Inc., in the amount of \$125,000 to study roadway grade separations at Dunne Avenue and Tennant Avenue; and
2. Adopt resolution approving a three-year interfund loan in the amount of \$125,000 to the Traffic Impact Fund from the Local Drainage Impact Fund and amend the City's adopted Fiscal Year 2018-19 budget in funds No. 303 and 309 for related expenditures.

Estimated Time: 30 Minutes

14. APPROVE OUTDOOR SPORTS CENTER OPERATOR AGREEMENT

Recommendation:

1. Authorize the City Manager to execute an operations and maintenance agreement with MHOSC, LLC. for the Outdoor Sports Center; and
2. Adopt resolution appropriating \$100,000 from the Park Impact Fund (301) and \$50,000 from the General Fund (010), a total of \$150,000, for improvements and repairs to the Outdoor Sports Center.

Estimated Time: 30 Minutes

15. APPROVE MAGICAL BRIDGE MORGAN HILL PLAYGROUND CONCEPT DESIGN

Recommendation:

Approve the updated conceptual design for the Magical Bridge Inclusive Playground at Community Park.

Estimated Time: 20 Minutes

16. ADOPT POLICY FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AGRICULTURAL PRESERVATION EXEMPT SET-ASIDES, TRANSFER OF DEVELOPMENT RIGHTS AND/OR AUCTION

Recommendation:

1. Adopt a policy for Agricultural Set-A-Sides, Transfer of Development Rights, and/or Auction process;
2. Establish number of Agricultural Set-A-Sides Available for Auction in 2019; and
3. Authorize 2019 Auction.

Estimated Time: 20 Minutes

17. PROVIDE DIRECTION REGARDING MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN ALTERNATIVES

Recommendation:

Receive report and provide direction to staff on follow-up recommendation for Block-Level Master Plan Alternative for two Monterey Road Corridor projects.

Estimated Time: 20 Minutes

18. SELECT CITY COUNCIL MAYOR PRO TEMPORE AND REVIEW CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01; and
3. Review and discuss the listing of City Council Appointments to Outside Agencies.

Estimated Time: 5 Minutes

PUBLIC HEARING

19. ACCEPT PUBLIC COMMENT REGARDING THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID)

Recommendation:

Receive and accept public comment on the formation of a Morgan Hill TBID.

Estimated Time: 5 Minutes

20. DEVELOPMENT AGREEMENT APPLICATION DA2018-0002: E. DUNNE-YOUNG: REQUEST FOR APPROVAL OF A DEVELOPMENT AGREEMENT FOR THE FIRST 20 UNITS OF A 46-UNIT, THREE STORY, MULTI-FAMILY RESIDENTIAL CONDOMINIUM PROJECT PROPOSED ON A 3.5 ACRE PARCEL LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE, ADJACENT TO THE NORTH SIDE OF THE MORGAN HILL KINDER CARE LEARNING CENTER AT 605 E. DUNNE AVENUE.

Recommendation:

1. Open and close public hearing;
2. Waive the first and second reading of Development Agreement Ordinance; and
3. Introduce the Development Agreement Ordinance.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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



Sustainable Morgan Hill Vision

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

CITY COUNCIL ONGOING PRIORITIES

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

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

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



Economic Development and Telecommunications

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



Financial Stewardship

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



Infrastructure

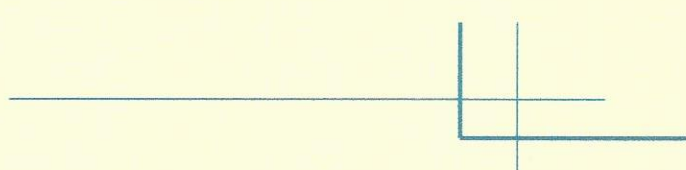
The City will review its streets, parks, and public facilities infrastructure needs to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels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



Regional Initiatives

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

Gordon Jacoby & Associates



November 29, 2018

Dear Mayor Tate and Councilmembers Carr, Constantine, Jachimowicz, and Spring

This letter is a) to provide the Council with pertinent information about the baseball field purchase Agreement related to the just adopted SRL zoning changes and b) to ask that you reconsider and make possible amendments to your October 14 and November 7, 2018 decision concerning the SRL-B - Sports, Recreation and Leisure Sub-Zone in B Zoning District of the Morgan Hill Municipal Code. The elimination of the zoning commercial uses materially alters on-going elements of the Council's 2015 baseball fields purchase Agreement. I am sorry that I did participate when the Council discussed this item but the City inadvertently failed to provide me with the required notice. Notwithstanding the notice problem, I would have thought that the combination of materials and comments I made at your October 17, 2018 meeting, on the related ballfield topic, provided staff with sufficient background to explain the sale circumstances and offer solutions for avoiding possible problem. Part of the problem is that the staff who prepared the zone change recommendations was not involved in the earlier baseball field transaction.

Background on the Ballfield Purchase Agreement

There were a lengthy series of consistent City Council actions, starting in 2002, that provided the foundation for the ballfield property purchase in 2015. As explained below, the City Council's ballfield property selection process and ultimate purchase decisions were consistent with the Council's earlier actions. A partner and I owned the selected site. Such selection was part of the 2012 Competitive Solicitation of Future Park Property. The 25.8-acre property is located at the southeastern corner of Tennant Avenue and the freeway and provides convenient access and close proximity to the other major City sports facilities. The selection process was very deliberative based on City-created criteria.

At the time of selection, the property was proposed for a combination of sports fields and supportive commercial uses that were consistent with the 2008 City-proposed Sports Recreation and Leisure (SRL) zoning. Both the proposed City SRL zoning and the project were an outgrowth of **General Plan 2020** policies, adopted in 2002, that had a combined focus on sports/recreation/leisure uses and agriculture preservation in the City's Southeast Quadrant (SEQ). The SRL zoning was Council proposed on February 20, 2008 and was the subject of a lengthy environmental impact review on both the SRL and agriculture preservation elements. Following normal City procedures, the environmental studies were paid for by both the City and property owners including our entity. Both the SRL zoning and the specific sports field/commercial uses proposed for the subject site were reviewed and ultimately approved in compliance with California Environmental Quality Act (CEQA). Those CEQA requirements included

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510-339-6367 ■ Fax 510-339-1951

compliance with environmental studies and disclosures, time schedules, public noticing and hearings, and applicant protections. The CEQA review started in 2010 but took until 2015 to be finalized, in large part due to community-requested changes to the agriculture preservation elements of the project.

The underlying economic/commercial strategy for the area was an outgrowth of the City's successful Outdoor Sports Complex and Aquatic Center. The strategy was to foster a synergistic linking of the sports facilities with nearby commercial uses that contributed hotel and sales taxes. Such additional taxes helped offset the costs of the recreation facilities. The economic and recreation strategy was prepared in a December 2006 Market Study as part of the SEQ process. It was further refined in a February 2008 Economic Assessment of Sports, Recreation & Leisure. (It is helpful for the City Council to recognize that this same economic/recreation strategy has continued as evidenced and contained within the 2017 adopted Bikeways, Trails, Parks and Recreational Master Plan; Morgan Hill Economic Blueprint; and Sports Market Business Strategy.)

Purchase Negotiation

Once our site was selected via the Competitive Solicitation, the City staff and I started negotiation on various topics including size of the area to be purchased; the location of the ballfields and the commercial area; and the purchase price. The City Council interacted at three separate times during the negotiations by approving a chain of three related documents - Letter of Intent (LOI, 8/2/2013); Option to Purchase Agreement (7/2/2014); and Purchase Agreement (7/15/2015). These documents (and their attachments and related communications) provide a clear legislative history about the importance of commercial use as a part of the entire project. Our property was larger than needed for the 20-acre, 6-field baseball complex. Both parties understood that the 20-acres was approximate and would be modified based on the preliminary design of the baseball complex and the adjacent commercial uses. Such area refinement was a part of the negotiation and occurred between the LOI and the Option to Purchase stage. A City-directed design consultant provided alternative conceptual site plans for both the ballfields and commercial site (Attachment A). The design studies concluded that the baseball complex (including fields, parking, roadways and restrooms/lockers) needed 22.2-acres, thereby leaving a 3.4-acre residual site for commercial uses. Such commercial uses were to be consistent with the 2008-proposed SRL zoning. Such zoning was later confirmed and adopted by the Council. As indicated in the November 25, 2013 Staff report (Attachment B), both the City staff and I wanted to make sure that both the 3.4-acre area and the specific location (at the north end next to Tennant Avenue) could lead to a successful commercial project. Based on those determinations, the sale price was established for the 22.2 acre ballfield site and the process moved forward to the purchase agreement.

The City took title to the entire 25.8 acre area until the site could be annexed and subdivided into the correct parcel configuration. The Sale Agreement contained a provision whereby the residual area (the commercial area) would be returned (sold at one dollar) to the Seller within a 15-year period. That 15-year period was judged to provide sufficient flexibility to enable the required annexation and land subdivision.

LAFCo Annexation Considerations

The City's Competitive Solicitation did not contemplate immediate construction of the ballfields. Essentially, the entire 6-field complex was to be constructed in at least two stages. Stage one would be the purchasing and land banking of the site using funds from City- park development fees (Quimby Act

fees). The subsequent ballfield construction stages would occur when additional development fee funds became available and were allocated. As such, immediate annexation, while perhaps desirable, was not a necessity.

All but one of the possible sites (solicitation-process) were located outside of the Morgan Hill city limits. That was understandable since there are few 20-acre vacant properties within the city limits other than more expensive properties held for large residential, commercial or industrial development. (The one site within the city limits was being considered also in the General Plan Update for rezoning to residential. Such a rezone took place and that site was no longer available for ballfields.) Therefore, all the potential ballfield sites required annexation approval from LAFCo, in order to be connected to public utilities.

The northern portion of our Tennant Avenue site (the location of contemplated commercial uses) is within the 1994 Joint City/County-Urban Growth Boundary (UGB). As shown in the Santa Clara County General Plan (Attachment C) the UGB "delineates areas appropriate for and likely to be needed for urban purposes within the next 20 years". Therefore, the subject commercial site qualifies for annexation under the "20-year" policy.

There is existing municipal water service to the site. When we were owners, we contributed a small area of our property to the Tennant Avenue overpass widening improvement and understood that the overpass improvement was designed to enable an extension of the current Condit sewer line to the site (now located at the hotel on the north side of Tennant Avenue).

Additionally, the current LAFCo Policy concerning UGBs (Attachment D) specifically includes a provision whereby properties within the UGB can be recognized and considered for annexation. As indicated above, the commercial area is located within this long-established UGB.

For purposes of the Sale Agreement both parties realized that the site, including its contemplated commercial area, was either a current or eventual candidate for annexation based on a) consistency with City General Plan policies, b) within the Joint County/City UGB boundary for more than 20 years, c) at least partial, if not total, consistency with the LAFCo UGB policy, and d) adjacent to public services. However, the specifics and timing of such LAFCo annexation was unclear. To resolve this matter, the chain of various legal agreements (LOI, Option, and Purchase Agreement) addressed the LAFCo uncertainty with a condition wherein the eventual annexation; subdivision; and sale/transfer of the 3.4-acre residual site could occur within an extended period (15 years).

Treatment of Property with Recently Adopted Zone Change

As the former property owners and seller, we have relied and participated in good faith in the 15-year long Council public policy legislative history concerning the site. The terms of the property sale were based on that legislative history. The defined residual area, and its eventual anticipated value, were material parts of the sale negotiation. All of the earlier Council actions, on both the SEQ planning and the selection/negotiation/sale of the site were done in very public and transparent manners. Both the SEQ planning; the planning/zoning regulations for this subject site; and the purchase were analyzed and had public discussion defined by CEQA and City ordinances. In simplest terms, it would be clearly unfair to change those sale circumstances and conditions three years after the sale was completed. Moreover, it would be unfair for the City to now use its zoning powers to change and thereby limit the

November 29, 2018

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possible uses of the residual property such that the only logical buyer/end user could be the City – and in so doing change to land uses that could lower the economic value of the residual parcel.

Request

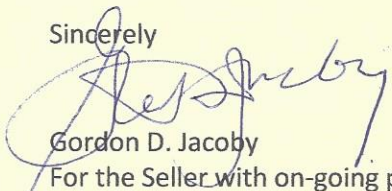
There are at least two and perhaps other options (which the City Attorney might recommend) that the City Council could use to reconsider and amend their earlier zone change decision.

The first and perhaps most direct adjustment, based on the Council's initial directives to staff, would be to limit any zoning modifications to apply exclusively to the parcels that are currently applying to LAFCo for annexation. Such an approach would give the Council the ability to consider the consequence of its zoning changes at a later date when there were annexation requests for those properties.

A second approach would be to exclude the zone change for the 3.4- acre subject area, because the sale terms and consequences were negotiated and transacted based of materially different circumstances.

I ask that you please consider the above.

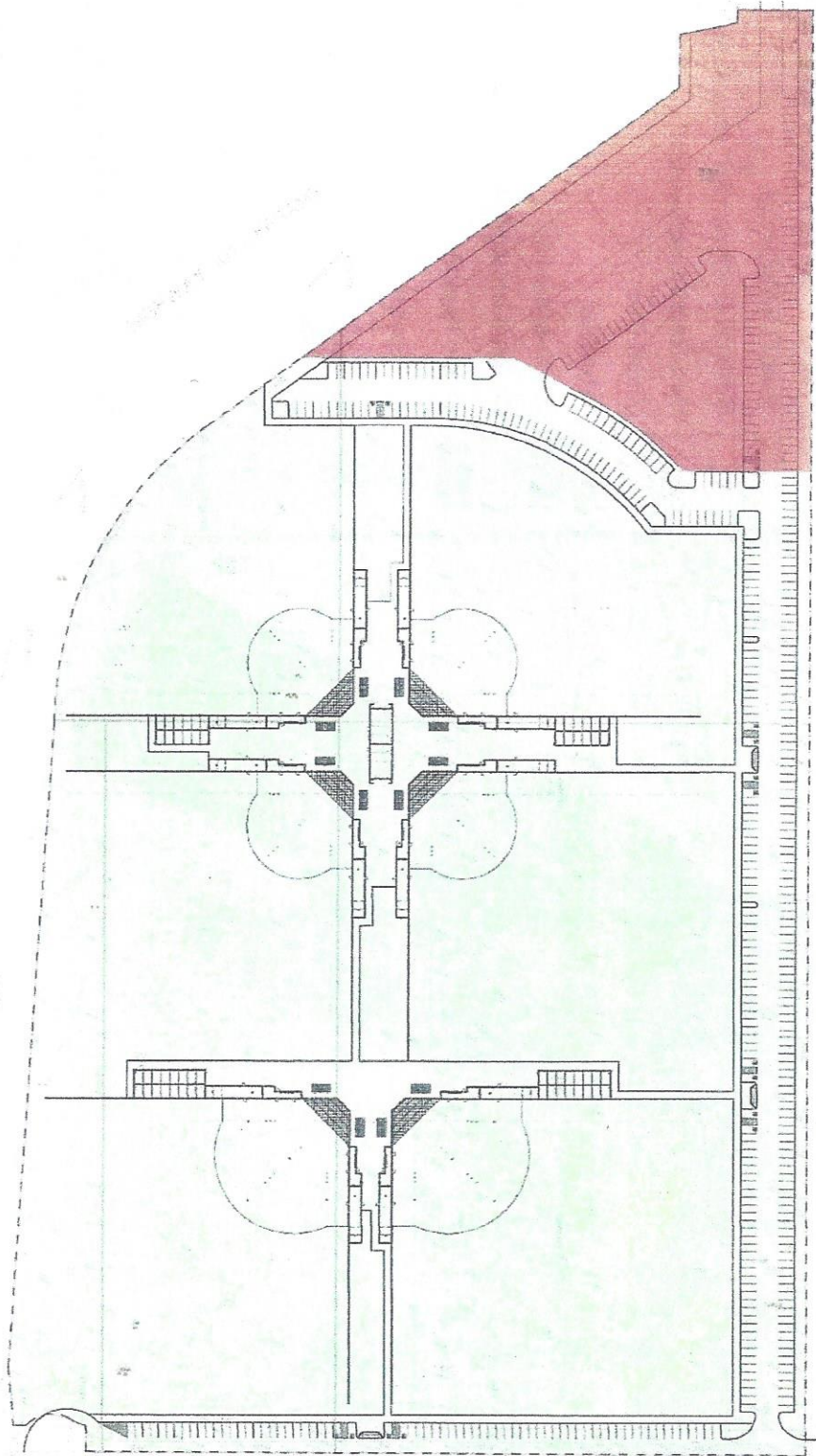
Sincerely



Gordon D. Jacoby

For the Seller with on-going property rights
NMSBPCSLDHB, a California limited partnership

(4 Attachments)



3.4 ACRES

23.1 ACRES

POHLEN AVE



October 2, 2012

Preliminary Design - Concept A
Tennant Avenue Ballfield Improvements
Morgan Hill, CA



JANISCHKE ARCHITECTS
CIVIL ENGINEERING
SPORT PLANNING & DESIGN
20221 Topportunity Blvd, Ste. 200
San Jose, CA 95131
Tel: 408.434.7200
Fax: 408.434.7201
www.janischke.com



Memorandum Community Services Department

Date: November 25, 2013

To: Steve Rymer, City Manager
Chris Ghione, Community Services Director

From: Anthony Eulo, Program Administrator

Subject: Due Diligence Activities on Ball Field Property

In 2012, the City issued a Competitive Solicitation of Future Park Property for the purchase of property suitable for constructing a ball field development. The Solicitation indicated that submitted properties should be a minimum of 20 acres, be able to accommodate a variety of field sizes, and be able to be delivered to the City without restrictions. Exhibit A is the full competitive solicitation and a map depicting the locations of the proposals the City received in response.

After considering the nine proposals received, the City determined that the property adjacent to the northbound Tennant offramp was best suited to meet the City's identified needs. This property has adequate size, has a shape that is conducive to ball field development, and is located near the City's other recreational destinations on Condit Road. This parcel also is ideally suited to eventually include a private development along Tennant that could serve the ball field users.

The City executed a Letter of Intent (LOI) with the owners of the selected ball field property on August 2, 2013. As authorized by the City Council, this agreement opened up a due diligence period during which the City would conduct its major evaluations of the property, complete preliminary planning for the site, and develop a purchase or option to purchase agreement for the site. Exhibit B is the executed LOI.

As noted in the LOI, purchasing the selected property will need to be coordinated with the City's Citywide Agriculture Preservation Program and Southeast Quadrant (SEQ) Land Use Plan Draft Environmental Impact Report. While the selected property will be included in the draft report with a programmed recreational use, additional environmental analysis considering the specific ball field project will need to be completed before the City finalizes any purchase of the property. The Option Period specified in the LOI indicates that the Option will expire 40 days after the completion of the CEQA process for the ball field project.

The LOI envisions that the City would execute an option to purchase agreement following the end of the due diligence period and would make a \$50,000 option payment that would be nonrefundable unless there is an uncured default of the seller.

This memo summarizes the City's findings to date and describes several alternatives for Council consideration.

Site Environmental Contamination Evaluation

The City contracted with an experienced environmental analysis firm to conduct Phase 1 and Phase 2 evaluations of the parcels. While a Phase 1 evaluation focuses on the known prior uses of the land and their related potential to cause contamination, a Phase 2 study focuses on the analysis of actual soil samples.

The Phase 1 research noted the existence of a barn-like structure that was potentially the location of pesticide mixing and spillage. The barn is considered a *Recognized Environmental Condition* because of the relatively high potential for chemical spills and leaks.

The Phase 2 evaluations were conducted in accordance with the California's *Interim Guidance for Sampling Agricultural Properties* (2008), which was designed to address agricultural transition to school sites and residential land use. The site-specific sampling included the collection of thirty-six (36) samples from across the site which were composited into nine (9), 4-point samples. The certified laboratory results showed non-detectable to limited detections of the persistent pesticide compounds with the exception of some slightly elevated levels of the persistent pesticides of *Dieldrin* and *Toxaphene*. Specifically, the lab results showed:

- Consistent, low-level detections of the organochlorine pesticide *Dieldrin*, at concentrations that did not exceed the human health and safety threshold (i.e., the *California Human Health Action Level, CHHSL*) concentration but did exceed the leachable threshold established in the Water Board's *Environmental Screening Level (ESL)*.
- A single, elevated detection of the persistent pesticide *Toxaphene* that was similarly below the human health and safety threshold but above the *Environmental Screening Level (ESL)*.

While the compounds detected were below the threshold established to protect human health and safety, they were above the level at which the City may be ordered to clean up the site in order to protect water quality. With this in mind, the following additional work is recommended for the site.

1. Collect four discrete samples from "worst case" locations and test those areas for solubility potential in order to assess the likelihood of groundwater contamination resulting from contaminants in the soil.
2. Confirm that there are no impacts resulting from potential historical storage and mixing practices at the old barn by taking and testing four additional samples.
3. Confirm that there is no leachability threat with the overseeing regulatory agency by obtaining a *no further action* letter from the Central Coast Regional Water Quality Control Board.

The City's Competitive Solicitation specified that the property can be delivered free of hazardous materials or conditions. It is anticipated that the discovery of any hazardous materials requiring remediation in order to meet this criteria will be the subject of additional negotiations with the property owner. While it is not possible to definitively state what the outcome of those negotiations would be without understanding the extent and cost of any needed remediation, these negotiations would occur prior to any action taken by the City to enter into an agreement to purchase the property.

Preliminary Site Planning

In order to evaluate how a potential ball field development would fit on the site, the City contracted with Verde Design to develop and present fully developed preliminary plans for the site. In order to maximize the economic development value the City received from the planned development, Verde was instructed to plan a facility designed to support tournament play.

Verde presented three optional designs for the site which are presented as Exhibit C. All three designs have the following features in common:

- Total of six fields (four fields with 300' fences suitable for softball and youth baseball and two fields with 360' fences suitable for softball, youth baseball, and teen baseball)
- Remainder parcel reserved for economic development on the north portion of the site
- Minimum of 454 parking stalls (75 stalls per field)
- Supporting features included (lights, drinking fountains, batting cages, etc.)
- Require over 23 acres of the site

The site planning process identified several issues/questions with the site design and potential development that should be addressed before proceeding with site acquisition.

* **Size of Remainder Parcel** - Since the potential for economic development on the northern remainder parcel is strongly desired, it is essential that the size of the remainder parcel be adequate to support the development. While six acres was originally envisioned to remain after the ball field development, the preliminary designs leave only 2.9 - 3.4 acres remaining. The seller has indicated that a minimum of 3.5 acres is needed to realistically ensure that economic development can occur. The size of the remainder parcel is directly linked to the number of required parking spaces. *

Amount of Parking Required - The preliminary designs include 75 parking spaces per field which is consistent with the recommended requirements for tournament play. The property landowner proposes that the City construct only 50 spaces per field, which is more consistent with local play, and arrange for overflow parking at other nearby locations. While the reduction in onsite parking would reduce the City's land acquisition and development costs and increase the size of the remainder parcel, having adequate onsite parking is important to support the use of the facility. Both the Outdoor Sports Center and Aquatics Center currently rely on offsite overflow parking for large events with mixed results. Staff recommends that the City follow the designers recommendation to plan for 75 spaces per field.

Development Costs - Verde provided estimates on site development costs for all three alternatives that range from \$21 - \$21.8 million. These estimates include site acquisition, permits, design and inspection, hard construction, contingency, and agricultural mitigation. The estimates do not include substantial costs for offsite improvements (traffic signals, road widening, extending utilities, etc.) which may be required but are currently unknown.

For reference purposes, the Park Impact Fund had a balance of approximately \$8 million at the end of the Fiscal Year 12/13 and annual fee revenues are approximately \$1.2 million at current fee rates. In addition to the ball field development, other planned uses of Park Impact Funds include improvements to Community Park, the construction of the El Toro Trail, and extensions to the West Little Llagas Creek Trail.

It is beneficial to have these estimates at this time in order for the City to consider the likelihood of eventual site development. It is possible that some value engineering could occur to reduce project costs, but this work is unlikely to reduce the costs substantially and the City's experience with value engineering is that it sometimes results in projects that must ultimately be improved at a later date to restore what was removed.

While bringing in a project partner that may help construct the facility is certainly a possibility, it is unknown how much assistance would be provided by such a partner and the terms that would accompany the partnership. If a local, nonprofit partner is desired, it is unlikely that a substantial capital contribution would be possible.

While building the facility in phases would be possible, having any less than four fields initially is likely to stifle the recruitment of tournaments to play at the facility.

Operational Costs and Property Taxes - While funding to operate the facility has not been identified and wouldn't need to be identified until site development occurs, it is important to note that it is highly likely that City funds will be required to support facility operations - even if a nonprofit or for-profit partner is responsible for day-to-day operations. In addition, as long as the site remains in the County, the City will be responsible for paying property taxes on the site once the facility is owned by the City. These will be approximately \$50,000 annually for the undeveloped parcel and substantially more once the site is developed.

Traffic Circulation - The preliminary site plans anticipate access to the site from both the Tennant and Fisher Avenue frontages. An initial review of the Tennant Avenue access point indicates that it may not be prudent to install a traffic signal at this location due to its close proximity to both the 101 interchange and Murphy Avenue. This issue complicates both the ball field development and the future private development of the site. Additional traffic analysis will be needed in order to ultimately determine if a traffic signal will be warranted and, if so, if one can be prudently accommodated at the intersection. If a traffic signal cannot be accommodated, it may be necessary to acquire additional property or an access easement on neighboring parcels in order to develop the site. This additional traffic analysis is anticipated to cost between \$5,000 and \$10,000 and could be completed during an extended due diligence period.

Alternatives for Moving Forward

The work completed during the due diligence period has moved the development process along substantially and has brought many issues into focus. Given the prospective cost of the facility and other discoveries associated with the parcel, it is an ideal time for the City Council to consider the City's current path on this issue, evaluate potential alternatives, and provide direction.

Alternative 1 - Proceed With Site Acquisition Process at Chosen Site

The site selected is ideally located near the City's other recreational destinations on Condit Road and would serve as a strong entry statement to the community. In order to proceed with acquiring this site, it is recommended that the City Council:

- C. Approve resolution authorizing the City Manager to negotiate and execute a 120-day extension of the due diligence period;
- D. Provide additional guidance to staff on site design issues;
- E. Direct staff to conduct additional site assessments as recommended by the City's environmental consultant and additional site planning work related to traffic circulation; and
- F. Direct staff to return to the City Council before the end of the due diligence period with recommendations and a potential option agreement to purchase the property.

Alternative 2 - Re-evaluate Other Sites Within the City's Boundaries for an Alternative Site Suitable to Host Tournaments

It may be possible to identify other sites within the City's boundaries that are suitably sized for tournament play - but likely wouldn't be near the City's other recreational destinations on Condit Road. While these locations may not provide the same level of economic stimulus, they may be easier to develop and would not be subject to property taxes. The development costs, however, are likely to not differ greatly from the development costs of the existing site.

One of these locations, two parcels on the north side Butterfield Blvd. as it reaches Monterey Road, was considered during the competitive solicitation process and not selected. In addition to the parcels north of Butterfield, the City now owns approximately eight acres of vacant property on the south side of the Butterfield extension that is adjacent to a privately-owned 19 acre property. There may also be additional sites worthy of consideration.

In order to proceed on this path, it is recommended that the City Council:

- A. Direct staff to suspend property acquisition efforts for the Tennant property; and
- B. Direct staff to evaluate the Butterfield/Monterey sites and any other sites within the City and report back to the City Council in 120 days with recommendations.

Alternative 3 - Refocus the Effort to Develop Fields Primarily Suited to Meet Local Needs

While hosting tournaments to complement the City's sports tourism efforts would be a primary focus at the existing site, the high site development costs may be reason to refocus the effort to primarily serve local users. This could likely be accomplished by pursuing the following three strategies in cooperation with the local baseball and softball community:

- Substantially redevelop/repurpose existing fields owned by the City;
- Work cooperatively with the School District to invest in fields owned by the District;
- Develop a smaller new site with one or two new fields at a location within the City's boundaries.

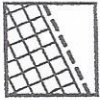
This approach would be substantially less expensive to complete because the size of the new site would be considerably smaller and less elaborate. This approach would also enable the City to leverage community partners who could contribute time, energy, and funding to both the development and maintenance of the redeveloped sites.

In order to proceed on this path, it is recommended that the City Council:

- A. Direct staff to suspend property acquisition efforts for the Tennant property; and
- B. Direct staff to collaborate with the local baseball and softball community on a Ball Field Improvement Plan and report back to the City Council in 120 days with recommendations on moving forward.

Alternative 4 - Suspend Ball Field Property Acquisition Activities and Take No Action At This Time

Given the magnitude of site development costs, the City Council could take no action at this time which would suspend ball field development activities.



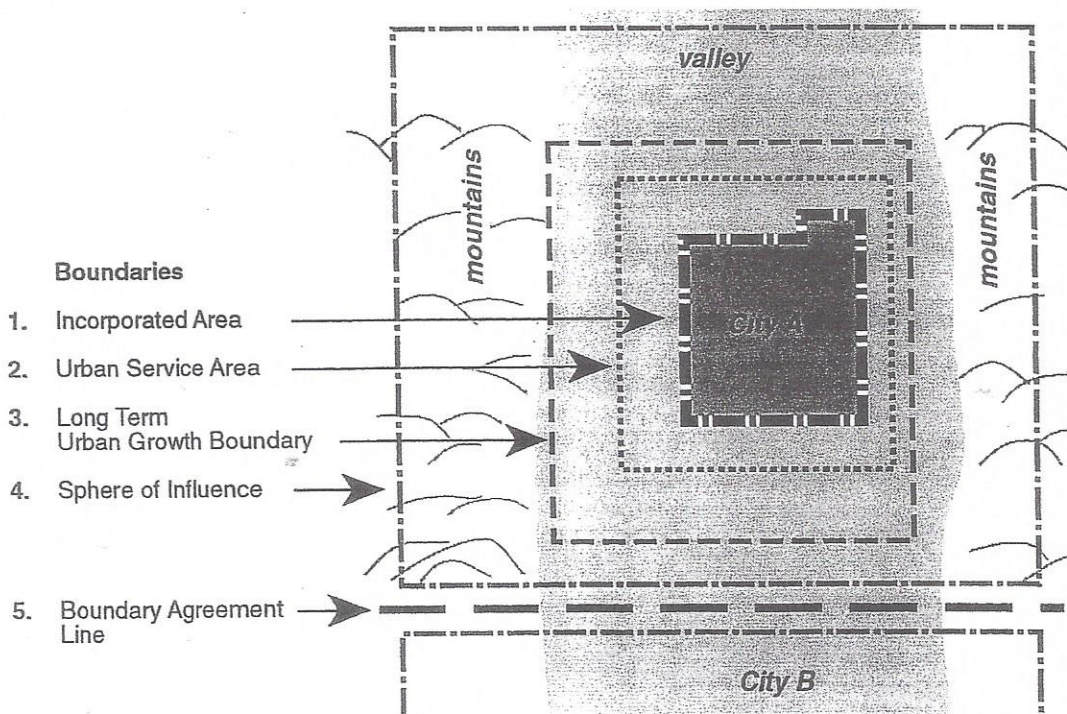
Growth and Development

Countywide Issues and Policies

Glossary of Jurisdictional and Growth Management Boundary Terms

Boundary	Definition / Description
1. Incorporated Area Boundary	"City limits"; Delineates lands currently annexed to city
2. Urban Service Area (USA) Boundary	Delineates areas currently provided with urban services, facilities, and utilities or proposed to receive such services within 5 years
3. Long Term Urban Growth Boundary (UGB)	Delineates areas appropriate for and likely to be needed for urban purposes within the next 20 years
4. Sphere of Influence (SOI) Boundary	In Santa Clara County, generally defined as city's planning area (i.e. area covered by general plan); often includes hillside areas the city has designated for non-urban uses and does not intend to provide with urban services. (State defines as the probable ultimate physical boundaries and service area of the city.)
5. Boundary Agreement Line	Delineates limits beyond which a city will not be allowed to annex territory.

Hypothetical Relationships Among Jurisdictional and Growth Management Boundaries



**POLICY REGARDING
URBAN GROWTH BOUNDARIES AND OTHER LONG TERM BOUNDARIES**

1. LAFCO shall recognize any urban growth boundary, urban limit line, greenline, greenbelt boundary, or other boundary adopted by a city and/or approved by voter initiative to define the limits of its urban development.
2. LAFCO shall consider these boundaries when reviewing relevant proposals, including: city annexations or reorganizations which LAFCO retains the authority to review pursuant to Government Code Section 56826, urban area amendments, sphere of influence amendments, and "out-of-agency" extension services.
3. LAFCO shall discourage proposals which are inconsistent with an adopted urban growth boundary.

Adopted April 12, 1999



December

Developmental Asset

#39

Sense of Purpose

Young person reports that
“my life has a purpose.”

How sense of purpose affects youth?

- Improves well-being
- Youth are open to try new opportunities
- Youth feel happier
- Youth feel encouraged to strive for success



How youth can feel important?

- Let youth know their ideas are important.
- Allow their ideas and opinions be heard.
- Support their goals and dreams.
- Treat their ideas with respect and seriousness.





December Complementary Asset number #5 Caring School Climate

School provides a caring,
encouraging environment.

How this relates to sense of purpose?

- Shows other people care about the youth
- Schools support and respect their ideas
- Schools open up new ideas for youth to take part in.
- Creates confidence to engage in new ideas.



Sense of Purpose

Family

Friends

Community

School

Mentors



CITY OF MORGAN HILL