



Special - Regular Meeting Agenda

City Council

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

Wednesday, April 17, 2019 5:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 p.m. for the purpose of conducting Planning Commission interviews.

5:00 p.m. Planning Commission interviews

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

PLANNING COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL SIX (6) SEATS ON THE PLANNING COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY MANAGER QUARTERLY RECOGNITIONS

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

YOUTH ACTION COUNCIL ASSET # 9 - SERVICE TO OTHERS

PROCLAMATIONS

Proclaiming the Week of April 14th through April 20th as
National Telecommunicator's Week

LEGISLATIVE UPDATE

Assembly Member Robert Rivas

RECOGNITIONS

Daniel Redfield and Norma Bussing for their Service on the Library, Culture, and Arts Commission

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. APPROVE SECOND AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve Second Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project to a revised not to exceed total of \$583,433; and
2. Authorize the City Manager to execute and administer the amended agreement.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

Recommendation:

1. Approve the Third Amendment to Consultant Agreement with Asset Protection Group Private Security Inc. to a revised not exceed total of \$145,000 for four years; and
2. Authorize the City Manager to execute and administer the amended agreement.

4. APPROVAL OF DENNIS KENNEDY AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

Recommendation:

Authorize the City Manager to execute, administer, and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Dennis Kennedy Aquatics Center.

5. ACCEPT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES/ DEPARTMENT OF HOMELAND SECURITY FOR PORTABLE BARRICADE SYSTEM

Recommendation:

1. Adopt a resolution:
 - a. Accepting grant funds from the Santa Clara County Office of Emergency Services via the Department of Homeland Security in the amount of \$90,000, for the purchase of portable vehicle incursion barriers; and
 - b. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$90,000 in the Police Department budget for the capital expenditures; and
2. Authorize the City Manager to approve purchase order in the amount of \$90,000 with Delta Scientific Corporation.

6. APPROVE PURCHASE OF THREE HEART MONITOR AND DEFIBRILLATOR DEVICES

Recommendation:

1. Adopt resolution amending the City's adopted Fiscal Year (FY) 2018-19 Budget to appropriate \$40,000 from the General Fund (010) for the purchase of three Advanced Life Support (ALS) Heart Monitor Defibrillator devices; and
2. Authorize the City Manager to approve the purchase order in the amount of \$121,162, for the purchase of said devices from Physio-Control, Inc.

7. APPROVE 3 YEAR PROPERTY LEASE AGREEMENT WITH MONUMENT (TECHON) CONSTRUCTION AT 16200 VINEYARD BOULEVARD

Recommendation:

Approve and authorize the City Manager to amend and execute a new Standard Lease Agreement with Monument Construction dba Techcon for the property located at 16200 Vineyard Blvd with an initial annual lease amount of \$68,424.

8. APPROVE COMMUNITY PROMOTIONS FUNDING REQUESTS FOR FISCAL YEAR 2019-20

Recommendation:

Approve Fiscal Year (FY) 2019-20 Community Promotions funding requests totaling \$47,000.

9. APPOINT EMERGENCY STANDBY COUNCIL

Recommendation:

Appoint former City Council Members Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan as Emergency Standby Council Members to be called upon as needed in the event of an emergency.

10. ACCEPT FEBRUARY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

11. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, 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.

12. ADOPT ORDINANCE 2301 NEW SERIES, AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

Waive the reading, adopt Ordinance No. 2301, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

13. APPROVE THE APRIL 3, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

14. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2019

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2019.

Estimated Time: 15 Minutes

CONTINUED PUBLIC HEARINGS

15. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES - ITEM CONTINUING TO THE MAY 15, 2019 CITY COUNCIL MEETING

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:

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill:

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

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 Community History ·
Enhancing Diversity and Inclusiveness · Advancing Regional Initiatives

2019-2020 STRATEGIC PRIORITIES

Agricultural Preservation
Cannabis Policy
Community Engagement and Messaging
Economic Development
Financial Stewardship
High Speed Rail
Homelessness
Housing Infrastructure
Telecommunications
Traffic/Transportation



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

INTERVIEWS TO FILL SIX (6) SEATS ON THE PLANNING COMMISSION

RECOMMENDATION(S)

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Community History

2019 Strategic Priorities

Economic Development
Financial Stewardship

REPORT NARRATIVE:

The City Council is recruiting to fill 6 seats on the Planning Commission. Two seats have a term ending June 1, 2021 and four seats have a term ending on June 1, 2023. On December 12, 2018, Planning Commissioners Yvonne Martinez Beltran and John McKay were sworn in to serve on the City Council, vacating their seats on the commission with terms expiring on June 1, 2021. On February 20, 2019, Andrew Froumis, Chip Williams, Chris Woods, and Ken Murray were interviewed to fill the two vacant seats on the commission. After conducting interviews, the Council directed staff to re-open the recruitment in an effort to get a diverse pool of applicants. Staff coupled the recruitment to fill the two vacant seats with a recruitment to fill the four seats with terms expiring on June 1, 2019. The recruitment resulted in a total of ten more applicants including the four incumbents; Joe Mueller, Juan Miguel Munoz-Morris, Liam Downey, and Wayne Tanda, along with six new applicants; James Dill, Laura Gonzalez-Escoto, Malisha Kumar, Paul Morgan, Sally Casas, and Victor Gaxiola.

All applicants have been invited and confirmed availability to interview before the City Council on April 17, 2019. Their applications are attached for Council consideration.

COMMUNITY ENGAGEMENT: Involve

Recruitment efforts were undertaken to encourage citizens to apply for City Council appointment consideration to the Planning Commission via the Morgan Hill Times, City Website, Government Access Channel, Facebook, NextDoor, outreach to community groups, and the weekly 411 emails.

ALTERNATIVE ACTIONS:

The City Council may choose to make appointments to fill all, some, or none of the six seats up for appointment. If the City Council desires, it could decide to re-open the application process to solicit more applicants to fill those seats not appointed at the April 17, 2019 meeting.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Planning Commissioners serve four-year terms with possible reappointment consideration. Every year, recruitment efforts are conducted to maintain the seven (7) member Commission.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with the actions to interview and appoint, as the recruitment and appointment process is accommodated in the Administrative Services operating budget.

CEQA (California Environmental Quality Act):

Not a project.

The interview and appointment of commissioners is not a project, as defined in Section 15378 of the State CEQA guidelines.

LINKS/ATTACHMENTS:

1. chapter 2.22 Master Provisions for boards and commissions
2. Chapter 2.36 Planning Commission
3. Joe Mueller Application Packet_Redacted
4. Juan Miguel Munoz-Morris application packet_redacted
5. Liam Downey Application Packet_Redacted
6. Wayne Tanda Application Packet_Redacted
7. Andrew Froumis Application Packet_Redacted
8. Chip Williams Application Packet_Redacted
9. Chris Wood Application Packet_Redacted
10. Ken Murray Application Packet_Redacted
11. James Dill Application Packet_Redacted
12. Laura Gonzalez-Escoto Application Package_Redacted
13. Malisha Kumar Application Packet_Redacted
14. Paul Morgan Application Packet_Redacted
15. Sally Casas Application Packet_Redacted
16. Victor Gaxiola Application Packet_Redacted

Chapter 2.22 - MASTER PROVISIONS FOR BOARDS AND COMMISSIONS*

Sections:

2.22.010 - Establishment of boards and commissions.

- A. There are established within the city the following boards and commissions:
 - 1. Planning commission;
 - 2. Parks and recreation commission;
 - 3. Library, culture and arts commission; and
 - 4. Disaster council.
- B. Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents.
- C. Members shall be appointed by the mayor subject to approval of a majority vote of the city council and may be removed without cause by vote of any three members of the city council.
- D. The appointment terms of members may be extended, at the discretion of the city council, until such time as a successor member may be appointed and take office.
- E. Vacancies in the commission occurring other than by expiration of term shall be filled for the unexpired term in the same manner as original appointments.
- F. The members of the commission shall organize the commission and shall elect from its members a chair and vice-chair and such other officers as may be necessary in accordance with adopted city council policy.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No 1930 N.S., § 2, 4-22-2009; Ord. No. 1935 N.S., § 1, 6-3-2009)

2.22.030 - Clerk and secretary.

The city clerk or designate shall also act as clerk for each of the boards and commissions and shall have authority to sign any official notices and also to certify any resolution of the commissions or boards. The city council may appoint a person not a member of the commission or board to act as secretary of the

commission or board. The secretary shall keep a record of all proceedings of said board or commission, its resolutions, its findings and actions, which records shall be a public record and kept with the city clerk in the City Hall building.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.040 - Rules of procedure.

- A. The chair shall preside at all meetings of the board or commission. The vice chair shall assume the duties of the chair in the absence of or in case of inability of the chair.
- B. A majority of the members of the commission or board shall constitute a quorum for the transaction of business.
- C. Unless otherwise specified herein, each board or commission may adopt its own rules and regulations for the transaction of its business. Such rules shall be subject to approval of the city council before becoming effective.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.050 - Rules of attendance.

If any member is absent from three of any six consecutive regular board or commission meetings, unless such absence is with the permission of the chair, or vice chair in absence of the chair, expressed in the official minutes, the member's seat shall be deemed vacated. The city manager shall so notify the city council and the council shall take action to fill the seat within a reasonable period of time.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.060 - Meetings.

Unless otherwise specified, the commission shall hold regular meetings once every two months at a designated time and place which shall be fixed and determined by the commission and entered upon in its minutes. Special meetings of the commission may be called at any time by the chair or by a majority of the members of the board upon notice being given to all members of the board and to all news media at least twenty-four hours in advance of the meetings, as required by the laws of the state of California.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No. 1930 N.S., § 3, 4-22-2009)

2.22.070 - Compensation.

Members of the boards and commissions shall serve without compensation but may receive reimbursement for actual and necessary expenditures made or incurred in the performance of their prescribed duties in accordance with state law and the Municipal Code and policies of the city of Morgan Hill.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.080 - Effect.

Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the city council or city officers as defined by the laws of the state of California or by this Municipal Code. Except as otherwise set forth in Chapter 2.36, the city council declares that the public interest and convenience require the appointment of the boards and commissions established pursuant to Section 2.22.010 to act purely in an advisory capacity to the city council.

(Ord. 1778 N.S. § 2 (part), 2006)

Chapter 2.36 - PLANNING COMMISSION*

Sections:

2.36.010 - Created—Statutory authority.

The planning commission is established pursuant to the authority contained in Chapter 3 of Title VII of the California Government Code, entitled "Local Planning, " as existing or hereafter amended. Reference shall be made to said Chapter 3 for interpretation of this chapter.

(Ord. 811 N.S. § 1 (II-3-1), 1987)

2.36.020 - Membership—Terms of office—Vacancies.

- A. The city planning commission shall consist of seven members. Members of the planning commission shall serve the following terms:
1. In the year 1998, three members shall be appointed to serve terms ending June 1, 2001;
 2. The four members who were appointed in 1996 shall serve terms ending June 1, 1999;
 3. Thereafter, all terms shall be for four years and shall expire on June 1st.

(Ord. 1778 N.S. § 5, 2006; Ord. 1407 N.S. § 2, 1998; Ord. 1083 N.S. § 1, 1992; Ord. 811 N.S. § 1 (II-3-2), 1987)

2.36.030 - Meetings.

The commission shall hold regular meetings at least twice a month or as otherwise deemed necessary by the commission. All meetings of the commission shall be held in the city council chambers at City Hall or other location designated by minute order of the city council or at a location deemed necessary or appropriate by the planning commission.

(Ord. 1197 N.S. § 1 (part), 1994; Ord. 811 N.S. § 1 (II-3-3), 1987)

2.36.040 - Powers and duties.

The planning commission shall have the powers and shall perform all the duties conferred and imposed upon city planning commissions by the applicable provisions of Chapter 3 of Title VII of the Government Code of the state and, in addition, the planning commission shall:

- A. Perform all the functions assigned to the commission by the subdivision and zoning ordinances (Titles 17 and 18 of this code) of the city, and all general laws of the state of California;
- B. Serve as an advisory body to the city council on matters related to city growth and

development and on such other matters as may be requested by the council;

- C. Promote public interest in and understanding of the subdivision and zoning ordinances of the city, and also of all master plans and other official plans and regulations pertaining to planning which have been approved officially by the city council;
- D. Review and advise the city council on all proposed amendments to Title 17, Subdivisions, and Title 18, Planning and Land Use Regulations;
- E. Approve or disapprove application for designation of cultural resources and historic districts pursuant to Chapter 18.75 of this code, or as amended;
- F. Approve or disapprove permits sought to remove or demolish a cultural resource, cultural resource site or historic district pursuant to Chapter 18.75 of this code, or as amended.

(Ord. 1111 N.S. §§ 2, 3, 1992; Ord. 899 N.S. § 18, 1989; Ord. 811 N.S. § 1 (II-3-4), 1987)

Print**Commission Application - Submission #15386****Date Submitted: 4/10/2019****First Name**

Joseph

Last Name

Mueller

Address1**Address2**

3

City

Morgan Hill

State

CA

Zip

95037

Home Phone Number

)

Cell Phone Number**email address****Occupation**

Retired, Academic Coach

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

I do not own property in Morgan Hill

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Joe Mueller Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

App Cover Letter..docx

Please upload a resume*

Mueller_Joseph_Resume.doc

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

Co-Chair 1990 General Plan Update Committee
1984-88 Mobile Home Rent Advisory Committee
1984-88 Personnel Board
1989-now Morgan Hill Planning Commission
South County Join Planning Advisory Committee (PC Representative)
2 Fire Master Plans.
2035 General Plan Update RDCS Update Task Force

What skills and/or experience do you possess that would be important to your role as a commissioner?*

Skills: Active listener, Collaboration, Problem solving, Third Alternative and the ability to keep the big picture in focus while working the fine details of a project or plan.
Experience: 30 years on the Morgan Hill Planning Commission including finding a third alternative solutions which are acceptable to the vast majority, if not all, of the stakeholders.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The PC has two major roles.

1. The PC advises the CC on matters related to the growth and development of the City including zoning changes, zoning code changes, General Plan changes, and Development Agreements.
2. The PC makes final decisions on RDCS Project scores, Award of RDCS Development Allocations, Conditional Use Permits and Tentative Maps.

There are additional roles given to the PC in the Municipal Code.

What would you like to accomplish as a commissioner?*

1. Transparent, fair, open, and inviting PC processes that those appearing before the PC know they will be heard.

2. We have several long, term projects that I would like to see completed. They include the Monterey Corridor Plans, Single Family Attached, town home, development standards, neighborhood commercial development standards. In addition, we need to work on the tree preservation programs.

What are the greatest opportunities facing the community in regards to this commission?*

The greatest opportunity for Morgan Hill is also a very large challenge-Housing. There are two parts to this opportunity. First, California Housing Law has dramatically changed in the last couple of years and is continuing to change annually. The implementing rules are still being clarified and determined. We need to adapt to the new legal framework while building the City the residents want. The second component of this challenge is the new Housing Cycle.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

☐ Yes

☒ No

Are you currently serving on a committee

☐ Yes

☒ No

Are you assigned to a special project?

☐ Yes

☒ No

If you are assigned to a special project, please describe the project.

Please review the [City Council Ethics Policy](#)

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Joseph Mueller

Date*

4/10/2019

9:45 AM

Attachment: Joe Mueller Application Packet_Redacted (2289 : Planning Commission Interviews)

April 9, 2019

Dear Mayor and City Council

I am applying for appointment to the Planning Commission for another four years. As I stated in my application, the largest challenge facing Morgan Hill is housing. The State is making very significant changes to California Housing Law every legislative session. The implementing rules are still being determined and clarified. In addition to the changing laws a new Housing Cycle is coming and the rules are changing for developing the new Housing Element for the General Plan.

I believe my experience on the Planning Commission and ability to see and keep in focus both the big picture and details of a plan or project will be very valuable to the Planning Commission.

Thank you for considering my application

Sincerely

Joe Mueller

JOSEPH H. MUELLER

Morgan Hill, CA 95037

Director

Performance-driven, Director level management professional, who has focused on the transfer of technology products into manufacturing. With record of success building teams and focusing activities to accelerate productivity and improve quality. Skilled in collaborating at all levels of an organization and with managing multiple products from product launch to EOL including on site and high-volume off-shore production.

Operational Leadership:	Strategy Implementation • Change Management • Team Building • Team Mentoring • Staff Development
Program Management:	Quality Control • Prototype Testing • DVT/DMT Testing • Product Engineering • Process Improvement • Solution Development • Delivery • Demand Planning • Problem Identification & Resolution • Product Lifecycle Management
Engineering Department:	Employee development • multi-discipline team leadership • internal and external collaboration • problem prevention and solving

PROFESSIONAL EXPERIENCE

Extreme Learning Center –Morgan Hill, CA (2013 – Present)

Academic Coach

Academic Coach for 1 on 5 group homework support for grades 1 to 6. Academic Coach for 1 on 3 and 1 on 1 for middle school and high school students in math (up to AP Calculus) and Physics (AP Physics) and college students in math and physics. SAT and ACT Coach for group and 1 on 1

Extreme Learning – Morgan Hill, CA (2011 – 2013).

Academic Coach, Logistics Assistant

Academic Coach for 1 on 3 online tutoring of students in grades 1 to 10 in Language Arts and Math. Academic Coach (1 on 1) for advanced math and physics. Logistics Assistant involved a wide range of activities around the distribution of systems to be used by online students including data entry in Salesforce CRM system, shipment preparation, and student warranty support.

SEAGATE TECHNOLOGY — Scotts Valley, CA • 2005–2007

World's largest hard drive and storage solutions manufacturer.

Senior Manager

Delivered strong and sustainable results leading Account Management and Demand Planning Teams in Customer Service Organization, and subsequently as internal expert in RMS warranty system.

- **Led integration activities** following Maxtor acquisition to seamlessly incorporate Maxtor CSO account teams and customers into Seagate CSO operations and systems.
- **Slashed pending defects** in return for credit process by 90%.
- **Warranty Repair Factory** demand planning and performance monitoring.

3dfx INTERACTIVE — San Jose, CA • 1999–2000

Manufacturer of 3D graphics processing units and graphics cards.

Senior Program Manager

Directed cross-functional core team to achieve timely development of chip set and associated board products. Reported monthly to senior staff regarding program scheduling, chip functionality, and risk mitigation actions.

- **Transformed core team focus** from chip set to entire end product, resulting in smoother transition from development into production.
- **Improved team effectiveness** by championing continuous improvement that instituted a culture of excellence.

QUANTUM CORP. — Milpitas, CA • 1993–1999

Manufacturer of data storage products.

Director of Product Engineering (1998–1999)

Resolved all technical issues of Fireball™ product line as leader of product engineering team. Served as member of Fireball™ Operations Team responsible for the day-to-day operations of product line. Operations Team reported to division executive staff.

- **Introduced technical team concept and technical integrator role** as part of initiative to restructure Operations Team and decrease division staff time necessary to monitor production.
- **Reduced number of escalations** to senior management by strengthening relationships between tech team and major OEM account teams, resulting in timely resolution of technical issues.
- **Identified \$40M in potential cost savings** through rigorous review of product costs.
- **Strengthened OEM drive qualification support** by gaining support for a Product Engineering Manager to become a “Qual. Champion” customer-facing position to provide technical support for account team product qualification.

QUANTUM CORPORATION (continued)

Product Engineering Manager (1993–1998)

Built and led 13-member product engineering team to support volume production of key disk drive, and directed 3-member component engineering team to support 6 drive teams within desktop division.

- **Achieved resolution of technical problems** beyond skill set of direct reports by establishing company-wide, internal partnerships with other engineering teams possessing specialized knowledge, reducing resolution time and improving efficiency.
- **Initiated cross-cultural training** by influencing division leaders to restart Japanese language and culture classes for new US employees, resulting in several hundred employees completing classes that improved their communication abilities and willingness to travel to rural Japanese facility.

KALOK — Sunnyvale, CA • 1991– 1993

Hard drive disk manufacturer.

Director of Product Engineering

Provided strategic and tactical leadership for disk drive production support at off-shore and partner manufacturing operations in the Philippines, Japan, and Bulgaria.

- **Built a high-performing team** of product engineers/disk drive professionals with 100 man years of experience capable of resolving all production issues, freeing DE team to focus on new designs.
- **Improved pilot line operation** to enable volume manufacturing with yields of 90%+ for new drive and manufacturing process.
- **Cultivated strong relationships** with manufacturing engineers in the Philippines, facilitating swift resolution of problems without sending US engineers to site and introduction of second drive into volume production.

MAXTOR — San Jose, CA • 1989– 1991

Hard drive disk manufacturer.

Test Engineering Manager

Designed and built all test equipment (except servo-writer design) to ensure quality production at volume manufacturing operation in Singapore.

- **Shortened duration of critical path activities** of new 3 ½” disk drive manufacturing ramp by removing test equipment, accomplished within 2 months by focusing team on key deliverables.
- **Rescued \$1M capital in progress write-off** by completing tester development.

U. S. Patents: 4,468,712 and 4,472,750

EDUCATION

EMBA, Pepperdine University — Malibu, CA
BSEE, University of Michigan — Ann Arbor, MI

10 - Commission Member

Contact Information -- Person ID: 5602421

Name: Juan Miguel Munoz-Morris Address: [REDACTED]
Morgan Hill, California 95037
US

Home Phone: [REDACTED] Alternate Phone:
Email: [REDACTED] Former Last
Name:
Month and Day of
Birth:

Personal Information

Driver's License: Yes, California , [REDACTED] Class C
Can you, after employment, submit proof of
your legal right to work in the United States? Yes
What is your highest level of education? Master's Degree

Preferences

Preferred Salary:
Types of positions you will accept: Regular
Types of work you will accept: Full Time
Day , Evening ,
Types of shifts you will accept: Night , Rotating
, Weekends

Objective

I wish to improve my community and the lives of its citizens through civil
service. I wish to guide the community to a better, more sustainable future while
at the same time preserving our cultural and historical heritage.

Education

College <i>Santa Monica College</i> www.smc.edu 8/2009 - Present Santa Monica, California	Did you graduate: No College Major/Minor: Continuing Education Units Completed: 9 Semester Degree Received: No Degree
Graduate School <i>Purdue University</i> 8/2010 - 7/2011 Hannover, International	Did you graduate: Yes College Major/Minor: International Business Administration Degree Received: Master's
College <i>California Polytechnic Institute</i> www.calpoly.edu 9/2001 - 12/2005 San Luis Obispo, California	Did you graduate: Yes College Major/Minor: Modern Languages and Literatures Units Completed: 180 Quarter Degree Received: Bachelor's
High School <i>Atascadero High School</i> 8/1997 - 6/2001 Atascadero, California	Did you graduate: Yes Highest Level Completed: 12 Did you receive a GED? No Degree Received: High School Diploma

Work Experience

Management Ananlyst Hours worked per week: 40

12/2016 - Present

Monthly Salary: \$0.00

County of Santa Clara Social Services
Agency
333 W. Julian St
San Jose, California 95110

Name of Supervisor: Jorge Montes - Program
Manager II
May we contact this employer? Yes

Duties

Responsible for managing the full lifecycle for contracts with internal and external contractors. Prepare RFP documents, negotiate contract terms, establish service goals and measurable outcomes, manage monthly/quarterly documentation, review financial information and performance, provide reports and analysis for senior staff. Develop intergovernmental agreements, interagency agreements and MOUs with partner agencies. Coordinate renewals and contract approvals by the Board of Supervisors and Procurement team, work with program managers to ensure appropriate service delivery. Other duties as needed.

Reason for Leaving

N/A

ASO II, Prevention & Outreach

8/2015 - 11/2016

Hours worked per week: 40

Monthly Salary: \$0.00

of Employees Supervised: 2

County of San Luis Obispo Behavioral
Health Department
2180 Johnson St
San Luis Obispo, California 93401

Name of Supervisor: Frank Warren - Division
Manager, Prevention & Outreach
May we contact this employer? Yes

Duties

Responsible for the management of Prevention and Early Intervention (PEI) and Innovation (INN) Program components of the Mental Health Services Act (MHSA)

Collect and analyze program data following State guidelines as approved by MHSOAC, and report program outcomes to the State in the Annual Update and 3- Year Expenditure Plan

Coordinate with the Innovation Stakeholder group in the development of INN projects. Prepare Innovation Plan and present to local stakeholder groups as well as seek approval from State

Serve as Ethnic Services Manager, participating in policy forums and updating the Cultural Competence Plan as per CBHDA and DHCS guidelines.

Maintain regular, professional communication with community based organizations, and provide guidance and assistance regarding program requirements, invoicing, data collection and reporting, RFP and grant preparation, and participate in local stakeholder groups as appropriate

Provide Outreach and information to residents and partners at local events.

Provide assistance related to programmatic requirements to counselors, service providers and other partners to ensure accuracy and timeliness of data.

Other duties as needed

Reason for Leaving

Relocated to San Jose/Morgan Hill area

Supplier Account Manager

9/2013 - 11/2014

Hours worked per week: 40

Monthly Salary: \$4,000.00

of Employees Supervised: 0

Superior Foods
www.superiorfoods.com
275 Westgate Dr
Watsonville, California 95076

Name of Supervisor: Asun Romero - Director of
Supply and Procurement
May we contact this employer? Yes

Duties

- Monitor Master Contracts' performance from approval to end, confirm volumes and specifications, and identify at-risk contracts for non-completion. Make adjustments and ensure visibility to all parties

- Coordinate all shipments from plants throughout Latin America, Asia, and Europe. Adjust shipments based on plant capacity/capability, and sales and customer needs

- Communicate changing priorities, and serve as main point of contact and CSR for suppliers
- Assist suppliers with packaging needs, shipping line inquiries, documentation, and communicate supplier needs to Sales and Operations. Manage the process of vetting and sampling product offerings, and communicate findings to Sales, Operations, Quality Assurance, and Supply Chain
- Maintain product catalogs for all suppliers and identify new industry trends
- Prepare and share weekly reports with Executive Team, Sales, Supply Chain, and Operations
- Coordinate with Sales Development and partners/suppliers to identify new business opportunities
- Assist Accounting team with the processing of debits and credits, pricing, cash flows and inventory calculations
- Internal Auditor, C-TPAT Committee

Reason for Leaving

Departmental restructuring, position terminated

Communications & Engagement Specialist, Sustainability

8/2011 - 8/2013

Driscoll's
www.driscolls.com
345 Westridge Dr.
Watsonville, California 95076

Hours worked per week: 40
Monthly Salary: \$4,000.00
of Employees Supervised: 0
Name of Supervisor: Katie Montano - Sustainability Manager
May we contact this employer? No

Duties

- Define the communications, engagement, marketing and education strategy for Sustainability, including desired outcomes and metrics
- Track and communicate progress for all sustainability activity in North America and Mexico, leveraging SharePoint and traditional communications channels
- Write and/or coordinate all internal communications for newsletters, reports and online presence
- Create slides, photos, video, etc., and present to appropriate internal audiences on all aspects of Driscoll's sustainability
- Establish employee educational workshops; prepare and conduct trainings for all employees aimed at increasing awareness and engagement based on sustainability goals for the company; travel to all sites to conduct training
- Manage all Green Team structure, activity, budgets and projects. Increased membership by 20%
- Elevate department's visibility internally, making sustainability part of all planning processes and employee trainings; collaborate across functional teams and regional offices both locally and internationally
- Stay current on sustainability trends and technologies; identify best practices, reporting requirements and benchmark Driscoll's performance against other companies
- Represent company externally and participate in industry membership groups where appropriate

Reason for Leaving

The communications efforts were outsourced, and thus the position was terminated

Residential Greening Program Director's Assistant

10/2009 - 8/2010

Sustainable Works
www.sustainableworks.org
1744 Pearl St.
Santa Monica, California 90405
(310) 458-8716

Hours worked per week: 15
Monthly Salary: \$0.00
Name of Supervisor: Barent Roth - Executive Director
May we contact this employer? Yes

Duties

Assist Residential Program Director and other staff in promoting the company's mission statement. Answer calls, schedule meetings and provide information to visitors and students. Update contacts, data entry, manage workshop materials, and outreach.
Special projects: The complete translation of their book, Sustainable Works WorksBook to Spanish.

Instructor, student sustainable workshops. Lead crew of college students in learning about key global, national and local issues/problems relating to sustainability. Topics include Water, Energy, Waste, Chemicals, Transportation and Shopping and Food.

Reason for Leaving

I was an intern, and left to go to graduate school.

Certificates and Licenses

Type: Apttus Quote to Cash Certified

Number: Certificate without number

Issued by: Apttus

Date Issued: 2 /2015 Date Expires:

Skills

Office Skills

Typing: 45

Data Entry: 0

Other Skills

Microsoft Office Tools Expert - 10 years and 0 months

Technical Research Skilled - 5 years and 0 months

Languages

Spanish - Speak, Read, Write

French - Speak, Read, Write

Additional Information

Volunteer Experience

Volunteer, San Luis Obispo County Animal Services- Dog Walker

Community Committee Chairman, Superior Foods

Internal Auditor, CTPAT Committee, Superior Foods

Member, Development Committee for the Santa Cruz Animal Shelter.

Multiple beach cleanups coordinated by Heal the Bay and Save Our Shores, among others

Volunteer Coordinator, UCLA Opportunity Green Expo, 2009

Honors & Awards

Eco Star Award, 2009- Sustainable Works

References

Professional

Zarate, Laura

Executive Assistant to Health Agency

Director

2180 Johnson St.

San Luis Obispo, California 93401

8055506080

Professional

Chavez, Crystal

Management Analyst

Watsonville, California

408.755.7719

crystal.chavez@ssa.sccgov.org

Resume**Text Resume**

City of Morgan Hill has chosen not to collect this information for this job posting.

Attachments

Attachment	File Name	File Type	Created By
City of Morgan Hill Cover Letter.docx	City of Morgan Hill Cover Letter.docx	Cover Letter	Job Seeker
CV 2017.docx	CV 2017.docx	Resume	Job Seeker

Agency-Wide Questions

1. Q: Were you ever discharged from employment or forced to resign?

A: Yes

2. Q: Are you now or have you ever been employed by the City of Morgan Hill?

A: No

3. Q: Do you have a relative who is an official or employee of the City of Morgan Hill?

A: No

Supplemental Questions

1. Q: Which commission are you interested in serving?

A: Parks and Recreation Commission
Planning Commission

2. Q: Please attach a resume or briefly describe your background listing the qualifications and skills which you can contribute to the Commission.

A: I believe that my resume demonstrates that I am committed to thinking globally but acting locally in order to maximize impact. I want to bring a global perspective to the Commission and be able to adapt it for local impact. My experience with team leadership, supervision, program/event management, contract negotiations and desire to be a student first, then a teacher would complement the work of the Commission. My desire to improve my community will fuel my determination to provide sound, sustainable recommendations and solutions to the challenges ahead.

3. Q: Have you served on any other citizen advisory commissions or committees? If so, please list and briefly explain the purpose of each committee.

A: I was a member of the San Luis Obispo County Suicide Prevention Council. The council met regularly to develop a countywide suicide prevention framework, as well as promote suicide awareness through outreach and policy recommendations. As a member of the team I personally worked with the Board of Supervisors to proclaim September 2016 as Suicide Prevention and Awareness Month in SLO County.

4. Q: What do you believe to be the role of the commission you are interested in serving on and why would you like to serve on this commission?

A: I would like to serve on the Planning and/or Parks and Rec Commissions because they are both intimately connected to the way the community grows, evolves and improves. I would like to actively participate in the conversations guiding the development of policies and recommendations for both the natural and built environments of Morgan Hill. The commission provides a way for the community to express their thoughts and have them turned into actions, as well as act as an advisory body for matters concerning overall city planning. I would like to be an active participant of the efforts to make Morgan Hill a leading municipality in Santa Clara County and the greater Bay area.

- 5.** Q: What skills and/or experience do you believe would be important to your role as a commissioner?
- A: I think a good commissioner has to know how to listen to public concerns and then translate those into actions, recommendations, and policies. A good commissioner is a problem solver who is capable of thinking laterally, incorporate new methods into traditional processes, and have enough flexibility to make changes as needed. A good commissioner also needs to be impartial, and know how to balance their personal opinion and the majority opinion, and should always put the collective above the individual.
-
- 6.** Q: How would you know if the commission is successful in supporting the City Council's Goals, Priorities, and Strategies?
- A: As a former member of the American Evaluation Association, I know the value of having clear goals and expectations and would bring a similar approach to my work as Commissioner. As a contract manager for a public entity, I have been able to negotiate program deliverables with service providers and establish measurable outcomes and measurement tools. Success could be measured in a combination of ways to include positive community feedback on projects, meeting targets/goals, and evaluating financial performance among others.
-
- 7.** Q: What would you like to accomplish as a member of the commission?
- A: Simply put, I would like to end my tenure as Commissioner by leaving the Morgan Hill community better off than it was the start of my term. I do not have specific goals in mind as I believe I would need to become familiar with present and past work before suggesting new projects.
-
- 8.** Q: What are the greatest opportunities facing the community in regards to this commission?
- A: Morgan Hill is an ideal place to live because of where it is located and its natural surroundings. It's close enough to the big urban centers but far enough as well. I think that one of the greatest challenges for the community in the next few years will be to manage the demand for growth in a sustainable way, ensuring the city doesn't lose its identity or charm. The expansion of public transportation and the preservation of a rural feel are two interesting opportunities where the Commissions, and Morgan Hill as a whole, can drastically shape the future of the area.
-
- 9.** Q: If you are an incumbent seeking reappointment, check all that apply:
- A: You are assigned to a special project
-
- 10.** Q: If you are assigned to a special project, please identify the project:
- A: PLEASE NOTE: I checked option 3 on question 9 because I had to make a selection on that required questions. I am not assigned to any special projects, nor am I a current member of any commission.

City of Morgan Hill
Application as Commissioner

05.22.2017

Dear Sir or Madam,

Please consider my attached application for the position of Planning Commissioner.

I am a MBA graduate of Purdue University's international business school in Hannover, Germany, where I completed my studies in 2011. Along with my academic qualifications I have a background in corporate sustainability, supply chain and procurement, and most recently in public service as a program and contract manager.

After my graduate degree I worked for several years in the Sustainability team at Driscoll's. During my time there, I performed data analysis of sustainability metrics, worked to streamline and automate the collection of data, and performed research on new technologies, including ROI and feasibility studies. I also developed and managed the team's outreach and education programs as part of its greater communication strategy, and oversaw the projects undertaken by Green Teams in the US and Mexico. I was a quarterly contributor to the corporate newsletter, and one of its editors for Spanish content. Our team coordinated with and supported most departments within the company, allowing me to work on projects ranging from introducing biodegradable packaging, energy upgrades, water conservation, composting and waste reduction.

In my current role I manage the procurement and delivery of social services for Santa Clara County, participating on the entire contract lifecycle. I have experience developing RFPs and other solicitation documents, managing bid processes, coordinating the evaluation and awarding of contracts, as well as negotiating terms and deliverables, payment structures, and tracking the financial performance of public programs. I have worked with the Board of Supervisors to approve programming, resolutions, and to provide information and context on important services.

As a homeowner and resident of Morgan Hill I wish to become an active member of my community, guiding the planning and development of the area. I am a strong believer in volunteerism and in giving back locally. I have strived to find ways in which to do so beyond my professional career, whether it was participating in beach cleanups in the Santa Cruz area, volunteering as a dog walker at the Santa Cruz and San Luis Obispo County shelters, or volunteering in sporting events to promote a healthy lifestyle. Becoming a Commissioner would allow me to continue to grow my passion for local engagement, and do so at a higher level.

I feel that my professional and academic background has provided me with the knowledge necessary to succeed as Commissioner. My passion for volunteerism will inject a new energy to the important work of the commission. I welcome the opportunity to discuss the role and my suitability for it through an interview at your convenience, and look forward to hearing from you.

Yours sincerely,

Juan Miguel Muñoz Morris

Attachment: Juan Miguel Munoz-Morris application packet_redacted (2289 : Planning Commission Interviews)

Juan Miguel Muñoz-Morris

Morgan Hill, CA 95037

Phone:

CORE COMPETENCIES

- Corporate training and communications
- Sustainability Data Analysis
- International education & business experience
- Native speaker of Spanish and English

EDUCATION:

M.B.A., Purdue University, Krannert School of Management, West Lafayette, Indiana USA	2010-2011
M.B.A., Leibniz University, Hannover, Lower Saxony Germany	2010-2011
B.A., Modern Languages and Literatures, California Polytechnic State University, San Luis Obispo	2001-2005

EMPLOYMENT HISTORY:

Management Analyst, County of Santa Clara Social Services Agency December 2016-Present

- Coordinating contacts including creation of request for proposal, bid tracking, drafting purchase orders, and ongoing contract administration
- Overseeing payable functions of the team
- Perform data and program analysis and prepare reports for vendors, County Management and the public
- Setting and scheduling meetings and workshops; managing those meetings.
- Serve as point of contact for Community Based Organizations

Administrative Services Officer II, County of San Luis Obispo Behavioral Health Dept. August 2015- December 2016

- Day to day management of Innovation and Early Intervention programs under the Mental Health Services Act (MHSA or Proposition 63) programming
- Participate in State level committee meetings and provide feedback to the Mental Health Services Oversight and Accountability Commission (MHSOAC). Participate in planning meetings for MHSA as well as attend Behavioral Health Board meetings to present new projects and inform the Board of new developments
- Prepare RFPs, review bids and develop contracts, coordinate with the Board of Supervisors for contract execution
- Perform program data analysis and create reports and executive summaries
- Participate in local committees and commissions. Member of the SLO County Suicide Prevention Council
- Serve as Ethnic Services Manager and member of Cultural Competence Committee
- Develop, launch and manage the department's social media strategy. Curate content in both English and Spanish for various platforms, respond to requests/comments, and leverage social media for departmental goals (@slobehavioralhealth)
- Participate in and manage outreach activities, such as Bike Breakfast 2016, National Alliance on Mental Illness (NAMI) Local Chapter meetings, benefit walks and film festivals
- Additional duties as requested

Supplier Account Manager. Superior Foods September 2013- November 2014

- Monitor Master Contracts' performance from approval to end, confirm volumes and specifications, and identify at-risk contracts for non-completion. Make adjustments and ensure visibility to all parties
- Coordinate all shipments from plants throughout Latin America, Asia, and Europe. Adjust shipments based on plant capacity/capability, and sales and customer needs
- Participate in the demand and supply planning processes, and make weekly adjustments to forecasts.
- Monitor production of goods and communicate any changes to Sales and Operations teams.
- Communicate changing priorities, and serve as main point of contact and CSR for suppliers
- Maintain product catalogs and certification documents for all suppliers and identify new industry trends
- Prepare and share weekly reports with Executive Team, Sales, Supply Chain, and Operations
- Coordinate with Sales Development and partners/suppliers to identify new business opportunities
- Assist Accounting team with the processing of debits and credits, pricing, cash flows and inventory calculations
- Internal Auditor, C-TPAT Committee, and Chair of the Community Committee

Communications & Engagement Specialist, Sustainability, Driscoll's Strawberries

January 2012- August 2013

- Define the communications, engagement, marketing and education strategy for Sustainability
- Track and communicate progress for all sustainability activity in North America and Mexico, leveraging SharePoint and traditional communications channels
- Write and/or coordinate all internal communications for newsletters, reports and online presence
- Create slides, photos, video, etc., and present to internal audiences on all aspects of Driscoll's sustainability
- Establish employee educational workshops; prepare and conduct trainings for all employees aimed at increasing awareness and engagement based on sustainability goals for the company; travel to all sites to conduct training
- Manage all Green Team structure, activity, budgets and projects. Increased membership by 20%
- Elevate department's visibility internally, making sustainability part of all planning processes and employee trainings; collaborate across functional teams and regional offices both locally and internationally
- Stay current on sustainability trends and technologies; identify best practices, reporting requirements and benchmark Driscoll's performance against other companies
- Represent company externally and participate in industry membership groups where appropriate

Sustainability Data Analyst, Driscoll's Strawberries

August 2011- January 2012

- Complete retroactive data collection and analysis for 2010 metrics; work with external suppliers to streamline data collection and automation
- Verify and consolidate sustainability data; control for accuracy and completeness
- Apply data to conduct cost-benefit analysis and ROI calculations on new sustainability projects, including lighting retrofits and waste audits at all corporate offices, with a cost savings of \$600,000 annually
- Prepare executive reports emphasizing resource efficiency and underscoring areas for improvement
- Incorporate new tools for cross-departmental collaboration in the automation of data collection
- Research, recommend, and implement a new sustainability management system (SMS) to streamline and automate the collection process, reducing labor costs, eliminating redundancies and limiting human error

Consultant, Rohstoff Recycling GmbH, Dortmund, Germany

January 2011-May 2011

- Consulting internship during international MBA program in Hannover, Germany
- Research and estimate current size, growth rate, and trends of scrap metal market in Germany
- Evaluate financial ramifications for company of investment in various new scrap metal sorting technologies
- Deliver a profitability and feasibility report, including final recommendation. Using these findings, the company invested in a scrap metal sorting system that provided a new revenue stream worth 13M EUR over 7 years
- Project team speaker/coordinator; maintain regular communication with company executives; compile and present information and findings to the board

Office Manager, Sustainable Works, Santa Monica, USA

August 2009 - August 2010

- Manage daily office functions, including customer inquiries, interviewing candidates, and coordinate office staff
- Collaborate with sponsors/partners of the organization in the preparation and management of events, including UCLA's Opportunity Green Business Conference, 2009
- Act as representative of the organization in Associated Student Body meetings at Santa Monica College
- Take initiative to start new projects, including the complete translation into Spanish of the organization's student handbook. Project manager and lead translator/editor
- Instructor, Student Sustainable Workshops for Santa Monica College students

AWARDS, HONORS, AND CERTIFICATIONS:

- Apttus Quote to Cash Certified (February 2015)
- Member, Santa Cruz County Animal Services Development Committee (2011-Present)
- Dean's List, Purdue University (Spring 2011)
- GISMA Foundation scholarship recipient (2010-11)
- Recipient of the Sustainable Works Eco Star Award, for outstanding achievements in the Residential and Student Greening Programs. (September 2010)
- Scholarly Essay Award recipient, School of Liberal Arts, Cal Poly University (May 2005)
- Dean's List, Cal Poly University (Spring 2002)

Received
City of Morgan Hill

MAY 12 2015

City Clerk



CITY OF MORGAN HILL

APPLICATION FOR APPOINTMENT TO COMMISSION OR COMMITTEE

(In order to be considered for appointment, this application form must be fully executed and all questions answered by applicant, including those who are Incumbents. If you prefer to type your answers on the form, an electronic version will be e-mailed to you upon request.)

Name: Liam Downey *E-mail Address: _____

*Home address: _____ *City: Morgan Hill

*Telephone: (Work) (408) _____ (Home) (408) _____ (Cell) (408) _____

Occupation: Business Consultant Employer: The Redstone Group Inc.

Number of Years lived within City Limits: 7 Are you a registered voter? Yes ☒ No ☐

If not a MH resident, years worked in City Limits: _____ -or-

Years lived within the MH School District boundary: _____

Do you have any relatives currently employed by the City of Morgan Hill? Yes ☐ No ☒

Properties owned in Morgan Hill/Address(es): _____

*I consent to the release to the public of the above contact information marked with an *: Yes ☒ No ☐

QUESTIONNAIRE

(Please attach additional sheets, as necessary, to provide complete answers)

1. Please attach a resumé, or briefly describe your background, listing the qualifications and skills, which you can contribute to the Commission.

See supplied summary of qualifications attached to this application

2. Have you served on any other citizen advisory commissions or committees? If so, please list and briefly explain the purpose of each committee.

Yes, member of the Complete Streets Stakeholder Committee. Joined as a non downtown business citizen representative

3. What do you believe to be the role of the Commission, and why you would like to serve on this Commission?

Ensure that planning applications, review process, public considerations and final recommendations support the city regulations, development plans and well being of the community and local economy. I wish to serve as I am a very interested in the ongoing development, sustainability and success of Morgan Hill as a community and business location

4. What skills and experience do you believe would be important to your role as a Commissioner?

I have 35 years of leadership, facilitation, committee participation, facilitation, and decision making. I work well on teams, in public and large forums, and in difficult environments and situations. I have a reputation for being fair, balanced, ethical and collaborative. I facilitate well, know how to participate, lead (when necessary) and conduct meetings, decision forums, public and large forum reviews and debates. I have a lot of experience with fiscal policies and adherence, large scale planning analysis, impact analysis, and recommending and implementing solutions

S:\Commission & Committees\Application\Generic Commission Application.doc

Updated: 3/4/2011

5. How would you know if the Commission is successful in supporting the City Council's Goals?

Acceptance of the commissions recommendations on planning matters the majority of the time shows a synergy between the commission and the council. Positive feedback and experience from applicants, resident and impacted parties on the planning process and decision making forums and meetings. Low rework of analysis and decisions.

6. What would you like to accomplish as a member of the Commission?

Ensure that the continued economic development and viability of the community is sustained in conjunction with a balance of the needs of the citizens, general community, our environment and the long term plans and objectives of the Morgan Hill community. I want to ensure fairness, respect and the ability for all to feel represented and the right decisions are made for the overall good of Morgan Hill and its citizens

7. What are the greatest opportunities facing the community in regards to this Commission?

Commissions can often be perceived to be unbalanced, biased, and overly influenced by developers, businesses, and activists. It is difficult to find balance between the objectives of the developers, the local businesses and the community. Recent environmental challenges like water, conservation, traffic and recycling pose challenges with the need for ongoing economic change and development. City housing demands for the greater Silicon valley puts pressure on expansion and hyper growth. The commission must strive to be fair to all, be balanced, ethical, follow the conditions and terms of zoning and planning regulations.

8. If you are an incumbent seeking reappointment:

- Are you currently serving on a Committee?
- Are you next in line to serve as Chair or Vice-Chair?
- Are you assigned to a special project?
- If assigned to a special project, please identify the project:

Yes	☐	No	☐
Yes	☐	No	☐
Yes	☐	No	☐

Name of commission

9. I am interested in serving on the following Commission or Committee? Please indicate:

☐ **LIBRARY, CULTURAL AND ARTS COMMISSION**

The Library, Culture and Arts Commission provides the City Council with advice and recommendations regarding the adequacy of library facilities; seeks opportunities for city sponsored artistic and performance opportunities; encourages community involvement in the arts; and reviews and recommends works of art to be acquired by the City or installed on public property. This seven member Committee meets on the second Tuesday of odd numbered months at 7:00 p.m. at the Morgan Hill Library.

☐ **PARKS & RECREATION COMMISSION**

The Parks and Recreation Commission provides the City Council with advice and recommendations on recreation programs, activities and resources. The Commission also plans for the future growth and development of parks facilities and recreation programming. This seven member Commission meets on the third Tuesday of odd numbered months at 7:00 p.m.

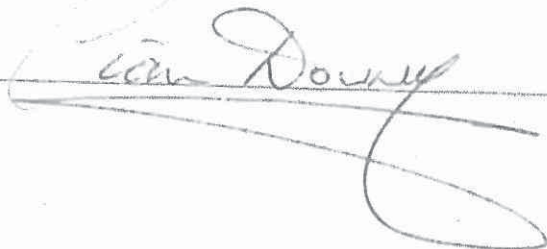
☒ **PLANNING COMMISSION**

The Planning Commission performs duties and exercises power and authority with regard to planning, subdivisions, zoning, zoning administration, residential development control, and other land use regulatory controls as prescribed by ordinance and state law. The Commission serves as an advisory body to the City Council on Zoning and General Plan related matters. The Commission is a seven member body, and each commissioner serves a term of four years and meets on the second and fourth Tuesday each month.

By my signature below, I acknowledge that I will be subject to the City's Conflict of Interest Code; the City Council's requirement of a two hour "Fair Political Practices Commission AB1234 Ethics" training session, and the requirement to file Statements of Economic Interest forms with the City of Morgan Hill when I assume office, annually thereafter, and when leaving office.

By my signature below, I consent to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee, and confirm that I have read the attached Ethics Policy; that I do subscribe to this Policy; that I will apply it to the specific responsibilities which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.

SIGNATURE: _____



Date: _____

5/11/15

Attachment: Liam Downey Application Packet_Redacted (2289 : Planning Commission Interviews)

Liam Downey

Morgan Hill Resident and Business Owner

LinkedIn Profile: _____

SUMMARY OF QUALIFICATIONS

I is a resident of Morgan Hill since 2009. We found our dream home, in a dream community that has proven to everything and more than expected. I live with his wife Loyola, and 3 grown up children and 2 grand children who all live in the Morgan Hill and Gilroy area.

I am a 25 year veteran business consultant and advisor, serving many of Silicon valley's large corporations and leaders. My (self owned) boutique consulting company and team focus on business transformation, business process design and implementation, change management and large event and group facilitation and decision-making

Having lived and worked across Europe and now California for the past 16 years, I feel that I can bring a fresh and balanced, and sometimes alternative perspective on life, community, economic sustainability and environmental stability. I am an avid supporter of our City's well being and sustainability and the well being of our citizens as a whole.

I have a long and respected reputation for being fair, balanced, providing sound business and management coaching and advice, and being a true problem solver. Not only do I analyze, I also revel in recommending and managing solutions from beginning to end.

I have experience with the following attributes that would be relevant to a role on a city commission or other committee.

- Leadership
- Strong team player
- Ethical and balanced – fairness and respect as a priority
- Decision Making and decision advisory services
- Process and Policy design and implementation
- Policy adherence
- Change management – understanding the phases and challenges with good and bad change
- Small and large group facilitation
- Public Speaking and presentation
- Committee/Group facilitation
- Vendor / inter company relations
- Contract and other business event negotiations and facilitation

I am looking for ways to contribute to the community and the development and management of our city. I believe I bring a wealth of experience that could benefit many aspects of our community, and look forward to the opportunity to speak with the interview committee and how I can contribute.

Liam Downey

Morgan Hill, CA 95037

Print**Commission Application - Submission #15385****Date Submitted: 4/9/2019****First Name**

Wayne

Last Name

Tanda

Address1**Address2****City**

Morgan Hill

State

CA.

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Consultant

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Wayne Tanda Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Letter of Interest.docx

Please upload a resume*

Wayne Tanda Resume Planning Commission.docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

Morgan Hill Parks and Recreation Commission
Morgan Hill Planning Commission

What skills and/or experience do you possess that would be important to your role as a commissioner?*

12 years experience as a Morgan Hill Planning Commission and 48 years experience working in and for local governmental agencies

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the Commission is to execute the responsibilities delegated to it by the City. I have enjoyed that role as a Morgan Hill Planning Commissioner.

What would you like to accomplish as a commissioner?*

Over the next 4 years I would like to participate in the City's management of growth in the new era of the State's involvement in local land use planning.

Attachment: Wayne Tanda Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

The greatest opportunity for the Commission is to influence the City's policies related to the rate, quality, and mixture of growth; the interpretation and effective application of land use policies on individual projects; and the inclusion of the community in the decision making process.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Wayne Tanda

Date*

4/10/2019

8:00 AM

April 10, 2019

Honorable Mayor Constantine and Members of the City Council,

This is to express my interest in the position of Commissioner on the Morgan Hill Planning Commission. It has been my pleasure and honor to serve on the Commission for the past 12 years. During the current term I enjoyed the challenge of being the chair of the Commission through the update of the City's Residential Development Control System. The yearlong effort allowed me to gain a better appreciation of the diverse points of view in the Morgan Hill community and the intricacies and rational of the RDCS. I felt that the effort was worth the results. That we were making a real difference.

I was not sure that I would apply for another term on the Planning Commission, but concluded that my contribution to the Commission was the best way to continue to serve the City that has been our home for over 40 years.

Regards,

Wayne Tanda

Wayne K. Tanda Resume

Work experience	2012 - Present	Municipal Resource Group, LLC	Danville, Calif.
	Principal Consultant, Public Works, Engineering, and Community Development		
	Responsible for public works, engineering, and community development organizational and performance analysis, strategic planning and execution, leadership and management training, and executive coaching		
	2005 – 2011	County of Monterey	Salinas, Calif.
	Director, Resource Management Agency		
	Responsible for the County's land use related programs including planning, development services, engineering, utilities, affordable housing, redevelopment, buildings, roads, bridges, fleet, real estate, property management, code compliance, sustainability, and countywide capital improvements. Staff of 310		
	2002 – 2005	City of Los Angeles	Los Angeles, Calif.
	General Manager, Department of Transportation		
	Responsible for the City's transportation planning, development review, capital programming, public transit, traffic management, public parking, traffic control, taxi and pipeline regulations, and emergency response. Staff of 2050		
	1992 - 2002	City of San Jose	San Jose, Calif.
	Director, Department of Transportation		
	Responsible for the City's services and infrastructure related to public rights-of-way and parking facilities including transportation planning, capital improvement programming, traffic operations, and the maintenance of roads, sewers, drainage, landscaping, street lights, and traffic controls. Staff of 540		
	1990-92	City of San Jose	San Jose, Calif.
	Assistant Director, San Jose International Airport		
	Responsible for daily operations of San Jose Norman Y. Mineta International Airport including facility development, maintenance, airside and landside operations, finance, real estate, and emergency services		
	1990	City of San Jose	San Jose, Calif.
	Assistant Director, Department of Recreation, Parks & Neighborhood Services		
	Responsible for recreation services, neighborhood parks, regional facilities, and senior, youth, therapeutic and community service programs		

Wayne K. Tanda

1987-1989 City of San Jose San Jose, Calif.

Assistant Director, Department of Traffic

- Responsible for traffic engineering, signal systems, neighborhood programs, traffic control and street light maintenance, and parking programs

1980 - 1986 City of San Jose San Jose, Calif.

Deputy City Traffic Engineer, Department of Traffic

- Division manager responsible for traffic studies, bicycle and pedestrian improvements, safety programs, senior paratransit, and traffic device maintenance

1978 - 1980 City of San Jose San Jose, Calif.

Senior Civil Engineer, Department of Public Works

- Section head in charge of traffic engineering program

1975 -1978 City of San Jose San Jose, Calif.

Associate Civil Engineer, Department of Public Works

- Unit leader for transportation planning and traffic capital improvement programming

1973-1975 City of San Jose San Jose, Calif.

Assistant Civil Engineer, Department of Public Works

- Project engineer for the Update of the Transportation Element of the San Jose General Plan (2 year project)

1971 - 1972 City of San Jose San Jose, Calif.

Junior Civil Engineer

- Construction engineer and transportation planner

Education

1994 Harvard University Cambridge, MA

- Certificate for State and Local Senior Executives

1981 Golden Gate University San Francisco, CA

- Master of Public Administration, State and Local Governance

1973 San Jose State University San Jose, CA

- Master of Science in Civil Engineering, emphasis in transportation

1971 San Jose State College San Jose, CA

- Bachelor of Science in Civil Engineering, emphasis in structures

Wayne K. Tanda

Professional Registrations

- Registered Professional Civil Engineer, #27328, State of California
- Registered Professional Traffic Engineer, #1142, State of California

Professional Memberships

- Institute of Transportation Engineers, Life Member
- American Public Works Association

Community Activities

- Japanese American Citizens League National Convention, Convention Chairman, 2013-2014
- San Jose State University College of Engineering, Graduate Course Instructor on Special Topics in Transportation, 2012 - present
- Ann Sobrato High School, Football and Track and Field Coach, Morgan Hill, 2011 - 2013
- City of Morgan Hill Planning Commission, Chair and Member, 2007 – present
- San Jose State University College of Business (Mineta Transportation Institute), Course Instructor on Leadership and Management, 2007 - 2008
- City of Morgan Hill Parks and Recreation Commission, Chair and Member, 1998 – 2002
- San Jose State University Advisory Council for Civil Engineering, Member, 1997 - 2002
- Association of Asian American City Employees, Member and Conference Moderator, 1994 - 2002
- San Jose State University College of Engineering, Course Instructor on Leadership and Management, Lecturer, Keynote Speaker, and Panelist, 1989 - 2002
- San Jose Japanese American Citizens League, President and member, Board of Directors and Advisory Committee, 1980 - present

Print**Commission Application - Submission #14967****Date Submitted: 1/21/2019****First Name**

Andrew

Last Name

Froumis

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number**

3

email address**Occupation**

Retired Executive

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

Own home a , Morgan Hill, 95037

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Andrew Froumis Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Parks and Recreation Commission ▼

Please upload a letter of interest or cover letter*

RESUME14.doc

Please upload a resume*

RESUME14.doc

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No

What skills and/or experience do you possess that would be important to your role as a commissioner?*

Besides being a 20 year resident in Morgan Hill, I have been involved in Operations and Planning on various projects, including Government contracting and in the private sector.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

It's my understanding that this commission is primarily responsible for the growth and control of Morgan Hill's development.

What would you like to accomplish as a commissioner?*

Assure the growth of Morgan Hill continues with adequate infrastructure to handle increase demands resulting from the growth.

Attachment: Andrew Froumis Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

To help maintain quality of living in Morgan Hill, while it continues to grow as a desired location for residents and businesses.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Andrew J. Froumis

Date*

1/21/2019

7:45 AM

ANDREW J. FROUMIS

, Morgan Hill, CA 95037 (408)

EDUCATION

MBA - Business Management, St. Ambrose University, Iowa 1983
 BA - Business Administration, St. Ambrose University, Iowa 1980
 Ph.D. - Business Administration, International Business, UOP 2002

OBJECTIVE An Executive Materials/Operations position with a progressive organization.

EXPERIENCE & ACCOMPLISHMENTS:

Applied Materials - Sante Clara, California

1997 - Present **Senior Director of Materials, Quality and Reliability**

Applied Materials is the world leading supplier of Semi-Conductor manufacturing equipment. The company designs, manufactures, distributes, and markets semi-conductor equipment used in the manufacture of computer chips by all manufacturers in the industry. Applied Material's facilities are located throughout the world.

Materials responsibilities include the management of professional purchasing personnel. All production and indirect materials for the leading division, along with inventory control are the primary tasks. Led efforts to reduce the costs of purchases meeting corporate goals and also increased inventory turns meeting the goal of 12 turns on high cost materials. Quality and Reliability responsibilities include the leadership and management of operations towards Quality Assurance of process to prevent problems, product improvement, development of the corporate Quality Management System, reduction of defects in products, software, and services delivered to the customer, improved reliability measured in "up time" of the systems, and greater length of time between maintenance at the customer. In the area of new product introduction, responsibilities include the development of automated tools/fixtures for testing of systems and resolving issues prior to customer delivery. Currently responsible for the documentation of procedures and progressing towards ISO certification as a milestone progression towards total quality management.

ACHIEVEMENTS

- Designed and deployed the QMS(Quality Management System) for the entire enterprise. Identified key milestones for measuring level of deployment and efficiency of QMS deployment.
- Utilized world class Quality performance measures to determine customer satisfaction and manage the CLCA (closed loop corrective action) process.
- Developed goals for Quality standards and provided training to all personnel in the operations and software disciplines of the organization.
- Established Quality standards for components and modules that were outsourced for optimum utilization of resources. Successfully outsourced major modules to include gas delivery systems, sub assemblies, and software development.

Accuride International Incorporated - Sante Fe Springs, California

Attachment: Andrew Froumis Application Packet_Redacted (2289 : Planning Commission Interviews)

1996 - 1997 Vice President of Materials and Logistics

Accuride International Incorporated is the world leading supplier of metallic slides and components for various industries including automotive, computer, electronic, appliance and assembly industries. The company designs, manufactures, distributes, and markets advanced design assemblies used in the manufacture of high quality end products. Accuride's manufacturing facilities are located in four North American locations, Mexico, United Kingdom, Germany, and Japan.

Responsible for the Purchasing, Master Scheduling, Planning, Distribution, Inventory control, Receiving, Shipping and Stockroom functions throughout all the worldwide located facilities.. Corporate responsibilities include the development of Supplier Certification, Negotiations of major subcontracts, establishment of blanket orders with long term suppliers, manage the development of procedures, successfully achieve ISO 9001 Certification, and develop required skills in materials personnel. Manage inventory turns through the implementation of J.I.T. and developed highly responsive suppliers while improving vendor relationships. Responsibilities include both line reporting structure for material's personnel and staff to the office of the president as an executive board member.

SILICON VALLEY GROUP - Thermco Systems Division, Orange, California

1994 - 1996 Corporate Director of Materials

Silicon Valley Group, Inc.(SVG), Thermco Systems Division is a leading supplier of automated wafer processing equipment for the worldwide semiconductor industry. The division designs, manufactures, and markets technically sophisticated capital equipment used in the primary stages of semiconductor manufacturing.

Responsible for the Purchasing, Master Scheduling, Planning, Inventory control, Receiving, Shipping and Stockroom functions. Corporate responsibilities include the development of Supplier Certification, Negotiations of major subcontracts, establishment of blanket orders with long term suppliers, manage the development of procedures, successfully achieve ISO 9001 Certification, and develop required skills in materials personnel. Manage inventory turns through the implementation of J.I.T. and developed highly responsive suppliers while improving vendor relationships.

ACHIEVEMENTS

- Lead the negotiation of multi-million dollar electronic components, such as, MOS memories, asic's and passive components, controllers and subsystems agreements resulting in substantial cost savings.
- Utilized world class material's metrics to benchmark the organization and identify areas requiring further improvement.
- Developed and control budgets within the corporate objective of 2%. Train personnel to incorporate target pricing in meeting materials goals.
- Reduced the materials cost as a percentage of sales through negotiations from 65% to 52%.
- Improved inventory turns with JIT while eliminating shortages to manufacturing's requirements.
- Implemented customer satisfaction metrics through the use of surveys and questionnaires.
- Developed Supplier Certification resulting in reduced inspection while improving supplier quality and delivery performance. Completed certification of 45 suppliers representing 60% of dollars spent.

- Increased efficiency 25% of the purchasing group by restructuring from a geographic buying responsibility to a commodity buying structure.
- Promoted personnel development by presenting TQM philosophy, ISO 9000 implementation, Juran Problem Solving, Statistical Process Control, GMAT preparation and Situational Leadership to divisional personnel.
- Implemented \$8M procurements with international suppliers to satisfy offset obligations on sales to foreign customers.

McDonnell Douglas - Long Beach, California

1990-1994 Director of Procurement

Directed the group that procured or produced all prime product materials. Established business objectives, means to measure and direct the division towards supporting corporate goals. Negotiated short and long term contracts with cost reduction objectives. Established major contracts with foreign sources including currency exchange rates, electronic data exchange, and MRP II planning. Implemented offset contracts to satisfy foreign obligations.

1987-1990 Manager of Procurement

Supervised purchasing professionals for the procurement of major systems, avionics, electronics, for the communication industry and the successful launch of satellites and classified projects.

ACHIEVEMENTS

- Reduced manufacturing costs \$16M and influenced long range strategic planning by establishing innovative contracts which eliminated the backlog of manufacturing hours.
- Produced \$3M of additional sales of prime products while serving as translator/host for two European businessmen.
- Supervised 145 professional procurement personnel in the procurement of prime product to include electrical and electronic components such as robotics, mechanical systems and other complicated assemblies.
- Reduced costs by developing, implementing, and monitoring target pricing.

Caterpillar, Inc. 1973-1987

1981-1987 Purchasing Manager Caterpillar, Inc. Aurora, Illinois

Managed the group responsible for the procurement of \$1 Bil. of components for the production of the world leading capital equipment.

ACHIEVEMENTS

- Optimized efficiency by evaluating the workload and reorganizing personnel in the materials division at the 4th largest component of Caterpillar, Inc.

- Reduced prices of materials 10% annually by developing and implementing an innovative pricing strategy.
- Headed a team that reduced supplier costs 5% or \$14M by leading a "Supplier Day" seminar with 1200 of Caterpillar Inc. suppliers of prime product.
- Demonstrated effective teaching skills of three MBA classes at Aurora University in which my students outscored full time faculty students on standardized exams.

1978-1981 **Quality Assurance Supervisor** Caterpillar, Inc. Davenport, Iowa

Accumulated quality data for supplier quality performance. Aided Purchasing by visiting suppliers, analyzing their quality plans and correcting any deficiencies found. Performed routine audits with existing suppliers to assure conformance. Established "Supplier Certification" that progressively improved supplier quality ultimately resulting in a "No Inspection" plan reducing costs of materials purchased by 15%.

1973- 1978 **Manufacturing Supervisor/Operations** Caterpillar, Inc. Davenport Iowa

Supervised 130 employees in assembling and packaging parts. Scheduled priorities to feed assembly line with needed material.

1973-1977 **Management Apprentice**

Worked supervisory positions including: times study, quality assurance, training, materials, accounting, engineering, and planning. Operated plant controlling data bases and input data into IBM Vac center.

RELEVANT EXPERIENCE

Conducted seminars in Purchasing, "Just In Time", MRP II, Electronic Data Communication, Inventory Reduction, Target Pricing, Quality and Process Improvement (ISO), Total Quality Management.

Currently teaching three MBA courses at University of Phoenix and Aurora University; "Human Resource Management," "Financial Management for the Profit Sector" and "Organization Theory and Design."

PERSONAL

54 years old, married 33 years, two grown children. U.S. Army Veteran (Viet Nam Veteran)

REFERENCES WILL BE FURNISHED UPON REQUEST

Print**Commission Application - Submission #15090****Date Submitted: 2/13/2019****First Name**

Howell

Last Name

Williams

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Retired

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

Home a

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Chip Williams Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Chip Williams - Cover Letter.pdf

Please upload a resume*

Chip Williams Resume.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

None

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I have extensive experience managing technical businesses and projects in complex operational environments. I have broad technical competence and demonstrated ability to objectively evaluate all alternatives when formulating decisions. I hold my personal and professional integrity inviolate and beyond compromise for any reason.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The primary role of the Planning Commission is to evaluate development plans with respect to the City General Plan, and when applicable allocate units per the RDCS, and provide a recommendation for approval/denial to the City Council. I have read the General Plan; I found it to be a well structured and comprehensive document for guiding the continued evolution of the City.

What would you like to accomplish as a commissioner?*

I would seek to contribute to the process of managing the growth and development of Morgan Hill in a fashion that is sustainable both fiscally and environmentally to the benefit of all of our residents. I would like to see Morgan Hill become the model for successful and sustainable growth in the region and the State.

Attachment: Chip Williams Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

Continuous growth in this region is inevitable given the continued prosperity of the Silicon Valley. We have the opportunity to grow this community in a fashion that is both sustainable and enriching to all that choose to make Morgan Hill their home.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Howell P. Williams

Date*

2/13/2019

12:45 PM

Chip Williams

Morgan Hill, CA 95037

City of Morgan Hill

Dear members of the City Council:

My wife Bonnie and I have lived in Morgan Hill since 1983. We love living here and adore this community. During most of the past 36 years I found little time outside of my professional commitments to actively engage in the evolution of our community. I am now retired and have both the time and desire to serve this community.

I believe that my professional experience and abilities can be of significant value to the City as a member of the Planning Commission. I request your consideration of my application for appointment to this Commission.

Sincerely,

Chip Williams

Howell P. Williams (Chip)

Morgan Hill, CA 95037

SUMMARY

Retired senior business leader with a rich mix of operations, business development, product marketing, and general management experience. I have a track record of success building new teams and turning around under performing business units in technically demanding environments.

PROFESSIONAL EXPERIENCE

Siemens Smart Grid Division, 1998 – 2015

Business Manager, California Operations (2004) – Business segment P&L and site general manager of the Energy Automation facility in Mountain View, CA. This segment includes all business functions with the exception of purchasing and HR that are provided as corporate functions from division HQ. The primary role of the site is to address the small to mid-range energy control center market, with direct sales responsibility in North America (NAFTA) and to provide product management, sales support, ongoing innovation and global supply of the Siemens Spectrum Power™ TG SCADA/EMS product line, one of a family of Spectrum Power control system platforms offered by Siemens. This operation provides direct-to-end customer delivery and services for customers in the Americas, plus Saudi Arabia, Australia, New Zealand, and the Netherlands. In other geographies we supply software only to a regional Siemens unit for integration and delivery. Key accomplishment was rescuing this business that had not been consistently profitable before acquisition by Siemens and was on the verge of being shutdown following several years of unsuccessful attempts at integration. The business returned a slight profit in 2004 and since 2005 has delivered consistent EBIT ~ 10%. Current outlook is strong with substantial growth opportunity, particularly in distribution automation driven by SmartGrid investment. The Siemens organization has had several restructurings during this time with this business operation now an element of the Smart Grid Division within the Infrastructure & Cities Sector.

Operations Manager (2002, Siemens PT&D) – Transition role following integration of the Telegyr Systems business into the Siemens Energy Management division. Primary efforts during this period were fulfilling current customer obligations while responding to a variety of corporate restructuring and product rationalization concepts driven from the division.

Director, Product Delivery (1999, Telegyr Systems, Inc.) – Established Product Delivery Centers in the USA and Switzerland for the Telegyr NMS for Windows control center product line. Managed the USA Delivery Center operations responsible for the delivery of 45 Telegyr NMS systems (over 3 year period) to customers in Canada, Peru, Brazil, and USA. A significant accomplishment was to achieve profitability during the first year of operations with significant improvements as we scaled up volume.

Senior Marketing Manager (1998, Landis & Gyr/Telegyr Systems, Inc.) – Responsible for market analysis, product requirements definition, and global market introductions. The most significant accomplishment was a Microsoft Windows based, utility class electrical network control system (SCADA) targeted for small to mid range utility customers. Market introduction included branding, pricing structure, sales collateral and advertising, business model (factory production, delivery/install, and maintenance service). The key process innovation was to apply product oriented delivery methods to what had traditionally been a custom project business model and thereby dramatically reduce cost and delivery time for a control center that was functionally competitive with custom project implementations. This was to be

Howell P. Williams (Chip)

accomplished by establishing two Product Delivery Centers, one in USA to service the Americas and one in Switzerland to service Europe.

General Electric Company (Nuclear Energy), 1980 - 1998

Senior Manager, Nuclear Measurement & Control Systems – Led a business unit responsible for a ~\$20 million nuclear measurement and control (NUMAC) systems business serving original installation and retrofit applications markets. This organization was responsible for technical sales support, pricing, proposals, project management, product development, hardware and software design, materials management, production control (manufacturing was out-sourced), delivery, installation/startup and all customer interactions. When I accepted the position the business was operating at a loss. Turned the business into a highly profitable one by restructuring the organization to reduce management overhead, identifying and rewarding key individual contributors to drive accountability throughout the team, implementing rigorous configuration control constraints to minimize scope creep, and renegotiating with several customers as well as our out-source manufacturer. Acquired new orders and completed system deliveries to customers in Japan, Mexico, Sweden, and USA.

Senior Manager, Business Development – Established and led a marketing and business development team for a \$100 million replacement equipment and services business. Consolidated and managed all new product development activities from conception through initial sale. Evaluated strategic alliance opportunities with companies in Canada, Mexico, Spain, Taiwan, and USA.

Senior Manager, Electrical Products – Established and led a cross-functional product team providing replacement electrical, instrumentation, and control system products. This business team of 30 people was responsible for sales, pricing, application engineering, all materials logistics including purchasing and inventory, delivery, and customer service for both nuclear safety-related and nonsafety-related equipment originally manufactured by GE Nuclear as well as by various GE commercial product departments and non-GE manufacturers. Key accomplishments were reducing delivery cycles by 50%, increasing profit margins, and increasing sales volume through improved customer satisfaction. This team was a model of success that was to be emulated with other product lines.

Senior Manager, Materials Services Engineering – As part of a major re-organization of the Nuclear division, established and led a new organization comprised of 5 departments (one located in Pennsylvania, the others in California) providing all technical support functions for the replacement parts & services business. Functions provided included technical sales support, product application engineering, new product qualification including requirements for nuclear safety-related applications, and electronics test and repair services.

Senior Program Manager – Directed GE's nuclear equipment qualification programs establishing compliance to IEEE standards and U.S. Regulatory requirements for nuclear safety-related systems. Established engineering standards for specifying equipment performance requirements at a systems and component level; managed the environmental and seismic testing programs for approximately 100 major equipment assemblies and control instrumentation.

Program Manager – Managed cost, schedules and established program technical requirements to meet new U.S. Regulatory requirements for nuclear power plant safety systems.

Howell P. Williams (Chip)

Quadrex Corporation, 1977 – 1980

Senior Engineer - Performed as the project engineer for design qualification of safety systems equipment at a commercial nuclear power project in Texas. Established and managed project schedule to support construction schedule; integrated activities between the onsite constructor, the utility staff in Dallas, and the architect-engineer staff in New York City.

Engineer - Performed analytical assignments involving environmental risk assessment and site evaluation for commercial nuclear power projects and U.S. Department of Energy facilities.

EDUCATION

B.S., Environmental Resources Management, The Pennsylvania State University, State College, Pennsylvania.

Numerous corporate sales, business, management, and leadership courses including at GE's Management Development Institute (Crotonville).

VOLUNTEER ACTIVITIES

Monterey Bay Aquarium, 1984 – 1998

Maintenance Diver & Dive Team Leader – Performed routine underwater maintenance of large exhibit tanks, public feeding shows, and open water specimen collection dives. (total over 700 dives).

Print**Commission Application - Submission #14974****Date Submitted: 1/22/2019****First Name**

Chris

Last Name

Wood

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Just retired, was Electrical Engineer W/Oracle

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

my house:

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Chris Wood Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Chris_Wood_Planning_Comission.pdf

Please upload a resume*

Chris_Wood_Resume_Current.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No, just Computer Industry ones.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

President of Holiday Lakes HOA board during the DAWITO development issue. Negotiated an outcome to protect Holiday Lake residents and preserve most all at risk green space for HLE use forever.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

Understand the master plan for Morgan hill, and pertinent state, county and local zoning regulations, and under their guidance suggest the best possible solutions to the Mayor and City Council.

What would you like to accomplish as a commissioner?*

Insure the City and its residents have the best information to allow them to make the optimal trade offs on Growth Control, Infill vs Outfill of the city, Locations and number of affordable housing units developed going forward, green space preservation and banking for future park, recreation or school use. Said another way, setting up Morgan Hill for growth and change that all its citizens benefit from.

What are the greatest opportunities facing the community in regards to this commission?*

Laying out the future road and transportation needs now and preserving necessary rights of way, Insuring our city's and citizens needs are taken into account by High Speed Rail (Assuming it gets built), moving now to protect our northern and southern borders from undesirable development, re-build our relationship with LAFCO, and the list goes on. Summary: Understanding what has to happen now to ensure our best possible future.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Leighton C. Wood Jr.

Date*

1/22/2019

11:30 AM

Leighton C. Wood Jr.

Morgan Hill, CA 95037

To whom it may concern

The City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

Reference: Planning Commission Vacancies

Dear Sir or Madam:

Given that I have recently retired from a 40+ year career in various computer & storage disciplines, it's now time to give back to the community I have called home for 38 years since 1981; Morgan Hill. You can read my resumé to see what I did for whom, so I won't belabor it here.

What may be of more import is the fact that I am a disciplined electrical engineer who approaches problems in a methodical, apolitical manner with a simple goal of defining and implementing the best reasonable solution to whatever the problem is.

While this would be my first assignment in a municipal environment, I have served on and led multiple industry wide commissions and panels setting technical (And by definition political) specifications for various I/O and Networking protocols so am very familiar of working in a group with multiple points of view and often very divergent ideas of what constitutes success; while guiding the parties (or cajoling, if you will) to some group-wide convergence on a path forward that's good enough for everybody.

I would be very interested in applying these skills to the Planning Commission. Our future will be writ in large part by the decisions we make today, so we best do a good job of it.

Leighton C. (Chris) Wood Jr.

Attachment: Chris Wood Application Packet_Redacted (2289 : Planning Commission Interviews)

Morgan Hill, CA 95037

Leighton C. (Chris) Wood Jr.

Director of Product Management, Flash Storage, Oracle USA.

(10/1/11/ – 12/31/2018)

Storage Technology Development / Adoption / Deployment
 File Systems / Archiving / Data Protection & Recovery / Business Continuance
 Customer Facing Evangelist & Architect: Implementers to C-Level Executives
 30+ Years storage experience – “I know what works and what doesn’t”

Extremely experienced Storage executive with a strong focus on current data management software from both a management perspective as well as an operational one. Focused on actual solutions to customer problems vs. products and features. Excellent competitive skills as well as having a deep knowledge of the storage industry overall – Hardware and Software.

Represented SUN for 10 years, then Pillar Data Systems and now Oracle USA on a global basis as the key corporate Storage visionary and guru for the past 12 years; was the most requested speaker by name at Sun’s Executive Briefing Center and is well known in the storage industry overall.

My Interest Area: Obtaining a position with a high customer facing content where my unique skill of explaining very complex technologies and architectures that paint both the technological and the business value picture as they apply to any given customer problem or need. This includes building a team of individuals that know how to develop, manage, market and sell based on specific, quantifiable values to the end user.

Accomplishments

- **2X YoY growth in Pillar Axiom Sales W/W.** After Oracle acquired Pillar Data Systems on October 1, 2011, Mr. Wood integrated the Pillar Axiom 600 storage system into the Oracle “Red Stack” and launched it world-wide. Booked sales are up 200+% and committed sales pipe is up 3X+ in one year.
- **Conceived, and led a team of five people who developed and brought to market** the *Content Infrastructure System* (CIS), a complete integrated multi-tiered storage appliance that delivered a completely transparent policy-based 4 tier archiving platform with built in data protection and remote replication. The CIS became the first appliance ever sold by Sun, and was the model for all follow-on offerings including the Infinite Archive initiative and Oracle’s Engineered Systems.
- **Board Chairman** of the Sun Data Management Ambassadors (DMA’s); Sun’s elite global storage pre-sales architecture team. Responsible for up-leveling the field skill base and integrating the STK elite SE’s into the DMA program.
- **Conceived, and led a team of three people who developed and brought to Sun’s global sales force** the *Network Storage Solutions Rack* (NSSR), a complete storage data management “demo in a can” that could simulate almost any backup, archive, data replication and/or recovery scenario that a customer might want to see. The NSSR was credited with driving hundreds of millions in storage sales over two years.
- **Represented the field as a voting member** on the corporate *Product Approval Committee* (PAC); responsible for managing the complete lifecycle of all storage products from conception to EOL.
- **Earned the reputation** as the “Go to Guy” to assist in selling and closing large, complex competitive storage deals. Directly credited with over 70+ million dollar deals over the last few years.

What Others Say¹

- “When they made Chris, they broke the mold”
- “If Chris tells you it will work; you can take that to the bank”
- “Chris possesses what few can claim. Fully understanding the philosophy of data management.”
- “Chris' industry knowledge and experience is 2nd to none.”

Professional Experience

Director of Product Management: Oracle USA (10/11-Present)

- Responsible for product management, pricing, go to market for the Oracle FS1-2 Flash Storage System; also responsible for field readiness for Oracle's sales and SE force W/W.

Director of Marketing: Pillar Data Systems, San Jose, CA (3/10 – 10/11)

- Responsible for Pillar's entire Enterprise Data Protection strategy and delivery, SSD integration and delivery strategy.
- Other responsibilities and deliverables are similar to prior Chief Technologist job at Sun Microsystems.

Principle: Storage and Data Management, LLC (6/09 – 10/11)

- Advised the Financial Services Sector on M&A and competitive activity in the storage vertical: Primarily hedge funds and/or large banks with internal hedge funds.
- Clients included: Bain Capital, Goldman Sachs, Blackrock, Barclays Global Investors, Oppenheimer Funds, DE Shaw and 20 others.
- **Director and Chief Technologist: Technical Sales and Marketing, Sun Microsystems, Network Storage Division (3/02 to 6/09)**
- Evangelize Sun's technology World-Wide and deliver comprehensive data storage and data management solutions.
- Responsible for delivering to Sun's sales force all technical sales and marketing support
 - Direct delivery: I/O architecture assistance, design reviews, level five escalation support and global technical support.
- All storage related collateral including: white papers, benchmarks (Sun and third party), including both software and hardware products.
- Developed and deployed sophisticated Proof of Concepts (POCs) as well as customer solution focused demos and benchmarks.

Director: SAN Strategy, and Chief Technologist, Storage Marketing, Sun Microsystems (1/99 to 3/02)

- Developed and drove Sun's SAN strategy and development that took Sun from simple FC-AL direct and hub attached devices to the most robust and high function SAN offering in the industry.
- Delivered Sun's “Enterprise Continuity” solution based on Sun-Cluster 3.1, DWDM equipment and enhancements to Sun's device drivers to allow for geographically dispersed data centers to operate as a single logical data

VP Sales and Marketing, MaxStrat Corporation (3/94 to 1/99)

- Drove revenue from \$Zero to \$35 million annually at MaxStrat
- Hired and deployed a complete sales and service force developed a core sales/service and support channel strategy worldwide while establishing key reseller agreements within key vertical markets we served.
- Sold the company to Sun Microsystems in January of 1999, and joined Sun.

Director of Architecture, Open Systems DAS, IBM Corporation (6/90 to 3/94)

- Developed the “Extended Count Key Data” (ECKD) instruction set for all MVS (Z/OS) I/O devices
- Architected and delivered the 9570 disk array subsystem and conceived and architected the initial RAMAC II array

¹ All Comments and more were posted by their respective authors on LinkedIn.

Prior Jobs:

- Manager of Large Systems OEM Storage Products, IBM Corporation (4/84 to 6/90)
- Marketing Manager, IBM Corporation, Sacramento CA. (1/81 to 4/84)
- Regional Sales Manager, SNA & Networking, IBM Corporation, NY (3/77 to 1/81)
- Systems Engineer and Marketing Representative, IBM Corporation, Newark, NJ.

- **Publications and Dissertations**

- Over 25 peer-reviewed publications, hundreds of articles, interviews and citations, etc. List available on request. Google it with the following arguments:
 - “Chris Wood” +storage (Use the parens.)

- **Professional Societies and Patents**

- IEEE Mass Storage Technical Committee (MS/TC), SNIA Managed Storage: MSI/Blue Fin and DMF)
- Filed and received three patents relating to:
 - 01 Intelligent power optimized array data placement, (Follow-on MAID patent) (5,900,007)
 - 02 Large data store with power management (The “MAID” patent), (5,423,046)
 - 03 Non-degrading block interleaved data protection. (RAID –8) (5,301,297)

- **Education**

- Union College, Schenectady, NY.
 - BA: Economics; BS: Electrical Engineering

Print**Commission Application - Submission #14810****Date Submitted: 12/19/2018****First Name**

Ken

Last Name

Murray

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

non-profit director

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Ken Murray Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

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[Planning Commission](#)

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[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Planning Commission.docx

Please upload a resume*

Ken Murray 2018 Resume.docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I have not served on a Citizens advisory Committee.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

- 1) Understanding of the General Plan, Morgan Hill's Strategic direction and familiarity of the planning process
- 2) Active Listening - the ability to rapidly and thoroughly understand applicants, staff and legal perspectives
- 3) Strong analytical skills to facilitate collaborative solutions to difficult issues
- 4) Unbiased perspective
- 5) Willing to do the homework !

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The planning commission is an advisory commission to the City Council, on matters involving zoning, residential and commercial projects and the impact that these projects have on traffic, commercial / residential boundaries and the residents of Morgan Hill. I would like to serve on this commission to be a part of the solution for the problems we facing regarding RHNA targets, new legislation and growing our commercial space for job growth.

What would you like to accomplish as a commissioner?*

An aspirational goal would be to meet our RHNA targets, General Plan / financial objections, and new legislation requirements while having Morgan Hill becoming known as the most business friendly city in Santa Clara County for commercial and residential developers.

What are the greatest opportunities facing the community in regards to this commission?*

Measure S is comprehensive and solid residential growth control system. The issue will be what will become State mandated for low income housing and residential growth. The reduces residential growth has a negative impact on the general fund. If we could ramp up commercial development in the 110 commercial properties of possible interest, to help offset the reduced residential financial impact and lead to job growth in the City

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.**Please review the City Council Ethics Policy**

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Morgan Hill

Date*

12/19/2018

5:45 PM

Honorable Mayor Constantine & City Council Members

I love Morgan Hill. And I feel an obligation to help and serve in our community. Based on this desire to serve, I respectfully submit my application and resume for consideration as a member the Morgan Hill Planning Commission.

Since moving to Morgan Hill, I have been actively involved in serving our community through non-profits, Rotary International and the Morgan Hill Chamber of Commerce.

I became a Chamber Member and Director, at the suggestion of former Mayor Tate, to assist in the process of bringing better and higher paying jobs to our community. Jobs are a critical element of a balanced and controlled growth strategy for Morgan Hill. As a Chamber Board Member, I have led the Chamber's Economic Development Committee and now currently lead the newly created Government Relations Committee.

During these Chamber efforts, I have thoroughly enjoyed working and getting to know many of the City staff, City leadership and Council Members. I see the opportunity to serve on the Planning Commission as an opportunity to expand on my Chamber experience and I would thoroughly enjoy having the opportunity to serve our City on the Commission.

After reviewing my resume, hopefully you will find that my background and experience would be beneficial to the Commission.

Sincerely

Ken Murray

Kenneth Gerard Murray

(408)

Mobile

www.linkedin.com/in/kengmurray

Executive Profile

An entrepreneurial and transformational technology executive who has successfully developed and led organizations within the computation, cloud, storage, and network markets.

Capabilities

- ✓ Experience Silicon Valley executive having served as CEO, COO and other senior management positions
- ✓ Proven strategic business & financial planning skills
- ✓ Expert customer success program leadership
- ✓ JKeen business acumen across multiple industries
- ✓ Successful technical support & service leadership
- ✓ Professional services growth & enhancement
- ✓ Corporate development and organization integration
- ✓ Collaborative cross-functional leadership

Core Accomplishments

- ✓ Responsible for over \$20B in sales revenue over my career resulting in the hiring of over 2500 employees
- ✓ Led/participated in the purchase, sale, and integration of 6 organizations
- ✓ Led the development and execution of corporate standard engineering processes for software, hardware and services
- ✓ Cultivated high performance teams by growing employee competencies which enabled our teams' results
- ✓ Developed global corporate standards for sales and account management processes within medium and large enterprises

Professional Experience

Non Profit Director and Community Volunteer

1/2013 – present

For the past 5 years I have been involved in Morgan Hill volunteer work including Rotary International, and the Morgan Hill Chamber of Commerce where I currently lead the Government Relations Committee. Previously I have led the Chamber's Economic Development Committee where we focused on bringing more and better jobs to Morgan Hill.

Founder and Owner of Kabana Grill

Wasabe Ventures LLC, Lahaina, HI

1/2012 – 12/2013

Wasabe Ventures LLC was formed to open and operate a large, 150 person capacity, fine dining restaurant on the island of Maui. As the lead investor, I become actively involved in the operations when the Operating Partner left the business. The business was a great culinary success, including winning "Maui's Best New Restaurant" and Open Table's Diners Choice award. For personal reasons the restaurant is now closed.

Senior Vice-President – Sales, Marketing & Customer Success

DecisionOne, Devon, PA

12/2009 – 1/2012

DecisionOne is one of the largest multivendor services providers in North America. I was responsible for growing global revenue through customer acquisition, international expansion, and the introduction of new, higher margin IT services to catalyze the sale of the company.

- ✓ Achieved revenue performance at 103% and 107% of quota
- ✓ Built and implemented a standard sales process increasing the company's win/lose ratio by 50%
- ✓ Established Strategic Account Program growing YoY revenues by 27%
- ✓ Established a scalable Customer Success organization to establish customer expectations and report on D1 performance relative to expectations resulting in delighted customers, winning 2 beta service trials and retaining a \$28 M annual contract
- ✓ Lead participant in the identification, negotiations, purchase and integration of Anacom and CXP
- ✓ Actively negotiated the sale of the company to Glodyne and then led 23 of the company's 32 integration initiatives

Vice-President - Global Services & Sales

Rackable Systems/SGI, Fremont, CA

1/2008 – 12/2009

Rackable was a public company focused on providing "ecological" data center computing products for the cloud, providing the lowest cost, highest density, X86 server architectures available in the market. I was responsible for the stabilization and growth of all global services. Rackable Systems purchased SGI and changed the name of the company to SGI in 2009.

- ✓ Restructured the services organization to profitably improve the customer experience resulting in the highest renewal rates (94%+) in the company's history
- ✓ Grew services revenue by 42% and bookings by 210%, while generating Rackable's first profitable year in services
- ✓ Led the development of 6 strategic accounts growing revenue over 43% YoY
- ✓ Significantly improved each key process indicator (KPI) within the services business including 357% improvement in service response time, 432% reduction in service parts inventory, and 126% improvement in installation satisfactions
- ✓ Established a service introduction process resulting in new support and installations services at Rackable, including cloud container based services for Microsoft datacenters.

- ✓ Actively participated in the due diligence and acquisition of SGI and led the integration of support and professional services

Americas Global Services Director

NetApp, Sunnyvale, CA

10/2004 – 1/2008

NetApp is a leading supplier of enterprise storage and data management solutions. During my tenor at NetApp the organization was focused on the development of strategic accounts to drive revenue growth.

- ✓ Led the growth of the strategic account customer success organization to 15 GSMs with a \$95M services quota (102%) in support of a \$532M overall sales goal for FY08
- ✓ Served as the services thought leader on the evolution of the Strategic Account (TEA) sales organization utilizing value based selling, executive relationship development, and account P&Ls
- ✓ Established global customer template for ITIL based enterprise data center support and operational process to dramatically improve TEA customer experiences resulting in above target revenue growth
- ✓ Led the development of the Supportability Index methodology which enabled NetApp's selection into Gartner's Leader quadrant for services

CEO, Co-founder & Investor

Cenergize, Los Gatos CA

1/2003 – 9/2004

Cenergize was a startup focused on the integration of unstructured data within structured environments such as email. The first release of the product enabled the tracking of work flow contained within email for Outlook

- ✓ Established initial technical and support team
- ✓ Developed and launched initial product and first customer
- ✓ Established and presented the Cenergize business plan to 11 venture capitalist funds

President & CEO

Mockingbird Networks, Cupertino, CA

6/2001 – 12/2002

Mockingbird Networks was a 175 person, TCV/Alcatel backed private company providing next generation VoIP infrastructure to enable voice enabled applications such as Siri. The product was also used as a VoIP gateway to connect to SS7 networks

- ✓ Drove initial company revenues by delivering VoIP solutions resulting in an increase in revenue from \$0 to \$11M
- ✓ Established processes and metrics for software & hardware and service development resulting in 2 major on time product releases

COO

Appiant Technologies, Pleasanton, CA

3/2000 – 6/2001

Appiant Technologies was a publicly traded company where I led the re-invention of the company from a voice mail system integrator into an ASP for unified communications/information services.

- ✓ Developed an Americas sale force and drove sales of new product from 0 to \$13M, while growing sales of the existing product lines by 12%
- ✓ Led the development and launch of the InUnision voice enabled unified communications service using a distributed software engineering team
- ✓ Established the company's IT operations capabilities to support a 200,000 user VoIP network in partnership with Cisco

Hewlett-Packard Company, Mountain View, CA

5/1978 – 2/2000

During my tenure at Hewlett-Packard I held a variety of sales, sales leadership, services and senior management positions including:

New Services Marketing Director

08/1999 – 02/2000

Western Area General Manager

11/1997 – 08/1999

North American Field Development Manager

01/1995 – 10/1997

Global Account General Manager

10/1992 – 12/1994

Area Sales Manager

11/1990 – 10/1992

District Sales Manager

11/1987 – 10/1990

Field Marketing Manager

06/1985 – 10/1987

Sales

05/1978 – 05/1985

Affiliations and Recognition

Member of Michigan Technological University's Industrial Advisory Board

Michigan Technological University Engineering Academy

Education

St. Thomas College, St Paul, MN

MBA, International Organizational Behavior (Honors)

Michigan Technological University, Houghton, MI

BS, Control Systems, Circuit Design, Computing, and IC Design (Honors)

Print**Commission Application - Submission #15211****Date Submitted: 3/5/2019****First Name**

james

Last Name

dill

Address1**Address2****City**

morgan hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Realtor/Broker

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: James Dill Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

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[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Library, Culture, and Arts Commission ▼

Please upload a letter of interest or cover letter*

Backup of Letter of Intent MH Planning Commissio
03-05-2019.wbk

Please upload a resume*

2 page resume.docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

Committees:

Santa Clara County Association of Realtors - SCCAOR

Chair, Professional Standards Committee

Provide opportunities for training for the Professional Standards Committee in the National Association of Realtors Code of Ethics COE, and Arbitration as a panel member and for the presiding officer. Oversee and make recommendations in deliberations from findings from testimony and documentation.

Provide a vehicle for Realtors, Sellers, and Buyers to have a hearing in a safe and non-legal atmosphere without the expense of attorneys.

Chair, Education Committee

Facilitate and guide committee members in decision making on new and revised programs for the members of the Association. Interview prospective trainers with new programs to be presented to the members of the Association.

Grievance Committee

Review grievances that are brought before the Association either from a Realtor, Seller and or Buyer for violations of the Code of Ethics and determine if there were violations, to move them to the hearing phase of the Professional Standards Committee.

Membership Committee

Continuing to recruit and explore ways to retain members of the Association either by adding benefits such as the Professional Standards and activities for retention.

Silicon Valley Association of Realtors - SILVAR

Grievance Committee

Review grievances that are brought before the Association either from a Realtor, Seller and or Buyer for violations of the Code of Ethics and determine if there were violations, to move them to the hearing phase of the Professional Standards Committee.

Professional Standards Committee – Ethics and Arbitration

Purpose of the committee is to hear grievance using the National Association of Realtors Code of Ethics from either a Realtor, Seller, and or Buyer. The Committee will also arbitrate, hear disputes regarding money from Realtors, Brokers, Sellers and or Buyers.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

My background in real estate both in residential, vacate land, and commercial will provide the Commissioners and City Council with a perspective from a local resident who works with local organizations such as CERT, Community Emergency Response Team and CAB, Community Asset Builders.

My background and formal education in instructional design where I systematically break down complex issues then provide a roadmap to address the issues(s). My background and current position as Chair of the Professional Standards Committee where I preside over disputes of the Code of Ethics and for money through Arbitration with Realtors, Brokers, Sellers, and or Buyers.

And as a Director for the California Association of Realtors CAR, where I attend quarterly meetings of Directors throughout California determining and addressing issues of their local communities.

Attachment: James Dill Application Packet_Redacted (2289 : Planning Commission Interviews)

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the commission is an advisory to the Morgan Hill City Council, it is not a policy making committee. The Planning Commission make recommendations to the City Council for adoption, general plan or specific plan for the specific development of the city. The Planning Commission are administrators of the City Zoning Ordinance and Subdivision Ordinance. Develop the future vision: Legislative recommendations to Council: Adoption of local laws, policies or regulations of general applicability.

What would you like to accomplish as a commissioner?*

Affordable housing.

I would like to accomplish a partnership with local employers who are having difficulty moving into areas with their company but find that their employees cannot afford to live in the city they are employed in. I want to find ways either through grants, below market real estate, or reduction in rent through a tax credit for the owner of the property.

What are the greatest opportunities facing the community in regards to this commission?*

Affordable housing. How do we as a city entice/incentivize employers to come into Morgan Hill and have them not concerned with their employees commuting from other cities because of the expense of living is too high for the employee.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

james dill

Date*

3/5/2019

1:30 PM

Dear Morgan Hill City Council,

I am interested in being a member of the Morgan Hill Planning Commission and ask that you consider me for one of the current open seats. I am no stranger to the Morgan Hill area having moved to Morgan Hill fifteen years ago. As you probably recall, I ran for the position of Planning Commission several year ago. I am serious in my commitment to Morgan Hill's expansion and our residents.

As an interested member of our community and an active Realtor for the past fifteen years, I would like to volunteer my time, skills, and talents to assist in planning the future of our town. I am Community Emergency Response Team (CERT) member and an active member of our real estate community.

My interest in seeking appointment to the Planning Commission is my deep desire to serve the city of Morgan Hill; it is my home. My recent experience with the development of parts of the Morgan Hill's expansion plan and the knowledge of the city with my desire of affordable housing, makes me an ideal candidate for the commission.

These experiences have provided me the opportunity to better understand the challenges of managing our growth, improving our infrastructure, and further developing our business'.

I respectfully request your support in being appointed to the Morgan Hill's Planning Commission.

Thank you for your consideration.

James Dill

JAMES DILL

Morgan Hill, CA |

OPERATIONS EXECUTIVE

Higher Education / Leadership & Development / Instructional Design / Human Resources

Professional Summary:

- Repeated success guiding sizeable, cross-functional operations, excelling in instructional design projects, driving the theory and practice of design, development, utilization, management, and evaluation of strategies and resources for learning.
- Spearhead identification and analysis of gaps in knowledge, collaborating with subject matter experts to resolve issues and develop learning strategies while implementing theory and research processes to design and employ learning materials that produce successful outcomes for learners.
- Expertise in streamlining, organizing, restructuring, and managing high-end environments leading to successful achievement of goals and objects through proficiency in forecasting, budgeting, financial analysis and strategic planning.
- Recognized for exceptional drive and progressive experience in designing instructional management systems, evaluating eLearning materials, designing and revamping new and established learning models, implementing feedback from program reviews, and delivering professional development focused on innovations in both learning design and education.

Areas of Expertise:

- Design Thinking Models
- Risk Analysis/Management
- Emergency Response
- Process Redesign
- Statistical Analysis
- Instructional Design Theory
- Innovative Delivery Methods
- Needs Assessment
- Project Management
- Content Development
- Learning Resources
- eLearning Expertise

Notable Career Achievements

Propelled operational success of multiple organizations through extensive interdisciplinary knowledge, cross-cultural competency, as well as commitment and passion for learning and technology, effectively communicating both visually and verbally and designing measurable objectives based on the learner's needs.

Piloted dozens of instructional design projects, developing appropriate instructional strategy and structure which reflects an understanding of the diversity of learners.

Drove increased membership into Realtor Association for Professional Standards through cultivation of relationships in the community and collaboration with key stakeholders, including the District Attorney.

Streamlined successful professional development, mentoring new agents in contracts, disclosures, and real estate transactions, coaching new Presiding Officers through Code of Ethics and Arbitrations hearings, and guiding real estate agents in the industry.

*Instrumental in **innovative business consultation**, facilitating entrepreneurs through the startup process.*

*Recognized as **Chair of the Professional Standards Board**, providing services to other real estate associations.*

Spearhead conflict resolution among stakeholders, mediating between the public, agents, and brokers in real estate transactions.

*Orchestrate high end events resulting in **successful fundraising efforts** in the community.*

*Integral in **accessing funds for veterans** as the Chair of the Veterans homeless committee, dedicated to assessing need and prioritizing funds to service organizations.*

Career Experience

Assessment & Evaluation | 2016

StaffMark

Instructional Designer & Trainer, Contractor | 2016

Henkels & McCoy Green Cadre / Work2future, State of California Program

- **Courses Taught:** *fundamental instruction in the green environment, green construction practices, and green building rating systems. Instructed, First Aid/CPR/AED/ for adult/child/pediatric including choking and Blood Borne Pathogens.*
- **Training Program Design & Development:** *Business Analysis, Project Management, Business Planning, Critical Thinking, Entrepreneurship, Introduction to Computers (Microsoft Suite, Word, Excel, and Power Point), Project Management, and Project Management Warehouse.*

Regional West Coast Manufacturing Learning Manager 1999-2001

Instructional System Design & Evaluation Manager | 2001

Flextronics International, San Jose, CA

Instructional Designer, Lean Manufacturing | 2012

Cisco Systems

Teaching Experience

Employment Development Department | Community Emergency Response Team | Flextronics International | Henkel's & McCoy | KLA – Tencor | San Jose Metropolitan Adult Education, Aviation | Santa Clara County Association of REALTORS | South County REALTORS Alliance | West Valley & Mission CC | Wings West Airline/American Airlines Regional Airline | Work2Future

Additional Experience

Owner/Operator | Aviation World, Flight School

Pilot | American Airlines Regionals

Educator/Trainer | San Jose State University, Aeronautics | Ground School | Flight Simulation | Aircraft Operation

Steering Committee | Bay Area REALTOR® Leadership Academy (BARLA)

Educational Background

Ed.D. Curriculum & Instruction | University of San Francisco

Business Analysis | San Jose State University

B.A. Psychology - Sociology | San Jose State University

Instructional Technology | San Jose State University

Human Resource Management | University of Santa Cruz

Instructor Certification | American Red Cross

First Aid / CPR / AED / Adult / Child / Pediatric | American Red Cross

Blood Borne Pathogen | American Red Cross

Certified Flight Instructor | Federal Aviation Administration

Commission Application

Name (First and Last)*

e-mail address:*

Home Phone Number:*

Cell Phone Number:*

Home Address:*

City:*

Occupation:*

Are you a registered voter?*

Do you have any relatives currently employed by the City of Morgan Hill?*

Please list any properties you own in Morgan Hill.*

Laura Gonzalez-Escoto

Morgan Hill

Retired local government

Yes ▼

No ▼

Information regarding the Planning Commission:

Information regarding the Parks and Recreation Commission:

Information on the Library, Culture, and Arts Commission:

Please indicate which commission your are interested in serving on. *

Please indicate the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload cover letter/letter of interest.

Please upload resume.

Have you ever served on any other citizen advisory commissions or committees? If yes, please list and briefly explain the purpose of each one.*

[Planning Commission](#)

[Parks and Recreation Commission](#)

[Library, Culture, and Arts Commission](#)

Planning Commission ▼

[Laura Gonzalez Planning Commission cover ltr.docx](#)

[Resume Planning Commission.docx](#)

Please see resume.

What skills and experience do you believe would be important to your role as commissioner?*

The lens I bring includes professional knowledge of development issues, problem solving abilities, former experience of serving on the Planning Commission and expertise in affordable housing which is of primary importance to all cities in CA.

What do you believe to be the role of the commission and why would you like to serve on this commission?*

The Commission serves as an advisory body to the City Council on development and issues and challenges related to development and City growth. I believe the Commission will work best with a healthy mix of long time residents and newcomers, and gender and cultural diversity. I can add to this diversity mix.

What would you like to accomplish as a commissioner?*

I would like to be a responsible, productive and contributing member to the Commission.

What are the greatest opportunities facing the community in regards to this commission?*

Attachment: Laura Gonzalez-Escoto Application Package_Redacted (2289 : Planning Commission Interviews)

Challenges and opportunities are often intertwined. I believe timely concerns include 1. development of an affordable housing plan 2. implementation of the approved General Plan while remaining open to changes to the Plan based on current conditions and climate 3. investing in a respectful culture since development and community growth are areas that "hit home" and have deep impacts.

If you are an incumbent seeking reappointment:

Are you currently serving on a committee?

Are you next in line to serve as Chair or Vice-Chair?

Are you assigned to a special project?

If you are assigned to a special project, please identify the project:

☐ Yes

☐ No

☐ Yes

☐ No

☐ Yes

☐ No

Please read the City Council Ethics:

Please type name and date to sign.

By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee

and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities which

I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings

to which I am appointed, unless excused by the Chair.*

[Ethics Policy](#)

Laura Gonzalez-Escoto, 4/2/2019

* indicates required fields.

Laura Gonzalez-Escoto

Morgan hill, CA. 95037

Honorable Mayor Rich Constantine
And Members of the City Council
City Hall
Morgan Hill, CA. 95037

Dear Mayor Constantine and Members of the City Council,

Thank you for your consideration of my application for the City of Morgan Hill Planning Commission. I am interested in serving out a two (2) year term for a seat vacated by newly elected City Council member/s. I bring experience as a former Planning Commissioner as well as a former local government employee with deep knowledge about development in general and intensive knowledge about affordable housing. I am also a long-time resident, having lived primarily in the City's downtown since 1977. I also bring the perspective of women, and at this time of my life, of seniors as well. Additionally, as a Latina, I bring a unique lens to development issues. I am proud of the diverse make-up of the City Council and I believe the City's Planning Commission should be equally diverse. Thank you for your consideration.

Sincerely,

Laura Gonzalez-Escoto

I

LAURA GONZALEZ-ESCOTO

Morgan Hill, CA. 95037

STRENGTHS and EXPERTISE

- Confident public speaker.
- Strong analytical and experience-based foundation in redevelopment, including in-fill development, in-fill development, mixed use, project coordination and management and environmental remediation.
- Highly experienced in the development of award-winning affordable housing programs, policies and development.
- Over 20 years of local government experience primarily in redevelopment, affordable housing, and general management.

EXPERIENCE

CITY OF FREMONT, CALIFORNIA

Redevelopment Agency Director, 2004-05

Assistant Redevelopment Agency Director, 2001-04

Special Assistant for Housing, 1998-01

Initially hired as a Special Assistant for Housing to help the City articulate its vision for affordable housing. The Council approved a Five Point Program for Affordable Housing and strong community support was developed. Became a permanent employee and was hired as Assistant Director with primary responsibility for the affordable housing program. Eventually promoted to Director and worked hard to preserve the historic heritage within the Redevelopment Agency's three (3) project areas while advancing a strong economic development vision. Launched the commercial façade improvement program, expanded the housing rehabilitation program, and worked to acquire numerous parcels for redevelopment, engaged in extensive clean-up activity, relocation and development negotiations.

MACSA, San Jose, CA

Project Director, Mayfair Neighborhood Improvement Project, 1997-98

Working with hundreds of community and neighborhood leaders, government representatives and community organizations, and under the umbrella of the premier Latino service agency, MACSA, developed and mobilized a coalition to form a shared vision to improve the Mayfair neighborhood located in East San Jose. This successful articulation of improvement strategies embodied in a strongly supported neighborhood improvement plan resulted in an initial investment of \$5 million from the Flora and Hewlett Packard Foundation to launch the improvement plan.

SAN JOSE REDEVELOPMENT AGENCY**Project Coordinator, 1996-97**

Worked within the Project Management Division to coordinate the Guadalupe River Park Project, a massive flood control project that also included extensive urban development of parks, pathways, signage and development along the river. Partners included State Fish and Game, the City of San Jose, the Santa Clara Valley Water District, and two community committees consisting of elected officials and community leaders.

STATE OF CALIFORNIA, ASSEMBLYMAN JOHN VASCONCELLOS**Field Representative, District Office, San Jose, CA, 1984-85**

Responded to constituents and represented the Assemblyman locally at numerous events. Issue areas included taxation, seniors, transportation and housing.

SOUTH COUNTY ALTERNATIVES**Co-founder and first Director, La Isla Pacifica Shelter for Abused Women, Gilroy, CA 1977-84**

Co-founded and directed the first and only Shelter for abused women in South County which is still operational under the umbrella of Community Solutions. This award-winning Shelter was one of the first bi-lingual (Spanish) shelters in the State. Helped to lead the formation of the California Women of Color Coalition against domestic violence. Selected by the California State Police Academy (POST) to participate in preparing the first general orders and training module for all California Police Departments in responding to domestic violence.

EDUCATION

Bachelor of Science, Human Resources and Organizational Behavior]
University of San Francisco, 1985

COMMUNITY SERVICE

Currently on the Board of Directors for the Edward Boss Prado Foundation and serve as the volunteer liaison between Cecelia's Closet and Food Pantry (a Foundation program) and the Morgan Hill Unified School District who send family referrals. I am a long-time active supporter of what is now the Silicon Valley Boys and Girls Club and a current volunteer reading tutor. Served on the Downtown Association Board and helped to launch a resident's subcommittee. Served as the City of Morgan Hill Citizen's representative to the County Housing and Community Development (HCD) citizen's Committee. Served on the City of Morgan Hill Economic Development committee formulated in response to the demise of the Redevelopment Agency. Volunteer for many community-wide events.

Print**Commission Application - Submission #15201****Date Submitted: 3/4/2019****First Name**

Malisha

Last Name

Kumar

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

C-Level Executive

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

Our family owns a home at _____ and commercial building at _____ in Morgan Hill.

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Malisha Kumar Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Library, Culture, and Arts Commission ▼

Please upload a letter of interest or cover letter*

Kumar_Malisha_Cover_Letter.pdf

Please upload a resume*

Kumar_Malisha_Resume_2019.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No

What skills and/or experience do you possess that would be important to your role as a commissioner?*

My career was spent working with my family in a small business. Because of this, I have a unique ability to take the 3rd person point of view. I have learned to step back from problems and analyze it from all directions. I enjoy coming up with strategies to meet targeted goals especially when the goal seems almost out of reach. Finally, I have excellent critical thinking skills which allows me to take large amounts of information and process it down to the fine details.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the commission is to serve as an advisory board to the city council regarding planning and development in the city. The commissions job is to work to ensure that the general plan of the city is being implemented while saving money, improving economic development, and improving the quality of life in our city. But most importantly, it is the role of the commission to connect the people of Morgan Hill to its community, giving them a sense of place.

As a resident of Morgan Hill and former family business owner, I would appreciate the opportunity to help this city grow while keeping the community in mind. Our city has so much potential and I am excited to see what this town does with the opportunities it is given.

What would you like to accomplish as a commissioner?*

As a planning commissioner, I hope to contribute to the positive growth of our city. I hope to help guide the city in seeing the its goals come to fruition. Mostly... I want to give back.

What are the greatest opportunities facing the community in regards to this commission?*

The community has so many great opportunities with the planning commission. With the commission the city has the opportunity to come together, find its identity and innovate. Now more than ever, with our heightened political awareness, this community has the opportunity to shape this town and have a voice.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Malisha Kumar

Date*

3/4/2019

10:00 AM

Malisha Kumar

| Morgan Hill, CA 95037

(

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

Dear City of Morgan Hill;

Since attending city council meetings over the past year, I have become very interested in the on goings of the city and its commitment to the community. I saw that there is an opening on the Planning Commission and I am very excited to be considered for the opportunity to work with the members of the Planning Commission to see the vision of the City fulfilled.

A resident of Morgan Hill and having run a business in town, I bring a new perspective to planning. I have a unique ability to be objective and to see beyond what the current situation is presenting us and to look ahead to the consequences of a decision.

I hope you will consider me to fill the vacancy on the Planning Commission and I look forward to meeting with those involved.

Kind Regards,
Malisha Kumar

Attachment: Malisha Kumar Application Packet_Redacted (2289 : Planning Commission Interviews)

Malisha Kumar

| Morgan Hill, CA 95037

Qualifications

For over 20 years I have had the unique opportunity to work for a family owned manufacturing business. From running the day-to-day business to becoming part of the leadership team, I have 20+ years of experience in supply chain management and optimization, inventory optimization, and strategic planning. Strategy and how supply chain and operations can positively impact the overall goals of the business is my passion. I am a quick thinker, adaptable, and can effectively bring people together to solve a problem and exceed company expectations.

Professional Experience

AHK Electronic Sheet Metal, INC

Morgan Hill, CA

Consultant

November 2016 – January 2017

- Following the successful acquisition of AHK, I worked to ensure a successful transition between the outgoing and in-coming management teams in order to keep service to the customers seamless.

CEO/Vice-President of Operations

2010-2016

- Worked with the owner to strategically plan the negotiation and successful acquisition of AHK.
- Oversaw the development of strategic plans to advance the company's mission and objectives and to promote revenue, profitability, and growth. Outcomes showed continued growth in employee hiring (45 total employees) and increases in overall revenues.
- Oversaw the development and continuous improvement of the ISO 9001:2008 quality system including quality objectives, preventative action measures and continued process improvements. Audits consistently reported 0 major non-conformances year over year.
- Worked with company supervisors to investigate and implement ideas for quality improvement, increasing productivity, and reducing cost using analytical and quantitative methods. Cost reductions measured between 1-2% of unit cost year over year depending.
- Developed and successfully managed processing schedules and production orders concerning inventory requirements, staffing requirements, work procedures and duty assignments, considering budgetary limitations, time constraints and forecasts.
- Implemented performance, quality and efficiency measures to achieve aggressive production goals. Maintained a consistent record of 99% on time delivery for all customers.
- Used measurements, analysis and process alternatives to arrive at best practices and potential for value added services such as subassembly.
- Collaborated with a high functioning team researching and developing a foreign expansion plan for the company to enter into lower cost regions. This report was presented to the owner for consideration.
- Drove daily production activities with effective communication and leadership.
- Worked closely with customers to improve customer relationships and to meet customer requirements.

Operations Manager

2005 – 2010

- Responsible for ensuring the company provides outstanding products and services to its customers through high quality, competitive costs, and on-time delivery.
- Worked closely with the executive team to drive the continuous improvement of production processes. Process improvements included acquiring a specialized ERP system to help track production flow and allow for more accurate costing.
- Responsible for supporting the operation's overall business strategy by providing leadership and direction to the operations of the facility.

Malisha Kumar

| Morgan Hill, CA 95037

- Worked with management to add painting to the production process. This significantly reduced outside service cost (~\$100,000 per month) and allowed for further cost reductions to the customers.
- Advised on the acquisition of a Strippit CNC Laser in order to add capacity to the shop floor. Considerations included cost, production volume to support the purchase, training and customer need.
- Advised on the acquisition of an Amada Fabri-Vision Inspection machine in order to ensure a higher standard of quality for the customer.
- Responsible for the implementation and management of the ISO 9001:2008 quality system.

Office Manager

1999 – 2005

- Responsible for the day-to-day activities of the office and office staff including order fulfillment, customer service, inventory management, purchasing and payroll.

Education

Santa Clara University

Santa Clara, CA

- *Master of Business Administration* *June 2017*
 - ❖ *Authored two case studies based on my own experiences. Both case studies will be used within Santa Clara University's School of Business.*
VK Precision Sheet Metal, INC: A Case Study (A, B)
 - ❖ *Spring 2017 Capstone Project: A deep dive analysis of Intel's acquisition of Mobileye and the strategy behind it.*

Stanford Graduate School of Business

Palo Alto, CA

- *Certificate: Executive Program for Women Leaders*

*May 2015***Santa Clara University**

Santa Clara, CA

- *Bachelor of Science in Anthropology* *June 1999*
 - *Emphasis in Human Services*

Additional

- Participant in the Design Challenge of Redesigning Work to Increase the Presence of Woman Leaders | Stanford Graduate School of Business | July 2016
- Championed Jacob's Walk for CURED: A 5K walk to raise money for medical research for Eosinophil Disease.
- Highly active in the Autism Awareness community, Eosinophilic Awareness community and advocate for parents with children with special needs.
- Professional Certificate in Cannabis Science and Medicine, University of Vermont 2018
- Volunteer with 4H Market Sheep Project 2017
- Member AAUW
- Member Rotary Morgan Hill
- Volunteer at Cecelia's Closet & Food Pantry, Morgan Hill
- Volunteer at South Valley Community Theater, Morgan Hill

Print**Commission Application - Submission #15381****Date Submitted: 4/9/2019****First Name**

Paul

Last Name

Morgan

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

GIS Analyst

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Paul Morgan Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

PaulMorgan_Letter_PlanningCommission.pdf

Please upload a resume*

PaulMorganResume_PlanningCommission.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I have not served on any citizen advisory commissions or committees in Morgan Hill.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I have a unique set of skills and experience that will add value to the Planning Commission. My undergraduate training was in Planning and Resource Management. As a graduate student, my thesis focused on using Geographic Information Systems (GIS) to detect land use change. My career includes over 20 years in the geospatial technology industry where I currently work as a GIS Analyst. I have also owned and operated small businesses and been a part-time Geography Instructor at several Community Colleges in the Bay Area. Beyond my education and career experience, I feel I have strong interpersonal skills and am good at respectfully listening to and considering multiple viewpoints. I work well both in group settings and on an individual level.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The Commission serves as an advisory body to the City Council relative to planning issues. The role of the Planning Commission is to help ensure that development and growth follow the principles and objectives of the City's General Plan.

What would you like to accomplish as a commissioner?*

As a commissioner, I would like to help ensure the long-term interests of the entire community as it applies to land use and development. I would like to help make sure we are providing a full mix of development opportunities and types that efficiently use resources while preserving open space areas.

What are the greatest opportunities facing the community in regards to this commission?*

The greatest opportunities facing Morgan Hill are to continue to enhance and preserve the character the makes our community a desirable place to live, work and play. Morgan Hill can continue to distinguish itself in the region as a unique and vibrant community.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**☐ Yes☒ No**Are you currently serving on a committee**☐ Yes☒ No**Are you assigned to a special project?**☐ Yes☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Paul Morgan

Date*

4/9/2019

12:45 AM

Morgan Hill City Clerk

April 8, 2019

To Whom it May Concern:

With this letter and online submissions, please find the necessary application and documentation for consideration to serve as a member of the Morgan Hill Planning Commission.

As a relatively new resident to Morgan Hill, I have quickly grown to appreciate the wonderful community that I now call home. Morgan Hill staff and leaders have clearly invested in the planning process and created a vision for the City's future. As a citizen, I would like to help guide and shape that vision.

My education and experience provide a good foundation to serve as a Planning Commissioner. My undergraduate degree is in Geography with an emphasis on Planning and Resource Management. In my graduate studies, my thesis studied the use of Geographic Information Systems (GIS) to detect and monitor land use changes. The bulk of my career has been in mapping and geospatial technology. I have also owned small businesses and am aware of the impacts that the business community faces relative to zoning and land use issues. In the early 2000s, I was appointed as a member of the City of Logan, Utah Planning Commission where I served nearly 3 years before returning to the Bay Area.

Growing up in the Bay Area, I have a great appreciation for this unique part of the world. Morgan Hill is navigating the challenges faced with increasing development demands. Providing a proper balance of opportunities for its residents, businesses and visitors while preserving and enhancing their quality of life and wisely using their resources is an ongoing endeavor that I hope to play a small part in.

I appreciate your time and consideration.

Respectfully,



Paul Morgan

PAUL MORGAN, GISP

Morgan Hill, CA ·

OBJECTIVE

Consideration for opportunity to serve as a member of the Morgan Hill Planning Commission.

PROFESSIONAL EXPERIENCE

GIS ANALYST

Santa Clara County Fire Dept.

06/15-PRESENT

Los Gatos, CA

- Coordinate GIS and mapping to support Fire Department Operations

OWNER

Mapworqs, LLC dba Geographic Journeys Tours

04/18-PRESENT

Morgan Hill, CA

- Oversaw operations, marketing, financial and personnel of two franchise locations

PART-TIME LECTURER

Diablo Valley, De Anza, Las Positas and Ohlone Colleges

1/07-PRESENT

Bay Area, CA

- Teach Physical Geography Lecture & Lab, California Geography and Geographic Information Systems

FIRE GIS ANALYST

Alameda County Regional Emergency Communication Center/Alameda Co. Fire Dept.

05/06-06/15

Livermore, CA

- Coordinate GIS and mapping for Fire and EMS 911 Dispatch Center

OWNER

Gandolfo's Deli

03/03-03/07

Logan, UT

- Oversaw operations, marketing, financial and personnel of two franchise locations

GIS ADMINISTRATOR

City of Logan

1/01-03/03

Logan, UT

- Coordinated all aspects of GIS and geospatial technology for the City of Logan, UT

GIS SPECIALIST II

City of Logan

8/97-12/00

Logan, UT

- Responsible for daily operation and maintenance of Logan City's GIS

CIVIC and COMMITTEE EXPERIENCE

TECHNICAL COMMITTEE MEMBER

National Fire Protection Association (NFPA)

12/08-PRESENT

Quincy, MA

- Serve on National Fire Protection Association (NFPA) Technical Standard Committee for Data Exchange in the Fire Service (NFPA Standard 950/951)

PLANNING COMMISSIONER

City of Logan Planning Commission

06/03-05/06

Logan, UT

- Served as an Planning Commissioner for the City of Logan, UT

EDUCATIONAL TRAINING**MASTER OF SCIENCE***Utah State University***10/94-12/00***Logan, UT*

- Completed Masters Degree in Geography with emphasis in GIS
- Thesis topic: "The Integration of GIS and Aerial Photography Techniques for the Study of Urban Land Use in Logan, UT"

BACHELOR OF SCIENCE*Brigham Young University***1/89-4/94***Provo, UT*

- Received undergraduate degree in Geography--emphasis in Planning and Resource Management

Print**Commission Application - Submission #15387****Date Submitted: 4/10/2019****First Name**

Sally

Last Name

Casas

Address1**Address2****City**

Morgan Hill

State

Ca.

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Para Educator

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

N/A

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Sally Casas Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Planning Commission ▼

Please upload a letter of interest or cover letter*

Sally Casas_Cover Letter.docx

Please upload a resume*

Sally Casas_Resume .docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I served on the parks & recreation and downtown planning committee workshops with community members to design parks and beautification of the Morgan Hill downtown area. I also participated in the Downtown Association for several years.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I have personal experience living in low income housing studios. I have been a member of the Morgan Hill Community Garden for 10 yrs and serve on their Oversight Committee.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the Planning Commission is to decide allocations and land use; building growth and zoning. The commission is responsible for soliciting community input by organizing workshops for resident participation. Ultimately, reporting to the Economic Developing Department and City Council. I have grown roots in Morgan Hill since December of 2000 when I moved back to the Bay Area via Los Angeles. I work and live in Morgan Hill. Graduating from the 2014 Morgan Hill Leadership Program gave me an in-depth view of Morgan Hill economic landscape as well as the intricacies of City Government.

What would you like to accomplish as a commissioner?*

I would love to start a conversation on creative ways to meet our housing goals. By investigating, collaborating and planning with commission members my vision would be an all inclusive housing plan benefiting the present and future Morgan Hill population.

What are the greatest opportunities facing the community in regards to this commission?*

A greatest opportunities facing the community in regards to the planning commission will be the willingness of the commission to "think out of the box" in terms of striving for viable and sustainable housing solutions.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Sally Casas

Date*

4/10/2019

10:45 AM



SALLY CASAS

, Morgan Hill, CA, 95037 |

4/8/19

City Clerk's Office
Morgan Hill
11575 Peak Ave, Morgan Hill, CA 95037

Dear Recipient:

In my eighteen-year career as a Para Educator I've worked in a variety of community schools with teachers, students and administrators diverse in personalities and teaching styles as an itinerant Para Educator. My focus above all were the student's academic needs. Working at one school with incarcerated youth at Boys James Ranch in Morgan Hill was the position I chose in 2007.

My choices in volunteer work are related to my passion to be a productive community member using whatever skills I have accumulated. Such as my time with the Downtown Association, the Morgan Hill Community Garden and most important Leadership Morgan Hill 2014. The skills I have gained from my volunteer and work experience is why I would be a good fit for the position.

In my present job I collaborate with teachers, administrators, mental health providers and probation staff and their supervisors for guidance and to share important behaviors exhibited by the students during class time. I have honed my verbal and written communication skills to relay information throughout the day.

I would love the opportunity to discuss how I can contribute to your team. Thank you in advance for taking my application to this position into consideration, I look forward to hearing from you.

Sincerely,

Sally Casas



SALLY CASAS

, Morgan Hill, CA, 95037| (

OBJECTIVE

Working in collaboration with other members of the Planning Commission, City of Morgan Hill

EXPERIENCE

Santa Clara County of Education

Para Educator | April 2001

- Tutoring incarcerated youth at the lock down facility: Blue Ridge High School at Boys James Ranch. I work with students that have IEP's and general ed. students in the classroom supporting them in English, Math, History, Science, etc.

EDUCATION

Associate Degree in Automotive Repair Technology | Cerritos College | Graduated in May of 1989

Associate Degree in Administration of Justice | Cerritos College | Graduated in December of 2000

AWARDS AND ACKNOWLEDGEMENTS

- People Acting in Community Together Award (2008)
- Graduate of 2014 Leadership Morgan Hill

VOLUNTEER

- Restorative Justice Program (2003)
- El Torro after school Tutoring Program for Elementary Students (2003 - 2005)
- Downtown Association (2004 – 2008)
- 500 Mile Native American Marathon Run (2004 – 2009)
- Morgan Hill Community Garden (2009 – Present)
- Cecelia's Closet (2016 – Present)

Print

Commission Application - Submission #15224

Date Submitted: 3/7/2019

First Name

Victor

Last Name

Gaxiola

Address1

Address2

City

Morgan Hill

State

California

Zip

95037

Home Phone Number

Cell Phone Number

email address

Occupation

Investment Advisor Representative

Are you a registered voter?

yes

Please list any properties you own in Morgan Hill

Do you have any relatives currently employed by the City of Morgan Hill?

No

Attachment: Victor Gaxiola Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

PlanningCommissionCoverLetter.VictorGaxiola.docx

Please upload a resume*

VictorGaxiola-2019.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I served on the Library, Culture and Arts Commission in Morgan Hill- helped make recommendations on city art projects and library needs.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

In both my personal and professional life I've had the good fortune to have developed a wealth of experience collaborating with others and making key decisions. I've been an appointed trustee on a library board, served on the Library, Culture and Arts Commission in Morgan Hill, and was President of the Leadership Morgan Hill Board for one year as part of a three year term.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

I understand that it is our responsibility to assist and provide advice and recommendations to the city council on matters regarding city growth and development. I would like to serve because I grew up in this community and know that it is going to continue to grow. I'd like to be involved in the process to make measured steps in that growth for the benefit of our community.

What would you like to accomplish as a commissioner?*

I would like to be a good steward of our citizens and get closer to the inner workings of our local government.

Attachment: Victor Gaxiola Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

I think the greatest opportunities facing the community is the growth we are likely to experience in the next decade. We want to be sure that the growth matches the needs of our community while maintaining both the standard of living that our citizens expect while attracting new businesses and neighbors.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Victor Gaxiola

Date*

3/7/2019

5:00 PM

VICTOR GAXIOLA

, Morgan Hill, CA 95037 |

March 7, 2019

Dear City of Morgan Hill and its citizens,

I am submitting my application to serve on the Planning Commission of the City and fill one of the vacant seats available. Having grown up in this city, and as a small business owner, I take great pride in being a part of its ongoing development.

I wish to serve and represent the citizens of this city by providing guidance and advice to our City Council on matters related to city growth and development. I have experience serving on boards and commissions and am familiar with the protocol as well as the responsibility placed on those who participate. I served on the Public Library the Library, Culture & Arts Commission in Morgan Hill, was a graduate of Leadership Morgan Hill, class of 2009, and for three years was on the Leadership Morgan Hill Board- my final year as President.

Our city is growing, and will continue to grow, and it's vital that we take measured steps to ensure that we make great decisions along the way. I'd like to be part of the process and give back to the community that has given me so much throughout the years.

Sincerely,

Victor Gaxiola

VICTOR GAXIOLA

INSIGHTS AND LEADERSHIP FOR A DIGITAL FUTURE

I am a financial services and wealth management leader with a passion for digital innovation. Drawing from diverse industry experience across competitive and fast-paced environments, I combine strategic vision and creative leadership to empower financial success. Whether promoting innovative strategies as an industry thought leader, or developing relationships as an award-winning consultant, I provide the knowledge and tools to promote adaptation and growth.

CAREER HISTORY



01/2019 - Present // Morgan Hill, CA
Tech Girl Financial - Co-Founder & Investment Advisor Representative



8/2017 - 7/2018 // Remote & Knoxville, TN
Lirio LLC - VP Behavioral Marketing (formerly VP Sales & Marketing)



3/2014 - 8/2017 // San Francisco, CA
Hearsay Systems - Head of Customer Advocacy



5/2012 - 3/2014 // Redwood City, CA
Actiance - Subject Matter Expert for Social Media Marketing



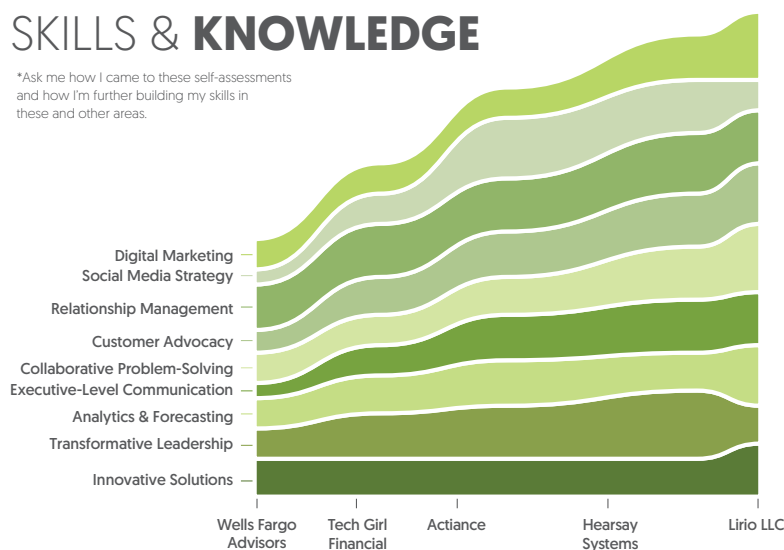
10/2010 - 5/2012 // Morgan Hill, CA
Tech Girl Financial - Co-Founder & Financial Advisor



8/2004 - 10/2010 // Woodstock, IL & San Jose, CA
Wells Fargo Advisors - Financial Consultant

SKILLS & KNOWLEDGE

*Ask me how I came to these self-assessments and how I'm further building my skills in these and other areas.



MAJOR IMPACTS

With Lirio, I spearhead the launch of our **Behavioral Finances software** program to the wealth management industry, partnering with Investcloud to develop an **AI-driven risk profile system**.

At Hearsay Systems, I expanded the size of our Customer Advisory Board **by 300%** while introducing a new **integrated regional meeting network** that included teams in major cities across the nation.

INDUSTRY ENGAGEMENT

I take pride in my engagement with the industry and the general public, contributing articles, interviews and think pieces for a diverse range of media outlets.

benefitsPRO

ThinkAdvisor

FAMILY WEALTHREPORT

FA

AB

RIABiz

San Francisco Chronicle

InvestmentNews

proactive advisor magazine

ORICentral

B BrightTALK

Wealth Management.com

EDUCATION



1989 - 1993
**B.A. Interpersonal Communication
Studies University of California
Los Angeles (UCLA)**

BY THE NUMBERS

29+

years of career experience as a digital strategy consultant and marketing innovator across the banking, hospitality, transportation, financial services and technology industries

70+

appearances and speaking engagements as a thought-leader in sales, marketing and client relationship management

25K+

downloads of my Hearsay Systems podcast, where I discuss business and financial strategy with over 100 industry leaders

500%

growth in attendance for annual Hearsay Summit by leveraging social media exposure and influencer networks

\$40M

in assets under management with Tech Girl Financial

\$100K

in short-term marketing expenses avoided by re-orienting marketing strategy, providing a scalable, extensible solution to securing greater technology access for financial advisors

WHAT THEY SAY

"Victor has a great eye for spotting trends and reading audiences. **His insight and personability make him an asset to our industry** as well as a strategic thought leader within our professional community."

Amy Webber, President and CEO of Cambridge Investment Research

"**Victor brings fresh creativity and builds quality relationships** with both clients and internal teams. He is a pleasure to work with!"

Clara Shih, CEO + Founder of Hearsay Systems

"Not everyone shines under pressure and adapts to change, but **Victor seemed to thrive on managing unexpected hurdles or clarifying complex ideas** to customers and executives alike."

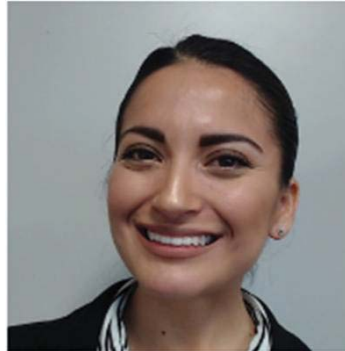
Jeremy Floyd, Founder of Lirio LLC

Welcome New Teammates



Reema Andrade
Municipal Services Assistant

Brenda Gonzalez
Police Officer Recruit



Eddy Gutierrez
Police Officer



Welcome New Teammates



Jared Huddleston
Animal Services Officer



Raksha Poria
Legal Specialist



Sarah Una'Dia
Police Officer



Teammate Promotions

Victor Benitez

Multi-Service Officer to Police Officer



Tim Conlon

Utility Worker I to Utility Worker II



Mario Jimenez

Assistant Engineer to Associate Engineer

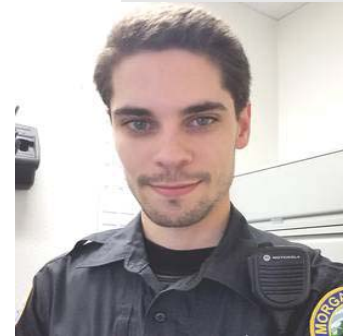


Teammate Promotions



Tyler Pecsok

Animal Services Officer to
Multi-Service Officer



Kira Sareli

Police Officer Recruit to Police Officer



Retirements

Toni Maiquez

Public Safety Dispatcher
28 Years of Service



Kathi Bailey

Paralegal
21 Years of Service



April

Developmental Asset #9

Service to Others

Young person serves in the community one hour or more per week.

How does this take place in our community?

- o Many community events where people can help out.
- o New opportunities provided by the city.
- o Provide food for people in need.
- o Creek cleanup for people to volunteer.

How this applies to YAC?



- o YAC takes pride in helping our community.
- o We get to know our community.
- o We help put on various events:
 - 50+ Ball
 - YLMH
 - National Night Out
 - Taste of Morgan hill
 - Morgan Hill Library Events
 - Art a la Carte
 - Earth Day
 - Get Fit



April Complementary Asset #8 Youth as Resources

Young people are given useful
roles in the community.

How youth are resources within the community?

- o Need for youth volunteers.
- o Bonding between different generations.
- o Ways that Youth help in the community:
 - Clubs
 - Helping at community events
 - To make a difference





How would you like the youth to be more involved in our community?





CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

APPROVE SECOND AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Approve Second Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project to a revised not to exceed total of \$583,433; and
2. Authorize the City Manager to execute and administer the amended agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

Upon the passage of the County's Measure B sales tax initiative in November 2016, the Morgan Hill City Council moved to approve a Service Agreement for Design Professionals with Mark Thomas & Company in the not to exceed amount of \$401,873 to complete the design for the Hale Avenue Extension Project. The project involves the construction of a new two-lane multi-modal roadway from the Main Avenue and Hale Avenue intersection to the Spring Avenue and Dewitt Avenue intersection. The service agreement scope of work included: updating and finalizing construction plans and specifications prepared in 2011, the preparation of right-of-way acquisition documents, geotechnical evaluation(s), etc.

A First Amendment was approved by City Council on April 18, 2018 to increase Mark Thomas & Company's scope of work to include; the design of cul de sacs at the ends of Warren Avenue and Nob Hill Terrace, sound wall architectural design support, underground conversion design of overhead utilities, Habitat Agency permit coordination, and design coordination with the Water District's PL-566 Phase II Project. This amendment increased the total not to exceed contract amount to \$494,733.

Upon staff's review of the latest plan set, several plan modifications were identified that would improve traffic movement at the project intersections. There were also a number of value engineering adjustments identified by staff. The increase scope of work will include; alignment modifications to the Spring/Dewitt intersection and the Hale/Main intersection, project lighting modifications and pavement section redesign. The additional design work will improve traffic flow and reduce construction costs. The improvements will also reduce ongoing maintenance costs. Staff therefore recommends that Mark Thomas & Company's scope of work be amended to include these elements at a cost not to exceed \$88,700, as reflected in the Second Amendment.

The Second Amendment would increase the agreement's not to exceed amount to \$583,433 (\$494,733 plus \$88,700). It is estimated that the final design of the project will be completed this summer and be ready to bid pending the availability of Measure B funds, securing the needed right-of-way from PG&E, and obtaining the necessary environmental permits for the project.

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. In addition, the City hired David J. Powers and Associates to complete the Environmental Impact Report (EIR) for the project. This process solicits input from the community regarding environmental impacts from the project. Additional community meetings and input will be required to complete the EIR and staff will make notifications as required by the California Environmental Quality Act (CEQA) process.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with the service agreement amendment at this time and direct staff to wait until more information is available regarding the Measure B funding allocation timing and process. This action could put the project in jeopardy of receiving funding and ultimately delay the construction of the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 18, 2017, City Council approved a Service Agreement for Design Professionals with Mark Thomas & Company to complete the construction plans for the Hale Avenue extension Project for \$401,873.

On April 18, 2018, City Council approved a First Amendment with Mark Thomas & Company for additional scope of work not to exceed \$494,733.

FISCAL AND RESOURCE IMPACT:

The Second Amendment with Mark Thomas & Company increases the agreement amount by \$88,700 to a total not to exceed amount of \$583,433. Sufficient funds and budgetary appropriations are available in the FY 2018-19 through 2023-24 Capital Improvement Program, under the Hale Avenue Extension project, for this Second Amendment. A portion of the projected savings from the reduction in construction costs will be used to cover the increased scope in design services. The total amount

budgeted for FY 2018-19 for this project is \$19,650,000 from Traffic Impact Fund (309), project #546007.

CEQA (California Environmental Quality Act):
Project.

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

LINKS/ATTACHMENTS:

1. Project Location Map
2. Mark Thomas Company 2nd Amendment - Final



Attachment: Project Location Map (2251 : Second Amendment with Mark Thomas for Hale Extension)

SCALE: NTS

City of Morgan Hill

ENGINEERING & UTILITIES



CITY OF MORGAN HILL

N:\PROJECTS\CIP\STREETS\546007-Santa Teresa Const\Staff Reports\hale plot 8-24-11.dwg

LOCATION PLAN

Hale Avenue Extension

Date: 4/17/19

Drwn by: DIG

PAGE 1 OF 1

Packet Pg. 118

SECOND AMENDMENT TO AGREEMENT MARK THOMAS & COMPANY

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MARK THOMAS & COMPANY, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017 for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO 00/DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 24, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND 00/DOLLARS (\$494,733.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from February 6, 2017 until December 31, 2020. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in revised Exhibit "B" dated March 21, 2019, attached hereto and incorporated herein by this reference."

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

"4.1. Amount. Compensation under this Agreement shall not exceed a total amount of FIVE HUNDRED EIGHTY-THREE THOUSAND FOUR HUNDRED THIRTY-THREE AND No/00 DOLLARS (\$583,433.00) during the term set forth in Section 2 above, and shall be billed based on the rate and basis set forth in the revised **Exhibit B** dated March 21, 2019 for the additional scope of work added by this Second Amendment, attached hereto and incorporated herein by this reference; **Exhibit B** dated February 15, 2018 for the additional scope of work added by First Amendment; and **Exhibit B** dated January 5, 2017 attached to the CONSULTANT AGREEMENT. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement."

D. Pursuant to the terms set forth in Paragraph 4.1 Amount, Compensation is based on the rate and bases set forth in Exhibit B. As of the Effective Date of this amendment, CONSULTANT'S billing rates have increased and are set forth in the revised Exhibit "2" dated March 21, 2019, approved by CITY and attached hereto and incorporated herein by this reference.

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

"9. Compliance with Law.

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

9.2 Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY

GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

MARK THOMAS & COMPANY

Donald A. Larkin, City Attorney

Date: _____

By: 

Title: Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 3/28/19



By: Matt Brogan

Title: Secretary

Print Name and Title of Signer.

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

Date: 3/28/19

EXHIBIT 1

FIRST AMENDMENT TO AGREEMENT
MARK THOMAS & COMPANY

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 4/24/18 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, MARK THOMAS & COMPANY, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on April, 18, 2018.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017, for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. Term of Agreement. This Agreement shall be effective and cover services rendered from February 6, 2017, until December 31, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the additional services set forth in revised Exhibit "B" dated February 15, 2018, attached hereto and incorporated herein by this reference."

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

"4.1. Amount. Compensation under this Agreement shall not exceed a total amount of FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$494,733.00) during the term set forth in Section 2 above, and shall be billed based on the rate and basis set forth in the revised Exhibit B dated February 15, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated

sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement."

D. Paragraph 20.1 shall be amended and replaced in its entirety by the following:

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

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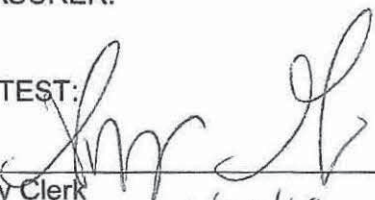
[Signatures on Next Page]

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

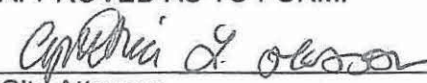
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

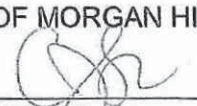
ATTEST:

Deputy City Clerk 
 Date: 4/25/18

APPROVED AS TO FORM:

Assistant City Attorney 
 Date: 4-23-18

CITY OF MORGAN HILL


 City Manager

Date: 4/24/18

MARK THOMAS & COMPANY

By:

Title:


 Soosha Darsky, Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

3/7/18

By:

Title:


 R. Matt Brogan, Secretary

Print Name and Title of Signer.

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

Date:

3/6/18



MARK THOMAS

EXHIBIT "B" DATED FEBRUARY 15, 2018

February 15, 2018

Project No.: SJ-17101

Mr. David Gittleson
City of Morgan Hill
Peak Avenue
Morgan Hill, CA 9

RE: Hale Avenue Extension- Additional Services

Dear David:

Mark Thomas requests additional budget for the Hale Avenue Extension Plans, Specifications, and Estimate (PS&E) and Environmental Permitting for the following additional services requested by the City:

SCOPE OF SERVICES

IMPROVEMENTS TO WESTERN TERMINUS' OF WARREN AVENUE AND NOB HILL TERRACE

The City has requested that the construction of cul-de-sacs at the western terminus of Warren Avenue and Nob Hill Terrace be added to the project. This will require additional field surveys of supplemental topography as this area is outside the limits of the original project topography. The work will require preparation of additional Site Topography and Demolition, Horizontal Control, Plan & Profile, Cross Sections, Pavement Elevations, Drainage System Plan & Profile, Utility Plan, Erosion Control, Lighting, Signing & Striping, and Construction Detail Plan sheets. Additional Geotechnical Investigation will be required to confirm soil characteristics and provide R-Values for pavement design. Construction of the improvements will require additional Right-of Way Acquisition plats and legal descriptions for the PG&E parcel.

FEE: \$19,950

SOUNDWALL AND RETAINING WALL ALTERNATIVES

The City has requested that alternatives be studied for the soundwalls and retaining walls shown on the 95% plans. The study will include up to 3 options for walls of different architectural and structural design and approximate unit costs for each wall type.

February 15, 2018

FEE: \$9,500

UTILITY UNDERGROUNDING- FEASIBILITY STUDY

The City has requested that Mark Thomas review the undergrounding of existing overhead utilities in the vicinity of the Hale Avenue Extension project. Pennino Management Group, as a subconsultant to Mark Thomas, will review the existing facilities and confirm the potential for undergrounding the facilities under PG&E Rule 20B Utility Undergrounding District.

FEE: \$10,000 including subconsultant mark-up

UTILITY UNDERGROUNDING- FINAL DESIGN NOB HILL TERRACE TO WEST MAIN AVENUE.

The Pennino Management Group, as a subconsultant to Mark Thomas, will prepare base information and coordinate the design by PG&E under Rule 20B of the undergrounding of existing overhead utilities in the vicinity of the project between Nob Hill Terrace and West Main Avenue, as shown on the attached exhibit.

FEE: \$25,000 including subconsultant mark-up

SCVHA COORDINATION AND SCVHP COMPLIANCE

The City has requested additional services from our environmental subconsultant, WRA, in preparation of documentation and coordination with the SCVHA and SCVHP. See attached additional services request from WRA.

FEE: \$3,410 including subconsultant mark-up

COORDINATE DESIGN WITH SCVWD'S PL-566 STORM WATER IMPROVEMENT PROJECT

The City has requested that the plans be revised at the West Main Avenue/Hale Avenue intersection to accommodate the SCVWD project to construct a by-pass tunnel west of existing Upper Llagas Creek, in the alignment of the proposed Hale Avenue Extension. The design of Hale Avenue will need to be modified to avoid conflicts with the tunnel.

February 15, 2018

FEE: \$25,000

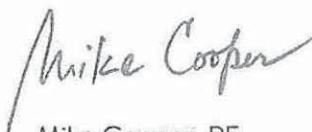
TOTAL ESTIMATED FEE: \$92,860.

All work will be performed on a time and material basis, at hourly rates shown in the Rate Schedule attached, in accordance with our current agreement for consulting services for this project.

Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

MARK THOMAS



Mike Cooper, PE
Senior Project Manager

Accepted:

Signature

Name/Title

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)



**HALE AVENUE EXTENSION PROJECT
CITY OF MORGAN HILL, CALIFORNIA**

**CHANGE ORDER 1
ADDITIONAL BIOLOGICAL SUPPORT SERVICES**

Prepared for:

Admas Zewdie
1960 Zanker Road
San Jose, California, 95112

July 21, 2017

WRA Project No. 21059-1

PURPOSE

The purpose of this Change Order is to request funding not previously scoped in order to facilitate coordination with the Santa Clara Valley Habitat Agency (SCVHA) related to the Santa Clara Valley Habitat Plan (SCVHP) for the Hale Avenue Extension Project in the City of Morgan Hill in Santa Clara County.

ADDITIONAL SERVICES

- SCVHA coordination
- SCVHP compliance

CHANGE ORDER

Task 1: Santa Clara Valley Habitat Plan Coordination

The City of Morgan Hill is a participant in the Santa Clara Valley Habitat Plan (Habitat Plan; Santa Clara County 2012). The Habitat Plan's purpose is to provide streamlined permitting for sensitive habitats and endangered species, including outlined mitigation approaches through the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers (USACE). WRA will incorporate the relevant Habitat Plan avoidance and minimization measures into the USACE and the Regional Water Quality Control Board (RWQCB) permit applications as deemed applicable through coordination with the SCVHA.

SCHEDULE

WRA is available to begin work on this project immediately upon receiving authorization to proceed.

STAFFING

Amanda McCarthy will be the principal in charge of the project. She will be assisted by, Leslie Lazarotti, project manager, and qualified project staff.

ASSUMPTIONS

The following assumptions have been made in the preparation of this Change Order:

- Permitting fees to regulatory agencies are not included under this Change Order

ESTIMATED COST

The estimated cost for these services is provided below. This cost is based on assumptions provided in the Change Order. The estimated cost is subject to change based on specific conditions that arise during the conduct of this work.

Task	Budget
1. SCVHA Coordination and SCVHP Mitigation Compliance	\$3,100
Total	\$3,100

TERMS AND CONDITIONS

The conditions contained in the existing Contract Agreement dated February 10th, 2017 will apply to this Change Order.

APPROVAL TO PROCEED

The work can be initiated with a letter of authorization, through acknowledgment of this Change Order by signing a copy of this Change Order below, or by Purchase Order issued to WRA.

Scope of Work and Estimated Budget accepted by:

Signature _____		Date _____
Printed Name and Title _____		Email _____
Firm Name _____		Phone Number _____
Street Address _____		Fax Number _____
City _____	State _____	Zip Code _____
For WRA, Inc.		
Principal _____		Date _____



Bryan Pennino

President

Michael Locke

Vice President

Phillip Pennino

Secretary/Treasurer

February 7, 2018

Mr. Mike Cooper
 Mark Thomas & Company
 2290 North First Street, Suite 304
 San Jose, CA 95131

Subject: PG&E Electric and Fiber Underground Coordination – Morgan Hill

Dear Mr. Cooper:

We appreciate the opportunity to discuss Electric & Fiber Coordination Services for the Morgan Hill project located in Morgan Hill, CA. As discussed, we believe Pennino Management Group (PMG) is uniquely qualified to provide Dry Utilities Coordination Services on the project.

This Letter of Engagement includes our proposed Scope of Work and Fee Schedule to successfully connect services for electric & fiber based on the information provided to PMG. PMG is ready and eager to begin work immediately.

Upon approval of this Letter of Engagement, PMG will begin with the Scope of Services as referenced on page two. Approval of this Letter of Engagement also confirms acceptance of the Fee Schedule referenced on page three. Please note these are estimated hours and Mark Thomas & Company will only be billed on the actual hours worked on the Morgan Hill project.

Please accept this Letter of Engagement by signing in the signature block below. Return the signed Letter of Engagement to PMG via standard mail or electronic mail, whichever is more convenient for you. Upon receipt, we will begin work immediately. Again, thank you and we look forward to working together.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Pennino Management Group

Phillip Pennino
 Secretary/Treasurer

On behalf of Mark Thomas & Company the above referenced Letter of Engagement, attached Scope of Work and Fee Schedule is accepted:

Signature: _____

Title: _____

Mark Thomas & Company

Phone: (205) 370-908 | Fax: (205) 571-1608 | www.PenninoManagementGroup.com
 1420 S. Millbrook Street, Suite 100, CA 95242 | PO Box 1566, Losi, CA 95241

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

Mr. Mike Cooper
February 6, 2018
Page 2

PENNINO
ENGINEERING & ARCHITECTURE

To assist Mark Thomas & Company with evaluation and design coordination for PG&E and Fiber Services to the Morgan Hill project. To facilitate the work, PMG has developed six (6) separate tasks.

Task 1 Utilities Research & Review for Dry Utility's needs.

- Meet & review dry utilities requirements for project.
- Evaluate options for Electric and Fiber Services.
- Meet with Utilities to discuss service options and requirements.
- Establish submittal schedule and target completion date.

Task 2 PG&E Submittal

- Prepare documents for electric submittal.
- Submit applications to PG&E.
- Contact PG&E after application to review submittal.

Task 3 Design Coordination

- Coordinate utilities meetings when appropriate.
- Monitor and follow-up with utilities through engineering and contract approvals to ensure timely completion.
- Coordinate necessary easements and legal descriptions between Developer & Utilities.

Task 3.5 Contracts & Payment

- Review PG&E/AH Control
- Monitor Payment & Release

Task 4 Temporary Power for Construction (Not Included)

- Meet with Contractor to determine temporary service and timeline.
- Submit PG&E application.
- Coordinate PG&E inspections and meter set.

Task 5 Construction

- Coordinate Construction Schedule.
- Complete site visits during construction of dry utilities.
- Make sure Contractor installs dry utilities per Utility design.
- Respond to any questions/concerns from Dry Utilities.

Task 6 Fiber Coordination

- Provide primary schematic design.
- Submit application for fiber services.
- Coordinate fiber installation.
- Review construction documents and contracts.
- Coordinate communication installation with General Contractor.

Task 7 Close Out

- Prepare Closeout Documents.
- Complete Project Binder.

Scope of Work



Request for Proposal
Design Coordination Construction Management for Morgan Hill

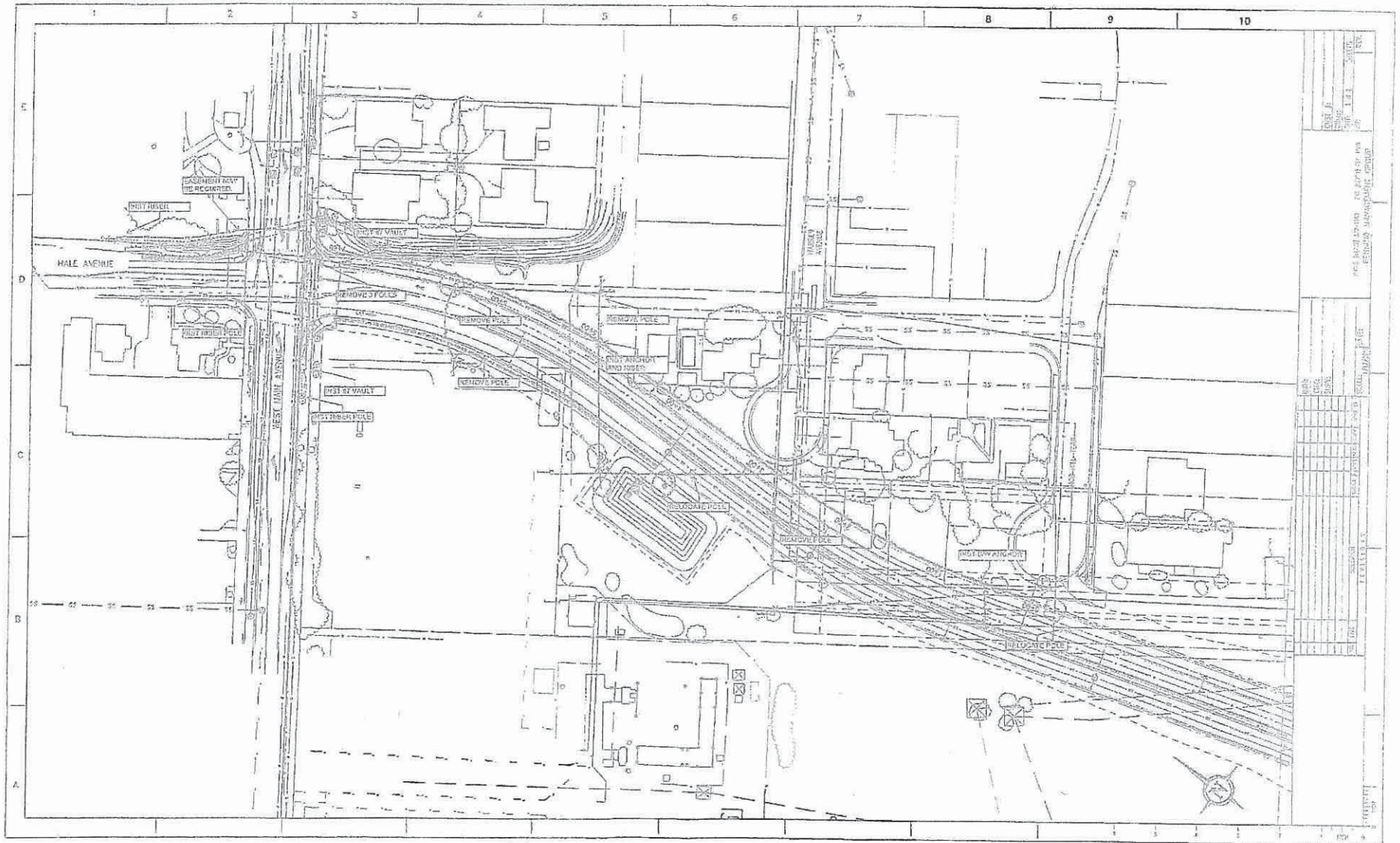
Cost Proposal
 Submitted by Pennino Management Group
 February 6, 2018

Pennino Management Group (PMG) has estimated the following hours & fees associated with the various tasks presented in the Scope of Work. The following fee schedule has been prepared based on the current available information. PMG will only bill for hours worked on the project and will obtain written consent from Mark Thomas for any additional contract amendments.

Position	Name	Company	Pre-Construction					Construction			Closeout	Total Hours	Rate (per hr.)	Total Fee
			Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18			
Task 1: Utilities Research & Review for Dry Utilities Needs														
Project Manager	Phillip Pennino	PMG	4									4	\$ 195.00	\$ 780.00
Project Support	Kristin MacDonald	PMG	1									1	\$ 100.00	\$ 100.00
Task 2: PG&E Submittal														
Project Manager	Phil Pennino	PMG		2								2	\$ 195.00	\$ 390.00
Project Support	Kristin MacDonald	PMG		1								1	\$ 100.00	\$ 100.00
Task 3: Design Coordination														
Project Manager	Phillip Pennino	PMG			6	5						11	\$ 195.00	\$ 2,145.00
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 3.5: Contracts and Payment														
Project Manager	Phil Pennino	PMG										3	\$ 195.00	\$ 585.00
Project Support	Kristin MacDonald	PMG										1	\$ 100.00	\$ 100.00
Task 4: Temporary Power for Construction														
Project Manager	Phillip Pennino	PMG										0	\$ 195.00	\$ -
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 5: Construction														
Project Manager	Phillip Pennino	PMG						6	2	6		14	\$ 195.00	\$ 2,730.00
Project Support	Kristin MacDonald	PMG						1	1	1		3	\$ 100.00	\$ 300.00
Task 6: Fiber Coordination														
Project Manager	Phillip Pennino	PMG	4	4	4	4		3	3	3		21	\$ 195.00	\$ 4,095.00
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 7: Close Out														
Project Manager	Phillip Pennino	PMG									1	1	\$ 195.00	\$ 195.00
Project Support	Kristin MacDonald	PMG									1	1	\$ 100.00	\$ 100.00
Sub-Consultants														
MFL2 Design	Mike Leroy	MFL2	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00						\$ 6,000.00
														\$ 6,000.00
Direct Expenses														
Mileage	N/A	N/A	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00				\$ 1,005.00
Travel	N/A	N/A												\$ 880.00
Reimbursable (printing, postage, etc.)	N/A	N/A	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$45.00			\$ 125.00
GRAND TOTAL													\$	19,215.00

Reimbursable Expenses:

- * Mileage is billed at \$0.545 per mile
- * Printing is billed at B&W \$0.0205 & Color \$0.0943
- * Out of Pocket Expenses (Billed at cost plus 10% and includes such items as travel expenses, freight, equipment rental, fees, subcontractors, postage, printing or reproduction fees, supplies, etc.)





February 8, 2018
Proposal PA18.1007.PR

Michael Cooper
Mark Thomas & Company
3000 Oak Road, Suite 650
Walnut Creek, CA 94597

Proposal for Geotechnical Services, Hale Avenue Extension – Warren Avenue & Nob Hill Terrace Cul-de-sacs, Morgan Hill, California

Geo-Logic Associates (GLA) is pleased to present this proposal to provide geotechnical services related to the design of cul-de-sacs at the western termini of Warren Avenue and Nob Hill Terrace associated with the Hale Avenue Extension project in Morgan Hill, California.

PURPOSE AND SCOPE OF SERVICES

The objective of our investigation is to explore the existing pavement sections at the west end of Warren Avenue and Nob Hill Terrace, sample and test the subgrade soil, and provide recommendations for grading and pavement sections for the cul-de-sacs. Our proposed scope of services is discussed below.

1. A site reconnaissance to observe surface site conditions and to mark the exploration locations for Underground Service Alert (USA).
2. Obtain an encroachment permit from City of Morgan Hill for our field work. Because traffic at the west end of these streets is very light, we plan to provide minimal traffic control with cones and signs during our work.
3. Notify Underground Service Alert of our exploration so their member companies can check the boring locations for underground utilities.
4. Coordinate our field exploration with the City.
5. Drill two (2) exploratory borings up to a depth of about 2 feet to measure the existing pavement section and to identify the subgrade soil. Bulk sample of the subgrade soil will be collected for laboratory testing.
6. Perform laboratory R-value testing on the bulk samples.
7. Perform engineering analysis of the collected data.
8. Prepare a letter presenting our findings and recommendations. The letter will summarize work we performed, the existing pavement sections, and recommendations for grading and pavement sections for the new cul-de-sacs.

UNDERSTANDING AND ASSUMPTIONS

This proposal is based on the following assumptions:

- An encroachment permit is required by the City of Morgan Hill which will require traffic control plans. We have assumed the City will not require the traffic control plans to be prepared and signed by a registered Traffic Engineer. Additional fee will be required if the traffic control plans are to be prepared and signed by a registered Traffic Engineer.
- Traffic at the work areas is very light; therefore, only limited traffic control with cones and signs will be provided during our field work. If full traffic control is required, additional fees will be necessary.

SCHEDULE

We are prepared to begin work with your written approval. The project schedule will largely depend on the permit process and drilling equipment availability. After drilling, laboratory testing would take about two weeks to complete. Our letter should be ready about two weeks after completion of laboratory testing.

FEE

We propose to perform the above scope of work for a Lump Sum of \$6,800. Monthly invoices will be submitted for work completed. If additional services beyond those listed above are required during this investigation, such as meetings, or due to unforeseen conditions, additional authorization will be requested.

AUTHORIZATION

Please provide a change order to our current contract with your firm on the Hale Avenue Extension project.

CLOSURE

We appreciate the opportunity to provide these services. If you have any questions, please contact us at (408) 778-2818.

Sincerely,

Geo-Logic Associates



Chalerm (Beeson) Liang, GE
Supervising Geotechnical Engineer



RATE SCHEDULE (I-1)

EXHIBIT A

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2018*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$412
Principal	\$381
Sr. Engineering Manager	\$322
Engineering Manager	\$276
Practice Area Leader	\$276
Sr. Project Manager	\$233
Sr. Technical Lead	\$233
Project Manager	\$192
Technical Lead	\$192
Sr. Project Engineer	\$162
Sr. Technical Engineer	\$162
Project Engineer	\$140
Design Engineer II	\$124
Design Engineer I	\$101
Sr. Technician	\$119
Technician	\$86
Intern	\$59

Survey Services

Sr. Survey Manager	\$215
Survey Manager	\$200
Sr. Project Surveyor	\$180
Project Surveyor	\$150
Sr. Surveyor	\$135
Surveyor	\$120
Lead Survey Technician	\$145
Sr. Survey Technician	\$120
Survey Technician	\$100
Survey Intern	\$70
Single Chief	\$130
Single Chainman	\$115
Apprentice	\$75
1 Person Field Crew	\$170
2 Person Field Crew	\$270
3 Person Field Crew	\$350

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$243
LAUD Division Manager	\$206
Sr. LAUD Project Manager	\$181
LAUD Project Manager	\$165
Sr. Project Landscape Architect	\$124
Project Landscape Architect	\$108
Landscape Designer	\$84
Intern	\$59

Project Support/Coordination Services

Sr. Project Accountant	\$124
Project Accountant	\$101
Sr. Project Coordinator	\$121
Project Coordinator	\$97
Sr. Project Assistant	\$90
Project Assistant	\$65
Sr. Technical Writer	\$105
Technical Writer	\$65
Sr. Graphic Designer	\$113
Graphic Designer	\$81

Special Services

Sr. Inspector	\$121
Inspector	\$87
Expert Witness	\$390
Strategic Consulting	\$390

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2018

PAGE 1 OF 1

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

126-04-17-008

EXHIBIT "1"

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
Mark Thomas & Company

THIS AGREEMENT is entered into and becomes effective on 2/6/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Mark Thomas & Company 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 January 18, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to complete the Hale Avenue Extension project plans and specifications as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$401,873. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred One Thousand Eight Hundred Seventy Three dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. Insurance Types and Amounts.

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

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

7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

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

10. Independent Contractor. CONSULTANT is an independent contractor and not an agent or employee of CITY.

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

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

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

Address of CONSULTANT is as follows:

Mark Thomas & Company
attn: Mike Cooper, Senior Project Manager
2290 North First Street, Suite 304
San Jose, CA 95131

Address of CITY is as follows:

Development Services Center	with a copy to:
attn: David Gittleson	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. Maintenance of Records.

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

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

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

- 20.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

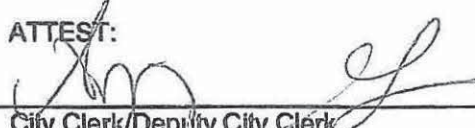
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

 Michelle Wilson

Print Name

Date: 2/7/17

APPROVED AS TO FORM:

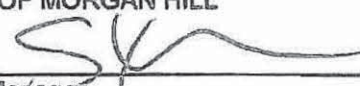

 City Attorney

Donald A. Larkin

Print Name

Date: 2/2/2017

CITY OF MORGAN HILL


 City Manager

Steve Rymer

Print Name

Date: 2/6/17

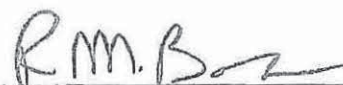
Mark Thomas & Company

By: 

Title: Sasha Dansky, Principal/Vice President
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: January 5, 2017



By:

Title: Matt Brezan, Secretary
 Print Name and Title of Signer.

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

Date: January 5, 2017

**EXHIBIT A
SCOPE OF SERVICES**

Exhibit A
HALE AVENUE EXTENSION PROJECT

SCOPE OF WORK

January 5, 2017

City of Morgan Hill (City) and Mark Thomas & Company, Inc. (MTCO) entered into an agreement for the preparation of contract documents for the Hale Avenue Extension project in April 2011. The project is to extend Hale Avenue from its present terminus at West Main Avenue in the north to the junction of Spring Avenue and DeWitt Avenue in the south, a distance of approximately 4,700 feet. The new road will have one traffic lane in each direction and a median. Bicycle/pedestrian paths, sidewalks, shoulder areas, landscape areas, bio swales, retaining walls and sound walls are proposed along sections of the roadways. Other proposed improvements include new storm drainage facilities, two stormwater detention ponds, water mains, and light standards. The project was developed to the 90% completion level before it was suspended in 2013. The contract for the project has subsequently expired. City would like to complete the contract documents to prepare the project for construction in 2018. The scope of work presented below has been developed based on a meeting held between City and MTCO on December 17, 2015, and subsequent communications with the City. MTCO will perform the work described herein, and will diligently perform this scope of work and will be responsible for items of work under this agreement to the extent that issues arising from the performance of these services are within our reasonable control and that MTCO's obligation to indemnify and defend are limited to the extent actually caused by MTCO in the performance of this scope of work.

The scope of work assumes that the project features remain unchanged from the previous contract with the following exceptions:

- In conformance with current C.3 requirements, add Biotreatment facilities to treat stormwater runoff from the portions of the new roadway that will not be draining to the detention ponds.
- Add soundwall per EIR
- Convert plans to Civil 3D- Optional
- Convert specifications to Caltrans 2015-Optional

1. Project Management

- Supervise, coordinate, and monitor project development.
- Maintain and coordinate project files throughout the contract period.
- Prepare and regularly update a detailed Critical Path Method (CPM) schedule.
- Prepare and submit monthly progress reports.
- Provide a monthly invoice, by task, that will present charges at agreed to hourly rates.
- Perform Quality Assurance/Quality Control review at milestone submittals.

Deliverables:

- *CPM Schedule and Monthly Updates*
- *Monthly Invoices and Progress Reports*
- *Quality Process Documentation*

2. Surveying

2.1. Plats and Legal Descriptions

- Prepare plat exhibits and legal descriptions for easement and right-of-way acquisitions. One plat exhibit and legal description per parcel will be prepared showing Public Street Easements, Slope Easements and Temporary Construction Easements. Separate plats and legal descriptions will be prepared for public utility easements and utility vacations. One round of review comments will be incorporated. The anticipated number of plat exhibits and legal descriptions is as follows:

Acquisition Type	Number of Plats & Legals
Public Street Easements, Slope Easements and Temporary Construction Easements	15
Public Utility Easements	5
Utility Vacations	5

2.2. Supplemental Field Surveys

- Conform Topographic Survey - Topographic surveys will be conducted at up to four (4) locations to assist in the determination of conform elevations.
- Positive Utility Pothole Survey - The locations and elevations of positive utility potholes will be surveyed using Real Time Kinematic (RTK) GPS or conventional survey methods.

Deliverables:

- *Plats and Legal Descriptions (25 total)*
- *AutoCAD file with topographic survey information*

3. Geotechnical Report

- Review the Draft Geotechnical Report that has been prepared for the project in 2012.
- Incorporate comments from City.
- Perform a site reconnaissance to observe existing surface conditions, focusing on changes since the draft report was prepared.
- Prepare a 100% final geotechnical investigation report presenting findings, conclusions and recommendations for the project.

Deliverables:

- *Final Geotechnical Report (10 copies)*

4. Potholing

- Contract with a potholing firm to perform up to ten (10) potholes of existing utilities at locations where proposed improvements may conflict with existing utilities. Pothole locations will be determined based on utility mapping obtained from utility companies.
- Locations and elevations of the potholes will be surveyed under Task 2.2.

Deliverables:

- *Layout location and depth of pothole results*

5. Utility Company Coordination

- Utility Identification and Verification – Collect updated as-built information of existing utilities from utility companies and City. Verify that existing utilities have been shown in the project plans.
- Utility Relocation Exhibits - Identify utility conflicts and prepare relocation exhibits to be used in coordinating with utility companies as they design the relocations of their utilities for up to three (3) utility companies.
- Utility Relocation Coordination - Coordinate with up to three (3) utility companies for relocations. MTCO will review relocation plans to be prepared by the utility companies. MTCO will review liability letters submitted by utility companies, and if necessary, prepare a draft utility agreement for City's signature. MTCO will also prepare utility relocation notices.

Deliverables:

- *Copies of correspondence with utility companies*
- *Utility relocation exhibits*

6. Meetings

6.1. Project Coordination Meetings

- Hold a kick-off meeting with City staff.
- Hold up to six (5) coordination meetings with stakeholders and City staff to coordinate project progress.
- Prepare meeting agenda and minutes for the above meetings.

6.2. Commission and Council Meetings

- Assist City in making up to two (2) presentation to City commissions and Council.
- Prepare draft presentation material (PowerPoint) for City's use in these presentation.
- Attend meetings to assist City staff in responding to questions from commissioners and council members. This will be considered extra work, and will be performed when requested by the City, on a time and material basis

Deliverables:

- *Meeting agenda (6 meetings)*
- *Meeting minutes (6 meetings)*
- *Draft PowerPoint presentations (2 meetings) – This will be considered extra work, and will be performed when requested by the City, on a time and material basis.*

7. Contract Documents

7.1. 95% PS&E Submittal

- Review previously submitted 90% Plans, Specifications and Estimate (PS&E) package for conformance with current design standards and guidelines.
- Update PS&E package to conform to current design standards and guidelines. The basis of the technical specifications shall be the Caltrans Standard Special Provisions for the 2015 Standard Specifications.

- Update project plans to comply with current C.3 requirements including Bioretention basins.
- Revised Civil plans to be in Civil 3D format.
- Review quantity estimates, update unit prices, and prepare an updated cost estimate.

7.2. 100% Submittal

- Prepare the 100% level of PS&E documents for the project that will be considered ready for bid advertisement.
- Update and incorporate comments received on the 90% submittal into the 100% PS&E documents.
- Revise cross sections of the improvements at 50-foot intervals on tangents, at 25-foot interval for curves and at locations of vertical and horizontal alignment changes, in Civil 3D format. The cross sections shall be to scale and presented on grid sheets to match bid plans. The cross-sections will not be part of the contract documents, but are rather intended to be provided to the contractor as supplemental information.
- Contract Bid Documents - Prepare and submit Contract Bid Documents to the City for final review and comment.
- Incorporate one (1) round of reviews and prepare a bid package. Comments are anticipated to be minor. City will be responsible for reproduction of the bid documents.
- Combine technical specifications with City-provided boiler plate specifications for final production.

Deliverables:

- *95% Plans, Specifications, Estimate – 6 hard copies (11"x17")*
- *100% Plans, Specifications, Estimate – 6 hard copies (11"x17")*
- *Design Cross Sections – 1 copy (11"x17")*
- *Bid Set – PDF copy*

8. Permitting Support

- Tree Inventory and Report - conduct an inventory and assessment of all Significant Trees pursuant to the City of Morgan Hill Tree Ordinance (Chapter 12.32 of the Municipal Code – Restrictions on Removal of Significant Trees) within and adjacent to the Project Area.
- Wetland Delineation - conduct protocol level jurisdictional wetlands delineation. Prepare a Section 404 jurisdictional wetlands delineation report in the format required by the local District of the Corps of Engineers along with a report and map of potential jurisdictional areas.
- Rare Plant Surveys and Report – conduct a protocol-level rare plant survey. This survey would be timed to coincide with the peak-blooming period of rare plant species known from the project vicinity.
- Section 404 Nationwide Permit Application – Prepare and submit a pre-construction notification (PCN) to the Corps for consideration under the Nationwide Permit program. Attend site visits with the Corps and respond to questions from the Corps about the PCN and the project.
- Section 401 Water Quality Certification – Prepare and submit a Section 401 Water Quality Certification to the Regional Water Quality Control Board (RWQCB).

- Section 1602 Streambed Alteration Agreement - prepare and submit a Section 1602 Lake and Streambed Alteration Agreement (LSAA) for the project. The LSAA covers maintenance activities with the potential to alter a stream- or lake-bed or –bank, in addition to potential wildlife habitat on their margins.
- Section 7 Biological Assessment and Coordination - prepare the Section 7 Biological Assessment report and coordinate with USFWS upon consultation initiation by the Corps.
- Provide consultation services in verifying that the mitigation measures identified in the environmental documents (to be provided by the City) are properly incorporated in the design document.
- NOTE: Portions of the work detailed above may be able to be eliminated if covered in the Project EIR currently being prepared for the City.

Deliverables:

- *Significant Tree Assessment Report*
- *Wetland Delineation Report*
- *Rare Plant Survey Report*
- *Section 404 Permit Package*
- *Section 401 form*
- *Section 1602 Permit Package*
- *Section 7 Biological Assessment*

9. Bidding Support- OPTIONAL- May be included in subsequent contract amendment at time of construction.

- Provide minor clarification of PS&E documents
- Provide information in response to bidders' questions regarding the bid documents
- Attend Pre-Bid Meeting
- Prepare addenda to the bid documents
- Attend Bid Opening and assist in preparation of a bid summary

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

Deliverables:

- *Responses to bidders' questions*
- *Addenda to contract documents*

10. Construction Support- OPTIONAL- May be included in subsequent contract amendment at the time of construction.

10.1. Design Support During Construction

- Attend a pre-construction meeting
- Provide ongoing consultation and interpretation of contract documents

- Respond to Requests for Information (RFI) made by the Contractor as coordinated through the Resident Engineer
- Perform periodic field visits at the request of the Resident Engineer
- Provide design support to address unforeseen conflicts encountered in the field
- Review change orders and make recommendations for approval
- Review submittals and shop drawings and recommend revisions or acceptance

Deliverables:

- *Responses to submittals and RFIs*

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

10.2. Record Drawings

- Review for completeness and accuracy marked-up drawings provided by the Resident Engineer.
- Provide "as-built" record drawings on Mylar using the marked-up Contractor drawings.
- Consultant has provided a budget for this task as an estimate only. Actual level of effort will be determined when red-lined plans are provided to the Consultant by City's construction manager.

Deliverables:

- *One (1) set of Mylar as-built drawings*

11. Optional Tasks – NOT INCLUDED IN THIS CONTRACT SCOPE AND FEE

11.1. Field Percolation Testing

- Perform field percolation tests in the two proposed detention pond areas:
 - Perform a site reconnaissance to mark locations of our exploration. City will secure right-of-entry to the testing sites.
 - Drill and prepare six percolation test holes (three at each detention pond sites) to a depth of about 5 feet below ground surface.
 - Perform percolation tests in the test holes to measure percolation rates.
 - Perform engineering analysis of the collected data.
 - Include the measured percolation rates in the 100% geotechnical investigation report discussed above.

11.2. Right of Way Acquisition Support

- Prepare individual acquisition exhibits on aerial photo background for use by City's right of way acquisition team for discussion with home owners.

- Install “show-me” stakes for proposed acquisition areas to assist City’s right of way acquisition team when negotiating with property owners. All show-me stakes will be provided within a single 5-day period. Show-me stakes outside of this window can be provided as extra work.

Exhibit B
City of Morgan Hill
Hale Avenue Extension Project
MARK THOMAS & COMPANY, INC.
1/5/2017

		MTC														Subconsultants						TOTAL COST		
		Principal \$357	Senior Project Manager \$225	Senior PM (Structural) \$225	Senior Survey Manager \$210	Senior Project Engineer \$158	Senior Technical Engineer \$158	Senior Technical Engineer (Structural) \$158	Design Engineer \$117	Project Surveyor \$158	Senior Survey Technician \$123	Graphic Designer \$78	Project Coordinator \$116	2 Person Field Party and Vehicle \$297	Total Hours	Labor Cost	Expenses	Total	Pacific Geotechnical Engineering	Phoenix Design Group	Y&C Transportation Consultants, Inc.		WRA Environmental Consultants, Inc.	Sub Mark Up 5%
100	Task 1: Project Management																							
	1 Project Management	8	80									16		104	\$22,712		\$22,712						-	\$22,712
	Subtotal Phase 100	8	80	0	0	0	0	0	0	0	0	16	0	104	\$22,712	\$0	\$22,712	\$0	\$0	\$0	\$0	\$0	\$0	\$22,712
200	Task 2: Surveying																							
	1 2.1 Plats and Legal Descriptions				50				85	250				385	\$54,680		\$54,680						-	\$54,680
	2 2.2 Supplemental Field Surveys				4				8	24			24	60	\$12,184		\$12,184						-	\$12,184
	Subtotal Phase 200	0	0	0	54	0	0	0	93	274	0	0	24	445	\$66,864	\$0	\$66,864	\$0	\$0	\$0	\$0	\$0	\$0	\$66,864
250	Task 3: Geotechnical Report																							
	1 Geotechnical Report		2			8								10	\$1,714		\$1,714	14,875					744	\$17,333
	Subtotal Phase 250	0	2	0	0	8	0	0	0	0	0	0	0	10	\$1,714	\$0	\$1,714	\$14,875	\$0	\$0	\$0	\$744	\$17,333	
251	Task 4: Potholing																							
	1 Potholing					4		8						12	\$1,568	\$12,000	\$13,568						-	\$13,568
	Subtotal Phase 251	0	0	0	0	4	0	8	0	0	0	0	0	12	\$1,568	\$12,000	\$13,568	\$0	\$0	\$0	\$0	\$0	\$0	\$13,568
252	Task 5: Utility Coordination																							
	1 Utility Coordination		16			40		60						116	\$16,940		\$16,940						-	\$16,940
	Subtotal Phase 252	0	16	0	0	40	0	60	0	0	0	0	0	116	\$16,940	\$0	\$16,940	\$0	\$0	\$0	\$0	\$0	\$0	\$16,940
440	Task 6: Meetings																							
	1 6.1. Project Coordination Meetings		16	3		16			0	0	0	0	0	35	\$6,803		\$6,803						-	\$6,803
	Subtotal Phase 440	0	16	3	0	16	0	0	0	0	0	0	0	35	\$6,803	\$0	\$6,803	\$0	\$0	\$0	\$0	\$0	\$0	\$6,803
540	Task 7: Contract Documents																							
	1 7.1. 95% PS&E Submittal		12	11		80	120	28	120		48			419	\$61,143		\$61,143						-	\$61,143
	2 7.2. 100% Submittal		12	6		60	120	8	120		24			350	\$50,746		\$50,746		28,020	18,000		2,301	\$99,057	
	Subtotal Phase 540	0	24	17	0	140	240	36	240	0	72	0	0	769	\$111,889	\$0	\$111,889	\$0	\$28,020	\$18,000	\$0	\$2,301	\$160,210	
550	Task 8: Permitting Support																							
	1 Permitting Support		12			24								36	\$6,492		\$6,492				\$7,900	2,895	\$67,287	
	Subtotal Phase 550	0	12	0	0	24	0	0	0	0	0	0	0	36	\$6,492	\$0	\$6,492	\$0	\$0	\$0	\$7,900	\$2,895	\$67,287	
SUBTOTAL PS&E PHASE HOURS		8	150	20	54	232	240	36	308	93	346	0	16	24	1527									1,527
SUBTOTAL PS&E PHASE COST		\$2,856	\$33,750	\$4,500	\$11,340	\$36,656	\$37,920	\$5,688	\$36,036	\$14,694	\$42,558	\$0	\$1,856	\$7,128		\$234,982	\$12,000	\$246,982	\$14,875	\$28,020	\$18,000	\$57,900	\$5,940	\$371,717
OPTIONAL TASKS																								
	1 CAD conversion		4			8	16				8			36	\$5,316		\$5,316						-	\$5,316
	2 Specification conversion					40	40								\$12,640		\$12,640						-	\$12,640
	3 Contingency														\$0		\$0						-	\$12,200

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT B
 MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
 Expires June 30, 2017*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$388
Principal	\$357
Sr. Engineering Manager	\$313
Engineering Manager	\$267
Practice Area Leader	\$267
Sr. Project Manager	\$225
Sr. Technical Lead	\$225
Project Manager	\$186
Technical Lead	\$178
Sr. Project Engineer	\$158
Sr. Technical Engineer	\$158
Project Engineer	\$135
Design Engineer II	\$117
Design Engineer I	\$97
Sr. Technician	\$113
Technician	\$81
Intern	\$56

Survey Services

Sr. Survey Manager	\$210
Survey Manager	\$200
Sr. Project Surveyor	\$184
Project Surveyor	\$158
Sr. Surveyor	\$144
Surveyor	\$119
Lead Survey Technician	\$148
Sr. Survey Technician	\$123
Survey Technician	\$87
Survey Intern	\$70
Single Chief	\$128
Single Chainman	\$112
Apprentice	\$76
1 Person Field Crew	\$170
2 Person Field Crew	\$297
3 Person Field Crew	\$382

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$236
LAUD Division Manager	\$200
Sr. LAUD Project Manager	\$174
LAUD Project Manager	\$158
Sr. Project Landscape Architect	\$119
Project Landscape Architect	\$104
Landscape Designer	\$81
Intern	\$56

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

Page 1 of 2

EXHIBIT B
 MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
 Expires June 30, 2017*

HOURLY CHARGE RATES

Special Services

Sr. Inspector	\$116
Inspector	\$82
Expert Witness	\$390
Strategic Consulting	\$390

Project Support/Coordination Services

Sr. Project Accountant	\$121
Project Accountant	\$98
Sr. Project Coordinator	\$116
Project Coordinator	\$93
Sr. Project Assistant	\$87
Project Assistant	\$62
Sr. Technical Writer	\$102
Technical Writer	\$64
Sr. Graphic Designer	\$109
Graphic Designer	\$78

OTHER DIRECT COSTS

Reimbursables including, but not limited to:	
Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

EXHIBIT C
SCHEDULE OF PERFORMANCE

Task Name	Duration	Start	Finish	End users
1. Notice to Proceed	1 day	Mon 2/6/17	Mon 2/6/17	
2. Kickoff Meeting	1 day	Tue 2/7/17	Tue 2/7/17	1
3. Supplemental Topic	10 days	Wed 2/8/17	Tue 2/21/17	2
4. Paving	5 days	Wed 2/22/17	Tue 2/28/17	3
5. Utility Company As-Built	10 days	Wed 2/8/17	Tue 2/21/17	2
6. Prepare 90% PS & E	40 days	Wed 2/22/17	Tue 4/18/17	3
7. City Review	35 days	Wed 4/19/17	Tue 5/31/17	6
8. Prepare 100% PS&E	35 days	Wed 5/10/17	Tue 5/30/17	7
9. Prepare Bid Documents	10 days	Wed 5/10/17	Tue 5/23/17	7
10. City Review	10 days	Wed 5/31/17	Tue 6/13/17	8,9
11. Prepare Plans & Legal Descriptions	10 days	Wed 5/10/17	Tue 5/23/17	7
12. Prepare Utility Relocation Exhibits- Submit to Utility Companies	5 days	Wed 5/10/17	Tue 5/16/17	7
13. Finalize Geotechnical Report	10 days	Wed 4/19/17	Tue 5/2/17	6
14. Permitting	20 days	Wed 2/8/17	Tue 5/30/17	2
15. Planning Commission		Tue 6/13/17		8
16. City Council		Wed 6/28/17		15



MARK THOMAS

March 21, 2019

Project No.: SJ-17101

Mr. David Gittleson
City of Morgan Hill
Peak Avenue
Morgan Hill, CA 95037

RE: Hale Avenue Extension- Additional Services

Dear David:

As previously discussed, Mark Thomas kindly requests a budget increase for the Hale Avenue Extension (Project) Plans, Specifications, and Estimate (PS&E) and Environmental Permitting as additional scope of work is necessary in order to complete the project.

SCOPE OF SERVICES

INTERSECTION IMPROVEMENTS:

REVISIONS TO SPRING-HALE INTERSECTION

The Spring/Hale intersection must be revised to widen northbound DeWitt Avenue at the approach to Spring Avenue, and to extend the median island to prohibit left turns from Buck Hill to northbound Dewitt. This will eliminate the three way stop and reduce congestion.

REVISIONS TO HALE/MAIN INTERSECTION

Due to the PL-566 project, Hale Avenue will require complete reconstruction and widening between Main Avenue and Hillwood Lane. This will affect the intersection of Hale and Main. Thus, the Hale Extension project must be revised at Hale/Main to align with the future widening of Hale Avenue.

STREET LIGHT AND PEDESTRIAN IMPROVEMENTS

Reposition street lights to be consistent with the other segments of Hale Avenue. The pedestrian path shall be aligned to follow the curvature of the roadway thus eliminating pedestrian lighting, and add curbs/gutters to secure the roadway in place.



(408) 453-5373
2290 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

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Packet Pg. 161

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

► March 21, 2019

ENVIRONMENTAL PERMITTING

The permits also need to be revised to include the SCVWD PL-566 project improvements. Additional revisions have been required from the environmental agencies that were unforeseen. See attached Scope and Fee from WRA.

Basin Research Associates will prepare a **Historic Properties Survey and Report**, as required by the Corps. BASIN proposes to develop a Historic Properties Survey Report/Finding of Effect (HPSR) document to meet the requirements of the Corps. BASIN's primary tasks will focus on: (1) reviewing previous archaeological surveys and completing an archaeological assessment that identifies cultural resources within 500 feet of the proposed project location; and, (2) utilize the information obtained on the location, type and distribution of any resources to review potential project impacts and develop appropriate mitigation actions.

The identification effort will include: (1) development of an Archaeological Area of Potential Effects (APE); (2) completion of an archival and literature search within 0.25 miles by the California Historic Resources Information System, Northwest Information Center (CHRIS/NWIC); (3) an archaeological field review of project areas; (4) a request to the Native American Heritage Commission (NAHC) for a review of the Sacred Lands File; and, (5) contact with locally knowledgeable Native Americans identified by the NAHC. The field review will be completed by an Archaeologist who meets the Standards of the Secretary of the Interior for archaeology.

The results will be prepared in a *Historic Properties Survey Report* (HPSR) format and provide a description of the project, present minimal background context and regulatory information, provide the results of the archival and field research, a discussion of the archaeological sensitivity of the proposed projects, and, the results of Native American consultation and other interested party consultation. The *Finding of Effect* (FOE) component of the document will discuss if any significant historic properties will be affected by the project with mitigation or protection measures recommended as appropriate.

Appendices will include, as appropriate, graphics and photographs; the results of the records search; and, Native American consultation. BASIN anticipates one comment round.



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► March 21, 2019

OPTIONAL SERVICES

Optional services on an "as needed basis" as directed by the City.

TOTAL ESTIMATED FEE: **\$88,700**

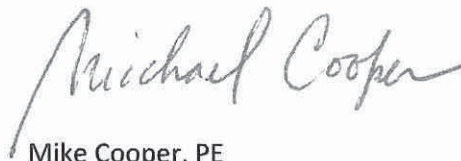
Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

MARK THOMAS



Sasha Dansky, PE
Principal/Vice President



Mike Cooper, PE
Project Manager



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Packet Pg. 163

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COST PROPOSAL FOR PROJECT SCOPE - Morgan Hill: Hale Avenue Extension Project

 MARK THOMAS		Mark Thomas																	Subconsultants					TOTAL COST		
		Principal	Sr. Project Manager	Sr. Project Engineer	Design Engineer II	Design Engineer I	Survey Manager	Project Surveyor	Survey Technician	Apprentice	2 person Field Crew	LAUD Project Manager	Landscape Designer	Sr. Project Accountant	Project Accountant	Sr. Project Coordinator	Sr. Project Assistant	Project Assistant	Total Hours	Total MT Cost	Y&C TRANSPORTATION DBE	WRA DBE	PENNINO Non-DBE		BASIN RESEARCH ASSOCIATES DBE	Sub Mark Up 10%
1.0	REVISIONS TO SPRING/HALE INTERSECTION																									
1.1	Revisions to Spring/Hale Intersection and Media	2	8		40	40													90	\$11,074	5,000	2,500		-	\$750	\$19,324
	Subtotal Phase 1	2	8	0	40	40	0	0	0	0	0	0	0	0	0	0	0	0	90	\$11,074	\$5,000	\$2,500	\$0	\$0	\$750	\$19,324
2.0	REVISIONS TO HALE/MAIN INTERSECTION																									
2.1	Revisions to Hale/Main Intersection	2	8		10	20													40	\$5,624	-	-	-	-	\$0	\$5,624
	Subtotal Phase 2	2	8	0	10	20	0	0	0	0	0	0	0	0	0	0	0	0	40	\$5,624	\$0	\$0	\$0	\$0	\$0	\$5,624
3.0	STREET LIGHTS																									
3.1	Street lights		2		4														6	\$838	5,000	-	-	-	\$500	\$6,338
	Subtotal Phase 3		2	0	4		0	0	0	0	0	0	0	0	0	0	0	0	6	\$838	\$5,000	\$0	\$0	\$0	\$500	\$6,338
4.0	PEDESTRIAN PATH, FLUSH CURBS AND MAINTENANCE BANDS																									
4.1	Pedestrian path, flush curbs and maintenance bands		2		4	40													46	\$4,798	-	-	-	-	\$0	\$4,798
	Subtotal Phase 4	0	2	0	4	40	0	0	0	0	0	0	0	0	0	0	0	0	46	\$4,798	\$0	\$0	\$0	\$0	\$0	\$4,798
5.0	PEDESTRIAN PATH LIGHTS																									
5.1	Pedestrian path lights		2		4	16													22	\$2,470	-	-	-	-	\$0	\$2,470
	Subtotal Phase 5	0	2	0	4	16	0	0	0	0	0	0	0	0	0	0	0	0	22	\$2,470	\$0	\$0	\$0	\$0	\$0	\$2,470
6.0	ENVIRONMENTAL PERMITTING																									
6.1	Environmental Permitting																		0	\$0	-	21,500	-	-	\$2,150	\$23,650
6.2	Historic Properties Survey Report																		0	\$0	-	-	-	10,000	\$1,000	\$11,000
	Subtotal Phase 6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$21,500	\$0	\$10,000	\$3,150	\$34,650
	TOTAL HOURS	4	22	0	58	120	0	0	0	0	0	0	0	0	0	0	0	0	204		0	0	0	0		204
	Anticipated Salary Increases																			\$0	\$0	\$0	\$0	\$0	\$0	\$0
	OTHER DIRECT COSTS																			\$0	\$0	\$0	\$0	\$0	\$0	\$0
	TOTAL COST	\$1,428	\$4,950	\$0	\$6,786	\$11,640	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$24,804	\$10,000	\$24,000	\$0	\$10,000	\$4,400	\$73,204
	OPTIONAL TASKS																									
1.1	Optional services requested by the city																		0	\$15,000	-	-	-	-	\$0	\$15,000
	Subtotal Optional Tasks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$15,000	\$0	\$0	\$0	\$0	\$0	\$15,000
	TOTAL HOURS - OPTIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0		-
	Anticipated Salary Increases																			\$0	\$0	\$0	\$0	\$0	\$0	\$0
	OTHER DIRECT COSTS - OPTIONAL																			\$500	\$0	\$0	\$0	\$0		\$500
	TOTAL COST - OPTIONAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$15,500	\$0	\$0	\$0	\$0	\$0	\$15,500

EXHIBIT 2 March 21, 2019
Mark Thomas & Company, Inc. Rate Schedule
Expires June 30, 2019*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$425
Principal	\$394
Sr. Engineering Manager	\$332
Engineering Manager	\$284
Practice Area Leader	\$284
Sr. Project Manager	\$238
Sr. Technical Lead	\$238
Project Manager	\$195
Technical Lead	\$195
Sr. Project Engineer	\$167
Sr. Technical Engineer	\$167
Project Engineer	\$146
Design Engineer II	\$128
Design Engineer I	\$103
Sr. Technician	\$123
Technician	\$91
Intern	\$60

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$252
LAUD Division Manager	\$230
Sr. LAUD Project Manager	\$200
LAUD Project Manager	\$178
Landscape Architect II	\$145
Landscape Architect I	\$107
Landscape Designer II	\$98
Landscape Designer I	\$72
Intern	\$60

District Management Services

Deputy District Manager	\$247
Sr. Inspector	\$124
Inspector	\$90

Construction Management Services

Resident Engineer	\$236
Construction Inspector	\$159

Survey Services

Sr. Survey Manager	\$225
Survey Manager	\$210
Sr. Project Surveyor	\$190
Project Surveyor	\$160
Sr. Surveyor	\$145
Surveyor	\$125
Lead Survey Technician	\$150
Sr. Survey Technician	\$125
Survey Technician	\$110
Survey Intern	\$75
Single Chief	\$150
Single Chainman	\$125
Apprentice	\$80
1 Person Field Crew	\$175
2 Person Field Crew	\$275
3 Person Field Crew	\$375

Project Support/Coordination Services

Sr. Project Accountant	\$130
Project Accountant	\$103
Sr. Project Coordinator	\$124
Project Coordinator	\$98
Sr. Project Assistant	\$94
Project Assistant	\$66
Sr. Technical Writer	\$107
Technical Writer	\$68
Sr. Graphic Designer	\$117
Graphic Designer	\$83

Grant Writing Services

Sr. Funding Specialist	\$155
Funding Specialist	\$125

Special Services

Expert Witness	\$405
Strategic Consulting	\$405

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2019



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Mariah Dabel, Community Services Supervisor
APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

RECOMMENDATION(S)

1. Approve the Third Amendment to Consultant Agreement with Asset Protection Group Private Security Inc. to a revised not exceed total of \$145,000 for four years; and
2. Authorize the City Manager to execute and administer the amended agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

In July 2016, the City of Morgan Hill entered into an exclusive two-year consultant agreement with Asset Protection Private Group Security, Inc. to provide security at the Community and Cultural Center during events that include alcohol and dancing. Facility renters pay for this service, as needed, through their rental contract fees. The contract also allows for security services to be requested for additional one-time or ongoing events at other locations within the City as needed.

On September 27, 2017, the City Council approved the first amendment to increase compensation due to increased rental activity at the Community and Cultural Center, and the need for other security services within the City.

On May 16, 2018, the City Council approved the second amendment to extend the term for an additional year and increased the compensation to cover the expenses for the additional year.

City staff recommend a third amendment that proposes three changes to the amended agreement:

1. Asset Protection has continued to be a reliable and efficient company and staff recommends using the option to extend the final term to June 30, 2020.
2. Staff recommends the compensation be increased by \$40,000, to a revised not exceed amount of \$145,000, to cover the expenses of the additional year. Rental activity at the Community and Cultural Center continues to be strong.
3. The consultant requested to adjust one rate in the schedule of compensation (hours worked after midnight), as reflected in Exhibit B of the amended agreement. The compensation increase is directly related to increases in the consultant's operating costs.

The schedule of compensation rates is still within the range of the fees submitted in the Request for Proposals conducted in 2016. Staff recommends approving the request.

COMMUNITY ENGAGEMENT: Inform

Before entering into an agreement with Asset Protection, the City conducted a formal Request for Proposals (RFP) to find the best possible security company to meet the needs of the City. The community was informed of this request for proposals on the City website and in the local newspaper.

ALTERNATIVE ACTIONS:

The Council could elect to not approve the amendment and provide additional direction to staff on use of security services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council approved the first amendment to the agreement at the September 27, 2017 Council Meeting, and the second amendment at the May 16, 2018 meeting.

FISCAL AND RESOURCE IMPACT:

Majority of the expenses for this agreement are paid for through charges to facility renters. There is no additional fiscal impact, as security services expenses are budgeted at this level in the adopted Fiscal Year (FY) 2018-19 and FY 2019-20 biennial budget, within the Community Services Department, in the General Fund (010).

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. Asset Protection Group Private Security, Inc. 01 Amend 3

**THIRD AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ASSET PROTECTION GROUP PRIVATE SECURITY, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 24, 2016, for consultant services for a maximum compensation of FORTY-FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$44,500.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of November 27, 2017, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SIXTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$65,500.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of May 30, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED AND FIVE THOUSAND AND NO/DOLLARS. The CONSULTANT AGREEMENT, and the First, and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 24, 2016, until June 30, 2020. The City Manager is authorized to extend the term of this Agreement, for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED AND FORTY-FIVE THOUSAND AND NO/DOLLARS (\$145,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B** dated April 17, 2019, attached hereto and incorporated herein by

reference. 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."

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

"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."

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

"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."

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

"9. **Compliance with Law**.

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

9.2 Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal

Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

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2. Conflicts. In the event of a conflict between the terms and provisions of this THIRD Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendments, the terms of this Third Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

ASSET PROTECTION GROUP PRIVATE
SECURITY, INC.

LARRY A. JOHNSON
Larry A. Johnson
 By: _____
 Title: PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 03-29-2019

DEBRA JOHNSON
Debra Johnson

By: _____

Title: SECRETARY

Print Name and Title of Signer.

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

Date: 03-29-2019

APRIL 17, 2019

REVISED EXHIBIT B TO THIRD AMENDMENT TO AGREEMENT
SCHEDULE OF COMPENSATION RATES

Weekdays (Monday-Thursday) \$25.00 per hour

Weekends (Friday, Saturday, Sunday) \$25.00 per hour

After midnight \$30.00 per hour

Holidays \$30.00 per hour

Exhibit 1

**SECOND AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, INC**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on May 30, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, ASSET PROTECTION GROUP PRIVATE SECURITY, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 16, 2018.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 24, 2016, for consultant services for a maximum compensation of FORTY-FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$44,500.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of November 27, 2017, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SIXTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$65,500.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 24, 2016, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. **Amount.** Total compensation to CONSULTANT under this Agreement during the term set forth in Section 2 above shall not exceed ONE HUNDRED AND FIVE THOUSAND AND NO/100 DOLLARS (\$105,000.00) and shall be billed based on the rate and basis set forth in revised **Exhibit B** dated April 18, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

City Clerk

Date:

5/31/18

APPROVED AS TO FORM:

City Attorney

Date:

5-23-18

CITY OF MORGAN HILL

City Manager

Date:

5/30/18

ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

4-30-2018

By:

Title:

Print Name and Title of Signer.

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

Date:

4-30-2018

Exhibit 1

176-04-16055

**FIRST AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, INC.,**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/27/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, Asset Protection Group Private Security Inc., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council Approval on September 27, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of 6/24/2016, for consultant services for a maximum compensation of \$44,500 ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

- 1.1. "4.1. **Amount.** Compensation under this Agreement shall not exceed SIXTY FIVE THOUSAND AND FIVE HUNDRED DOLLARS (\$65,500) and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy

City Clerk

Date:

12/4/17

APPROVED AS TO FORM:

City Attorney, Assistant

Date:

11-17-17

CITY OF MORGAN HILL

City Manager

Date:

11-27-17

Asset Protection Group Private Security,
Inc.

By:

Title:

PRESIDENT
LEON A. JOHNSON

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date:

9-15-2017

By:

Title:

SECRETARY
DEBRA JOHNSON

Print Name and Title of Signer.

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

Date:

9-15-2017

Exhibit A

126-04-16-055

CONSULTANT AGREEMENT
Asset Protection Group Private Security, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/24/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Asset Protection Private Group Security, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be security services as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$44,500. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed FORTY FOUR THOUSAND FIVE HUNDRED dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. Insurance Types and Amounts.

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

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

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

10. Independent Contractor. CONSULTANT is an independent contractor and not an agent or employee of CITY.

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

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

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

Address of CONSULTANT is as follows:

Asset Protection Group Private Security, Inc.
1430 Blossom Hill Road
San Jose, Ca 95118

Address of CITY is as follows:

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

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

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

15. Maintenance of Records.

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

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

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

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
 - 20.1. Defense and Indemnification. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 20.2. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
 - 20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
 - 20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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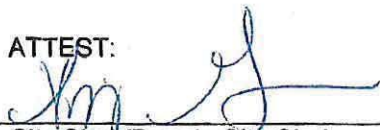
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

 Michelle Wilson
 Print Name

Date: 4/27/16

APPROVED AS TO FORM:


 Interim City Attorney

 Gary M. Baum
 Print Name

Date: 06/21/16

CITY OF MORGAN HILL


 City Manager

Steve Rymer
 Print Name

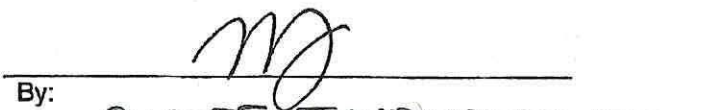
Date: 6/24/16


 By:

LARRY A. JOHNSON
 Title: PRESIDENT

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

Date: 5-23-2016


 By:
 Title: CHIEF FINANCIAL OFFICER
NOLAN JOHNSON

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

Date: 5-23-2016

**EXHIBIT A
SCOPE OF SERVICES**

Special Event and Banquet Security: Provide security services for the City at selected special events and banquets occurring at the Community and Cultural Center or other locations designated by the City. Responsibilities include:

1. Supply the Cities requested number of security officers for special events to provide customer service and a visible presence at the event.
2. Work under the direction of the City Building Coordinator or other staff designated by the City to maintain general order and ensure City policies and procedures are enforced.
3. Ensure that room capacities for events are not exceeded.
4. Verify attendees are over the age of 21 if alcohol is being served.
5. Periodically patrol the Community Center parking lot and grounds during events.
6. Contact the police department in the event of a disturbance, breach of the peace, or other emergency.
7. Ensure that the Community Center or other City facilities are secure and locked after special events have ended and escort the City employee to his or her car after the event.

APRIL 18, 2018
REVISED EXHIBIT B TO SECOND AMENDMENT TO AGREEMENT
SCHEDULE OF COMPENSATION RATES

Weekdays (Monday-Thursday) \$25 per hour

Weekends (Friday, Saturday, Sunday) \$25 per hour

Holidays \$30 per hour

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

As arranged by Community Services Department



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Jennie Tucker, Recreation Manager
APPROVED BY: City Manager

APPROVAL OF DENNIS KENNEDY AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

RECOMMENDATION(S)

Authorize the City Manager to execute, administer, and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Dennis Kennedy Aquatics Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

In November 2018, the City issued a Request for Proposal (RFP) for the Aquatics Center's (AC) concession operations, with the goal of entering into a contract with an experienced food and beverage operator. Public notice was published in the Morgan Hill Times on November 16 and November 23, 2018, and an optional onsite clarification meeting was held on December 11, 2018 at the AC.

Communication with previous concessionaires and to the Morgan Hill Downtown Association and Chamber of Commerce was also included in the RFP outreach.

As a result of the RFP, the City received one (1) proposal from the following vendor:

1. Sycamore Concessions Corporation

Sycamore was the most recent operator at the AC and staff recommends entering into a concessionaire license agreement with Sycamore Concessions Corporation (SCC) for another year.

SCC will continue to offer a variety of menu items including healthy choice options for visitors.

Key terms of the agreement include:

1. City's compensation would be the greater of \$25,000 annually or 18 percent of

the net income (gross sales less sales tax).

2. One-year agreement with an option for the City to renew for two (2) additional one-year terms.
3. Continue to allow visitors to bring outside food and beverage (excluding alcohol) into the facility.

COMMUNITY ENGAGEMENT: Consult

Community Services teammates will continue to solicit and gather feedback from AC customers regarding the provision of concession services. Feedback will be shared with the vendor to assist in making operational changes and adjustments.

ALTERNATIVE ACTIONS:

The Council could direct staff to attempt to negotiate changes to key terms of the agreement with the recommended vendor.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

April 6, 2011 City Council authorized the City Manager to execute a Concessionaire License Agreement with Burrito Azteca.

May 7, 2014 City Council authorized the City Manager to execute a Concessionaire License Agreement with Burrito Azteca.

April 19, 2017 City Council authorized the City Manager to execute a Concessionaire License Agreement with Sycamore Concessions Corporation.

FISCAL AND RESOURCE IMPACT:

This agreement would generate a minimum of \$25,000 in revenue annually to support AC operations. This revenue is accounted for in the adopted biennial budget, in the General Fund (010). (GL# 010.37940)

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. Sycamore Concession Agreement 2019
2. AC Concession RFP 2018 with Addendum

**CITY OF MORGAN HILL
AND
SYCAMORE CONCESSIONS CORPORATION
CONCESSIONAIRE LICENSE AGREEMENT**

This CONCESSIONAIRE LICENSE AGREEMENT ("AGREEMENT") is made this ____ day of _____, 2019 ("Effective Date"), by and between the CITY of Morgan Hill, a municipal corporation ("CITY"), and Sycamore Concessions Corporation ("Sycamore"), a California corporation.

RECITALS

- A. CITY currently operates the Morgan Hill Aquatics Center ("AC").
- B. Sycamore is an experienced food and beverage concessionaire with operations in the City of Berkeley, California and Sonoma, California.
- C. Sycamore desires to license from CITY and CITY desires to license to Sycamore the right to use certain portions of the AC for the purpose of providing food and beverage concession services and vending machine services to the public.

NOW THEREFORE, the parties agree as follows.

AGREEMENT

1. Parties.

A. CITY is the CITY of Morgan Hill, with its principal contact for purposes of this AGREEMENT as follows: Community Services Director, 17575 Peak Avenue, Morgan Hill, CA 95037, phone: 408-782-9154.

B. Sycamore is Sycamore Concession Corporation, a California corporation, with its principal contact for purposes of this AGREEMENT as follows: President, 340 Boulder Brook, Boulder Creek, CA, 95006, , phone: 209-916-5011.

2. Term and Renewal.

A. The "Term" of this AGREEMENT shall be for one year from the Effective Date unless terminated earlier as provided in Section 18 of this AGREEMENT or extended by mutual agreement as provided below. Sycamore's obligation to make final payment and the CITY's right to audit that payment shall survive the termination of this Agreement.

B. Six months after the Effective Date, or anniversary thereof upon renewal, both parties will meet to review the AGREEMENT terms and determine if a one year option to renew will be exercised. Any such renewal shall be by mutual written agreement. This AGREEMENT may be renewed for two (2) one year terms; the maximum term of this Agreement is three years from the Effective Date.

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

enforce any other right available to it under the laws of California or the provisions of this Agreement.

3. Compensation.

A. On or before the 15th day of each month following the Effective Date of this Agreement, Sycamore shall pay to CITY without notice or demand, 18 percent (18%) of "Net Income" as defined below collected by Sycamore from its operations at the AC during the preceding month ("Base Payment"). Sycamore guarantees that the CITY shall receive a Base Payment of at least \$25,000 for each one year period starting from the Effective Date of this Agreement. The same guarantee terms shall apply to any renewals of this Agreement. Each payment shall be accompanied by a report reflecting gross sales totals for each day of operation included in payment, sales tax paid/due and the total due to CITY.

For purposes of this AGREEMENT, "Net Income" shall mean amounts received by Sycamore from any source relating to the license described in Section 4 less sales taxes paid on those revenues.

B. Within 10 days after written notice, Sycamore shall provide the CITY with all financial books, records and receipts requested by CITY for the purpose of verifying the amount of Sycamore's revenues and the accuracy of Sycamore's calculation of the amount of compensation due to the CITY under this AGREEMENT. If an underpayment is determined based upon such review, Sycamore shall remit the balance owing within 30 days of notification by the CITY of its findings.

4. Permission Granted.

CITY hereby licenses to Sycamore and Sycamore hereby licenses from CITY for the term, at the price, and upon the terms, covenants and conditions set forth herein, the right to provide food and beverage concession services and vending machine services at the AC according to the following schedule:

Concession Summary Matrix:

	<u>City Contractor</u>	<u>Swim Meet Organizer</u>
Summer Recreation Swim Season	Exclusive*	
Summer Swim Meets	Allowed	Allowed
Summer Parties and Special Events	Exclusive*	
Vending Machines	Exclusive (year round service desired by City)	

*Aquatics Center customers shall be allowed to bring outside food and beverage (excluding alcohol) into the facility for consumption at the facility. The City may change or adjust this policy at its sole discretion.

5. Premises.

The parties agree that the rights provided by CITY to Sycamore create a license and do not create any tenancy, leasehold or possessory interest in the AC. CITY agrees that Sycamore, upon payment of the fees and charges specified herein, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, shall lawfully use the area designated as the "Premises" as specified in Exhibit "A" during the term of this AGREEMENT for the uses granted.

In carrying out its concession right on the Premises, Sycamore shall not interfere or obstruct the operation of the AC or the public enjoyment and use of the AC. The concession rights herein granted shall be carried on at the AC solely within the limits and confines of the Premises. No temporary stands or other places of operation shall be allowed during any other time without the express written permission of the Community Services Director. In the case of disputes, during the life of this AGREEMENT, over any conditions which may impede upon Sycamore's quiet enjoyment of the concession Premises, the Community Services Director shall have final determination of any solution to such dispute. His or her final determination shall be binding upon all parties in such dispute.

Sycamore shall not use or allow the Premises to be used, in whole or in part, during the term of this AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include those which relate to sanitation, public health and safety.

CITY reserves the right to further develop or improve the Premises as it sees fit; provided that the CITY will use its best efforts to minimize interference on the operation of the concession. At any time during the term of this AGREEMENT, the CITY may, by appropriate resolution fully setting forth the reason therefore, require Sycamore to surrender any portion of the Premises. Should CITY impose such a requirement on Sycamore to surrender, CITY shall provide comparable space at the AC for the continued operation of the concession.

6. Use. The Premises shall be used and occupied by Sycamore as a concessionaire for the preparation and sale of food and beverages for sale to and consumption by visitors and for no other purposes without the CITY'S prior approval.

7. Equipment, Furnishings and Supplies.

A. CITY shall have responsibility and sole discretion regarding the construction, purchase, and/or installation, of: furniture, fixtures, equipment, and interior furnishings to be utilized by Sycamore on the Premises, including, but not limited to, appliances and equipment, sinks, dishwashers, refrigerators, freezers, counters, tables, garbage disposals, and trash compactors.

B. Sycamore shall be solely responsible for the purchase of all food, beverages, paper products, and supplies, including office supplies to be used in its operations.

8. Common Areas.

A. Definition of Common Areas. The term "Common Areas" as used herein means all areas and facilities outside the Premises and within the exterior boundary line of the AC.

B. Sycamore 's Rights in Common Areas. CITY hereby grants to Sycamore, for the benefit of Sycamore and its employees, suppliers, shippers, customers, and invitees, during the Term of this AGREEMENT, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas.

C. Changes. CITY shall have the right, in CITY's sole discretion, so long as it will not unreasonably interfere with Sycamore 's use of the Premises and the accessibility of the public to the Premises, to make changes to or temporarily close the Common Areas.

9. Maintenance and Repairs.

A. CITY's Obligations. CITY shall, at its own expense, keep in good condition and repair the building's roof, foundations, windows, doors and interior and exterior walls, structural condition of interior bearing walls of the Premises, and air conditioning, electrical, steam, heating, ventilating, mechanical, plumbing systems and appliances as well as the parking lots, walkways, driveways, landscaping, fences, signs, and utility installations of the Common Areas and all parts thereof (collectively the "CITY Obligations"). CITY shall not be liable for damages or loss of any kind or nature by reason of CITY's failure to furnish any Common Area services when such failure is caused by accident, breakage, repairs, strikes, lockout, or other labor disturbances or disputes of any character, or by any other cause beyond the reasonable control of CITY.

B. Sycamore's Obligations. Sycamore shall at its own expense, keep in good order and condition: its vending machines, the Premises, and every part thereof including, equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, and ceilings. Sycamore shall complete all maintenance work expeditiously in a first class and workmanlike manner using high quality new materials. Sycamore shall be responsible for emptying trash bins within the Premises in the appropriate trash dumpster and cleaning and removing trash, including the clean-up of spilled food or beverages, from that portion of the Common Area located within twenty (20) feet of the exterior wall of the Premises and the picnic, party and cabana areas when Sycamore provides food and beverage service to parties in said areas. Sycamore shall closely monitor that portion of the Common Area that it is required to maintain and immediately clean-up spilled food or drinks. Sycamore shall also be responsible for collecting all serving trays, drink pitchers and other Sycamore supplies from throughout the Common Area at the end of each business day.

C. CITY and CITY's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same.

D. If Sycamore fails to perform Sycamore's maintenance and repair obligations, CITY may enter upon the Premises after ten (10) days' prior written notice to Sycamore (except in the case of emergency, in which case no notice shall be required), perform such obligations on Sycamore's behalf and put the Premises in good order and condition and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to CITY together with Sycamore 's next monthly compensation payment to the CITY.

E. On the last day of the Term hereof, or on any sooner termination, Sycamore shall surrender the Premises to CITY in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary

wear and tear if the same could have been prevented by good maintenance practices. Sycamore shall repair any damage to the Premises occasioned by the installation or removal of trade fixtures, alterations, furnishings, and equipment made by Sycamore.

F. Notwithstanding any other provision of this Section 9, the parties agree that Sycamore shall repair all Equipment used for purposes of this AGREEMENT with a repair cost of \$500 or less and the CITY shall repair all Equipment used for purposes of this AGREEMENT with a repair cost over \$500. For purposes of this Section 9 F, "Equipment" shall mean the inventory listed on the attached Exhibit "B" which Exhibit may be revised from time to time by mutual written agreement, which in the case of the CITY may be authorized by the Community Services Director; provided however that Sycamore shall be responsible for the cost of repair of any damage or malfunction of the Equipment caused by Sycamore's failure to maintain or by Sycamore's negligence.

10. Alterations and Additions.

A. Sycamore shall not, without CITY's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on, or about the Premises, or the AC during the Term of this AGREEMENT, nor shall Sycamore make any change or alteration to the exterior of the Premises or the exterior of any buildings which are part of the AC. For purposes of this AGREEMENT, "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, and plumbing. In the event that CITY consents to any alteration, improvement, addition, or Utility Installation, if CITY so elects, CITY may require that Sycamore remove any or all of said alterations, improvements, additions, or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. CITY may require Sycamore to provide CITY, at Sycamore's expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure CITY against any liability for mechanics' and materialmen's liens and to insure completion of the work. Should Sycamore make any alterations, improvements, additions, or Utility Installations without the prior written approval of CITY, CITY may, at any time during the Term of this AGREEMENT, require that Sycamore remove any or all of the same. All work with respect to any alteration or addition must be performed in a good and workmanlike manner.

B. Any alterations, improvements, additions, or Utility Installations in or about the Premises that Sycamore shall desire to make and which require the consent of CITY shall be presented to CITY in written form with proposed detailed plans. If CITY shall give its consent, the consent shall be deemed conditioned upon Sycamore acquiring any necessary permits from appropriate governmental agencies, the furnishing of copies thereof to CITY prior to the commencement of the work, and the compliance by Sycamore with all conditions of said permits in a prompt and expeditious manner.

11. Utilities and Services.

A. CITY shall furnish: (i) heating, air conditioning ventilation, electric current, gas and domestic water service in reasonable amounts as required for the normal use and occupancy of the Premise; and (ii) a grease interceptor, sewer line to the kitchen, and kitchen ventilation to the roof. All other services required for operation shall be furnished at Sycamore's expense.

B. Without the prior written consent of CITY, Sycamore shall not use any apparatus or device in the Premises that will in any way increase the amount of electricity, gas or water to be provided by CITY.

C. CITY shall have no obligation to furnish janitorial services to the Premises which shall be furnished by Sycamore at Sycamore's expense.

D. CITY reserves the right to temporarily stop the service of the air conditioning, plumbing, electrical, or other mechanical systems or facilities in any building when necessary by reason of accident or emergency, or for repairs, alterations, replacements, or improvements, that, in the reasonable judgment of CITY, are desirable or necessary, until such repairs, alterations, replacements, or improvements shall have been completed. CITY supports conservation efforts and, to that end, may cooperate with the efforts of national, state, or local governmental agencies or utilities in reducing energy or other natural resource consumption. In connection therewith, CITY reserves the right to limit, restrict, or ration on a reasonably nondiscriminatory basis the use of water, electricity, or any other form of energy or any other service or utility serving the Premises or any building.

12. Menus.

A. Sycamore shall submit to CITY for approval a proposed menu of all food and beverage items, including vending machine items and special event catering selections, and their prices, prior to the offering of any items for sale at the AC. No food or beverage items shall be offered for sale without CITY's prior approval.

B. Sycamore shall offer a reasonably priced menu that contains popular, healthy, freshly prepared items and pre-packaged snacks, and may expand/vary the menu offerings from time to time with the mutual agreement of the City. The menu shall comply with the City's Healthy Food and Beverage guidelines as they apply to concessionaires.

C. Sycamore shall not sell any non-food or non-beverage items without express written consent of the CITY.

D. Sycamore shall not serve or sell alcohol without prior written consent of the CITY.

E. Sycamore shall not sell tobacco products without prior written consent of the CITY.

F. Sycamore shall furnish and post professionally printed menus and signs at the food concession store, cabanas and other mutually agreed upon locations. Sycamore must have these signs in place prior to the start of the summer.

G. For purposes of this Section 12, the Community Services Director is authorized to provide the CITY's consent.

13. Permits. Sycamore shall, at its own expense, comply with all licenses and/or permit requirements of any governmental agency applicable to Sycamore's operations.

14. Signs. Sycamore shall not place any sign upon the Premises without CITY's prior written consent.

15. Displays. With the exception of food or beverage carts located in areas of the Common Area previously approved in writing by the CITY, Sycamore may not display or sell merchandise outside of the defined exterior walls and permanent doorways of the Premises. Sycamore shall not install any exterior lighting, amplifiers, or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs, or radio broadcasts. Sycamore shall not install any window displays without prior approval of the CITY.

16. Hours of Operation. Sycamore shall, during the Term, keep the Premises open for business during the same hours as the AC summer recreation swim hours. Vending machines shall be operable at all times and shall be repaired within 24 hours of oral or written notice from CITY.
17. Minimum Requirements for Sycamore Employees.
- A. Sycamore shall provide its own employees to manage and conduct its concession operations at the AC.
- B. Sycamore shall not permit any Sycamore employee to work at the AC, unless Sycamore has, within 90 days prior to said employee commencing work at the AC, conducted a criminal background check of such employee using Live Scan fingerprint services, and said check discloses no criminal conviction for any felony or misdemeanor involving moral turpitude.
- C. Sycamore shall not permit any Sycamore employee to work at the AC, unless Sycamore has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis. Sycamore shall comply with the requirements of Public Resources Code § 5163.
- D. Sycamore's employees shall wear uniforms approved by CITY and shall be properly groomed.
18. Termination.
- A. This AGREEMENT may be terminated before the end of the Term as follows:
- (a) The abandonment of the Premises by Sycamore for three (3) consecutive days.
 - (b) The failure by Sycamore to make any payment when due where such failure continues for a period of three (3) days after written notice thereof from CITY to Sycamore.
 - (c) Except as otherwise provided in this AGREEMENT, the failure by Sycamore to observe or perform any of the covenants, conditions, or provisions of this AGREEMENT to be observed or performed by Sycamore where such failure shall continue for a period of fifteen (15) days. Sycamore shall not be deemed to be in default if Sycamore diligently pursues a cure within said fifteen (15) day period.
 - (d) The making by Sycamore of any general arrangement or general assignment for the benefit of creditors: (i) Sycamore becoming a debtor as defined in Section 101 of Title 11 of the United States Code or any successor statute thereto, or any action taken or suffered by Sycamore under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief statute, whether now existing or hereinafter amended or enacted; (ii) the appointment of a trustee or receiver to take possession of substantially all of Sycamore's assets located at the Premises or of Sycamore's interest in this AGREEMENT, where possession is not restored to Sycamore within thirty (30) days; or (iii) the attachment, execution, or other judicial seizure of substantially all of Sycamore's assets located at the Premises or of Sycamore's interest in this AGREEMENT, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section 18(A)(d) is contrary to any applicable law, such provision shall be of no force and effect.

B. In the event of any such material default by Sycamore, CITY may at any time thereafter, with or without notice or demand and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default:

- (a) Terminate Sycamore's right to use the Premises by any lawful means, in which case this AGREEMENT shall terminate and Sycamore shall discontinue its use of the Premises.
- (b) Pursue any remedy now or hereafter available to CITY under the laws or judicial decisions of the state wherein the Premises are located. Any unpaid monetary obligations of Sycamore under the terms of this AGREEMENT shall bear interest from the due date at the maximum rate then allowable by law.

19. Late Charges. Sycamore hereby acknowledges that late payment by Sycamore to CITY of any sums due hereunder will cause CITY to incur costs not contemplated by this AGREEMENT, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any sum due from Sycamore shall not be received by CITY or CITY's designee within ten (10) days after such amount shall be due, then without any requirement for notice to Sycamore, Sycamore shall pay to CITY a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs CITY will incur by reason of late payment by Sycamore.

20. Insurance Requirements. Sycamore 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 Sycamore, 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. Sycamore further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Sycamore, at any time as deemed necessary to protect the interests of the CITY.

A. Insurance Types and Amounts.

- (a) Commercial General Liability (CGL). Sycamore 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 Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (b) Automobile Liability. Sycamore shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Sycamore does not own automobiles, then Sycamore 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 Sycamore under Sycamore's combined

insurance policies (including any excess or “umbrella” policies), whichever is greater.

- (c) Workers’ Compensation Insurance and Employer’s Liability. Sycamore 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 Sycamore under Sycamore's combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Sycamore is self-insured, Sycamore shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (d) Liquor Liability. If Sycamore engages in serving and/or selling alcoholic beverages, then Sycamore shall provide evidence of Liquor 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 for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

- (a) General Liability.
 - i. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
 - ii. 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,
 - iii. insurance shall be primary non-contributing.
- (b) Workers Compensation. The insurer waives the right of subrogation against the City of Morgan Hill and the CITY’s elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

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

D. Certificates. Sycamore 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 Sycamore’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

21. 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.

22. Compliance with Law.

- A. Sycamore 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. Sycamore 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.
- B. Compliance with Wage and Hour Laws: Sycamore, 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 SYCAMORE and/or its subcontractors: BY SIGNING THIS AGREEMENT, SYCAMORE 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 SYCAMORE OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SYCAMORE 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 SYCAMORE or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SYCAMORE learns of such a judgment, decision, or order that was not previously disclosed, SYCAMORE 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. SYCAMORE and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SYCAMORE to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

23. Independent Contractor. Sycamore is an independent contractor and not an agent or employee of CITY.
24. Conflict of Interest and Reporting. Sycamore shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
25. 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 Sycamore is as follows:	
Address of CITY is as follows:	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

26. Licenses, Permits and Fees. Sycamore 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.
27. Maintenance of Records.
 - A. Maintenance. Sycamore 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. Sycamore 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 Sycamore shall retain said records until such action is resolved.
 - B. 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 Sycamore 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.

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

28. Familiarity with Work. By executing this Agreement, Sycamore 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 Sycamore 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 Sycamore's risk, until written instructions are received from CITY.
29. Time of Essence. Time is of the essence with respect to the obligations to be performed under this AGREEMENT.
30. No Assignment. Neither this Agreement nor any portion shall be assigned by Sycamore, 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.
31. Attorney Fees. In any legal action, proceeding, or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses incurred.
32. Defense and Indemnification.
 - A. Defense and Indemnification. Sycamore 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 Sycamore, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - B. Exceptions. Sycamore 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.
 - C. 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 Sycamore.
 - D. Right to Offset. CITY shall have the right to offset against any compensation due Sycamore under this Agreement any amount due CITY from Sycamore as a result of Sycamore's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount

due CITY from Sycamore arising from Sycamore 's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

E. 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 Sycamore 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.

33. 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 Sycamore. 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.
34. 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.
35. 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.
36. 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.
37. 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 Sycamore in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.
38. 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

Michelle Wilson

Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin

Print Name

Date: _____

City Manager

Christina Turner

Print Name

Date: _____

Sycamore Concessions Corporation

By: Doreen Kwasnick

Title: Doreen Kwasnick - Preside

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 3/26/19

By: Sean Kwasnick

Title: Secretary

Print Name and Title of Signer.

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

Date: 3/26/19

Premise Exhibit A

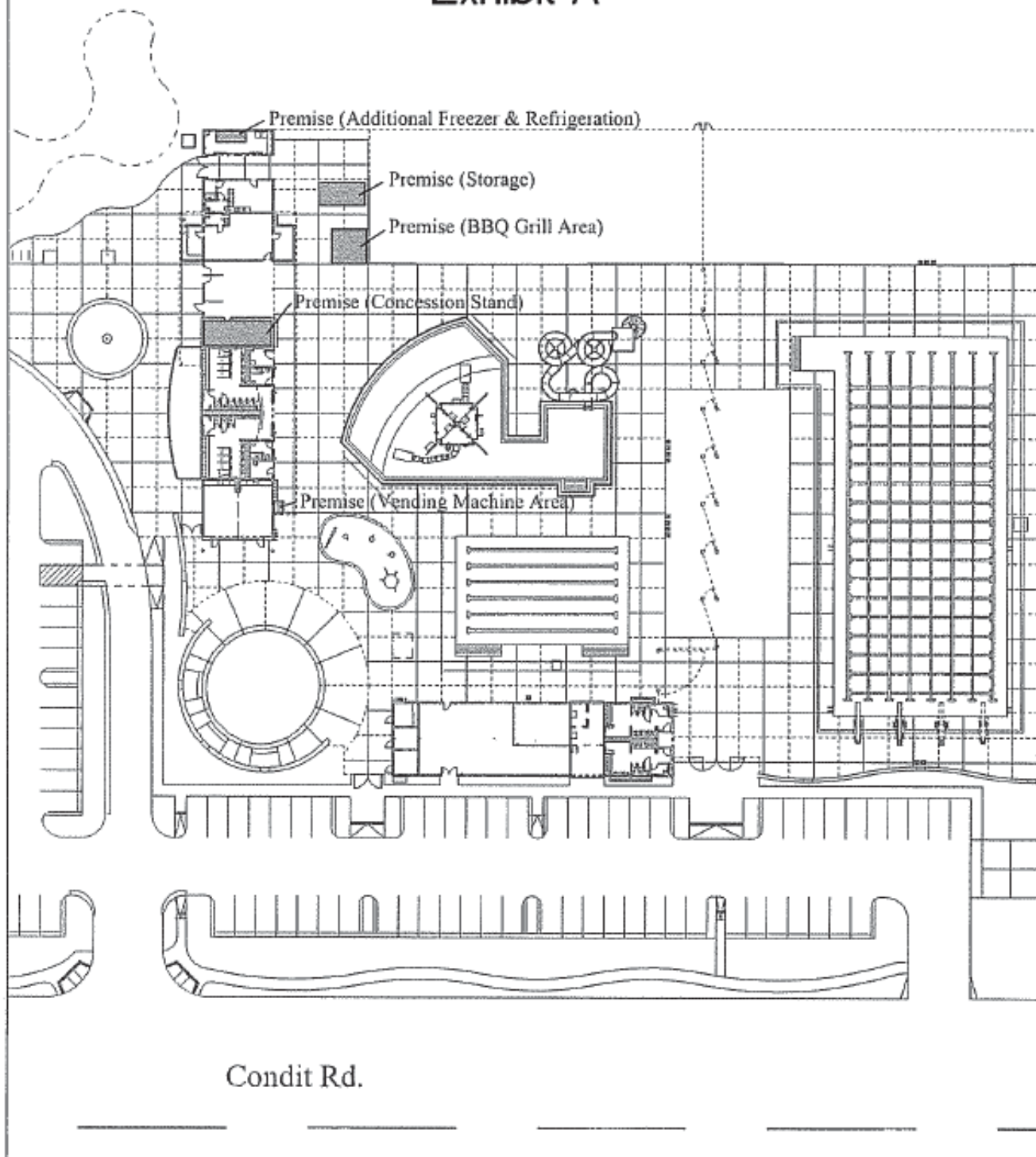


EXHIBIT B

17575 Peak Avenue
Morgan Hill, CA 95037
Te: 408-779-7271
www.morgan-hill.ca.gov

**Morgan Hill Aquatics Center
Equipment Inventory List**

- 1 Manitowoc commercial Ice Maker machine
- 1 True refrigerator, double door Model # T-49
- 1 White residential Freezer Model # FFH1767GW2
- 1 True sandwich refrigerator Model # TPP-60
- 1 6 burner + oven Sunfire stove
- 2 Single use Frymaster
- 1 True sandwich refrigerator Model # TWT-48
- 1 Small True freezer Model # TWT-27F
- 1 Portable sink Model # KSC402 120VAC
- 1 Large commercial charcoal BBQ grill



**AQUATICS CENTER
FOOD CONCESSION OPPORTUNITY
NOVEMBER 2018**

DUE DATE: JANUARY 11, 2019, 5:00PM

REQUEST FOR PROPOSAL

The City of Morgan Hill seeks proposals from experienced food and beverage service operators to provide food and beverage service at the Morgan Hill Aquatics Center, located at 16200 Condit Road, Morgan Hill, CA 95037.

CONCESSION SERVICES:

The City desires to enter into a mutually beneficial Concessionaire's License Agreement with an experienced food and beverage service operator who will be the sole and exclusive provider of food and beverage concession services at the Aquatics Center ("AC") during the Summer Recreation Swim Season. The City is seeking a food and beverage service provider to either operate out of a fully self-contained food truck on-site or use the Aquatic Center's existing kitchen facility. As part of the agreement, the City has the following expectations of the contractor selected to provide food concession services:

1. The food service contractor will be the sole and exclusive provider of food and beverage sales at the AC during the Summer Recreation Swim Season (see anticipated 2019 season schedule in the "Additional Information" section of this document) with the following exceptions:
 - a. Limited outside food and drink is permitted in the facility, such as small snacks and finger foods. Large food items or foods that require preparation, and/or glass and hard coolers are not allowed anywhere in the Aquatics Center. Additional detail is outlined in the "Aquatics Center Outside Food and Beverage Policy." within the Additional Information section below.
 - b. It is understood that the preseason School Dayz program allows school groups to bring their lunches to the facility and that the concession store shall also be open during these scheduled events (late May to early June).
 - c. It is understood that swim meets during the Summer Recreation Swim Season (historically two or three meets) shall be allowed to provide their own concessions of products not offered by the food service contractor,

including a hospitality room for meet officials and volunteers. During meets, the concession operation may also be open.

- d. Parties are allowed to bring their own cake.
2. The food service contractor shall offer a reasonably priced menu that contains popular, healthy, freshly prepared items and pre-packaged snacks, and may expand/vary the menu offerings from time to time with the mutual agreement of the City. **The menu shall comply with the City's Healthy Food and Beverage guidelines as they apply to concessionaries** (see attached).
3. The food service contractor shall ensure that concession employees look professional and are in uniform and extend a pleasant attitude and exemplary customer service to the patrons of the AC.
4. The food concession operation will be open for business during all recreation swim times and special events.
5. Food and beverage wait service will also be provided to the six (6) poolside cabanas during all recreation swim times. This service may be negotiable depending on the service model.
6. The food service contractor will work with City staff to coordinate the sale of food to parties and groups using the AC. The food service contractor is expected to be able to work directly with customers and provide exemplary customer service in those exchanges. On average, the AC hosts 100 parties during the summer season.
7. The food concession operation may also be open for business at other times as agreed upon by the City and the food service contractor.
8. The sale of alcohol and tobacco products is prohibited.
9. The food service contractor will post/furnish professionally-printed menus and signs at the food concession counter, cabanas, and other mutually agreed upon locations.
10. The food service contractor shall provide all food, beverages, supplies, personnel, insurance, and all other items necessary to operate the concession store to standards required by the Santa Clara County Health Department.
11. The City subscribes to a "green building" philosophy. The food service contractor should be prepared to demonstrate how their service will be operated to minimize trash products, and maximize reuse/recycling efforts, and compostable service ware. Similarly, City ordinance prohibits the distribution of prepared food using polystyrene food containers or service ware. Glassware is prohibited at the AC.
12. The City, at its discretion, may modify AC operating hours and programs as it sees fit.

13. Concession Summary Matrix:

	City <u>Contractor</u>	Swim Meet <u>Organizer</u>
Summer Recreation Swim Season	Exclusive*	
Summer Swim Meets	Allowed	Allowed
Summer Parties and Special Events	Exclusive*	
Vending Machines	Exclusive (year round service desired by City)	

**Customer allowed to bring in limited outside food and birthday cakes. See Aquatics Center Outside Food and Beverage Policy in this RFP.*

PREFERRED TERMS OF AGREEMENT:

The City's Concessionaire License Agreement with the previous concession operator is attached as an example. The agreement should not be considered as the actual agreement that the City and new operator will enter into, only as an example. The final terms and language will be negotiated.

- 1) The food service contractor will be required to sign a Concessionaire License Agreement with the City of Morgan Hill. The City prefers a contract with an initial term of two (2) years which may be extended for a longer term by mutual agreement of both parties, but will consider other options.
- 2) The City will consider terms whereby the food service contractor will pay the City either a percentage of monthly gross receipts or another mutually agreed upon arrangement with a guaranteed minimum to the City.
- 3) Operating Model A: Food Truck (s)
 - (1) The City will pay for the cost of electrical utilities. The food service contractor will pay for all additional utilities required for operation (e.g. CO2 service), including the cost of Internet and data service. Free public Wi-Fi is available on site.
 - (2) The food service operator will furnish a self-contained food truck to serve as the base of operations for food preparation and sales.
 - (3) The food service operator will be responsible for proper disposal of all food preparation waste (grease).
- 4) Operating Model B: Concession Store

- i) The City shall provide use of the concession store premises, storage shed, grill, and existing equipment and furnishings to the food service contractor.
 - ii) The City will pay for the cost of all utilities currently being provided. The food service contractor will pay for all additional utilities required for operation (e.g. CO2 service).
 - iii) The food service contractor will be required to properly clean and maintain the concession store, storage shed, grill, vending machines, and all areas immediately adjacent to the aforementioned areas. All mentioned areas must be thoroughly cleaned following the end of the summer season.
 - iv) The contractor shall repair all Equipment used for purposes of providing concessions with a repair cost of \$500 or less and the City shall repair all Equipment used with a repair cost over \$500. The City shall have no responsibility for repairs to approved contractor provided equipment/furnishings.
- 5) The food service contractor shall be required to maintain insurance in the types and amounts as required by the City and shall possess or obtain a City of Morgan Hill Business License.
- i) Comprehensive general liability insurance: \$1,000,000 per occurrence
 - ii) Automobile insurance: \$1,000,000 per occurrence
 - iii) Worker's compensation insurance: as required by law

PROPOSAL FORMAT:

To ensure the provision all of the necessary information and that all proposals are evaluated equally, please submit your written proposal in the following format:

PROPOSAL SUBMISSION FORM:

Please complete the Proposal Submission Form attached to this RFP. Please place the form **on top** of your proposal. This will be used for proposal identification.

COVER LETTER:

Provide a signed cover letter indicating your desire to provide concession services.

SECTION 1: COMPANY INFORMATION

In this section, provide a summary of your company's qualifications that includes the following information:

- Name, business address and business phone of your company's owner
- Name, business address and business phone of local company supervisor or contact person, if not the same as above
- Describe your current company including the number of years in business, number of years at current business address, and number of employees

- Describe your experience in operating a food service company similar to one or both of the two proposed models (food truck and/or AC concession store) including current menu offerings and services provided by your company. Please include any experience you have working providing food and beverage service to parties and managing wait staff.
- Demonstrate financial stability

SECTION 2: PROPOSED BUSINESS PLAN

Describe your business plans and/or approaches you envision for the operation of the food truck or AC concessions store. Please include how you intend to maximize sales, understand the wants of your customers, provide exemplary customer service, and ensure orders are expedited in the timeliest manner.

Please include a two year proforma with estimated gross receipts and expenses. As part of this, please describe your proposed financial arrangement with the City, including the minimum guaranteed revenue to the City.

Please also include any plans to contract, partner, and/or collaborate with other food service providers in order to provide diverse menu options aimed at meeting the wants of AC customers (additional information below in Section 3) and the City's Healthy Food and Beverage Guidelines.

Please detail any site improvements needed to operate. Identify specific electrical/power utilities needs. Please outline your storage plan for perishable and non-perishable goods, whether on site at the AC, offsite, or some combination.

Please detail any mobile ordering or order-ahead apps or services you plan to use to minimize wait times in lines and provide efficient customer service (highly preferred).

SECTION 3: PROPOSED MENU OFFERING

In this section, provide a list of core menu items you are prepared to offer. The menu should be designed to maximize sales and satisfy customer demand. Note that in the AC setting, food and beverage items that result in the minimum amount of waste or trash are most desirable.

While the menu you propose is at your discretion, it should contain the following variety of foods:

- Hot and cold beverages;
- Freshly prepared hot and/or cold food items and snacks;
- Healthy options;
- A variety of pre-packaged snack foods.

The City also desires to have a diversity of menu items that may only be able to be delivered by collaborating, contracting, and/or partnering with other food service

providers. As such, the City is interested in receiving proposals that include creative approaches to providing quality food and beverage selections.

Concession Equipment:

Should the City select an operator for the AC Concession Store model (Model B), the City will provide the food service contractor access to the existing furnishings and equipment in the concession store and storage shed. If additional furnishings and/or equipment are desired, it is the contractor's responsibility to provide these items and to pay for any additional utility work that may be necessary, provided that it is approved first by the City. Furthermore, the contractor will pay for the additional monthly utilities expense.

Existing City-Owned Concession Equipment at the Morgan Hill Aquatics Center:

<u>Item</u>	<u>Quantity</u>
1 Manitowoc commercial Ice Maker machine	
1 True refrigerator, double door Model # T-49	
1 White residential Freezer Model # FFH1767GW2	
1 True sandwich refrigerator Model # TPP-60	
1 6 burner + oven Sunfire stove	
2 Single use Frymaster	
1 True sandwich refrigerator Model # TWT-48	
1 Small True freezer Model # TWT-27F	
1 Portable sink Model # KSC402 120VAC	
1 Large commercial charcoal BBQ grill	

Estimated RFP Schedule

The City's proposed schedule for review of the proposals and final selection of the Contractor is as follows:

Date	Item
Mon. 11/19/18	RFP Packages Available
Fri. 11/23/18 and 11/30/18	RFP posted in Morgan Hill Times
Tues. 12/11/18	Interested parties optional onsite RFP clarification meeting and Aquatics Center tour at 10am
Fri. 12/14/18	Deadline to submit questions in writing to Jennie Tucker at jennie.tucker@morganhill.ca.gov
Thurs. 12/20/18	City to issue addendum addressing all questions submitted in writing
Fri. 1/11/19	Proposals due by 5pm
Week of 1/21/19	Interviews with potential Contractors
March 2019	City Council considers approving agreement
May 2019	Contract concession operations begin

Request for Information:

Questions regarding this Request for Proposals must be submitted in writing to Jennie Tucker, Recreation Manager, at jennie.tucker@morganhill.ca.gov no later than Friday, December 14, 2018 at 5:00 p.m. An addendum addressing all questions will be issued no later than Thursday, December 20, 2018.

PROPOSAL SUBMITTAL:

Written proposals are due at the following address **no later than 5:00pm on January 11, 2019.** The City of Morgan Hill is not responsible for non-receipt of proposals sent by mail or courier.

Proposals should be completed and delivered **to the City Clerk of the City of Morgan Hill, located at 17575 Peak Avenue, Morgan Hill, CA 95037 clearly marked "AQUATICS CENTER CONCESSIONS PROPOSAL" no later than 5:00pm on January 11, 2019.**

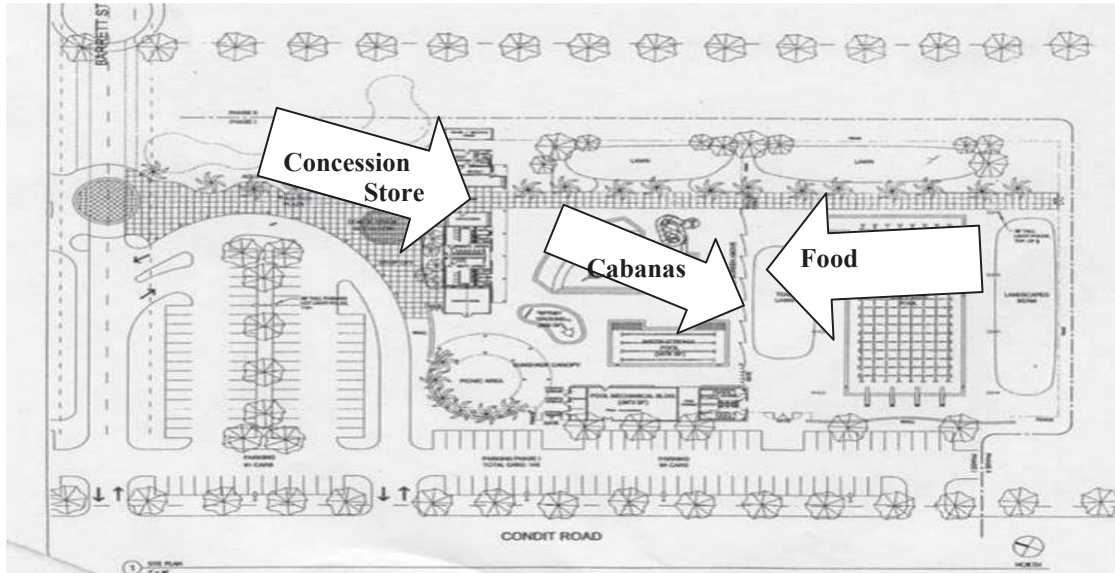
The City Council reserves the right to reject any or all proposals and to determine which proposal is in its judgment the best responsible submission by a responsible candidate and which proposal should be accepted in the best interest of the City Council. The City Council also reserves the right to waive any informality in any proposal or bid.

Please deliver **five (5) unbound copies** of your proposal to:

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

ADDITIONAL INFORMATION **ABOUT THE MORGAN HILL AQUATICS CENTER**

The Morgan Hill Aquatics Center opened in 2004 and offers a full range of instructional, recreation, and competition swim activities. The facility is located on approximately 5.5 acres of the total 8.8 acre site. The AC's main features include a recreation pool with two waterslides and a play structure, a 25 yard instructional pool, children's interactive water fountain, 50 meter competition pool with diving boards, and patio/lawn areas for picnics and relaxation. More information can be found online at www.mhaquaticscenter.com.



FOOD CONCESSION KITCHEN AND OTHER AMENITIES

The food concession kitchen is approximately 360 (30' x 12') square feet in the main pool house near the entrance to the Aquatics Center. It is furnished with commercial grade equipment to prepare and serve a wide variety of sandwiches, snack foods and beverages. In addition, a gas grill cooking area is provided and a 209 (19' x 11') square feet storage shed is also available to store contractor materials and supplies.

ANTICIPATED 2019 SUMMER RECREATION SWIM SCHEDULE

The Aquatics Center is anticipated to be open for the *2019 Summer Recreation Swim Season* as follows:

Pre-Summer

Memorial Day Weekend

Saturday, May 25 – Monday, May 27 11:30am - 5pm

Saturday, June 1 – Sunday, June 2 11:30am - 5pm

Saturday, June 8 – Sunday, June 9 11:30am - 5pm

School Dayz, Weekdays

Thursday, May 22– Friday, June 7 9:30am - 2pm

(Excluding Monday, May 27 due to Memorial Day)

Summer Season June 10 – August 9

Sunday-Saturday (7 days per week) 11:30am - 6:30pm

Weekends August 17 through September 15

Weekends Only & Labor Day, Monday, September 2 11:30am - 5pm

HISTORICAL BACKGROUND INFORMATION

The following information is intended to assist you in understanding historical summer recreation swim visits and concession sales. These are all estimates and should not be considered as a guarantee for future performance.

	FY17/18	FY16/17	FY15/16	FY 14/15	FY 13/14	FY 12/13
Daily Visits	54,399	57,413	58,304	60,594	67,132	56,010
Gross Concession Revenue	\$137,280	\$174,426	\$206,285	\$198,782	\$190,279	\$168,277
Revenue/Visit	\$2.52	\$3.04	\$3.54	\$3.28	\$2.83	\$3.00

Aquatics Center Outside Food and Beverage Policy

The Aquatics Center features a variety of food and beverage for sale for almost every taste and budget—including a wide range of choices to help accommodate Guests with food allergies or intolerances.

Guests may enjoy their own food and beverages in an ideal setting at the complimentary picnic area - conveniently located outside the Main Entrance to the Morgan Hill Aquatics Center. However, with the exception of food items for Guests with specific dietary restrictions, limited outside food or beverage items are permitted. Please see below for details or contact us at 408.782.2134.

Food and beverages allowed in the facility:

- o Snack foods, baby food, premade handheld food (no glass containers) may be brought into the facility.
- o Non-alcoholic beverages (no glass) may also be brought into the facility.
- o Small insulated, soft coolers (no hard sided coolers) no larger than 12"x12"x12" are allowed.

Food and beverages NOT allowed in the facility:

- o Food or beverages in glass containers
- o Alcoholic beverages
- o Large quantity food items or items that require preparation. These items may be enjoyed at the complementary picnic area outside the facility.
- o Hard sided and styrofoam coolers.
- o Other food items that cause/may cause excessive trash, distraction or harm to the facility or its patrons, or are otherwise deemed as non-permissible by Aquatics Center Management (e.g. sunflower seeds).

Camps:

If you are visiting with an organized camp, we ask that sack lunches be enjoyed outside of the facility.

Parties:

Our food concessionaire offers a variety of food and beverage options and party packages to accommodate your special event. Guests hosting a party at one of our reservable party areas (cabanas not included) may also choose to bring their own food and beverages for the party. Please note the following restrictions:

- o Unless purchasing from our food concessionaire, party hosts must bring their own plates, utensils and serving ware.
- o If you would like us to store your cake, please let us know. We cannot accommodate ice cream cakes or ice cream.
- o Food that requires prepping is not allowed.
- o Food cooking apparatuses (e.g. hotplates, electric skillets, rice cookers, etc.), open flames, BBQs and food warmers are not allowed.
- o Hard sided coolers must be stored in our air conditioned office. You are more than welcome to come into the office at any time to retrieve items for your

guests. If you would like, we do allow you to bring in soft bag coolers to your area.

Guests with food sensitivities, allergies or special dietary needs:

Guest may bring personal foods into the park, to the extent that they are medically necessary (e.g., for diabetics, baby formula for infants, gluten-free foods, or allergy-safe foods for allergies).

Our food outlets prepare and serve products sourced from third parties, which contain peanuts, tree nuts, fish, shellfish, eggs, milk, soy and gluten. Regular kitchen operations involve shared cooking and preparation areas, and food variations may occur to differences in suppliers, ingredient, substations, recipe revisions, and /or preparation at the parks. As such, we regret to inform you that the facility cannot, and does not, make any representations or guarantees whatsoever regarding allergy-free contests of any foods or beverages, or the safety thereof (especially in regard to any allergies).

SAMPLE MENU FROM PREVIOUS VENDOR



BEVERAGES

Coffee: Organic, free trade micro roaster	\$3.00
Hot Chocolate-Ghirardelli Premium Hot Chocolate	\$3.00
Tea-organic, iced or hot; various flavor varieties	\$3.00
Bottled Water	\$1.00
Fountain Soda-32 oz.	\$4.00
Bottled Drinks	\$2.50
Juice Boxes	\$2.00
Milk-organic, low fat	\$3.00

COLD SNACKS

Tropical Parfait: layers of mango, yogurt, tropical trail mix granola	\$5.00
Smoothies: Fresh Fruit, yogurt or juice. Strawberry, Banana, Mango	\$5.00

FROZEN SNACKS

Frozen Juice Bars	\$2.50
Ice Cream Bars-Variety of Choices	Varies
Snow Cone Cups	\$3.00

FRUIT & VEGETABLE SNACKS

Apple Sandwich: Sliced apple with almond butter, granola, coconut	\$2.50
Veggie Cup: ranch or hummus with carrots, bell peppers, celery	\$2.50
Fresh Fruit Cup: variety of in season fruits	\$3.50

FINGER FOOD

Hummus & Tortilla Chips or Chips and Salsa	\$3.50
French Fries	\$3.00
Garlic Fries	\$5.00
Sweet Potato Fries	\$5.00

SNACKS

Giant Soft Pretzel w/ salt or cinnamon sugar	\$3.50
Beef Jerky	varies
Chips, Pretzels, Granola Bars	varies
Sweets	varies
Nuts and Trail Mix	varies
Animal Crackers	\$1.00
The Crispery-Gourmet Rice Krispy Treats	\$4.50
Karens' Naturals freeze dried fruit snacks	\$2.00
Fresh Baked Cookies	\$1.50
Pop Corn-Popped Fresh Daily	\$2.00
Cotton Candy-Made fresh daily	\$3.00

DOLPHIN COVE CAFÉ



SALADS

Chicken Caesar: romaine, croutons, chicken, parmesan cheese	\$6.00
Mixed Greens: spring mix, tomato, cucumber, onion, bell pepper, cheese	\$5.00
Grilled Chicken & Berry: spring mix, berries, onion, walnuts, tomato, chicken	\$6.00

SANDWICHES: choice of bread & cheese, served w/ pickle spear

Roasted Turkey: oven roasted turkey	\$6.99
Tuna Salad-Albacore Tuna, mayo, relish & onion	\$6.99
Roasted Turkey, cream cheese, cranberry & walnuts	\$6.99
Turkey Club: Diestel Turkey, Bacon, Avocado	\$6.99
BLT: Hickory Bacon, Tomato and Lettuce	\$6.99
Vegetarian: Cheese, Grilled Veggies, Hummus & Chipotle Aioli	\$6.99

FROM THE BBQ: (\$1 adds: bacon, cheese or avocado)

Hamburger: ground chuck, brioche bun with fixings	\$7.00
Cheeseburger: ground chuck, cheddar, brioche bun with fixings	\$8.00
Hot Dog: Jumbo all beef dog with tomato, relish, onion, sauerkraut	\$6.00
Polish Sausage: Jumbo sausage with tomato, relish, onion, sauerkraut	\$6.00
Grilled Chicken Breast: all natural chicken, brioche bun with fixings	\$7.00
Tri-Tip Sandwich: on hoagie roll w/ BBQ sauce	\$8.00
Philly Cheese Steak: grilled tri-tip w/ onions, bell peppers and cheese	\$9.00

KIDS MENU-served with slice of seasonal melon

Corn Dog-turkey dog	\$3.50
Chicken Breast Nuggets and Fries	\$4.50
*Peanut Butter & Jelly on wheat	\$3.50
*Peanut Butter & Banana on wheat	\$4.00
*Peanut Butter & Honey on wheat	\$4.00
(can substitute Almond Butter-add .50)	
Grilled Cheese-American cheese	\$3.50
Kids Hot Dog-all beef, served plain	\$3.50
Kids Hamburger, served plain	\$4.50

DOLPHIN COVE CAFÉ
CATERING MENU
BIRTHDAY PACKAGE MENU



SPLASH'S SPREAD

Hamburgers & Hot Dogs
Choice of 2 sides
Green Salad

\$12.00 p/person 3 and up



PUFFER'S PIZZA PARTY

Cheese & Pepperoni Pizza
Green Salad

\$9.00 p/person 3 and up
Based on 2 slices per person



WHALES TAIL DELI PLATTER

Assorted Meat Platters (Turkey, Honey Ham, Roast Beef, Salami)
Assorted Cheese Platter (Cheddar, Swiss, Pepper Jack, Gouda, American)
Assorted Rolls and Breads
Green Salad, Potato Salad, Fruit Salad

Feeds 10-12
\$90.00



BLUE TANG BUFFET

Tri-Tip
Roasted Corn
Watermelon
Choice of Side

\$15.00 p/person 3 and up



CLOWN'S MINI MEAL

Veggie Sticks w/ Ranch
Chips
Hot Dogs (kid dogs)

\$6.00 p/person 2 and up

Tax and 18% gratuity will be added
Please order 72 hrs. in advance



**AQUATICS CENTER
FOOD CONCESSION OPPORTUNITY**

-PROPOSAL SUBMISSION FORM-

DUE DATE: JANUARY 11, 2019, 5:00PM

Name & Address of
Firm/Organization:

Contact Name:

Contact Phone:

Contact E-mail:

	Model A: Food Truck(s)	Model B: On-Site Kitchen
Proposed Financial Arrangement		
Minimum Guarantee To City		

The City reserves the right to reject any or all proposals and to determine which proposal is in its judgment the best responsible submission by a responsible candidate and which proposal should be accepted in the best interest of the City. The City also reserves the right to waive any informality in any proposal or bid.

Proposals received after the due date will not be considered. No proposal may be withdrawn after the due date or before the award and accepting of the contract; unless the award is delayed for a period exceeding ten (10) days.

**PLEASE PLACE THIS FORM ON TOP OF YOUR PROPOSAL
THANK YOU!**



Healthy Food & Beverage Guidelines

The City of Morgan Hill is committed to promoting and encouraging ways for City teammates, residents, and visitors to improve their overall health and wellness. One way to achieve the goal of supporting healthy living is to offer, purchase and serve food and beverages of greatest nutritional value and in appropriate serving sizes. The Work on Wellness Committee has developed the following guidelines to help the City of Morgan Hill promote a healthy work environment leading to greater job satisfaction, higher morale, and reduced health care costs and absenteeism.

Please note these guidelines are applicable when City funds are being used or the concessionaire is on City property. They are not directed at individuals' meals, snacks or beverages purchased and/or brought from home or with non-City funds.

Beverages

General Guidance

- Present water as an attractive and appealing option
- Offer sparkling water instead of soda
- Offer decaffeinated as well
- Serve coffee and tea unsweetened
- Offer juices that provide more beneficial nutrients, like orange and grapefruit



Beverages Recommended

- Water with no added sweeteners
- Fat-free (skim) or low-fat (1%) milk and milk alternatives (soy, rice, almond)
- Coffee and tea, hot and/or iced with no added sugar & creamer on the side
- Juice - 100% fruit or vegetable juices such as orange or grapefruit (no more than 120 calories per 8 fl.oz.)
- Artificially sweetened, calorie-reduced beverages that do not exceed 40 calories per 8 fl. oz. (e.g. diet beverages, calorie-free sports drinks, low calorie sparkling water products)

Guidelines:

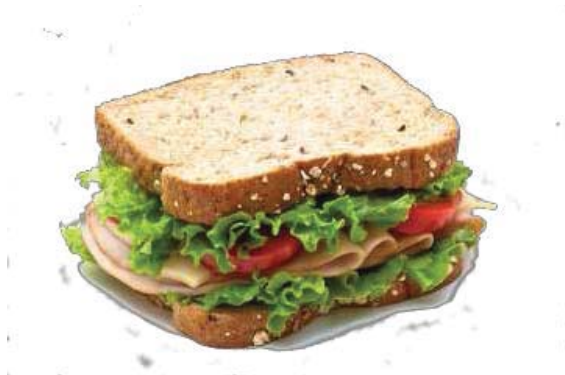
100% of the beverages served at City-sponsored celebrations, events, meetings, programs, and in vending machines shall meet the guidelines.

50% of beverages sold by concessionaires on City property shall meet the guidelines.

Food & Desserts

General Guidance

- Ensure healthier options are attractively presented and appealing
- Provide reasonable (not large) portions by cutting food in halves or quarters (e.g. ask for pizza slices to be cut smaller, slice bagels and sandwiches in half)
- Offer at least one vegetarian option every time food is served
- Prepare foods using healthy cooking techniques such as baking, roasting, grilling, or steaming
- Serve desserts in small portion sizes and provide healthier food options such as fresh fruit at the same time



Foods Recommended

- Fruits and vegetables (fresh, frozen, or canned in 100% fruit juice)
- Whole grains (e.g. whole wheat or whole grain bread, bagels, cereals, pasta, and tortillas; brown rice; oatmeal)
- Lean protein foods (e.g. skinless chicken breast or turkey, fish, reduced fat beef, pork loin, beans, tofu)
- Non-fat or low-fat dairy products (e.g. yogurt, cheese, cottage cheese)
- Foods made or produced without added sugar and less sodium
- Tomato based sauces and broth-based soups instead of cream based sauces and soups
- Lower fat condiments (e.g. vinaigrette and light salad dressing, nonfat or low fat cream cheese, hummus, mustard, light mayonnaise, salsa)
- Smaller portion desserts (e.g. mini brownie bites, small cookies, mini cupcakes)

Guidelines:

50% of the food options served at City-sponsored celebrations, events, meetings, programs, and sold by concessionaires on City property shall meet the guidelines.



Food Vending

100% of all snack foods in each City operated vending machine will meet *all of the following* criteria:*

- Contents of package/container must be a single serving size (*Nutrition Facts Label indicates Servings per Container: 1*).
- No more than 35% calories from fat with the exception of packages that contain 100% nuts or seeds. Snack mixes that contain less than 100% nuts and seeds must meet the 35% of calories from fat requirement.
- Zero *trans* fat.
- No more than 35% total weight from sugar and caloric sweeteners with the exception of fruits and vegetables that have not been processed with added sweeteners and fats;
- No more than 360 milligrams (mg) of sodium per package/container.
- **At least 10% of all snack foods** in each of the City operated vending machines will contain at least two (2) grams of dietary fiber per serving – information found on the packages' Nutrition Facts Labels.*
- **At least one snack food** item in each of the City operated vending machines will meet the FDA definition of "low sodium" or be ≤ 140 mg per serving.

*For more information on how to understand and use the Nutritional Facts Label go to the U.S. Food and Drug Administration (FDA) site at

<http://www.fda.gov/Food/ResourcesForYou/Consumers/NFLPM/ucm274593.htm>

See supplemental educational materials for suggested food ideas in compliance with the Morgan Hill food and beverage guidelines.

October 2015





COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

GENERAL: (408) 779-7271
FAX: (408) 779-3117

WWW.MORGANHILL.CA.GOV

ADDENDUM NO. 1

DATE: December 19, 2018

TO: ALL RESPONDING PARTIES TO THE RFP FOR AQUATICS CENTER CONCESSIONS

FROM: Jennie Tucker, Recreation Manager
Mariah Dabel, Community Services Supervisor

SUBJECT: City Responses to Questions

Question	City Response
1. I noticed a bid for food service on BidSync/Periscope. Can you think of any upcoming bids that will require Healthy Vending options?	A: The City does not have any upcoming bids for vending options scheduled at this time. Any future bids would be posted in the same location on the City of Morgan Hill website.
2. I have been invited to submit a quote for this project but it appears you might be looking for food suppliers? We do kitchen equipment. Are they looking to remodel the concession stand? Or replace any existing equipment?	A: The City is seeking food suppliers/services at this time. No remodel of the kitchen is planned.
3. There are also 2 freezers located in the lifeguard room that were not listed in the RFP equipment. Will these be available for storage for the concessions operator? Is there anything else that was not listed?	A: Yes, in addition to the equipment listed in the RFP, the following equipment is available for use by the concessions operator: a) Two True double door freezers Model # T-49F for concessions storage, and b) One commercial charcoal BBQ grill
4. The charcoal grill is not available during spare the air days?	A: Correct, the charcoal grill is not usable during spare the air days (approximately 10 days per season in recent years).
5. Is the City open to a cart and/or a trailer in combination with use of the kitchen?	A: The City is seeking concessionaires to propose services using either a Food Truck model or an On-Site Kitchen/Concessionaire Store model. The food truck model should be self-contained and not require operation of the kitchen. If use of the kitchen is needed, in combination with a food truck, cart, or trailer, please outline this clearly in your proposal.
6. What power is available throughout the facility?	A: There is 110 V power and water access throughout the facility. In addition to 110 V power and water access, the location flagged in the RFP for potential food trucks also has 220 V power.



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7. Is the food truck model being requested because the City wants to no longer incur the cost of maintaining the kitchen?	A: The City wants customers to be provided quality food at a reasonable cost. This RFP will enable the City to assess the best method to provide this service.
8. The RFP mentioned the vending machines on site. These have been serviced by Coca Cola which has been an issue in the past. Will that be continuing?	A: The City may arrange to remove the current vending machines and replace with a different vendor.

The proposal due date remains unchanged. All proposals are due on Friday, January 11, 2019 at 5:00 p.m.

ADDENDUM ACKNOWLEDGMENT

Bidder acknowledges receipt of this addendum, which shall be attached to the proposal.

Vendor's Representative

Date

THIS DOCUMENT AND ALL ATTACHMENTS SHALL BECOME PART OF THE PROJECT SPECIFICATIONS



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Mario Ramirez,
APPROVED BY: City Manager

ACCEPT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES/ DEPARTMENT OF HOMELAND SECURITY FOR PORTABLE BARRICADE SYSTEM

RECOMMENDATION(S)

1. Adopt a resolution:
 - a. Accepting grant funds from the Santa Clara County Office of Emergency Services via the Department of Homeland Security in the amount of \$90,000, for the purchase of portable vehicle incursion barriers; and
 - b. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$90,000 in the Police Department budget for the capital expenditures; and
2. Authorize the City Manager to approve purchase order in the amount of \$90,000 with Delta Scientific Corporation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2019 Strategic Priorities

Infrastructure

Traffic/Transportation

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Santa Clara County Office of Emergency Services (SCC OES) engages the whole community in assessing needs and developing strategies to achieve stronger emergency preparedness, prevention, response, and mitigation capabilities within the Santa Clara County Operational Area (Op Area). The Op Area includes all fifteen cities within the County and special jurisdictions. The Op Area is responsible for coordinating information, resources, and priorities among the local governments during large scale emergency events.

SCC OES has a designated Emergency Operations Center for the overall coordination of large scale emergencies for County government and is capable of serving as the central point for coordination within the Op Area following the Standardized Emergency Management System.

SCC OES also oversees the State Homeland Security Grant Program and Emergency Management Performance Grant process for the County.

SCC OES wishes to provide a grant donation for the following amount and purpose:

\$90,000 for the purchase of two Delta Scientific Inc. MP5000 Portable Barricade Systems. Delta Scientific's MP5000 Portable Barricade System is a solution for portable barricading that provides a robust barrier against vehicle ramming attacks. The MP5000 can be towed by any vehicle rated to tow a trailer under 15,000 lbs. (gross vehicular weight) to where portable barricading is needed and sets up in less than fifteen minutes. It is self-contained and battery powered. The MP5000 is the only portable 20-foot barricade available on the market that is battery powered, can be lowered into position using hydraulic jacks, and is rated by the National Transportation and Safety Board to an M40 standard (stops a 15,000 lbs. truck traveling at 40 miles per hour). Additionally, the MP5000 will be used as a regional asset, as both the San Jose Police Department and the Mountain View Police Department will be purchasing the MP5000. The Police Department strives to provide a safe environment at each and every special event. With the goal of furthering event safety, having the temporary barricades deployed will help prevent vehicles from entering the closed streets where special events are occurring.

Its recommended the purchase be made pursuant to Morgan Hill purchasing code 3.04.150, as it is determined the vendor is the sole source of the Grantor approved system.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve as notification to the community of the grant funds from the Santa Clara County Office of Emergency Services/ Department of Homeland Security.

ALTERNATIVE ACTIONS:

N/A

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously accepted grant funds from the Santa Clara County Office of Emergency Services/ Department of Homeland Security to aid in the operation of the Police Department Emergency Operations Center.

FISCAL AND RESOURCE IMPACT:

Staff recommends adopting the resolution to accept the grant and recognize \$90,000 as revenue towards Police Grants (010.37552) and appropriate \$90,000 in the Police Department budget for capital expenditures (010.3210.43825), in the General Fund (010).

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. Resolution
2. QUOTE - MORGAN HILL PD MP5000-20ft JA0214192

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING GRANT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES DEPARTMENT VIA THE FEDERALLY FUNDED HOMELAND SECURITY GRANT PROGRAM AND AMENDING THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET TO APPROPRIATE \$90,000 FROM THE GENERAL FUND (010) FOR THE PURCHASE OF TWO DELTA SCIENTIFIC INC. MP5000 PORTABLE BARRICADE SYSTEMS THEREFOR

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

WHEREAS, the reasons supporting the 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 Grant funds from the Santa Clara County Office of Emergency Services/Department of Homeland Security for Portable Barricade System" submitted for City Council consideration at its meeting of April 17, 2019 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 Council wishes to accept the grant funds and is in support of the purchase of two Delta Scientific Inc., MP5000 Portable Barricade Systems; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to direct staff to purchase the vehicle incursions barriers per the provisions of the grant funds provided, specifically, that the total amounts to be received in grant funds by City shall in no event exceed ninety thousand dollars (\$90,000); and
- 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 A attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2018-19 Budget of the City; and
- e. 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 17th day of April 2019 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 April 17, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (2233 : Accept Grant for Portable Barricade System)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

036

FUND:

010 General Fund

DEPARTMENT:

3210 Police-Patrol

OBJECT:

43825 MACHINERY/EQUIPMENT (010.37552 - Revenue)

AGENDA DATE:

02/27/19

AGENDA ITEM TITLE:

SCC OES Grant Acceptance for Portable Barricade Systems

	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	-	505,353	904,986	(399,633)
RECOMMENDED ACTION	-	90,000	90,000	-
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,859,902</u>	<u>42,653,475</u>	<u>16,893,479</u>



MORGAN HILL PD

MP5000 MOBILE CRASH BARRIER

Quote #: JA0214192

MP5000 HYDRAULICALLY OPERATED MOBILE SURFACE MOUNTED BARRIER SYSTEM

******DELTA SCIENTIFIC ENGINEERED AND CERTIFIED TO ATSM M30 AND M40 RATINGS**

2	MP5000	BASIC STRUCTURE, -20 FT. (STANDARD) CLEAR OPENING	\$	69,964.00
2	H4050	BATTERY OPERATED HYDRAULIC PUMP / W CONTROL STATION	\$	11,295.94
2	MP5000TA	BARRIER TRAILER ASSEMBLY - INCLUDES SPARE TIRE, UTILITY BOX, AND VIN NUMBER	\$	6,541.26

BASIC SYSTEM CONSISTS OF:

- * QUICK DEPLOYMENT MOBILE BARRIER ASSEMBLY
- * HINGED, RIGID CRASH PLATE ASSEMBLY
- * TRAILER HITCH ASSEMBLY
- * STANDARD WHITE/YELLOW OR BLACK/YELLOW PAINT (OPTIONS AVAILABLE)
- * COMPLETE INSTRUCTIONS, START UP AND TROUBLE-SHOOTING MANUAL

MP5000 SYSTEM OPTIONS: (NOT INCLUDED WITH BASIC SYSTEM)

2	MPL-4050	REMOTE OPEN/CLOSE PUSH BUTTON STATION W/20' CABLE	\$	284.10	\$	568.20
0	MPL-4050-300	ADDITIONAL MPL4050 CABLE---300FT OF TOTAL CABLE	\$	675.00	\$	-
0	POWER CABLE	POWER CORD (300 FT) / SOW 14/3 BLACK NEOPRENE	\$	875.00	\$	-
		CONNECTORS ARE: 71435K41 PLUG / 509-2016 CONNECTOR MATE				
2	B2010	BARRICADE FULLY DOWN AUXILIARY LIMIT SWITCH	\$	216.00	\$	432.00
2	B1154	BOOSTER PAK 12VDC	\$	399.00	\$	798.00
2	90590-2	SIGNAL LIGHT MODULE	\$	-	\$	-
2	MPL-10	STOP GO SIGNAL LIGHT(S) (EXTERNAL POWER REQUIRED)	\$	791.47	\$	1,582.94
2	MPL-20W	48" TALL TRAFFIC LIGHT MOUNTING POST WITH 24" SQ BASE	\$	185.99	\$	371.98
0	SOLAR1	PEDESTAL MOUNTED SOLAR PANEL ASSEMBLY	\$	1,752.00	\$	-
0	MPL-20W	48" TALL SOLAR MOUNTING POST WITH 24" SQUARE BASE	\$	185.99	\$	-
0	GALVAN	GALVANIZE MOBILE BARRIER	\$	4,195.00	\$	-
2	CAB KIT	CABLE KIT (JUMPER CABLE, UTILITY OUTLET CONNECTION)	\$	296.00	\$	592.00
2	MP5K-TT1	BARRIER TURN TABLE	\$	481.56	\$	963.12
2	SEC1	HPU AND CONTROLS SECURITY KIT - FOR UNATTENDED USE	\$	1,518.15	\$	3,036.30
0	EXWA1	EXWARR ONE YEAR EXTENDED WARRANTY PER DELTA SCIENTIFIC'S EXISTING WARRANTY POLICY	\$	-	\$	-
0	EXWA2	EXWARR TWO YEAR EXTENDED WARRANTY PER DELTA SCIENTIFIC'S EXISTING WARRANTY POLICY	\$	-	\$	-
0		PREVENTIVE MAINTENANCE AGREEMENTS AVAILABLE, CONTACT OFFICE				

* ALL EQUIPMENT IS FOB FACTORY

TOTAL EQUIPMENT COST	\$	96,145.74
DISCOUNT 10%	\$	(9,614.57)
INSTALLATION	TBD	
Freight (if applicable)	\$	3,465.00

GRAND TOTAL (Quote is valid 60 days from 02/14/19)

Packet Pg. 233



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Jim Crawford, Division Chief of Operations for Morgan Hill Fire
APPROVED BY: City Manager

APPROVE PURCHASE OF THREE HEART MONITOR AND DEFIBRILLATOR DEVICES

RECOMMENDATION(S)

1. Adopt resolution amending the City's adopted Fiscal Year (FY) 2018-19 Budget to appropriate \$40,000 from the General Fund (010) for the purchase of three Advanced Life Support (ALS) Heart Monitor Defibrillator devices; and
2. Authorize the City Manager to approve the purchase order in the amount of \$121,162, for the purchase of said devices from Physio-Control, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Fire Department is requesting approval to procure three (3) Physio-Control Life Pack 15 heart monitor/defibrillator units (LP15). Currently, the Fire Department owns three LP15's but has six apparatus that can be staffed with Advanced Life Support (ALS) devices. A heart monitor/defibrillator is a required device for any staffed ALS Unit. Once acquired, the three new LP 15's will be placed on cross-staffed apparatus, the reserve engine, and the EMS Battalion Chief's vehicle. Once assigned to the apparatus the Fire Department may staff additional apparatus at the ALS level during special events, severe weather events, mutual aid assignments, natural disasters, and will have one spare to rotate in when a frontline device needs service.

To be consistent with the existing equipment, staff is recommending purchasing the same make model from Physio-Control, Inc. This allows devices to be interchanged across the apparatus, and staff is already well trained and experienced in using the LP 15 devices. The City also has an existing agreement with Physio-Control to periodically services the 3 existing devices. Staff will amend the agreement to include the additional 3 units in the service plan. The service agreement and future amendment is within the City Manager's authority; therefore, the amendment will be processed administratively.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community regarding the ALS devices the Fire Department wishes to procure for the City Fire apparatus.

ALTERNATIVE ACTIONS:

Council may elect to not approve the purchase of these devices. If not approved, it would limit the capabilities of staffing additional apparatus at the ALS level when needed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted the current FY 2018-19 and 2019-20 Biennial Budget, which included the purchase of these devices.

FISCAL AND RESOURCE IMPACT:

The cost of each ALS device is about \$40,000. Purchase of these devices are budgeted in the Fire Department's budgets; two devices within the General Fund (010), and one device within the Fire Impact Fund (313). The additional \$1,162 will be covered by savings within the existing budgets.

In efforts to be efficient and save time, staff is recommending advancing the purchase of the third device from next FY to the current FY. This recommendation requires Council to adopt a resolution amending the FY 2018-19 budget to appropriate \$40,000, from the General Fund (010). Subsequently, the FY 2019-20 budget will be reduced by the equal amount, and this recommendation will be reflected in the upcoming mid-cycle budget review. Purchase of devices are budgeted in the Fire Department's budget, within the General Fund (010). (GL#010.3510.43825)

CEQA (California Environmental Quality Act): Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, are not projects for purposes of CEQA review.

LINKS/ATTACHMENTS:

1. Resolution
2. MRG 3 LP15 quote 4.5.19

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET TO APPROPRIATE \$40,000 FROM THE GENERAL FUND (010) FOR THE PURCHASE OF THREE ADVANCED LIFE SUPPORT (ALS) MONITOR DEFIBRILLATOR DEVICES

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 the City of Morgan Hill at its meeting held on this 17th day of April 2019 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 April 17, 2019.

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 #

037

FUND:

010 General Fund

DEPARTMENT:

3510 Fire Administration

OBJECT:

43825 MACHINERY/EQUIPMENT

AGENDA DATE:

04/17/19

AGENDA ITEM TITLE:

Purchase ALS Devices

	07/01/18			06/30/19 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	595,353	994,986	(399,633)
RECOMMENDED ACTION	-	-	40,000	(40,000)
RESULT OF RECOMMENDED ACTION	17,687,052	41,859,902	42,693,475	16,853,479



Physio-Control, Inc
 11811 Willows Road NE
 P.O. Box 97006
 Redmond, WA 98073-9706 U.S.A.
 www.physio-control.com
 tel 800.442.1142
 Sales Order fax 800.732.0956
 Service Plan fax 800.772.3340

To	MORGAN HILL FD Attn: Jesse Winnen 18300 OLD MONTEREY RD MORGAN HILL, CA 95037 (408) 710-7196 jesse.winnen@fire.ca.gov	Quote Number	00170441
		Revision #	1
		Created Date	4/5/2019
		Sales Consultant	Antonella Bondi 7025952216 antonella.bondi@stryker.com
		FOB	Redmond, WA
		Terms	All quotes subject to credit approval and the following terms and conditions
		NET Terms	NET 30
		Expiration Date	5/15/2019

Product	Product Description	Quantity	List Price	Unit Discount	Unit Sales Price	Total Price
99577-001958	LIFEPAK 15 V4 Monitor/Defib, Adaptive Biphasic, Manual & AED, Color LCD, 100mm Printer, Noninvasive Pacing, Metronome, Trending, SpO2, NIBP, 12-Lead ECG, EtCO2, Carbon Monoxide, Bluetooth, Temp INCLUDED AT NO CHARGE: 2 PAIR QUIK-COMBO ELECTRODES PER UNIT - 11996-000091, TEST LOAD - 21330-001365, N-SERVICE DVD - 21330-001486 (one per order) , SERVICE MANUAL CD- 26500-003612 (one per order) and ShipKit- (RC Cable) 41577-000290 INCLUDED. HARD PADDLES, BATTERIES, CARRYING CASE NOT INCLUDED.	3.00	37,000.00	-9,364.00	27,636.00	82,908.00
21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	9.00	479.00	-186.50	292.50	2,632.50
11160-000011	NIBP Cuff-Reusable, Infant	3.00	22.00	-7.75	14.25	42.75
11160-000013	NIBP Cuff-Reusable, Child	3.00	25.00	-8.50	16.50	49.50
11160-000015	NIBP Cuff-Reusable, Adult	3.00	31.00	-10.75	20.25	60.75
11160-000017	NIBP Cuff -Reusable, Large Adult	3.00	34.00	-11.50	22.50	67.50
11160-000019	NIBP Cuff-Reusable, Adult X Large	3.00	49.00	-15.25	33.75	101.25
11171-000049	Rainbow DCI Adt Reusable Sensor, 1/box	3.00	640.00	-83.20	556.80	1,670.40
11220-000028	Carry case top pouch for use w/LIFEPAK 12 or LIFEPAK 15	3.00	59.00	-7.67	51.33	153.99
11260-000039	LIFEPAK 15 Carry case back pouch	3.00	84.00	-10.92	73.08	219.24
11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	3.00	327.00	-42.51	284.49	853.47
11996-000474	4G Modem: Verizon Cellular non-Kore (customer data plan)	3.00	1,205.00	-156.65	1,048.35	3,145.05
	LIFEPAK15 Service - 4 YEAR. On-site ProCare Prevent					

Attachment: MRG 3 LP15 quote 4.5.19 (2281 : Approve Fire Department Purchase of Heart Monitor Defibrillators and Amend Service

LP15-PCPVOS-4-POS	Coverage. Annual Payments. Includes: -Services performed at customer's location by a Physio-Control Technical Specialist -Parts and labor necessary to restore device to original specifications -Annual Preventive Maintenance and inspections including quality assurance documentation -Discounts on accessories, disposables, and upgrades -Updates to the latest software version -Preconfigured loaner device provided if needed -Battery Replacement Service	3.00	7,200.00	-1,080.00	6,120.00	18,360.00

Subtotal USD 110,264.40

Estimated Tax USD 10,711.95

Estimated Shipping & Handling USD 185.00

Current Sales Tax Rates will be applied at the time of Invoice and tax rate is based on the Ship To location

Grand Total USD 121,161.35

Pricing Summary Totals

List Price Total USD 144,339.00

Total Contract Discounts Amount USD -33,171.75

Total Discount USD -902.85

Trade In Discounts USD 0.00

Tax + S&H USD 10,896.95

GRAND TOTAL FOR THIS QUOTE

USD 121,161.35

Attachment: MRG 3 LP15 quote 4.5.19 (2281 : Approve Fire Department Purchase of Heart Monitor Defibrillators and Amend Service

Please provide a company issued Purchase Order that includes Billing and Shipping Address.

PO must reference payment terms of Net 30 days.

- OR -

Required information if no Purchase Order is provided

Billing Address ☐ same as address on quote Account Name Address City State Zip Code	Shipping Address ☐ same as Billing Address Account Name Address City State Zip Code
Accounts Payable Contact Information Accounts Payable Contact Accounts Payable Email	
Authorized Customer Signature Name Title	
Accounts Payable Phone Number Customer is Tax Exempt? ☐ Yes ☐ No Signature Date	

Optional information:

Special Ship to Address

Comments

For Multiple End Users, please attach a supporting document with End User name, physical location, product type and quantity

Reference Number AB/17189301/193877

Attachment: MRG 3 LP15 quote 4.5.19 (2281 : Approve Fire Department Purchase of Heart Monitor Defibrillators and Amend Service

General Terms for all Products, Services and Subscriptions.

Physio-Control, Inc. ("Physio") accepts Buyer's order expressly conditioned on Buyer's assent to the terms set forth in this document. Buyer's order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

Pricing. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services unless Physio receives a copy of a valid exemption certificate prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions.

Payment. Payment for goods and services shall be subject to approval of credit by Physio. Unless otherwise specified by Physio in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.

Minimum Order Quantity. Physio reserves the right to charge a service fee for any order less than \$200.00.

Patent Indemnity. Physio shall indemnify Buyer and hold it harmless from and against all demands, claims, damages, losses, and expenses, arising out of or resulting, from any action by a third party against Buyer that is based on any claim that the services infringe a United States patent, copyright, or trademark, or violate a trade secret or any other proprietary right of any person or entity. Physio's indemnification obligations hereunder will be subject to (i) receiving prompt written notice of the existence of any claim; (ii) being able to, at its option, control the defense and settlement of such claim (provided that, without obtaining the prior written consent of Buyer, Physio will enter into no settlement involving the admission of wrongdoing); and (iii) receiving full cooperation of Buyer in the defense of any claim.

Limitation of Interest. Through the purchase of Physio products, services, or subscriptions, Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

Delays. Physio will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio's inability to obtain goods from its usual sources.

Limited Warranty. Physio warrants its products and services in accordance with the terms of the limited warranties located at <http://www.physio-control.com/Documents/>. The remedies provided under such warranties shall be Buyer's sole and exclusive remedies. Physio makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

Compliance with Confidentiality Laws. Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

Compliance with Law. The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.

Regulatory Requirement for Access to Information. In the event 42 USC § 1395x(v)(1)(I) is applicable, Physio shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Physio.

No Debarment. Physio represents and warrants that it and its directors, officers, and employees (i) are not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (iii) are not under investigation which may result in Physio being excluded from participation in such programs.

Choice of Law. The rights and obligations of Physio and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

Additional Terms for Purchase and Sale of Products.

In addition to the General Terms above, the following terms apply to all purchases of products from Physio:

Delivery. Unless otherwise specified by Physio in writing, delivery shall be FOB Physio point of shipment and title and risk of loss shall pass to Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from Buyer, Physio will obtain transportation on Buyer's behalf and for Buyer's account. Delivery dates are approximate. Freight is pre-paid and added to Buyer's invoice. Products are subject to availability.

Inspections and Returns. Within 30 days of receipt of a shipment, Buyer shall notify Physio of any claim for product damage or nonconformity. Physio, at its sole option and discretion, may repair or replace a product to bring it into conformity. Return of any product shall be governed by the Returned Product Policy located at <http://www.physio-control.com/Documents/>. Payment of Physio's invoice is not contingent on immediate correction of nonconformities.

No Resale. Buyer agrees that products purchased hereunder will not be resold to third parties and will not be reshipped to any persons or places prohibited by the laws of the United States of America.

Additional Terms for Purchase and Sale of Service Plans.

In addition to the General Terms above, the following terms apply to all Physio Service Plans.

Service Plans. Physio shall provide services according to the applicable Service Plan purchased by Buyer and described at <http://www.physio-control.com/ServicePrograms.aspx> for the length of the subscription purchased and for the devices specified as covered by the Service Plan ("Covered Equipment").

Pricing. If the number or configuration of Covered Equipment changes during the Service Plan subscription, pricing shall be prorated accordingly. For Preventative Maintenance, Inspection Only, Comprehensive, and Repair & Inspect Service Plans, Buyer is responsible to pay for preventative maintenance and inspections that have been performed since the last anniversary of the subscription start date and such services shall not be pro-rated.

Device Inspection Before Acceptance. All devices that are not covered under Physio's Limited Warranty or a current Service Plan must be inspected and repaired (if necessary) to meet specifications at then-current list prices prior to being covered under a Service Plan.

Unavailability of Covered Equipment. If Covered Equipment is not made available at a scheduled service visit, Buyer is responsible to reschedule with the Physio Service Technician, or ship-in the Equipment to a Physio service depot. Physio reserves the right to charge Buyer a surcharge for a return visit. Surcharges will be based on then-current Physio list price of desired services, less 10% for labor and 15% for parts, plus applicable travel costs. The return visit surcharge will be in addition to the subscription price of the Service Plan. To avoid the surcharge, Buyer may ship devices to a Physio service depot. Buyer shall be responsible for round-trip freight for ship-in service.

Unscheduled or Uncovered Services. If Buyer requests services to be performed on Covered Equipment which are not covered by a Service Plan, or are outside of designated Services frequency or hours, Physio-Control will charge Buyer for such services at 10% off Physio-Control's standard rates (including overtime, if appropriate) and applicable travel charges. Repair parts required for such repairs will be made available at 15% off the then-current list price.

Loaners. If Covered Equipment must be removed from service to complete repairs, Physio will provide Buyer with a loaner device, if one is available. Buyer assumes complete responsibility for the loaner and shall return the loaner to Physio in the same condition as received, normal wear and tear exempted, upon the earlier of the return of the removed Covered Equipment or Physio's request.

Cancellation. Buyer may cancel a Service Plan upon sixty (60) days' written notice to Physio. In the event of such cancellation, Buyer shall be responsible for the portion of the designated price which corresponds to the portion of the Service Plan subscription prior to the effective date of termination and the list-price cost of any preventative maintenance, inspections, or repairs rendered after the last anniversary date of the subscription start date.

No Solicitation. During the Service Plan subscription and for one (1) year following its expiration Buyer agrees to not to actively and intentionally solicit anyone who is employed by Physio to provide services such as those described in the Service Plan.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

APPROVE 3 YEAR PROPERTY LEASE AGREEMENT WITH MONUMENT (TECHON) CONSTRUCTION AT 16200 VINEYARD BOULEVARD

RECOMMENDATION(S)

Approve and authorize the City Manager to amend and execute a new Standard Lease Agreement with Monument Construction dba Techcon for the property located at 16200 Vineyard Blvd with an initial annual lease amount of \$68,424.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Financial Stewardship

REPORT NARRATIVE:

The property at 16200 Vineyard Boulevard, Suite 100, is a 6,080-square foot office space adjacent to the Police Department, owned by the City of Morgan Hill and currently occupied by Monument Construction, Inc. dba Techcon. The lease expires April 30, 2019. Staff recommends renewal of a new short term, market-rate lease with Monument Construction, Inc. for 36 months, with an option to extend for one year, starting May 1, 2019 for 3,285 square feet (SF) of exclusive office space, and 1,265 SF of common area space. The terms of the lease agreement are detailed in a section below.

Monument Construction, Inc. doing business as Techcon, has rented 16200 Vineyard Blvd., Suite 100 from the City for the past ten years. The lease expires at the end of April 2019. The proposed short-term lease agreement allows Techcon time to plan their move to a permanent location that would consolidate operations. Economic Development and Planning staff is working with Techcon to find an appropriate location that would accommodate office use as well as storage of landscaping and construction equipment.

The proposed lease agreement envisions the City subdividing the space, reducing Techcon's footprint from 6,080 SF to 3,285 SF. Techcon will have access and pay for their proportionate share of the common space (1,265 SF). Subdividing this space will require some tenant improvements such as new walls, doors and security or keying system. City staff plan to work with Techcon to implement some of the necessary tenant improvements and deduct these soft and hard costs from the rent.

Lease**Terms**

- **Building:** 16200 Vineyard Blvd, Suite 100.
- **Premises:** 3,285 SF + use of 1,265 SF of common space (68% proportionate share for Techcon).
- **Use:** General office, administrative purposes.
- **Office Base Rent:** \$1.50 per square foot (PSF) – Year 1; \$1.75 PSF – Year 2; and \$2.00 PSF – Year 3.
- **Common Space Rent:** \$0.90 PSF – Year 1; \$1.05 PSF – Year 2; and \$1.20 PSF – Year 3.
- **Security Deposit:** \$5,702.00 (One month's rent)
- **Term:** 36 months, starting May 1, 2019, with option to extend for one year.
- **Utilities:** Lessee has separate utilities, except 7% of Gas portion of the monthly PG&E bill.

Current Morgan Hill market rate rents for office space range from \$1.50 PSF to \$3.00 PSF, depending on location and condition of the space. Rates for common space are usually lower than the office space rent and vary by location and costs associated with the proportionate maintenance/expenses of the common space.

Under the proposed lease agreement, Techcon would pay the City the following amounts in monthly and yearly rent.

Year 1: \$5,702 per month, \$68,424 total
 Year 2: \$6,652 per month, \$79,824 total
 Year 3: \$7,602 per month, \$91,224 total

Reducing the square footage for Techcon and approving a short-term lease agreement allows the City to collect a market rate rent while at the same time allowing Techcon time to find a new permanent home.

The City will have the ability to use the new available space at 16200 Vineyard Blvd. for City purposes and/or to relocate tenants currently housed at other City facilities. Staff is currently exploring relocation opportunities for tenants and City operations to find the most efficient and effective use of the City space.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed lease agreement.

ALTERNATIVE ACTIONS:

The City Council could choose not to move forward with the recommended lease agreement and/or provide recommendations for the future of the space.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 23, 2008, the City entered into a Purchase and Sale Agreement with Techcon for 17450 Monterey Road and Vacant Land North of El Capri with Paul and Diane

Swing and approved a short-term lease at 16200 Vineyard Blvd. Subsequently, the Council approved a five-year lease with a five-year extension, beginning April 30, 2009.

FISCAL AND RESOURCE IMPACT:

Currently, the City collects \$4,327 a month from Techcon for the entire space or approximately \$0.71 PSF. Under the new lease agreement, the City will collect \$239,472 in rent over the next three years, minus costs associated with the tenant improvements. This revenue will be offset by tenant improvements. At the end of the lease agreement, the City can choose to utilize this space itself or rent the space at market-rate. The revenue from this lease is deposited in the General Fund (010). (GL#010.37413)

CEQA (California Environmental Quality Act): Categorically Exempt.

The lease agreement is categorically exempt under CEQA pursuant to section 15301 of CEQA Guidelines as it involves the continuation of leasing existing facilities for office use, involving no expansion of existing use.

LINKS/ATTACHMENTS:

1. Lease Agreement 16200 Vineyard Blvd. Ste 100 (002) Techcon Signed

STANDARD LEASE

16200 VINEYARD

BLVD.

By
and
between
THE CITY OF MORGAN HILL,
public body, corporate and politic
"Lessor"

AND

MONUMENT CONSTRUCTION,
INC.,
a California Corporation, d/b/a
Techcon "Lessee"

Dated as of
April __, 2019

TABLE OF CONTENTS

	<u>Page</u>
1. Basic Lease Provisions	1
2. Premises, Parking and Common Areas	1
3. Term	3
4. Rent	3
5. Security Deposit.....	4
6. Use	5
7. Maintenance, Repairs, Alterations and Common Area Services	6
8. Insurance; Indemnity	8
9. Damage or Destruction.....	11
10. Taxes	13
11. Utilities	14
12. Assignment and Subletting.....	15
13. Default; Remedies	15
14. Hazardous Substances	17
15. Premise Improvements	19
16. Broker's Fee	20
17. Estoppel Certificate	20
18. Sale or Assignment by Lessor.....	21
19. Severability	21
20. Interest on Past-due Obligations	21
21. Time of Essence	21
22. Entire Agreement; Amendments	21
23. Notices	21
24. Waivers; Modifications	21
25. Recording	22
26. Holding Over	22
27. Cumulative Remedies	22
28. Covenants and Conditions	22
29. Binding Effect; Choice of Law	22
30. Subordination	23
31. Attorney's Fees	23
32. Lessor's Access	23
33. Auctions	24
34. Signs	24
35. Merger	24

TABLE OF CONTENTS
(continued)

36.	Access Disclosure	24
37.	Quiet Possession	24
38.	Authority	25
39.	Intentionally Deleted	25
40.	Security Measures	25
41.	Lessor's Reservations; Lessee's Restrictions	25
42.	Easements	26
43.	Performance Under Protest	26
44.	Conflict	26
45.	Lender Modification	26
46.	Intentionally Deleted	26
47.	Multiple Parties	26
48.	Nondiscrimination	26
49.	Lessor's Termination Option	27
50.	Lessee's Termination Option	27
51.	Counterparts	27
52.	Attachments	27

16200 VINEYARD BLVD. STANDARD LEASE

1. Basic Lease Provisions

1.1 **Parties.** This Standard Lease, dated, for reference purposes only, APRIL __, 2019, is made by and between the City of Morgan Hill (herein called "**Lessor**"), and Monument Construction, Inc., a California corporation, d.b.a. Techcon (herein called "**Lessee**"). Throughout this Agreement, Lessor and Lessee may be referred to collectively as the "Parties" and individually as a "Party."

1.2 **Premises.** Suite Number 100, which is estimated to consist of approximately 3,285 primary rentable square feet and approximately 1,265 square feet of common space, as defined in Section 2 and as shown on **Exhibit "A"** hereto (the "**Premises**").

1.3 **Building.** Commonly described as 16200 Vineyard Street, in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 42,222 rentable square feet.

1.4 **Use.** General office and administrative purposes, subject to Section 6.

1.5 **Term.** Thirty six (36) months, commencing on May 1, 2019 ("Commencement Date"), with an option to extend as described in Section 39.

1.6 **Base Rent.** Five thousand Seven Hundred two dollars(\$5,702.00) per month during year one, and shall be adjusted annually for duration of the term as illustrated in Section 4.1.

1.7 **Security Deposit.** Concurrently with the execution of this Lease, Lessee shall pay the sum of \$5,702.00 as Security Deposit which is equivalent to one (1) month of the Base Rent in the first year, paid in advance. Lessee's security deposit of \$3,040.00 from previous lease agreement shall be applied towards new security deposit, therefore, the residual balance of security deposit to be paid is \$2,662.00.

1.8 **Amount Paid Upon Execution.** Concurrently with the execution of this Lease, Lessee shall pay Lessor the sum of \$8,364.00, representing the sum of the Security Deposit and the first month's Base Rent, paid in advance.

1.9 **Lessee's Share of Premises.** 8% of permanent space, and 2% interest in common space, of the building described in Section 1.3.

1.10 **Former Lease Agreement.** Parties acknowledge that Lessor and Lessee are currently parties to a Lease Agreement that is expiring effective April 30, 2019.

2. Premises, Parking and Common Areas.

2.1 **Premises.** Subject to the terms, covenants and conditions set forth in this Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor the Premises specified in Section 1.2 of the Basic Lease Provisions. The Premises are a portion of the Building identified in Section 1.3 of the Basic Lease Provisions. As used herein, the term "**Building**" shall include adjacent parking areas used in connection therewith. The Premises, the Building, the Common Areas, the land upon which the same are located, along with all other buildings and improvements thereon or thereunder, are herein collectively referred to as the "**Morgan Hill Police Department Building**." As used herein, the term "**Common Areas**" shall include all areas and facilities outside the Premises and within the exterior boundary line of the Morgan Hill Police Department Building that are provided and designated by Lessor from time to time for the general non-exclusive use of Lessor, Lessee and of other lessees of the Morgan Hill Police Department Building and their respective employees, suppliers, shippers, customers and invitees, including, but not limited to, common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, escalators, parking areas

to the extent not otherwise prohibited by this Lease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Lessor reserves unto itself and its designees the use of the roof, exterior walls and area beneath the floor and above the ceiling of the Premises, together with the right, from time to time, to install, maintain, use, repair and replace utility lines, tunneling, pipes, ducts, conduits, and wire and the like leading under, over or through the Premises.

2.2 Vehicle Parking. Subject to the rules and regulations attached hereto as **Exhibit "B"** (the **"Rules and Regulations"**), and as established by Lessor or its duly authorized parking operator from time to time, Lessee shall be entitled to use up to twenty (20) parking spaces in the Morgan Hill Police Department Building for company vehicles, on an unreserved and non-exclusive basis.

(a) If Lessee's employees violate any parking rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and invoice Lessee for the cost of such removal, which invoice shall be payable immediately upon receipt.

(b) Lessee agrees to comply with all regulations and ordinances of the City of Morgan Hill or the County of Santa Clara governing transportation management in the jurisdiction in which the Building is located.

2.3 Common Areas - Rules and Regulations. Lessee agrees to abide by and conform to and to cause its employees, suppliers, shippers, customers, and invitees to abide by and conform to the Rules and Regulations with respect to the Morgan Hill Police Department Building. Lessor or such other person(s) as Lessor may appoint (the **"Property Manager"**) shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to modify, amend and enforce the Rules and Regulations. Lessor shall not be responsible to Lessee for the noncompliance with the Rules and Regulations by other lessees, their agents, employees and invitees of the Morgan Hill Police Department Building, provided Lessor takes reasonable steps to enforce the Rules and Regulations. In the event of a conflict, this Lease prevails over the Rules and Regulations.

2.4 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Building interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number, and appearance thereof, including, but not limited to, the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Lessor shall at all times provide the parking facilities required by applicable law;

(b) To close temporarily any of the Common Areas for maintenance and repair purposes so long as reasonable access to the Premises remains available;

(c) To designate other land and improvements outside the boundaries of the Morgan Hill Police Department Building to be a part of the Common Areas, provided that such other land and improvements have a reasonable and functional relationship to the Morgan Hill Police Department Building;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Morgan Hill Police Department Building, or any portion thereof;

(f) To do and perform such other acts and make such other changes in, to or with

respect to the Common Areas and Morgan Hill Police Department Building as Lessor may, in the exercise of sound business judgment deem to be appropriate.

3. Term. The term of this Lease (the "**Term**") and the Commencement Date shall be as specified in Section 1.5 of the Basic Lease Provisions. All of Lessee's obligations under this Lease shall be effective as of the Commencement Date. Terms for option to extend are described in Section 39.

4. Rent.

4.1 Base Rent. By the first day of each calendar month during the Term, Lessee shall pay to Lessor the Base Rent for the Premises set forth in Section 1.6 of the Basic Lease Provisions, without notice, offset or deduction. Base Rent for any period during the Term which is for less than one month shall be prorated on the basis of a 30-day month. Base Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

Primary Space = 3,285 SF
Common Space (68%) = 1,265 SF

	Primary Space Rent Per Square Foot (PSF)	Common Space Rent Per Square Foot (PSF)	Monthly Rent	Yearly Rent
Year 1 (May 2019 - April 2020)	\$ 1.50	\$ 0.90	\$ 5,702	\$ 68,424
Year 2 (May 2020 - April 2021)	1.75	1.05	6,652	79,824
Year 3 (May 2021 - April 2022)	2.00	1.20	7,602	91,224
<i>*OPTION TO EXTEND Year 4</i>	2.50	1.20	9,245	110,940

4.2 Additional Rent. Lessee shall pay to Lessor all charges and other amounts required under this Lease, including, when applicable, Personal property Taxes pursuant to Section 10.1 and Possessory Interest Taxes pursuant to Section 10.2, as additional rent ("**Additional Rent**"). Base Rent and Additional Rent shall be referred to herein as "**Rent**". Additional Rent shall include, but not be limited to Lessee's Share of the Operating Expenses for the Morgan Hill Police Department Building.

(a) "**Lessee's Share**" is defined as the percentage set forth in Section 1.9 of the Basic Lease Provisions, which percentage has been determined by dividing the approximate square footage of the Premises by the total approximate square footage of the Morgan Hill Police Department Building. It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Lessor and Lessee agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises or a change in the space available for lease in the Morgan Hill Police Department Building.

(b) "**Operating Expenses**" is defined, for purposes of this Lease, to include all costs and expenses paid or incurred by Lessor in the exercise of its reasonable discretion, for:

(a) The operation, management, repair, maintenance, and replacement, in neat, clean, safe, good order and condition, of the Morgan Hill Police Department Building, including, but not limited to, the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, telecommunication and other equipment used in common by, or for the benefit of, lessees or occupants of the Morgan Hill Police Department Building, including tenant directories, fire detection systems, including sprinkler system maintenance and repair (the "**Building Systems**").

(b) General maintenance, trash disposal, janitorial and security services;

(c) Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "**Operating Expense**";

(d) The cost of the premiums for any liability and property insurance policies maintained by Lessor;

(e) The cost of water, sewer, gas, electricity, and other publicly mandated services to the Morgan Hill Police Department Building, to the extent that these services apply to the common areas of the Morgan Hill Police Department Building;

(f) Labor, salaries, payroll taxes and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Morgan Hill Police Department Building and accounting and a management fee attributable to the operation of the Morgan Hill Police Department Building; and

(g) The cost of any capital improvements made by Lessor to the Morgan Hill Police Department Building, the common facilities or any part thereof and the cost of replacing any capital improvements or equipment, such cost to be amortized over a reasonable period as Lessor shall determine, together with interest on the unamortized balance at the rate of ten percent (10%) per annum or such higher rate as may have been paid by Lessor on funds borrowed for the purpose of constructing or replacing such capital improvements.

(c) Operating Expenses shall not include any expenses paid by any lessee directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

(d) Lessee's Share of any Operating Expenses shall be payable by Lessee within fifteen (15) days after a reasonably detailed statement of actual expenses is presented to Lessee by Lessor. At Lessor's option, however, an amount may be estimated by Lessor from time to time, and the same shall be payable monthly or quarterly, as Lessor shall designate during each year of the Term, on the same day as the Base Rent is due hereunder. In the event that Lessee pays Lessor's estimate of Lessee's Share of Operating Expenses, Lessor shall deliver to Lessee after the expiration of each calendar year a reasonably detailed statement ("**Operating Expense Statement**") showing the actual amount of Lessee's Share of Operating Expenses incurred during such year. If Lessor's estimate of Lessee's Share of Operating Expenses exceeded the actual amount of Lessee's Share of Operating Expenses, Lessee shall be entitled to credit in the amount of such overpayment against the portion of Lessee's Share of Operating Expenses next falling due, or, if this Lease has terminated, such excess shall be refunded to Lessee within fifteen (15) days after delivery by Lessor to Lessee of the Operating Expense Statement. If Lessor's estimate of Lessee's Share of Operating Expenses was less than the actual amount of Lessee's Share of Operating Expenses, Lessee shall pay to Lessor (whether or not this Lease has terminated) the amount of the deficiency within fifteen (15) days after delivery by Lessor to Lessee of the Operating Expense Statement.

5. Security Deposit. Concurrently with the execution of this Lease, Lessee is depositing with Lessor the security deposit set forth in Section 1.7 of the Basic Lease Provisions (the "Security Deposit") as security for Lessee's faithful performance of its obligations hereunder. Lessee agrees that Lessor may, without

waiving any of Lessor's other rights and remedies under this Lease, upon the occurrence of any of the events of default described in Section 13 hereof, apply all or any portion of the Security Deposit to remedy any failure by Lessee to repair or maintain the Premises or to perform any other terms, covenants or conditions contained herein. Should Lessor so apply all or any portion of the Security Deposit, Lessee shall, within ten (10) days replenish the Security Deposit to the original amount. Lessor shall not be required to keep the Security Deposit separate from its general accounts and Lessee shall not be entitled to interest on the Security Deposit, except as required by law. If Lessee performs all of Lessee's obligations hereunder, the Security Deposit shall be returned to Lessee (or at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) within a reasonable time after the expiration of the Term. The Security Deposit shall not be deemed an advance payment of Rent or a measure of Lessor's damages for any default hereunder by Lessee. No trust relationship is created herein between Lessor and Lessee with respect to the Security Deposit. Should the Premises, the Building or the Morgan Hill Police Department Building be conveyed by Lessor, the remaining amount of the Security Deposit shall be turned over to Lessor's grantee and thereafter Lessor shall not be responsible for the return of the Security Deposit, and Lessee agrees to look to Lessor's grantee for return of the same. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Lessee or its successors or assigns, said Security Deposit shall be deemed to be applied first to the payment of Basic Rent or Additional Rent due Lessor for all periods prior to the institution of the proceedings, and the balance, if any, of said Security Deposit may be retained or paid to Lessor in partial liquidation of Lessor's damages.

6. Use.

6.1 **Use.** The Premises shall be used and occupied solely by Lessee and Lessee shall use the Premises solely for the purpose set forth in Section 1.4 of the Basic Lease Provisions and for no other purpose, without the express written permission of Lessor. Lessee hereby agrees that any variation from or expansion of the use specified herein shall constitute a material breach of this Lease.

6.2 **Compliance with Law.** Lessee shall, at Lessee's expense, promptly comply with all Applicable Laws, all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises or any other body exercising similar functions. As used herein, the term "**Applicable Laws**" means all applicable laws, codes, ordinances, orders, rules, regulations and requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof relating to or affecting Lessee, the Morgan Hill Police Department Building or the Building or the use, operation or occupancy of the Premises, whether now existing or hereafter enacted. Lessee shall conduct its business in a lawful manner and shall not use or permit the use of the Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Morgan Hill Police Department Building.

6.3 **Specially Designated National or Blocked Person.** Lessee certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation designated by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, group, entity or nation pursuant to any Applicable Laws that are administered or enforced by the Office of Foreign Assets Control, nor is Lessee initiating, facilitating or engaging in this transaction, directly or indirectly, for or on behalf of any such person, group, entity or nation.

6.4 Acceptance of Premises; Lessee's Work

(a) The Premises as furnished by Lessor consist of the improvements as they exist as of the date hereof. Lessor shall have no obligation for construction work or improvements on the Premises, and Lessor's contribution to the construction and improvements consists only of delivery of possession of the Premises to Lessee in their as-is condition and with all existing faults, if any. The improvements now or hereafter situated upon the Premises, whether constructed by, for, or at the expense of either Lessor or Lessee, are and shall become a part of the Premises and Lessee shall have only a leasehold interest therein.

(b) Prior to entering into this Lease, Lessee has made a thorough and independent examination of the Premises and all matters relating to Lessee's decision to enter into this Lease. Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in any acceptable condition and meet Lessee's needs. Lessee hereby accepts the Premises and the Morgan Hill Police Department Building in their condition existing as of the Commencement Date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that the Premises are in good order and repair and that it has satisfied itself by its own independent investigation that the Premises are suitable for its intended use, and that neither Lessor nor Lessor's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Morgan Hill Police Department Building for the conduct of Lessee's business.

7. Maintenance, Repairs, Alterations and Common Area Services

7.1 Lessor's Obligations. Subject to receipt by Lessor of Lessee's Share of any Operating Expenses, Lessor shall repair and maintain the structural portions of the Premises (including the roof structure and membrane and exterior walls), the Building Systems and Common Areas; provided that Lessee shall be obligated to reimburse Lessor for any repair or maintenance if necessitated or occasioned by the acts, omissions or negligence of Lessee, or any of its servants, employees, contractors, agents, visitors or licensees, which Lessee could have reasonably prevented. Except as provided in Section 9.4, there shall be no abatement of rent or liability of Lessor on account of any injury or interference with Lessee's business arising from the making of any improvements, alterations or repairs to any portion of the Morgan Hill Police Department Building or to fixtures, appurtenances and equipment therein, nor shall any such improvement, alteration or repair constitute an eviction or disturbance of Lessee's use or possession of the Premises.

7.2 Lessee's Obligations.

(a) Lessee shall take good care of the Premises and keep the Premises in good working order and in a clean, safe and sanitary condition. Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall pay, as Additional Rent, the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, that is attributable to causes beyond normal wear and tear. Lessee shall be responsible for the cost of such periodic painting or repair or replacement of wall coverings at the Premises as may reasonably be required and approved by Lessor and for the repair or replacement of any improvements that are not ordinarily a part of the Building or that are above generally accepted building standards.

(b) On the last day of the Term, or upon any sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Lessee. Lessee shall repair any damage to the Premises occasioned by the installation or removal of Lessee's trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this Lease, Lessee shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings, carpets, wall paneling, ceilings and plumbing on the Premises and in good operating condition.

7.3 Alterations and Additions.

(a) Lessee shall not make or permit any alterations, installations, improvements, additions, or repairs, structural or otherwise (collectively, "Alterations"), in, on or about the Premises, or the Morgan Hill Police Department Building without Lessor's prior written consent, which Lessor may give or

withhold in Lessor's sole discretion. As used herein, the term "Alterations" shall include, but not be limited to, carpeting, window and wall coverings, power panels, electrical distribution systems, lighting fixtures, air conditioning, plumbing, and telephone and telecommunication wiring and equipment. Along with any request for consent, Lessee will deliver to Lessor plans and specifications for the Alterations and names and addresses of all prospective contractors for the Alterations. Lessee shall, within ten (10) days after written request thereof, reimburse Lessor for all reasonable costs and expenses incurred by Lessor in reviewing any request to approve any proposed Alterations, regardless of whether Lessor approves or disapproves of such Alterations. If Lessor approves the proposed Alterations, Lessee will, before commencing the Alterations, deliver to Lessor copies of all contracts, certificates of insurance, copies of all necessary permits and licenses and such other information relating to the Alterations as Lessor reasonably requests. Lessee will cause all approved Alterations to be constructed (i) in a good and workmanlike manner, (ii) in compliance with all Applicable Laws (as defined in Section 6.2), (iii) in accordance with the Rules and Regulations and with any design guidelines established by Lessor, (iv) in accordance with all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises or any other body exercising similar functions, and (v) during times reasonably determined by Lessor to minimize interference with other lessees' use and enjoyment of the Morgan Hill Police Department Building.

(b) Lessee shall pay the cost and expense of all Alterations, including, without limitation, a reasonable charge for Lessor's review, inspection and engineering time, and for any painting, restoring or repairing the Premises or the Building that the Alterations occasion. Prior to commencing any Alterations, Lessee shall deliver the following to Lessor in form and amount reasonably satisfactory to Lessor: (i) demolition (if applicable) and payment and performance bonds, (ii) builder's "all risk" insurance in an amount at least equal to the replacement value of the Alterations, and (iii) evidence that Lessee and each of Lessee's contractors have in force commercial general liability insurance insuring against construction related risks in at least the form, amounts and coverages required of Lessee under Section 8. The insurance policies described in clauses (ii) and must name Lessor, Lessor's lender and the Property Manager as additional insureds.

(c) Lessor may inspect construction of the Alterations. Immediately upon completion of any Alterations, Lessee will furnish Lessor with contractor affidavits and full and final lien waivers and receipted bills covering all labor and materials expended and used in connection with the Alterations. Lessee will remove any Alterations Lessee constructs in violation of this Section 7.3 within ten (10) days after Lessor's written request and in any event prior to the expiration or earlier termination of this Lease. All Alterations Lessee makes or causes to be made to the Premises (including all telephone, computer, security and other wiring and cabling located within the walls of the Premises, but excluding Lessee's movable trade fixtures, furniture and equipment) become the property of Lessor and a part of the Building immediately upon installation and, unless Lessor requests Lessee to remove the Alterations, Lessee will surrender the Alterations to Lessor upon the expiration or earlier termination of this Lease at no cost to Lessor.

(d) Lessee will keep the Premises and the Morgan Hill Police Department Building free from any mechanics', material providers', or other liens arising out of any work performed, materials furnished or obligations incurred by or for Lessee. In the event that Lessee shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause any such lien to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Lessor and all expenses incurred by it in connection therewith (including, without limitation, reasonable counsel fees) shall be payable to Lessor by Lessee upon demand. Lessor shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Lessor shall deem proper for the protection of Lessor, the Premises, and the Morgan Hill Police Department Building, from mechanics' and material providers' liens. Lessee shall give to Lessor at least ten (10) days' prior written notice of commencement of any repair or construction on the Premises.

7.4 Utility Additions.

(a) **Additional Utilities Facilities.** Lessor reserves the right to install new or additional utility facilities throughout the Morgan Hill Police Department Building for the benefit of Lessor or Lessee, or any other lessee of the Morgan Hill Police Department Building, including, but not limited to, plumbing, electrical systems, communication systems, and fire protection and detection systems, so long as such installations do not unreasonably interfere with Lessee's use of the Premises.

(b) **Telecommunications Equipment.** Lessee's installation of telephone lines, cables, and other electronic telecommunications services and equipment shall be subject to the terms and conditions of Section 7.3 of this Lease. Upon the expiration or earlier termination of this Lease and upon the request of Lessor, Lessee shall remove, at its sole cost and expense, all of Lessee's telecommunications lines and cabling installed by Lessee, including, without limitation, any such lines and cabling installed in the plenum or risers of the Building (collectively, the "**Tenant Wiring**"), as designated by Lessor. In the event that Lessor elects to retain any Tenant Wiring, the Tenant Wiring shall be left in good condition and working order, lien free and properly labeled.

(c) **Wireless Systems.** Subject to Section 7.3. Lessee shall cause, at its sole cost and expense, any wireless systems equipment ("**WIFI Equipment**"), as installed, to at all times comply with all applicable technical requirements and Applicable Laws, and Lessee shall cause such equipment not to interfere with (i) any of the Building's mechanical and electrical equipment and machinery, or any Building System, and (ii) any wireless system or telecommunications facilities servicing or within the Building as of the date of installation by the Lessee. Lessee agrees to consult with Lessor at the earliest practical stage of consideration of any project by Lessee which may possibly interfere with the foregoing.

8. Insurance; Indemnity.

8.1 Insurance. Lessee shall, at Lessee's sole cost and expense, obtain and keep in effect during the Term:

(a) Commercial general liability insurance applying to the use and occupancy of the Premises and the Morgan Hill Police Department Building and any part thereof, or any areas adjacent thereto and including any licensed areas and storage spaces and the business operated by Lessee and any other occupants on the Premises. Such insurance shall have a minimum combined single limit of liability of not less than Two Million and 00/100 Dollars (\$2,000,000). Such policy shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned occurring during the policy term, with at least the following endorsements to the extent such endorsements are generally available: (i) deleting any employee exclusion on personal injury coverage, (ii) providing broad form property damage coverage and products completed operations coverage (where applicable), (iii) deleting any liquor liability exclusions, and (iv) providing for coverage of owned and non-owned automobile liability;

(b) Standard fire and extended perils insurance, including sprinkler leakages, vandalism and malicious mischief covering property of every description including furniture, fittings, installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of the Lessee in an amount of not less than one hundred percent (100%) of the full replacement cost thereof as shall from time to time be determined by Lessee in form satisfactory to Lessor;

(c) State Worker's Compensation Insurance in the statutorily mandated limits and Employer's Liability Insurance with limits of not less than Five Hundred Thousand Dollars (\$500,000), or such greater amount as Lessor may from time to time require;

(d) Any additional amounts of coverage or other form or forms of insurance as Lessor may reasonably require from time to time in amounts and for insurable risks against which a prudent Lessee would protect itself.

8.2 Insurance Policies. All policies of insurance provided for herein shall be issued by insurance

companies with general policyholders' rating of not less than (VII) and a financial rating of A- as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of California, and shall include as additional insureds Lessor, the Property Manager, and such other persons or firms as Lessor specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of Lessor, Lessee and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days prior to the delivery of possession of the Premises to Lessee and thereafter within thirty (30) days prior to the expiration of the term of such policy. All commercial general liability and property damage policies shall contain a provision that Lessor and the Property Manager, although named as additional insureds, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees, by reason of Lessee's negligence. As often as any policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All such policies of insurance shall provide that the company writing said policy will give to Lessor thirty (30) days' notice in writing in advance of any cancellation or lapse or of the effective date of any reduction in the amounts of insurance. All commercial general liability, property damage and other casualty policies shall be written on an occurrence basis and as primary policies, and not in excess of coverage that Lessor may carry. Lessor's coverage shall not be contributory. Such insurance shall specifically include the liability assumed hereunder by Lessee, shall provide for severability of interests, shall further provide that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

8.3 Failure to Obtain. Should Lessee fail to take out and keep in force each insurance policy required under this Section 8, or should such insurance not be approved by Lessor and should the Lessee not rectify the situation within forty-eight (48) hours after written notice from Lessor to Lessee, Lessor shall have the right, without assuming any obligation in connection herewith, to effect such insurance at the sole cost of Lessee, and all outlays by the Lessor shall be immediately payable by the Lessee to the Lessor as Additional Rent without prejudice to any other rights and remedies of Lessor under this Lease.

8.4 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance and to the extent of insurance proceeds received with respect to the loss, Lessor and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Morgan Hill Police Department Building or any portion thereof or the contents of any of the same, for any loss or damage maintained by such other party with respect to the Morgan Hill Police Department Building or the Premises or any portion of any thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated as a result of such waiver, Lessee shall, if possible, obtain from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Lessor or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

8.5 Lessor's Liability. No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

8.6 Indemnity. Lessee shall indemnify, protect, defend and save and hold Lessor, the Property Manager, and their respective trustees, directors, officers, agents and employees, harmless, from and against any and all losses, costs, liabilities, claims, damages and expenses, including, without limitation, reasonable attorneys' fees and costs and reasonable investigation costs, incurred in connection with or

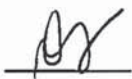
arising from: (a) any default by Lessee in the observance or performance of any of the terms, covenants or conditions of this Lease on Lessee's part to be observed or performed, or (b) the use or occupancy or manner of use or occupancy of the Premises by Lessee or any person or entity claiming through or under Lessee, or (c) the condition of the Premises or any occurrence on the Premises from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Lessor, or (d) any acts, omissions or negligence of Lessee or of the contractors, agents, servants, employees, visitors, customers, or licensees of Lessee, in, on or about the Premises or the Morgan Hill Police Department Building. Lessee's obligations under this Section 8.6 shall survive the termination of the Lease.

8.7 Limitation of Lessor's Liability: Subject to Section 8.4, Lessee hereby agrees that Lessor shall not be responsible for or liable to Lessee and Lessee hereby releases Lessor and waives all claims against Lessor for any injury, loss or damage to any person or property in or about the Premises or the Morgan Hill Police Department Building by or from any cause whatsoever (other than Lessor's gross negligence or willful misconduct) including, without limitation, acts or omissions of persons occupying adjoining premises or any part of the Morgan Hill Police Department Building; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil or electricity in, on or about the Premises or the Morgan Hill Police Department Building. The liability of Lessor, any agent of Lessor, or any of their respective officers, directors, board members, beneficiaries, shareholders, or employees to Lessee for or in respect of any default by Lessor under the terms of this Lease or in respect of any other claim or cause of action shall be limited to the interest of Lessor in the Building, and Lessee agrees to look solely to Lessor's interest in the Morgan Hill Police Department Building for the recovery and satisfaction of any judgment against Lessor, any agent of Lessor, or any of their respective officers, directors, shareholders, and employees. Any action based upon such liabilities shall be commenced within six (6) months following the date of any assignment of this Lease by Lessor and no such action shall be brought thereafter. No holder or beneficiary of any mortgage or deed of trust on any part of the Morgan Hill Police Department Building shall have any liability to Lessee hereunder for any default of Lessor.

(a) Lessee expressly acknowledges the inherent risks of being situated in the same building as the Morgan Hill Police Department ("**Police Department**") and waives for itself and its guests, employees, vendors, customers, truckers, or anyone connected with Lessee in any way, any and all claims for damages or liability against the Police and against Lessor arising out of or resulting from being situated in the same building as the Police Department. Lessee shall indemnify and hold harmless Police and/or Lessor from all liability, damage or expenses arising out of or related to Lessee's being situated in the same building as the Police Department.

(b) Lessee expressly waives any rights or benefits to its or its successors and assigns with respect to the foregoing release under any provision of applicable law which generally provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the release which, if known by such creditor, would materially affect the settlements. By execution of this Agreement, Lessee acknowledges that it fully understands the foregoing and with this understanding nonetheless elects to and does assume all-risk or claims, known or unknown, described in the foregoing release provision. Without limiting the generality of the foregoing, Lessee acknowledges it has been advised by legal counsel and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

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

Lessee: 

Lessee, being aware of this Code Section, hereby expressly waives any right that it may have thereunder, as well as under any statutes or common law principles of similar effect. The foregoing shall survive the expiration or early termination of this Lease.

9. Damage or Destruction.

9.1 **Definition.** The term "**casualty**", for purposes of this Lease, includes (but is not limited to) the following acts or events:

(a) Extreme events of nature including but not limited to fire, flood, bad weather, earthquake, and other similar occurrences;

(b) Any act of war, terrorism, or bio-terrorism, where "bio-terrorism" shall mean the release (or threatened release) of an airborne agent or other contaminant that is or could adversely affect the Building or its occupants.

9.2 If the Premises or the Building or the Morgan Hill Police Department Building or any portion thereof (whether or not the Premises are affected) are damaged by fire or other Casualty, Lessor shall forthwith repair the same (except for Alterations installed by or on behalf of Lessee) provided that such repairs can be made within one hundred eighty (180) days after the date of such damage under the laws and regulations of the federal, state and local governmental authorities having jurisdiction thereof and are covered by the proceeds of any insurance maintained by Lessor. In such event, this Lease shall remain in full force and effect except that Lessee shall be entitled to a proportionate reduction of Base Rent and Additional Rent while such repairs are being made as provided below. Within thirty (30) days after the date of such damage, Lessor shall notify Lessee whether or not such repairs are covered by any insurance maintained by Lessor and whether such repairs can be made within one hundred eighty (180) days after the date of such damage. Lessor's determination thereof shall be binding on Lessee. If such repairs cannot be made within one hundred eighty (180) days from the date of such damage or such damage is not so covered by insurance, Lessor shall have the option within thirty (30) days after the date of such damage to notify Lessee of its election to terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after notice is given. If Lessor notifies Lessee that or such damage is not so covered by insurance, Lessor shall either: (a) notify Lessee of Lessor's intention to repair such damage, in which event this Lease shall continue in full force and effect, Lessor shall diligently prosecute such repairs to completion, and the Base Rent and Additional Rent shall be reduced as provided herein; or (b) notify Lessee of Lessor's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given. If such notice to terminate is given by Lessor, this Lease shall terminate on the date specified in such notice. In case of termination, the Base Rent and Additional Rent shall be reduced by a proportionate amount based upon the extent to which such damage interfered with the business carried on by Lessee in the Premises, and Lessee shall pay such reduced Base Rent and Additional Rent up to the date of termination. Lessor agrees to refund to Lessee any Base Rent and Additional Rent previously paid for any period of time subsequent to such date of termination. The repairs to be made hereunder by Lessor shall not include, and Lessor shall not be required to repair, any damage by fire or other cause to the property of Lessee or any damage caused by the negligence of Lessee, its contractors, agents, licensees or employees or any repairs or replacements of any paneling, decorations, railings, floor coverings, or any Alterations, additions, fixtures or improvements installed on the Premises by or at the expense of Lessee.

9.3 If Lessor elects or is required hereunder to repair, reconstruct or restore the Premises after any damage or destruction thereto, Lessee shall, at its own expense, as soon as reasonably practicable, replace or fully repair, reconstruct or restore all Alterations installed by Lessee and all other of Lessee's

improvements, fixtures and property. Lessee hereby waives the provisions of any statute or law that may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated, or a Lessee is given the right to terminate a lease upon such an occurrence.

9.4 Lessee shall have no interest in or claim to any portion of the proceeds of any insurance or self-insurance maintained by Lessor. Except as otherwise provided herein, Lessor shall have no interest in or claim to any portion of the proceeds of any insurance maintained by Lessee under Section 8.

9.5 Lessee agrees at all times after any damage to or destruction of the improvements on the Premises, or any portion thereof, to continue the operation of its business therein to the extent practicable. If Lessor is required or elects to make any repairs, reconstruction or restoration of any damage or destruction to the Premises under any of the provisions of this Section 9, Lessee shall not be entitled to any damages by reason of any inconvenience or loss sustained by Lessee as a result thereof. During the period commencing with the date of any such damage or destruction that Lessor is required or elects hereunder to repair, reconstruct or restore, and ending with the completion of such repairs, reconstruction or restoration the Base Rent and Additional Rent shall be proportionately reduced based upon the extent to which such damage and the making of such repairs by Lessor shall interfere with the business carried on by Lessee in the Premises. The full amount of Base Rent and Additional Rent shall again become payable immediately upon the completion of such work of repair, reconstruction or restoration. Except as expressly hereinabove provided, there shall be no reduction, change or abatement of any rental or other charge payable by Lessee to Lessor hereunder, or in the method of computing, accounting for or paying the same.

9.6 **Interruption of Service.**

(a) **Interruption of Service Defined.** No damages, compensation, or claim shall be payable by Lessor, and this Lease and the obligations of Lessee to perform all of its covenants and agreements hereunder shall in no way be affected, impaired, reduced, or excused, in the event that there is an interruption, curtailment, or suspension of the Building's HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel), or other Building systems serving the Premises or any other services required of Lessor under this Lease (each, an "Interruption of Service"), by reason of:

(i) any Casualty;

(ii) any emergency situation creating a threat to person or property;

(iii) any other causes of any kind whatsoever that are beyond the control of Lessor, including but not limited to:

(aa) a lack of access to the Building or the Premises beyond the control of Lessor (which shall include, but not be limited to, the lack of access to the Building or the Premises when it or they are structurally sound but inaccessible due to the evacuation of the surrounding area or damage to nearby structures or public areas);

(bb) any cause outside the Building;

(cc) reduced air quality or other contaminants within the Building that would adversely affect the Building or its occupants (including, but not limited to, the presence of biological or other airborne agents within the Building or the Premises);

(dd) a disruption of mail and deliveries to the building or the Premises resulting from a Casualty;

(ee) a disruption of telephone and telecommunications services to the Building or the Premises resulting from a Casualty; or,

(ff) a blockage of any windows, doors, or walkways to the Building or the Premises resulting from a Casualty.

(b) **Lessor's Interruption of Services.** Except as otherwise expressly provided in this Lease, Lessor reserves the right, without any liability to Lessee, and without being in breach of any covenant of this Lease, to effect an Interruption of Service, as required by this Lease or by law, or as Lessor in good faith deems advisable, whenever and for so long as may be reasonably necessary, to make repairs, alterations, upgrades, changes, or for any other reason, to the Building's HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel), or other Building systems serving the Premises or any other services required of Lessor under this Lease.

In each instance, Lessor shall exercise reasonable diligence to eliminate the cause of the Interruption of Service, if resulting from conditions within the Building, and conclude the Interruption of Service. Lessor shall give Lessee notice, when practicable, of the commencement and anticipated duration of such Interruption of Service.

(c) **No Remedies.** The occurrence of an Interruption of Service pursuant to Subsections 9.6(a) and 9.6(b) hereof shall not:

- (i) Constitute an actual or constructive eviction of Lessee, in whole or in part;
- (ii) Entitle Lessee to any abatement or diminution of Basic Rent, Additional Rent, or any other costs due from Lessee pursuant to this Lease;
- (iii) Relieve or release Lessee from any of its obligations under this Lease;
- (iv) Entitle Lessee to terminate this Lease, unless said interruption continues for a period in excess of ninety (90) days.

10. Taxes.

10.1 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon any Alterations made by it, as well as any of its trade fixtures, furnishings, equipment, and all other personal property of Lessee located in the Premises or elsewhere.

(b) If any of Lessee's personal property shall be jointly assessed with Lessor's real property, Lessee shall pay to Lessor the portion of the tax attributable to such personal property within fifteen (15) days after receipt of a written statement setting forth such amounts prepared by Lessor in accordance with Section 4.2.

10.2 **Possessory Interest Tax.** So long as the Morgan Hill Police Department Building is exempt from *ad valorem* real property taxes, the following provisions shall apply:

(a) **Definition.** "Possessory Interest Taxes" means a tax imposed by County of Santa Clara upon private uses of public property which constitute "possessory interests," pursuant to Cal. Const. Art. XIII, §1; Cal. Rev. & Tax. Code §§ 104, 107 and 201. A "possessory interest" includes,

inter alia, the "possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in property, except when coupled with ownership of the land or improvements in the same person." (Cal. Rev. & Tax. Code§107(a)).

(b) **Payment.** Lessee shall be solely responsible for payment of any Possessory Interest Tax obligation with respect to the Premises.

(c) **Challenges.** Lessee shall be entitled to challenge the assessment of Possessory Interest Tax with respect to the Premises at Lessee's sole cost and expense.

10.3 Joint Assessment. If the taxes on improvements or personal property which are to be paid separately by Lessee under this Section 10 are not separately assessed, Lessee's portion of such taxes shall be equitably determined by Lessor from the respective valuations assigned to such improvements or personal property in the assessor's work sheets or such other information (which may include the cost of construction) as may be reasonably available. Lessor's reasonable, good faith determination thereof shall be conclusive.

11. Utilities.

11.1 Services Provided by Lessor.

(a) Lessor shall not provide any services to the Premises, and Lessee shall be solely responsible for obtaining and paying for any and all services, pursuant to Section 11.2, except for gas bill as described herein.

(b) Lessor shall bill Lessee for seven (7) percent of the gas bill received from PG&E, or other provider, payable as described in Section 4.2.

11.2 Services Exclusive to Lessee. Lessee shall independently contact the service providers for, and shall pay all costs related to, all utilities and services furnished to or used at the Premises, including heating, ventilation, air conditioning, electricity, water, sewer, janitorial, other power, telephone and other communications services, and all other utilities and services supplied and/or metered to the Premises or to Lessee, together with any taxes or impositions thereon. Lessee shall be responsible for installing a separate water and electrical meter and hooking up the existing heating, ventilation and air conditioning system. If any of the above-listed services are not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises in the Building.

11.3 Excess Usage by Lessee. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extraordinary burden upon the utilities or services, including, but not limited to security services, over standard office usage for the Morgan Hill Police Department Building. Lessee shall reimburse Lessor for any expenses or costs resulting from a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at the Premises at Lessee's expense supplemental equipment and/or separate metering for use in measuring Lessee's excess usage or loading. Lessee will reimburse Lessor for such excess utility use as Additional Rent.

11.4 Interruptions. Lessor shall not be liable for and there shall be no rent abatement as a result of any stoppage, reduction, interruption or discontinuance of any utility or service due to riot, strike, act of war, act of terrorism or bioterrorism, labor dispute, breakdown, accident, repair or any other cause or in

cooperation with governmental request or directions, nor shall such stoppage, reduction, interruption or discontinuance be considered an eviction or interruption of Lessee's use or possession of the Premises.

12. Assignment and Subletting. Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Lessee) voluntarily or by operation of law sell, assign, mortgage, encumber, pledge or otherwise transfer or hypothecate all or any part of Lessee's interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, "**Assignment**"), or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises (collectively, "**Sublease**").

13. Default; Remedies.

13.1 Default. The occurrence of any one or more of the following events shall constitute a material default by Lessee under this Lease:

(a) The vacation or abandonment of the Premises by Lessee. Vacation of the Premises shall include the failure to occupy the Premises for a continuous period of thirty (30) days or more, whether or not the rent is paid.

(b) The breach by Lessee of any of the covenants, conditions or provisions of Sections 7.3(a), (b) or (d) (alterations), 12 (assignment or subletting), 17 (estoppel certificate), 30 (subordination), or 42 (easements), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by Lessor to Lessee thereof.

(c) The failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee hereunder, without deduction or offset, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(d) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee other than those referenced in subparagraphs (b) and (c), above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion. To the extent permitted by law, such thirty (30) day notice shall constitute the sole and exclusive notice required to be given to Lessee under applicable Unlawful Detainer statutes.

(e) (i) The making by Lessee or by any guarantor of Lessee's obligations under this Lease of any general arrangement or general assignment for the benefit of creditors; (ii) Lessee or any guarantor of Lessee's obligations under this Lease becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section 13.1(e) is contrary to any applicable law, such provision shall be of no force or effect, and this Section 13.1(e) shall be interpreted in such a way to give effect to the remaining provisions.

(f) Lessee shall do or permit to be done anything which creates a lien upon the Premises

or upon all or any part of the Building or the Morgan Hill Police Department Building.

(g) The default of any guarantors of Lessee's obligations hereunder under any guaranty of this lease, or the attempted repudiation or revocation of any such guaranty.

(h) The inclusion by Lessee or its successor in interest or by any guarantor of Lessee's obligation hereunder of false information in any financial statement provided hereunder.

13.2 Remedies. In the event of any material default or breach of this Lease by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to (i) the cost of recovering possession of the Premises; (ii) expenses of reletting, including necessary renovation and alteration of the Premises; (iii) reasonable attorneys' fees, and any real estate commission actually paid; (iv) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; (v) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Lessee proves could reasonably be avoided; (vi) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; (vii) that portion of the leasing commission paid by Lessor pursuant to Section 16 and (viii) that portion of the Lessee improvement allowance (if any) applicable to the unexpired Term of this Lease. As used in this Section 13.2, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have vacated or abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder. The foregoing remedies shall also be available to Lessor in the event Lessee has abandoned the Premises. Lessor's election not to terminate this Lease pursuant to this Section 13.2(b) or pursuant to any other provision of this Lease, at law or in equity, shall not preclude Lessor from subsequently electing to terminate this Lease or pursuing any of its other remedies.

(c) Re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of, in Lessor's sole discretion, and no acceptance of surrender of the Premises or other action on Lessor's part shall be construed as an election to terminate this Lease.

(d) Pursue any other remedy now or hereafter available to Lessor under applicable law. Unpaid installments of Rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

13.3 Right to Perform. Except as otherwise specifically provided in this Lease, all covenants and agreements of Lessee under this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any abatement or offset of Rent. If Lessee shall fail to pay any sum of money (other than monthly Base Rent) or fail to perform any other act on its part to be paid or performed hereunder and such failure shall continue beyond any applicable cure period, Lessor may, without waiving or releasing Lessee from any of Lessee's obligations, make such payment or perform such other act on behalf of Lessee. All sums so paid by Lessor and all necessary incidental costs incurred by Lessor in performing such other acts shall be payable by Lessee to Lessor within five (5) days after demand therefor as Additional Rent.

13.4 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying the obligation that Lessor has failed to perform; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently pursues the same to completion.

13.5 Late Charges; Right to Change Terms.

(a) Lessee hereby acknowledges that late payment by Lessee to Lessor of Base Rent, or Additional Rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Morgan Hill Police Department Building. Accordingly, if any installment of Base Rent, Additional Rent, or any other sum due from Lessee shall not be received by Lessor or Lessor's designee when due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

(b) Following any late rental payment occurring twice within any twelve (12) month period, Lessor may require one or more of the following at Lessor's sole discretion by giving written notice to Lessee (and in addition to any late charge or interest accruing pursuant to Section 13.5(a) above, as well as any other rights and remedies accruing pursuant to Article 13, or any other provision of this Lease or at law): (i) that Base Rent shall be paid quarterly in advance instead of monthly; (ii) that all future rental payments are to be made on or before the due date by cash, cashier's check, or money order; (iii) that the delivery of Lessee's personal or corporate check will no longer constitute a payment of rental as provided in this lease; and/or (iv) that Lessee provide a security deposit equal to three (3) months of that current Base Rent. Any acceptance of a monthly rental payment or of a personal or corporate check thereafter by Lessor shall not be construed as a subsequent waiver of said rights.

14. Hazardous Substances.

14.1 As used herein, the term "**Hazardous Substances**" shall mean any chemical, substance, medical or other waste, living organism or combination thereof which is or may be hazardous to the environment or human or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects. "Hazardous Substances" shall include, without limitation, petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all substances which now or in the future may be defined as "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "hazardous materials," "toxic substances," "infectious wastes," "biohazardous wastes," "medical wastes," "radioactive wastes" or which are otherwise listed, defined or regulated in any manner pursuant to any Environmental Laws. As used herein, "**Environmental Laws**" means all present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, licenses, approvals and other entitlements, and rules of common law, pertaining to Hazardous Substances, the protection of the environment or human or animal health or safety.

14.2 Lessee shall not cause or permit any Hazardous Substance to be used,

manufactured, stored, discharged, released or disposed of in, from, under or about the Premises, the Building, the Morgan Hill Police Department Building or any other land or improvements in the vicinity thereof, excepting only, if applicable, such minor quantities of materials as are normally used in office buildings, and then only in strict accordance with all Applicable Laws. Without limiting the generality of the foregoing, Lessee, at its sole cost, shall comply with all Environmental Laws. If the presence of Hazardous Substances on the Premises or elsewhere in the Morgan Hill Police Department Building caused or permitted by Lessee results in contamination of the Premises or any other portion of the Morgan Hill Police Department Building, or any soil or groundwater in, under or about the Morgan Hill Police Department Building, Lessee, at its expense, shall promptly take all actions necessary to return the Premises or the Morgan Hill Police Department Building or portion thereof affected, to the condition existing prior to the appearance of such Hazardous Materials. The termination of this Lease shall not terminate or reduce the liability or obligations of Lessee under this Section 14, or as may be required by law, to clean up, monitor or remove any Hazardous Substances.

14.3 Lessee shall indemnify, protect, defend and hold harmless Lessor, the Property Manager, and their respective officers, directors, trustees, agents and employees from and against all losses, costs, claims, damages, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, or expenses of any kind or nature (including, without limitation, attorneys' fees and expert's fees) arising out of or in connection with any Hazardous Substances on, in, under or affecting the Premises, Building, Office Project, or any part thereof that are or were attributable to Lessee or any employee, invitee, licensee, agent, contractor, or permitted sublessee Lessee or anyone claiming under Lessee or other person or entity acting at the direction, knowledge or implied consent of Lessee, including, without limitation, any cost of monitoring or removal, any reduction in the fair market value or fair rental value of the Premises, the Building or the Morgan Hill Police Department Building, and any loss, claim or demand by any third person or entity relating to bodily injury or damage to real or personal property and reasonable attorneys' fees and costs.

14.4 Lessee shall not suffer any lien to be recorded against the Premises, the Building or the Morgan Hill Police Department Building as a consequence of a Hazardous Substance, including any so called state, federal or local "super fund" lien related to the "clean up" of a Hazardous Substances in or about the Premises, the Building or the Morgan Hill Police Department Building where said Hazardous Substances are or were attributable to the activities of Lessee.

14.5 In the event Hazardous Substances are discovered in or about the Premises, the Building or the Morgan Hill Police Department Building, and Lessor has reason to believe that Lessee or any employee, invitee, licensee, agent or contractor of Lessee or anyone claiming under Lessee was responsible for the presence of such Hazardous Substances, then Lessor shall have the right to appoint a consultant, at Lessee's expense, to conduct an investigation to determine whether Hazardous Substances are located in or about the Premises, the Building or the Morgan Hill Police Department Building and to determine the corrective measures, if any, required to remove such Hazardous Substances. Lessee, at its expense, shall comply with all recommendations of the consultant, as required by law. To the extent it is determined that neither Lessee nor any employee, invitee, licensee, agent or contractor of Lessee, nor anyone claiming under Lessee, was responsible for the presence of the Hazardous Substances, then Lessor shall reimburse Lessee for any costs incurred by Lessor and paid by Lessee under the terms of this Section 14.

14.6 Lessee shall immediately notify Lessor of any inquiry, test, investigation or enforcement proceeding by or against Lessee or the Premises, the Building or the Morgan Hill Police Department Building known to Lessee concerning any Hazardous Substances. Lessee acknowledges that Lessor, as the owner of the Morgan Hill Police Department Building, at its election, shall have the sole right, at Lessee's expense, to negotiate, defend, approve and appeal any action taken or order issued with regard to Hazardous Substances by any applicable governmental authority.

14.7 Lessee shall surrender the Premises to Lessor, upon the expiration or earlier

termination of the Lease, free of Hazardous Substances which are or were attributable to Lessee or any employee, invitee, licensee, agent or contractor of Lessee, or anyone claiming under Lessee. If Lessee fails to so surrender the Premises, Lessee shall indemnify and hold Lessor harmless from all losses, costs, claims, damages and liabilities resulting from Lessee's failure to surrender the Premises as required by this Section, including, without limitation, any claims or damages in connection with the condition of the Premises including, without limitation, damages occasioned by the inability to relet the Premises or a reduction in the fair market and/or rental value of the Premises, the Building or the Morgan Hill Police Department Building or any portion thereof, by reason of the existence of any Hazardous Substances, which are or were attributable to the activities of Lessee or any employee, invitee, licensee, agent or contractor of Lessee, or anyone claiming under Lessee.

14.8 Upon or prior to the Commencement Date, Lessee shall provide to Lessor a complete list of any and all Hazardous Substances expected to be employed by Lessee within the Premises. Throughout the term of the Lease, Lessee shall continue to update this list of chemicals, contaminants and Hazardous Substances.

14.9 At any time and from time to time during the term of this Lease if Lessor has a good-faith, reasonable belief that Hazardous Substances are present on the Premises in violation of this Lease, Lessor may perform, at Lessee's sole cost and expense, an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm chosen by Lessor, indicating the presence or absence of Hazardous Materials caused or permitted by Lessee and the potential cost of any compliance, removal or remedial action in connection with any such Hazardous Substances on the Premises. Lessee shall grant and hereby grants to Lessor and its agents access to the Premises and specifically grants Lessor an irrevocable non-exclusive license to undertake such an assessment; and the cost of such assessment shall be immediately due and payable on demand.

14.10 Lessee shall fully complete and execute the Pre-Leasing Environmental Exposure Questionnaire attached hereto as **Exhibit C** and incorporated herein by reference and deliver the same to Lessor within thirty (30) days of execution of this Lease.

15. Premise Improvements. The parties agree that certain Premise Improvements, consisting generally of interior work to subdivide space within the Premises, are necessary for continuation of leasing the space by Lessee. The exact scope and cost of the Premise Improvements is not known at this time.

15.1 Lessee shall construct Premise Improvements within the Premises in accordance with Plans and Specifications (as prepared by a licensed architect), and shall be submitted to the Lessor's Building Department along with any required documentation for a building permit. Premise Improvements must satisfy the federal Americans with Disabilities Act (ADA), if applicable. Lessor shall have exclusive authority to approve the plans and specifications. Lessee shall pay for all costs of Premise Improvements, with the understanding that Lessee shall be entitled to abate from rent the costs of the Premise Improvements until Lessee's costs have been reimbursed in full. Lessor and Lessee shall agree to all Premise Improvement construction costs and schedule prior to commencement of construction. Only those costs approved by Lessor may be applied to rent payments.

15.2 Construction of Premise Improvements by Lessee shall commence within thirty days of agreeing to the schedule and costs, and completed within four to six weeks. Lessor shall have access to the Premises for inspection of the Premise Improvements. Lessor may reject any work that does not conform to the approved plans and specifications, or that does not meet the standards as

determined by the Lessor's Building Official.

- 15.3 All materials and equipment used or installed for the Premise Improvements shall be new. All contractors or subcontractors shall be appropriately licensed in accordance with state and local laws, including a Morgan Hill business license. All work shall be performed in a professional quality, free from faults and defects, in accordance with the plans and specifications approved by Lessor, and in compliance with all applicable federal, state, and local laws.
- 15.4 Premise Improvements shall be guaranteed for a period of one year after substantial completion, and Lessee shall, following written notice from Lessor, unconditionally make any repair, replacement, correction, of any nature necessary by virtue of defective construction or materials.
- 15.5 All Premise Improvements described in this Paragraph 15 shall be the property of Lessor.
- 15.6 Lessee acknowledges that the Premise Improvements described herein constitute a work of public improvement as defined by the Labor Code and therefore prevailing wages must be paid.

16. Broker's Fee. Each of Lessee and Lessor represents and warrants to the other that it has not had any dealings with any person, firm, broker or finder in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and no other broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transaction and Lessee and Lessor do each hereby indemnify, defend and hold the other harmless from and against any costs, expenses, attorney's fees or liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying party.

17. Estoppel Certificate.

17.1 Lessor's Request. Upon Lessor's written request, Lessee shall execute, acknowledge and deliver to Lessor a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated and is in full force and effect; (iii) the amount of the current Base Rent; (iv) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (v) the amount of any Security Deposit paid and the validity of any charges made thereto by Lessor (or, if Lessee contests the validity of any such changes, stating why); (vi) that the Lease has not been subleased or assigned, or if it has been so subleased or assigned, the identity of the sublessee or assignee; and (vii) that Lessor is not in default under this lease (or, if Lessor is claimed to be in default, stating why). Lessee shall deliver such statement to Lessor within ten (10) business days after Lessor's request. Any such statement by Lessee may be given by Lessor to any prospective purchaser or encumbrancer of the Premises, the Building or the Morgan Hill Police Department Building. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

17.2 At Lessor's option, the failure to deliver such statement within ten (10) business days of such request shall be a material default of this Lease by the responding party, without any further notice to Lessee, or it shall be conclusive upon Lessee that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Lessor is the requesting party, not more than one month's Base Rent has been paid in advance.

17.3 Lessee shall, when requested by Lessor from time to time but not more frequently than once each year, furnish a true and accurate audited statement of its financial condition for the last three (3) years; provided, however, that if Lessee is a publicly traded company Lessee may satisfy the requirements of this paragraph by providing Lessor with a copy of its Form 10-K.

18. Sale or Assignment by Lessor.

18.1 It is agreed that Lessor may at any time sell, assign or transfer by lease or otherwise its interest as Lessor in and to this Lease, or any part thereof, and may at any time sell, assign or transfer its interest in and to the whole or any portion of the Premises or the Morgan Hill Police Department Building. In the event of any transfer of Lessor's interest in the Premises or the Morgan Hill Police Department Building, the transferor shall be automatically relieved of any and all of Lessor's obligations and liabilities accruing from and after the date of such transfer provided that the transferee assumes all of Lessor's obligations under this Lease.

18.2 Lessee hereby agrees to attorn to Lessor's assignee, transferee, or purchaser from and after the date of notice to Lessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made in the first instance by and between Lessee and such assignee, transferee or purchaser. In the event of the exercise of the power of sale under, or the foreclosure of, any deed of trust, mortgage or other encumbrances placed by Lessor against all or any portion of the Premises, Lessee shall, upon demand, attorn to the purchaser upon the effective date of any such sale or foreclosure of any such deed of trust, mortgage or other encumbrance, and shall recognize the purchaser or judgment creditor as the Lessor under the Lease.

19. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

20. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

21. Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

22. Entire Agreement; Amendments. This instrument, including the exhibits hereto, which are incorporated herein and made a part of this Lease, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Lessee hereby acknowledges that neither Lessor nor Lessor's agents have made any representations or warranties with respect to the Premises, the Building, the Morgan Hill Police Department Building, or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

23. Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail and shall be deemed sufficiently given if delivered or addressed to Lessee or to Lessor at the address noted below the signature of the respective parties. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such

party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.

24. Waivers; Modifications.

24.1 No failure by Lessor to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy consequent upon a breach thereof, no acceptance of full or partial Rent or Additional Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any employee or agent of Lessor shall constitute a waiver of any such breach or of such term, covenant or condition or operate as a surrender of this Lease.

24.2 Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. The consent of Lessor given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of Lessor in any other or future instance under the terms of this Lease.

25. Recording. This Lease shall not be recorded without Lessor's consent. However, either Lessor or Lessee may, upon request of the other execute, acknowledge and deliver to the requesting party a "short form" memorandum of this Lease for recording purposes if the non-requesting party consents to the recording of such memorandum.

26. Holding Over. Lessee shall vacate the Premises upon the expiration or earlier termination of this Lease. Lessee shall reimburse Lessor for and indemnify, defend and hold Lessor harmless against all damages, liabilities and costs, including, but not limited to, attorneys' fees, incurred by Lessor from any delay by Lessee in vacating the Premises. If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the Term, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, except that the Rent payable shall be one hundred fifty percent (150%) of the Rent payable immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy. Any holding over without Lessor's consent shall constitute a default by Lessee and entitle Lessor to exercise any or all of its remedies provided hereunder, notwithstanding that Lessor may elect to accept one or more payments of Rent from Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

29. Binding Effect; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Section 18, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State where the Morgan Hill Police Department Building is located and any litigation concerning this Lease between the parties hereto shall be initiated in county in which the Morgan Hill Police Department Building is located.

30. Subordination.

30.1 This Lease, and any Option or right of first refusal granted hereby shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Morgan Hill Police Department Building and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. The foregoing provision of subordination shall be self-operative and no further instrument of subordination shall be needed. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the Rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

30.2 Lessee agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Lessee hereunder without further notice to Lessee or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this Section 30.2.

31. Attorney's Fees. In the event that either Lessor or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. Should Lessor be named as a defendant in any suit brought against Lessee in connection with or arising out of Lessee's occupancy hereunder, Lessee shall pay to Lessor its costs and expenses incurred in such suit, including reasonable attorneys' fees.

32. Lessor's Access.

32.1 Lessor reserves (for itself, its Property Manager, and any other designated agent, representative, employee or contractor) the right to enter the Premises at all reasonable times and, except in cases of emergency (which shall be determined by Lessor in its reasonable discretion), after giving Lessee reasonable notice, to inspect the Premises, to supply any service to be provided by Lessor hereunder, to show the Premises to prospective purchasers, mortgagees or, during the last year of the Term of this Lease, Lessees, to post notices of nonresponsibility, and to alter, improve or repair the Premises and any portion of the Building, without abatement of Rent or Additional Rent, and may for that purpose erect, use and maintain necessary structures in and through the Premises and the Building, where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that the business of Lessee shall not be interfered with unreasonably. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby. All locks for all of the doors in, upon and about the Premises, excluding Lessee's vaults and safes or special security areas (designated in advance in writing by Lessee) shall at all times be keyed to the Building master system and Lessor shall at all times have and retain a key with which to unlock all of said doors. Lessor shall have the right to use any and all means that Lessor may deem necessary or proper to open said doors in an emergency in order to obtain entry to any portion of the Premises, and any entry to the Premises or portions thereof obtained by Lessor by any of said means, or otherwise, shall not under any circumstances be

construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

32.2 Without limitation of the provisions of Section 32.1 above, Lessor and its authorized agents and representative shall be entitled to enter the Premises at all reasonable times during business hours for the purpose of exhibiting the same to prospective purchasers and, during the final ninety (90) days of the Term, Lessor shall be entitled to exhibit the Premises for hire or for rent and to display thereon in such manner as will not unreasonably interfere with Lessee's business the usual "For Rent" or "For Lease" signs, and such signs shall remain unmolested on the Premises.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction in the Premises or the Common Areas without first having obtained Lessor's prior written consent, which consent may be granted or withheld in Lessor's sole and absolute discretion. The holding of any auction on the Premises or Common Areas in violation of this Section shall constitute a material default of this Lease.

34. Signs. Lessee shall not place any signage upon the Premises or the Morgan Hill Police Department Building without Lessor's prior written consent. All such signage shall be in accordance with applicable city and county codes, ordinances and regulations. Lessee shall be responsible for all costs and expenses of such signage. Under no circumstances shall Lessee place a sign on the roof of the Morgan Hill Police Department Building.

35. Merger. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing sub tenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such sub tenancies.

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

37. Quiet Possession. Lessee, upon paying the Rent due hereunder and performing all of its obligations under this Lease, shall have quiet possession of the Premises for the entire Term subject to all of the provisions of this Lease.

38. Authority. If Lessee is a corporation or a partnership, Lessee and each of the persons executing this Lease on behalf of Lessee does hereby represent and warrant as follows: Lessee is an entity duly formed and validly existing and in good standing under the laws of its state of organization and qualified to do

business in the State of California. Lessee has the power, legal capacity and authority to enter into and perform its obligations under this Lease and no approval or consent of any person is required in connection with the execution and performance hereof. The execution and performance of Lessee's obligations under this Lease will not result in or constitute any default or event that would be, or with notice or the lapse of time would be, a default, breach or violation of the organizational instruments governing Lessee or any agreement or any order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject. Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Lessee. Upon Lessor's request, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor confirming the foregoing representations and warranties.

39. Option to Extend.

- 39.1 Lessee shall have the option to request an extension of the Term of this Lease on all the terms and conditions contained in this Lease, except Rent, for one (1) additional twelve (12) month period following expiration of the Initial Term (the "Extended Term") provided that (i) Lessee is current with respect to all of its monetary obligations under this Lease, both at the time of exercise of the option and at the commencement of the extended Term, (ii) Lessee submits to Lessor a written request to Extend the Lease at least 90 days before the expiration of the initial Term and (iii) during the initial Term of the Lease, Lessee has not been late with any Rent payment three (3) or more times (a Rent payment shall be considered late for purposes of this Option if it is received by Lessor on or after the fifth calendar day of the month).
- 39.2 Sole Discretion of the City. City retains the sole discretion to approve or deny a timely submitted request for an extension.
- 39.3 Rent for Extended Term. The Base rent for the extended term shall be \$2.50 PSF for the permanent space and \$1.20 PSF for the common space.
- 39.4 Option Personal. The Option authorized hereunder is personal to Lessee and is not assignable or transferrable by Lessee.

40. Security Measures. Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Morgan Hill Police Department Building. Lessee assumes all responsibility for the protection of Lessee, its agents, and invitees and the property of Lessee and of Lessee's agents and invitees from acts of third parties. Nothing herein contained shall prevent Lessor, at Lessor's sole option, from providing security protection for the Morgan Hill Police Department Building or any part thereof, in which event the cost thereof shall be included within the definition of Operating Expenses, as set forth in Section 4.2.

41. Lessor's Reservations; Lessee's Restrictions.

- 41.1 Lessor shall have the following additional rights:

- (a) To change the name, address or title of the Morgan Hill Police Department Building or the Building in which the Premises are located upon not less than sixty (60) days prior written notice;
- (b) To, at Lessee's expense, provide and install Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate;

(c) To permit any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein;

(d) To place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Morgan Hill Police Department Building or on pole signs in the Common Areas.

41.2 Lessee shall not:

(a) Use a representation (photographic or otherwise) of the Building or the Morgan Hill Police Department Building or their name(s) in connection with Lessee's business;

(b) Suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Easements.

42.1 Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications as Lessor deems necessary or desirable in its sole and absolute discretion, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material default of this Lease by Lessee without the need for further notice to Lessee.

42.2 The obstruction of Lessee's view, air or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

43. **Performance Under Protest.** If at any time a dispute arises as to any amounts payable hereunder, the party against whom the payment obligation is asserted shall have the right to make payment "under protest" and shall retain the right to bring an action to recover such sum.

44. **Conflict.** Any conflict between the printed provisions, Exhibits or Addenda of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

45. **Lender Modification.** Lessee agrees to make such reasonable modifications to this Lease as may be reasonably required by an institutional lender in connection with the obtaining of normal financing or refinancing of the Morgan Hill Police Department Building.

46. Intentionally Deleted.

47. **Multiple Parties.** If more than one person or entity is named as either Lessor or Lessee herein, except as otherwise expressly provided herein, the obligations of Lessor or Lessee herein shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee, respectively.

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

49. Lessor's Termination Option. Lessor shall have the option to terminate this Lease at any time with ninety (90) days prior written notice at any time after the second anniversary of the Commencement Date (the "Termination Option").

50. Lessee's Termination Option. So long as Lessee is not in default hereunder, Lessee shall have the option to terminate this Lease with at least ninety (90) days prior written notice to Lessor at any time after the second anniversary of the Commencement Date. Lessee shall surrender the Premises to Lessor in accordance with 7.2(b). For the purposes of clarification, in the event that Lessee terminates this Lease pursuant to this Section 50, no amounts shall be due or owing to Lessee by virtue of such termination.

51. Counterparts. This Lease may be signed in counterpart originals, each of which shall be deemed an original and all of which shall, when executed, constitute one and the same instrument.

52. Attachments. Attached hereto are the following documents which constitute a part of this Lease:

Exhibit A	Description of the Premises
Exhibit B	Rules and Regulations
Exhibit C	Pre-Leasing Environmental Exposure Questionnaire

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE TERMS. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE LESSOR OR BROKERS AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

LESSOR

CITY OF MORGAN HILL

Christina J. Turner
City Manager

Approved as to Form

Donald A. Larkin
City Attorney

Address for Notices:

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

LESSEE

MONUMENT CONSTRUCTION, INC. dba
TECHCON

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Address for Notices:

16200 Vineyard Blvd. Ste 100
Morgan Hill CA 95037

Attachment: Lease Agreement 16200 Vineyard Blvd. Ste 100 (002) Techcon Signed (2272 : Lease Agreement with Monument Inc. dbaTechcon)

EXHIBIT A

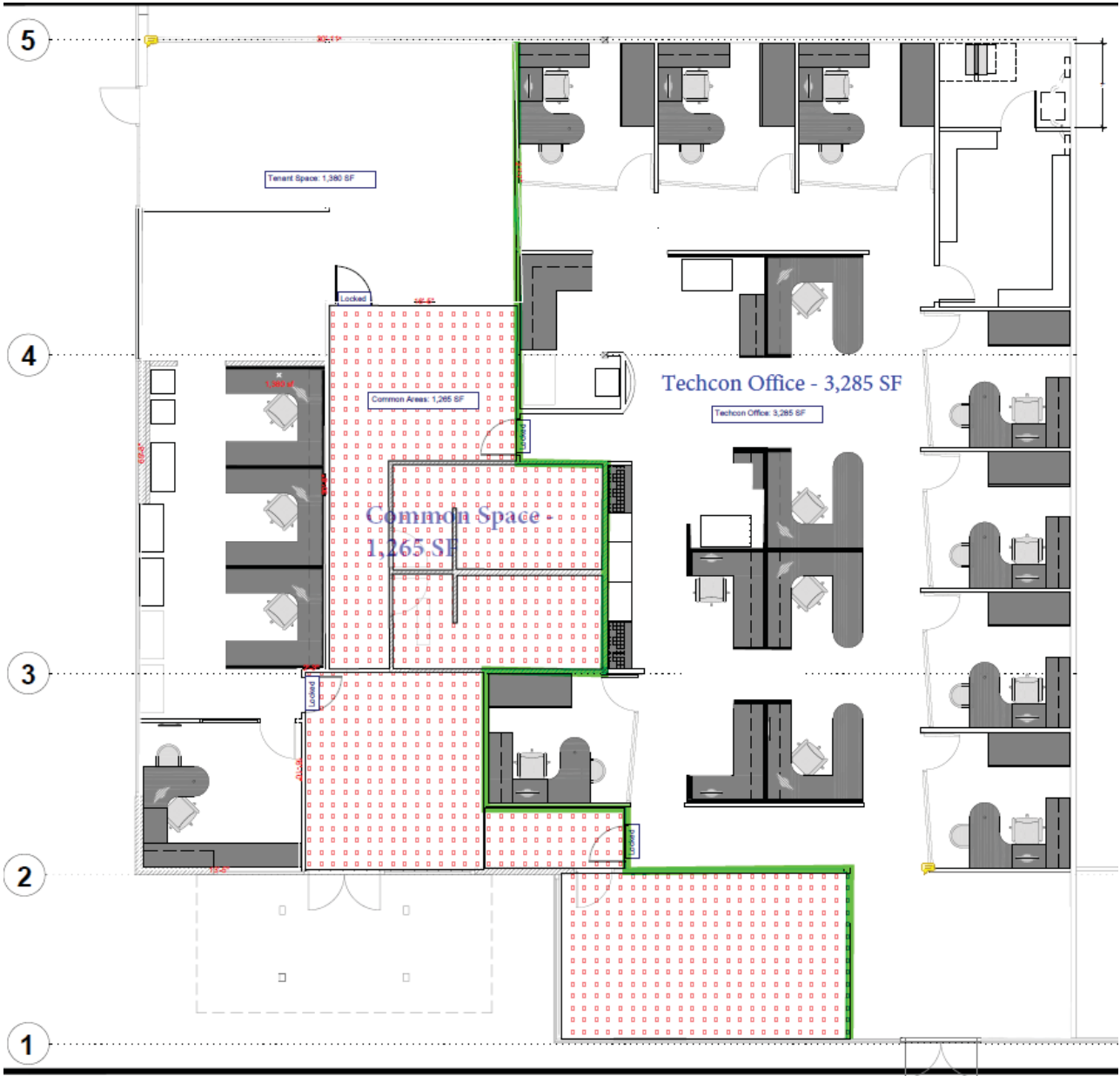


EXHIBIT B**RULES AND REGULATIONS**

It is further agreed that the following rules and regulations shall be and are hereby made a part of this Lease and Lessee agrees that Lessee's employees and agents or any others permitted by Lessee to occupy or enter the Premises will at all times abide by these rules and regulations as they may be amended or supplemented from time to time. Capitalized terms have the same meaning as used in the Lease, unless otherwise indicated.

(1) The sidewalks, entries, passages, corridors and stairways of the Morgan Hill Police Department Building shall not be obstructed or locked or used for smoking, storage or loitering by Lessee or Lessee's agents or employees or used for any purpose other than ingress and egress to and from the Premises. The fire doors shall not be locked or obstructed by Lessee.

(2) Furniture, equipment, or supplies will be moved in or out of the Building only through access ways designated by Lessor and then only during such hours and in such manner as may be prescribed by Lessor. The Lessor shall have the right to approve the movers or moving company employed by Lessee, which approval shall not be unreasonably withheld, and Lessee shall cause the movers to use only the loading facilities designated by Lessor. In the event Lessee's movers damage any part of the Building, Lessee shall forthwith pay to Lessor the amount required to repair that damage.

(3) No safe or article, the weight of which may, in the opinion of Lessor, constitute a hazard or damage to the Building or the Building's equipment, shall be moved into the Premises. Safes and other equipment, the weight of which is not excessive, shall be moved into, from, or about the Building only during such hours and in such manner as shall be prescribed by Lessor and Lessor shall have the right to designate the location of such articles in the Premises.

(4) No sign, advertisement or notice shall be inscribed, painted, or affixed on any part of the inside or outside of the Building (including windows) unless of such color, size, and style and in such place upon or in the Building as shall be first designated by Lessor in writing but there shall be no obligation or duty on Lessor to allow any sign, advertisement or notice to be inscribed, painted, or affixed on any part of the inside or outside of the Building. No furniture shall be placed in front of the Building or in any lobby or corridor of the Building (whether included wholly within the Premises, or otherwise), without the prior written consent of Lessor. Lessor shall have the right to remove all non-permitted signs and furniture, without notice to Lessee, at the expense of Lessee.

(5) Lessee shall not do or permit anything to be done in the Premises or bring or keep anything therein which would in any way increase the rate of fire insurance on the Building or on property kept therein which would in any way increase the rate of fire insurance on the Building or on property kept herein, constitute a nuisance or waste, obstruct or interfere with the rights of other Lessees or in any way injure or annoy them, or conflict with the laws relating to fire or with any regulations of the fire department, fire insurance underwriters, or with any insurance policy upon the Building or any part thereof, or conflict with any of the rules or ordinances of the Department of Health of the City and County where the Building is located.

(6) The janitor of the Building may at all times keep a passkey and other agents of Lessor shall at all times be allowed admittance to the Premises.

(7) Water closets and other water fixtures shall not be used for any purpose other than that for which they were intended and any damage resulting to them from misuse on the part of Lessee or Lessee's agents or employees shall be paid for by Lessee. No person shall waste water by tying back or wedging the faucets or in any other manner.

(8) No person shall disturb the occupants of the Building or adjoining buildings or premises by the use of any radio, sound equipment, or musical instrument or by the making of loud or improper noises.

(9) Bicycles or other vehicles shall not be permitted in the offices, halls, or corridors the Building nor shall any obstruction of sidewalks or entrances of the Building be permitted.

(10) Lessee shall not allow anything to be placed on the outside of the Building, nor shall anything be thrown by Lessee or Lessee's agents or employees out of the windows or doors or down the corridors, elevator shafts, or ventilating ducts or shafts of the Building. Lessee, except in case of fire or other emergency, shall not open any outside window. Lessee must at its own expense dispose of crates, boxes, or similar large items of refuse which will not fit into office waste paper baskets. In no event shall Lessee set any such items in the corridors or other areas of the Building or garage facility.

(11) No addition lock or locks shall be placed by Lessee on any door in the Building, unless written consent of Lessor shall first have been obtained. Lessor shall supply Lessee with such additional keys as Lessee may require at Lessee's sole cost and expense. At the termination of this tenancy, Lessee shall promptly return to Lessor all keys to offices, toilet rooms, or vaults.

(12) No window shades, blinds, screens, draperies, or other window covering will be attached or detached by Lessee without Lessor's prior written consent. Lessee agrees to abide by Lessor's rules with respect to maintaining uniform curtains, draperies and linings, or blinds at all windows and hallways.

(13) If any Lessee desires telegraphic, telephonic, or other electric connections, Lessor or Lessor's agents will direct the electricians as to where and how the wires may be introduced. Without such directions, no boring or cutting for wires will be permitted. Any such installation and connection shall be made at Lessee's expense.

(14) Lessee shall not install or operate any steam or gas engine or boiler or carry on any mechanical business in the Premises. The use of oil, gas, or inflammable liquids for heating, lighting, or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall be brought into the Building.

(15) Any painting or decorating, as may be agreed to be done by and at the expense of Lessor, shall be done during regular weekday working hours. Should Lessee desire such work on Saturdays, Sundays, Legal Holidays, or outside of regular working hours, Lessee shall pay for the extra cost thereof.

(16) Except as permitted by Lessor, Lessee shall not mark upon, paint signs upon, cut drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions, or floors of the Premises or of the Building and any defacement, damage, or injury caused by Lessee or Lessee's agents or employees shall be paid for by Lessee. Decorative paintings, pictures and the like may be hung in a customary manner on the interior walls of the Premises without Lessor's consent.

(17) Smoking is prohibited in the Building, including all Lessees' premises, inside lobbies, stairwells, bathrooms, and other Common Areas and public areas of the Morgan Hill Police Department Building and is restricted in all outside plaza areas of the Morgan Hill Police Department Building to specific locations designated by Lessor as smoking area, if any.

(18) Lessee shall be entitled to two sets of keys to the Premises. In the event Lessee needs any additional keys, such keys must be requested from Lessor. Lessee shall pay to Lessor the actual cost of making such additional keys. Lessor reserves the right to refuse admittance to the Building at any time other than during Ordinary Business Hours, to any person not producing a key to the Premises and/or a pass issued by Lessor. In case of fire, invasion, riot, public excitement or other commotion, Lessor also reserves the right to prevent access to the Building while it continues. Lessor shall in no case be liable for damages for the admission or exclusion of any person to or from the Building.

(19) No canvassing, soliciting, distribution of hand bills or other written material, or peddling shall be permitted in the Building on the Morgan Hill Police Department Building, and Lessee shall cooperate with Lessor in prevention and elimination of same.

PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles and company vehicles, herein called "**Permitted Size Vehicles**". For the purposes of clarification, no trailers or similar vehicles shall be parked in the parking area.
2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
3. Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder's parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.
4. Lessor reserves the right to reasonably allocate parking spaces between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations and to allocate and assign parking spaces among Lessee and the other tenants of the Building or to restrict the use of certain parking spaces for certain tenants.
5. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
6. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
7. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.
8. The maintenance, washing, waxing or cleaning of vehicles in the parking area is prohibited.
9. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
10. Lessor reserves the right to amend or modify these rules and/or adopt such other reasonable and nondiscriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
12. Lessee agrees and acknowledges that the Premises are located inside a building which houses the Morgan Hill Police Department. As such, Lessee acknowledges and agrees that it will follow any rules and regulations set forth by the Police Chief or the Chief's designee. These rules and regulations shall include, but not be limited to, that at no time shall any vehicle of a guest, employee, vendor, customer, trucker or anyone connected in any way with Lessee block access to the gate. If access is blocked, the Police may use any and all necessary force to remove the blockage and Lessee waives for itself and its guests, employees, vendors, customers, truckers, or anyone connected with Lessee in any way, any and all claims for damages or liability against the Police and/or against Lessor for any damages resulting therefrom. Lessee shall indemnify, defend and hold harmless Lessor from all liability, damage, or expenses due to the police removing any such blockage.

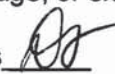
Initials 

EXHIBIT C

PRE-LEASING ENVIRONMENTAL EXPOSURE QUESTIONNAIRE

Property Address: 16200 Vineyard Blvd. • Suite 100

Proposed Lessee: Monument Construction Inc.
dba Techcon
 (Include full legal name of proposed lessee and any d/b/a)

Current Address: 16200 Vineyard Blvd. Ste 100
Morgan Hill CA 95031

Description of Proposed Use of Property: site development company corporate offices
sales, operations, HR, payroll

PLEASE ANSWER THE FOLLOWING QUESTIONS ACCURATELY AND FULLY, ATTACHING ADDITIONAL PAGES IF NECESSARY. YOUR RESPONSES TO THIS QUESTIONNAIRE, INCLUDING ANY AND ALL ATTACHMENTS, SHALL BE INCORPORATED AS REPRESENTATIONS AND WARRANTIES IN THE LEASE WHEN EXECUTED, AND INCORRECT, MISLEADING OR MATERIALLY INCOMPLETE RESPONSES SHALL BE DEEMED A BREACH OF SAID LEASE.

1. Will any of the following chemicals, petroleum products or hazardous materials be made, used, placed, or stored on the property in quantities greater than the minimum quantity listed in column (1) below? If yes, please mark column(s) (2), (3), and/or (4) as applicable.

	(1) <u>Minimum Quantity</u>	(2) <u>Made</u>	(3) <u>Used</u>	(4) <u>Placed</u>	(5) <u>Stored</u>
<u>Categories of Chemicals</u>					
Solvents, Degreasers	1 Gallon				
Paint Thinners/Remover	1 Gallon				
Paint	5 Gallons				
Oil (New)	5 Gallons				
Gasoline	1 Gallon				
Antifreeze	5 Gallons				
Other Automotive Fluids	1 Gallon				
Diesel Fuel	5 Gallons				
Heavy (Toxic) Metal Containing Compounds	1 Pound				
Liquid Plastics/Activators	1 Gallon				
Flammable Gases	20 Cu Ft				
Toxic Gases	20 Cu Ft				
Acids	1 Gl/5 Lb				
Bases (soda, ash, lye, etc.)	1 Gl/5 Lb				
Other Flammable Materials	1 Gl/5 Lb				
Other Corrosive Materials	1 Gl/5 Lb				
Other Toxic Materials	1 Gl/5 Lb				
Other Reactive Materials	1 Gl/5 Lb				
Liquid Hazardous Waste	1 Gallon				
Solid Hazardous Waste	1 Pound				

- 1.1 If required for your operations, please provide Lessor a copy of your Hazardous Material Business Management Plan.

Yes ☐ No ☒

- 1.2 Do your operations require H-occupancy storage or other special construction?

no ☐

If yes, please explain:

2. Will any of the following structures be used on the property? If yes, describe the contents of each.

no ☐

<u>Feature</u>	<u>Contents</u>		
Underground Tank	_____	_____	_____
Above-ground Tank	_____	_____	_____
Clarifier	_____	_____	_____
Sump	_____	_____	_____
Trench	_____	_____	_____
Waste Pile	_____	_____	_____
Chemical Piping	_____	_____	_____
Floor Drain	_____	_____	_____
Other _____	_____	_____	_____
_____	_____	_____	_____

- 2.1 Please describe plans for secondary containment and leak monitoring.

3. Will any hazardous wastes or liquid wastes be generated by on site operations or brought on to the property?

no _____

If yes, complete the following:

- 3.1 Identify each such hazardous waste or liquid waste.

- 3.2 Describe onsite storage, including secondary containment, and/or treatment.

- 3.3 Describe your plans for disposal of hazardous wastes or liquid waste including off-site disposal.

4. Will operations result in any wastewater discharges to the sewer?

no _____

Will operations result in any wastewater discharges to locations other than the sewer (including storm drain)?

If yes, describe each wastewater stream and plans for handling other than the sewer (including storm drain)

If yes, describe each wastewater stream and plans for handling wastewater discharges:

- 4.1 Have you performed any testing or analysis of wastewater discharges or other wastewater effluent from your current facility?

no _____

If yes, attach the results of any such testing or analysis.

4.2 Will your operations require any stormwater discharge permits?

no _____

If yes, describe:

5. Will activities on the property require warnings to be given to workers or visitors on the Premises or the surrounding community?

no _____

If yes, please describe how you will provide such communications or warnings. _____

6. Will operations result in any air emissions (including dust)?

no _____

If yes, describe:

7. Will operations result in air emissions which include hazardous or toxic air pollutants?

no _____

7.1 If yes, will any public notice or disclosure be required?

8. Will operations be subject to Risk Management & Preview Planning requirements or other risk reduction requirements?

no _____

9. Will your operations involve any on-site vehicle or equipment maintenance, repair or cleaning, including but not limited to oil changes, oil filter changes, brake pad replacement, battery changes, radiator flushing, radiator fluid replacement, and equipment, and equipment wash down and cleaning?

no _____

If yes, describe all such maintenance:

9.1 Will these on-site vehicles or equipment use batteries?

no _____

If yes, describe battery storage method:

10. Will your operations include a machine shop?

no _____

If yes, describe all operation:

11. Will your operations include any metal plating or metal fabrication?

no _____

If yes, describe:

12. Will your operations include the use of solvents?

no _____

If yes, describe:

13. Has your present facility or operation ever been the subject of an environmental investigation, an environmental enforcement action, or permit revocation proceeding?

no _____

If yes, describe:

14. Have you ever been identified as a potentially responsible party for any environmental cleanup, compliance or abatement proceedings?

no _____

If yes, describe:

15. Have you ever received a notice of violation or notice to comply from any environmental regulatory agency within the past five years?

no _____

If yes, describe:

16. Have you had any complaints from neighbors relating to noise, odor, air emissions, or dust at your present facility? no

If yes, describe:

- 16.1 Have you had any complaints relating to hazardous materials handling, storage, treatment or disposal from neighbors at your present facility? no

If yes, describe:

17. Will the proposed use of the property require the filing of any environmental reports or other documents to any agencies? no

18. Attach copies of all Material Safety Data Sheets ("MSDS") for all chemicals you intend to use, store, or handle on the property.

19. Has an Environmental Audit been conducted at your present facility? (If yes, attach a copy of any report prepared in connection with any such audit.) no

20. Please provide the Lessor your Emergency Response Plan and any contingency or emergency plans for the property in case of an accidental release of hazardous materials.

21. Identify the name, title and qualifications/experience of person responsible for your environmental, health and safety program:

Name: Tony Malagon

Title: Safety Manager

Qualifications/experience: 25+ years of industry safety

experience

22. Name and telephone number of person to contact for additional information:

Name: Stuart Arno H

Title: COO

Telephone Number: 408-316-0744

23. Please provide any additional information/comments concerning environmental compliance program and environmental compliance history:

The undersigned hereby certifies that the information above is correct and complete.

Monument Construction Inc. dba Techcon
Name of Proposed Lessee

Name: 

Title: Controller

Date: 4/12/19



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Nichole Martin, Community Services Coordinator
APPROVED BY: City Manager

APPROVE COMMUNITY PROMOTIONS FUNDING REQUESTS FOR FISCAL YEAR 2019-20

RECOMMENDATION(S)

Approve Fiscal Year (FY) 2019-20 Community Promotions funding requests totaling \$47,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust
Preserving Our Community History

REPORT NARRATIVE:

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The City Council funding is meant to offset the costs of City services required by the special event permit for the community event.

To be considered for this annual funding, the following criteria must be met:

- The organization requesting the funding is a non-profit
- The event hosted by the requesting organization is a community wide event, open to all, with no associated admission fees
- The event is not a fundraising event
- The event requires a special event permit and City services

In recent years, the City Council has approved funding for the Independence Day Celebrations' (IDC) Fourth of July events known as Freedom Fest; the Morgan Hill Downtown Association's (MHDA) Safe Trick or Treat; and the Kiwanis Holiday Lights Parade. Three years ago, the City Council also began approving funding to offset the cost of the tree lighting that happens in conjunction with the Holiday Lights Parade.

On March 1, 2019, staff provided Community Promotion Funding Request Applications to the three organizations noted above and posted the application with a Newsflash on the City website. The City received a total of four (4) requests from IDC, Morgan Hill Kiwanis, and MHDA (two separate requests). All applications are attached for reference.

As occurred last year, the MHDA has requested funding to offset the cost of the tree for the Holiday Tree Lighting Event. Although it does not meet the above stated criteria because funding the tree is not a community event, staff is once again recommending that the City Council fund the request. This recommendation is based on the tree being a key element in the Holiday Lights Parade and Tree Lighting Event, organized by a different organization. Additionally, the tree serves as a gateway icon for the community during the holiday season.

COMMUNITY ENGAGEMENT: Inform

The Community Promotion Funding Request Applications were sent via email to IDC, MHDA, and Morgan Hill Kiwanis informing those organizations of the deadline to submit their requests. Additionally, the application was posted to the website through a Newsflash providing information on the annual process and deadline to submit requests.

ALTERNATIVE ACTIONS:

1. The City Council could choose to provide less funding than was requested which could potentially hinder the ability of the requesting organization to put on the community event.
2. The City Council could choose to provide funding in an amount higher than has been budgeted potentially requiring a budget amendment.
3. The City Council could choose to provide no funding for the events, which in the case of the Holiday Lights Parade, Tree Lighting, and Safe Trick or Treat would likely mean the events would not occur. In the case of Freedom Fest, the Fourth of July Celebration would need to be scaled back significantly.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Annually, the City Council makes decisions to provide funding to support non-profit community events that benefit the entire community.

FISCAL AND RESOURCE IMPACT:

It should be noted that funding in the amount of \$41,800, annually, was allocated in the adopted biennial budget for FY 2018-19 and FY 2019-20. The total funds requested for FY 2019-20 have increased by \$5,200, with IDC requesting a total of \$30,000, rather than the \$24,700 that was previously adopted in the budget. This increase is due to an increase in the rental fees of the Outdoor Sports Center with management being under a new operator. The previous operator provided the rental at no charge in exchange for marketing, which the City was unaware of until the change in management was scheduled to occur. However, there are adequate savings in other line items to offset the increased cost for the IDC event and no budget adjustment is necessary.

Summary of Requests Received:

Requesting Organization	Funding Budgeted for FY 2018-19	Funding Budgeted for FY 2019-20	Funding Requested for FY 2019-20	Variance
-------------------------	---------------------------------	---------------------------------	----------------------------------	----------

Independence Day – Freedom Fest	\$24,700	\$24,700	\$30,000	+\$5,300
Kiwanis Morgan Hill – Holiday Lights Parade	\$5,100	\$5,100	\$5,000	-\$100
MHDA – Tree Lighting	\$6,000	\$6,000	\$6,000	\$0
MHDA – Safe Trick or Treat	\$6,000	\$6,000	\$6,000	\$0
Totals	\$41,800	\$41,800	\$47,000	Increase: \$5,200

The Community Promotions are budgeted within the City Council's budget (GL#: 010.1100.42413), in the General Fund (010).

CEQA (California Environmental Quality Act):

Council funding ultimately supports events held on public property. The support and permitting of the City to allow these events is categorically exempt under Class 1 Existing facilities, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

LINKS/ATTACHMENTS:

1. FY 19-20 Community Promotions Funding Applications



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

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- The organization requesting funding must be a non-profit
- The event hosted by the requesting organization must be a community-wide event, open to all, with no associated admission fees
- The event hosted by the requesting organization cannot be a fundraising event
- The event hosted by the requesting organization requires a special event permit and city services

The City Council will consider funding its Community Promotions budget as part of the FY 2019/20 budget review process.

To be considered for funding in FY 2019/20 please complete and return this form by 5:00 pm on Friday, March 22, 2019 to:

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Independence Day Celebration, Inc.

ORGANIZATION ADDRESS: PO Box 1776 Morgan Hill, CA 95038

CONTACT PERSON: Jeff Dixon

TELEPHONE and E-MAIL ADDRESS: 408-778-3900, president@mhfreedomfest.com

*Event Information:***NAME OF EVENT:** Freedom Fest**DATE OF EVENT:** July 3-4, 2019**LOCATION OF EVENT:** Community Center, Outdoor Sports Center, Downtown**ANTICIPATED ATTENDANCE:** 80,000-100,000*Budget Information:***ESTIMATED EVENT EXPENSES:** \$ 160,000**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ 160,000**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 30,000*Council Support Request Explanation:* To pay for city services and facility rentals**DESCRIPTION OF EVENT:**

July 3rd - Patriotic Sing and Family Music Fest

July 4th - Freedom Run, Car Cruise and Show, Historic Parade, Fireworks on the Green

PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

The Independence Day Celebration, Inc. is an all-volunteer, community service 501c3 non profit corporation. The Morgan Hill Freedom Fest is two day, six event celebration that bring up to 100,000 people to Morgan Hill each year. Without the financial support received from the City of Morgan Hill, we would not be able to continue operating the longest running July 4 celebration in Northern California.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

Maintaining fiscal responsibility

Serving youth

Preserving and cultivating public trust

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

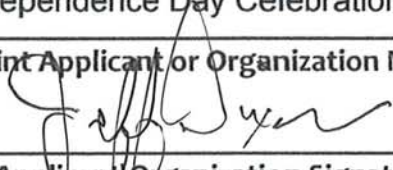
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Freedom Fest

Print Name of Event

Independence Day Celebration, Inc.

Print Applicant or Organization Name



Applicant Organization Signature

3/22/2019

Date



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

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To be considered for funding in FY 2019/20 please complete and return this form by 5:00 pm on Friday, March 22, 2019 to:

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Morgan Hill Downtown Association

ORGANIZATION ADDRESS: 90 West Main Avenue (Suite 6), Morgan Hill, CA 95037

CONTACT PERSON: Valerie Gutierrez

TELEPHONE and E-MAIL ADDRESS: 408-779-3190 mhda@morganhilldowntown.org

*Event Information:***NAME OF EVENT:** Safe Trick or Treat**DATE OF EVENT:** October 31, 2019**LOCATION OF EVENT:** Downtown Morgan Hill, Monterey Road, Dunne Avenue to Main Avenue**ANTICIPATED ATTENDANCE:** 3,000-4,000*Budget Information:***ESTIMATED EVENT EXPENSES:** ~~\$ N/A~~ *Handwritten signature***ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ N/A**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 6,000 —*Council Support Request Explanation:***DESCRIPTION OF EVENT:**

Safe Trick or Treat is a Halloween tradition for over 25 years in Downtown Morgan Hill, where families bring their children of all ages to Trick-or-Treat in a safe, community environment. It is held on Monterey Road, from Dunne Avenue to Main Avenue. Businesses, Churches, and Non-Profits join together on this evening to provide crafts, activities, and Trick-or-Treating. It has become a staple of Downtown Morgan Hill events and shows what a fun community Morgan Hill has.

PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

Safe Trick or Treat has been a time honored tradition of Morgan Hill for over 25 years, providing a fun and safe environment for children and their families to gather for Trick-or-Treating.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

Street Closure and City Services, included but not limited to: Police, Garbage, Portable Restrooms

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

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The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

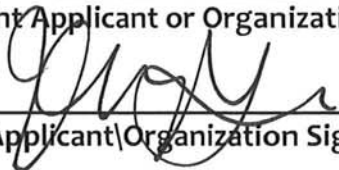
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Safe Trick or Treat

Print Name of Event

Morgan Hill Downtown Association

Print Applicant or Organization Name



Applicant/Organization Signature

March 11, 2019

Date



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

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Community Services Supervisor
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Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Morgan Hill Downtown Association

ORGANIZATION ADDRESS: 90 West Main Avenue (Suite 6), Morgan Hill, CA 95037

CONTACT PERSON: Valerie Gutierrez

TELEPHONE and E-MAIL ADDRESS: 408-779-3190 / mhda@morganhilldowntown.org

*Event Information:***NAME OF EVENT:** Holiday Tree Lighting**DATE OF EVENT:** December 1st or 8th 2019**LOCATION OF EVENT:** Morgan Hill Community Center**ANTICIPATED ATTENDANCE:** 3,000-4,000- viewed by 20,000+ during the holiday season its in place.*Budget Information:***ESTIMATED EVENT EXPENSES:** \$ None**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ None**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 6,000*Council Support Request Explanation:* Holiday tree will provide holiday spirit to the entire community.**DESCRIPTION OF EVENT:**

Terminus of the holiday parade in December, is the Morgan Hill Community and Cultural Center with a holiday tree. A lighting ceremony takes place where the tree lights are turned on and the tree will be left in place for the duration of the holiday season.

PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

The tree is a symbol to many throughout the community during the holiday season. The holiday tree will be enjoyed by thousands of people from the community and those who are visiting. It will show Morgan Hill's holiday spirit.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

Preserving our cultural heritage: Morgan Hill has long had a holiday tree, Holiday parade, and Holiday tree lighting event which is known and appreciated by the region.

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

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The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

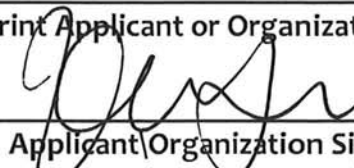
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Holiday Tree Lighting

Print Name of Event

Morgan Hill Downtown Association

Print Applicant or Organization Name



Applicant Organization Signature

March 21, 2019

Date



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The funding requested is meant to offset the cost of city services required by the special event permit for the community event.

To be considered for this annual funding the following criteria must be met:

- The organization requesting funding must be a non-profit
- The event hosted by the requesting organization must be a community-wide event, open to all, with no associated admission fees
- The event hosted by the requesting organization cannot be a fundraising event
- The event hosted by the requesting organization requires a special event permit and city services

The City Council will consider funding its Community Promotions budget as part of the FY 2017/18 budget review process.

To be considered for funding in FY 2017/18 please complete and return this form by Friday, May 5, 2017 to:

Maureen Tobin
Communications and Engagement Manager
17575 Peak Avenue
Morgan Hill, CA 95037
maureen.tobin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Morgan Hill Kiwanis

ORGANIZATION ADDRESS: Box 751, Morgan Hill, CA 95038

CONTACT PERSON: Mary Lou Conragan

TELEPHONE and E-MAIL ADDRESS: 408 779 1473, mconragan@msn.com

*Event Information:***NAME OF EVENT:** Holiday Lights Parade**DATE OF EVENT:** Saturday December 7, 2019**LOCATION OF EVENT:** Monterey Road, Downtown Morgan Hill**ANTICIPATED ATTENDANCE:** 3000*Budget Information:***ESTIMATED EVENT EXPENSES:** \$ 6000**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): **\$ 1000****AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 5000*Council Support Request Explanation:***DESCRIPTION OF EVENT:** Winter holiday parade, with tree lighting and post parade entertainment**PLEASE RESPOND TO THE FOLLOWING QUESTIONS:****1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

The Holiday Lights Parade is a classic “Hometown” event held annually. Over the last 4 years it has seen considerable growth in participants and parade viewers. The parade has become more inclusive with more schools and community organizations participating. This is one of Morgan Hill classic event. The Parade was started by the city. They asked Morgan Hill Kiwanis to take over the arrangements 20 years ago when management costs escalated. The cost are for what was “furnished by city” in our original agreement: Police, road closure, permits, sound systems, amphitheater rental, etc.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

The support for these events adds to the community spirit which is identified as the good life of Morgan Hill.

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2017/18 General Fund budget development process.

Holiday Lights Parade

Print Name of Event

_Morgan Hill Kiwanis

Print Applicant or Organization Name

Mary Lou Conragan

Applicant\Organization Signature

March 5, 2019

Date

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

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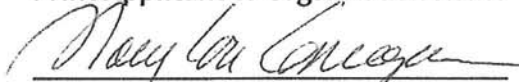
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Holiday Lights Parade

Print Name of Event

Morgan Hill Kiwanis

Print Applicant or Organization Name



Applicant/Organization Signature

March 5, 2019

Date



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

APPOINT EMERGENCY STANDBY COUNCIL

RECOMMENDATION(S)

Appoint former City Council Members Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan as Emergency Standby Council Members to be called upon as needed in the event of an emergency.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Civil Disaster and Emergency Organization Chapter of the City of Morgan Hill's Municipal Code was updated on February 6, 2019 to include the appointment and duties of Emergency Standby Council members by adding the section "Continuity of Government in the event of Disaster." This addition outlines the duties and assignment of the emergency standby council when sitting council members are unavailable or there is not a quorum. The appointment of a standby council allows the City to appoint former council members who reside within the City limits. Without this update the default procedure per California Code states that when council members are not available during a large-scale event the authority goes to a neighboring municipality's City Council with the largest population. Therefore, without the standby council, the authority would fall to the City of San Jose.

Appointment recommendations by staff for the emergency standby council were brought forth during the February 6, 2019 City Council meeting to include at least five past City Council members who reside within Morgan Hill city limits. A total of six have since agreed to serve on the Emergency Standby Council: Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan.

COMMUNITY ENGAGEMENT: Inform

Assigning an Emergency Standby Council strengthens the City of Morgan Hill's ability to act independently during a large disaster on issues relative to the community.

ALTERNATIVE ACTIONS:

One alternative action by the Council could be to decline appointment of emergency standby council members. If a large-scale disaster were to occur and current City

Council members were not available, the neighboring city with the largest population would step in to ratify any emergency proclamations and/or decisions relative to Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The updated ordinance was introduced at the January 23, 2019 council meeting and was approved at the February 6, 2019 council meeting.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact to appointing an emergency standby council.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. 2296 - Adding Section to Civil Disaster and Emergency Organization of Municipal Code

ORDINANCE NO. 2296, NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 2.44.094 (CONTINUITY OF GOVERNMENT IN THE EVENT OF A DISASTER) TO CHAPTER 2.44 (CIVIL DISASTER AND EMERGENCY ORGANIZATION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE MORGAN HILL MUNICIPAL CODE RELATING TO THE APPOINTMENT AND DUTIES OF EMERGENCY STANDBY COUNCIL MEMBERS

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Section 2.44. 094 (Continuity of government in the event of disaster) is hereby added to Chapter 2.44 (Emergency Organization and Functions) of Title 2 (Administration and Personnel) of the Morgan Hill Municipal Code is to read as follows:

"(a) At the second council meeting in January each year or as soon thereafter as may be practicable, the City Council shall appoint five (5) emergency standby council members. Emergency standby council members shall be selected from former members of the City Council who agree to serve in that capacity during that year and to reside within the City of Morgan Hill during that year so long as they elect to participate as members of the emergency standby council. If insufficient numbers of former members of the City Council are available or willing to serve, City Council shall select emergency standby council members from current Planning Commissioners.

(b) A member of the emergency standby council shall serve in that capacity from the date of appointment until the appointment of another emergency standby council the following year or until the member notifies the City Clerk in writing that the member has elected to terminate participation in the emergency standby council. Each emergency standby council member shall take the oath of office required for the City Council prior to assuming the position of emergency standby council member.

(c) Each emergency standby council member appointed by the City Council as described in section (a) shall have the duty during the term of that member's appointment to remain informed of the duties of City Council members and the business and affairs of the City of Morgan Hill to the extent necessary to enable participation as a member of the City Council upon appointment in the event of an emergency as provided hereafter.

(d) In the event of the declaration of a state of war emergency, a state of emergency, or a local emergency as those terms are designated in Articles 12, 13, and 14 of Title 2 of the California Government Code and less than a quorum of the City Council is available and a City Council meeting is urgently required, the members of the emergency standby council shall be contacted for service. At that meeting, any City Council members who are unavailable for duty at the time of that meeting as defined by section 8636 of the California Government Code (unavailable such as the member is either killed, missing; or so seriously injured as to be unable to attend meetings and otherwise perform the duties of office), shall be replaced by a member of the emergency standby council as

necessary to reach five members. The order of selection of emergency standby council members shall be determined by Council Policy. The appointment of members of the emergency standby council to fill vacancies created by the unavailability of City Council members at any time during a state of emergency shall be performed by City Council, and additional emergency standby members shall be appointed during the state of emergency as required to maintain a total of five members on the City Council.

(e) Members of the emergency standby council who are appointed to serve as City Council members shall serve in that position until replaced by a member of the City Council who becomes no longer unavailable such that the addition of emergency standby council members is no longer necessary in order to constitute a quorum, until termination of the state of emergency, or until the election or appointment of a new regular City Council member as provided by law."

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect on March 7, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Morgan Hill held on the 23rd day of January 2019 and was finally adopted at a meeting of said Council on the 6th day of February 2019 and said Ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rene Spring, Yvonne Martinez Beltran, John McKay, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE:

2/7/2019

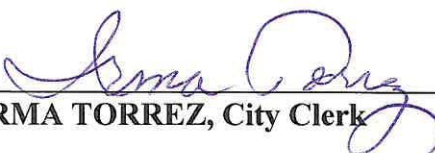
□ CERTIFICATE OF THE CITY CLERK □

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2296, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of February 2019.

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

DATE: _____

2/7/2019


IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ACCEPT FEBRUARY 2019 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the month ended February 28, 2019. The Revenue and Expense Summary for the month of February is included on the first page. Overall, General Fund revenues through February totaled \$25.1 million or 62% of the budget. Expenditures, including encumbrances, amounted to \$28.5 million through February. The encumbrances represent commitments or contractual obligations that the City entered with vendors or suppliers such as Cal-West Lighting and Signal Maintenance for the maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial

and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. February 2019 Financial Statement Analysis
2. February 2019 Financial and Investment Report



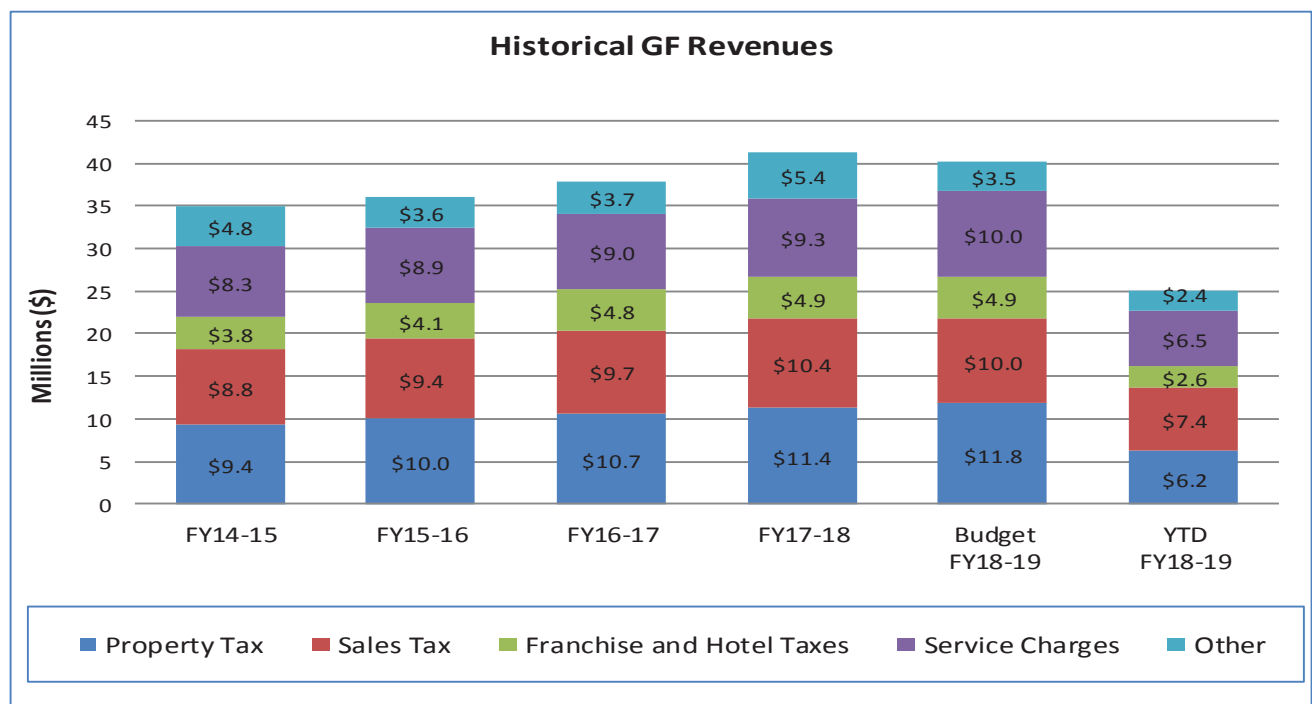
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED FEBRUARY 2019 – 67% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of February totaled \$25.1 million, or 62% of the budgeted revenues. The amount received is 1% or \$0.3 million higher than a year ago at this time primarily due to higher property tax and sales tax collections, partially offset by a reduction in other revenues. Sales tax collections increased by 7% compared to prior year.

As for property tax, the final advances for the December 10, 2018 secured and unsecured property tax installment have been received, and is 12% or approximately \$665,000 higher than a year ago at this time. Property tax revenue, excluding the property transfer tax, is forecasted to end the year at \$12.5 million, which is approximately \$800,000 more than the adopted budget partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution of \$943,000 versus \$495,000 budgeted. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 29% of the approximately \$40.5 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 99% of the budgeted amount as annual business license renewal payments are usually received in the first few months of the fiscal year.

The chart below shows historical General Fund revenues by major revenue category from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of February 28, 2019.



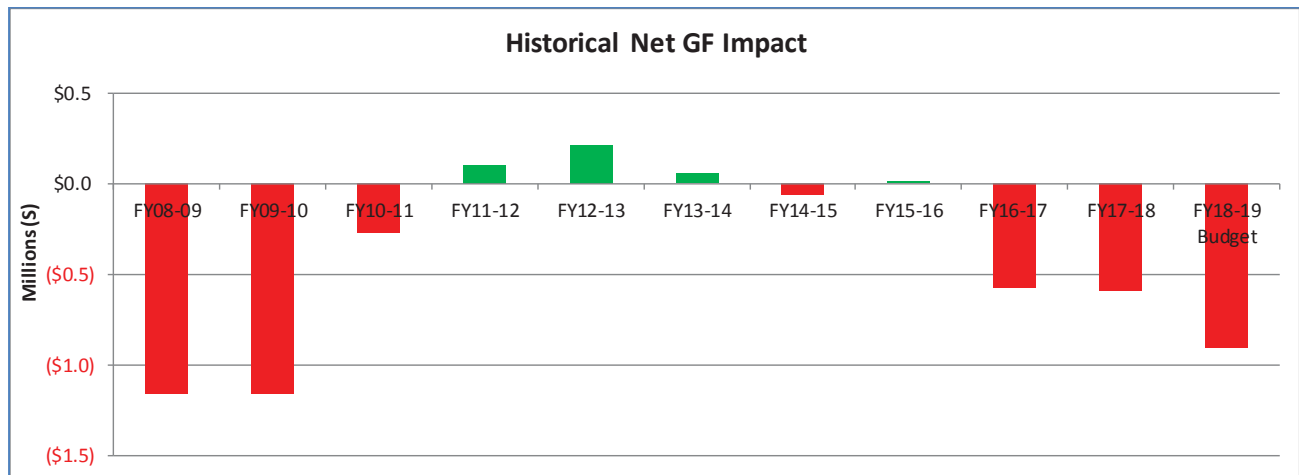
General Fund expenditures and encumbrances as of February 28, 2019 totaled \$28.5 million, of which



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED FEBRUARY 2019 – 67% OF YEAR COMPLETE

approximately \$2.0 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.0 million through the month of February. Without the carry-over encumbrances, the year to date operations through the month of February resulted in a small positive net impact to the general fund of approximately \$15,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through February totaled \$3.2 million, an increase of 9% or approximately \$275,000 more than a year ago at this time partially due to the fee increases that went into effect January 1, 2019. Expenditures, including encumbrances, totaled \$4.6 million. Without the outstanding encumbrances, however, expenditures through the month of February amounted to \$3.5 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$1.4 million. This is primarily due to the timing of fee increases, services or new projects unsupported by fees, such as front counter services, responding to public inquiries, tree removal permits, use permits for non-profits or special projects, and continued implementation of Measure S. In addition, fees are based on average time for processing, the more complicated the case, the more time is spent assisting the applicant in the application process. This extra time is not incorporated into the cost recovery model. There is available fund reserve to support the fund's operating deficits in the two-year window, however, a General Fund support may be required in future years due to the aforementioned reasons.
- **Debt Service Funds** – Expenditures through the month of February totaled \$520,000. The debt service



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED FEBRUARY 2019 – 67% OF YEAR COMPLETE

for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.

- **Wastewater Operations** – Revenues from Wastewater or Sewer Operations through the month of February totaled \$7.7 million. Expenditures and outstanding encumbrances totaled \$6.7 million or 59% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of February 28, 2019.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	10.3	10.2	9.7	10.3	10.7	7.7
Expenditures	8.8	12.0	9.8	10.8	11.3	6.7
Operating Margin	1.5	(1.8)	(0.1)	(0.5)	(0.6)	1.0
Operating Margin without Encumbrances	1.5	(1.8)	(0.0)	(0.3)	(0.6)	1.2

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of February totaled \$9.9 million, approximately 12% more than a year ago partially due to rate adjustment. Water Operations expenditures, including outstanding encumbrances, totaled \$9.1 million for the year. Without the encumbrances, however, the expenditures amounted to \$7.6 million. The table below shows Water Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of February 28, 2019.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	8.8	8.5	10.9	13.0	13.8	9.9
Expenditures	9.3	9.7	11.2	12.1	13.5	9.1
Operating Margin	(0.5)	(1.2)	(0.3)	0.9	0.3	0.8
Operating Margin without Encumbrances	(0.5)	(1.2)	(0.1)	1.4	0.3	2.3

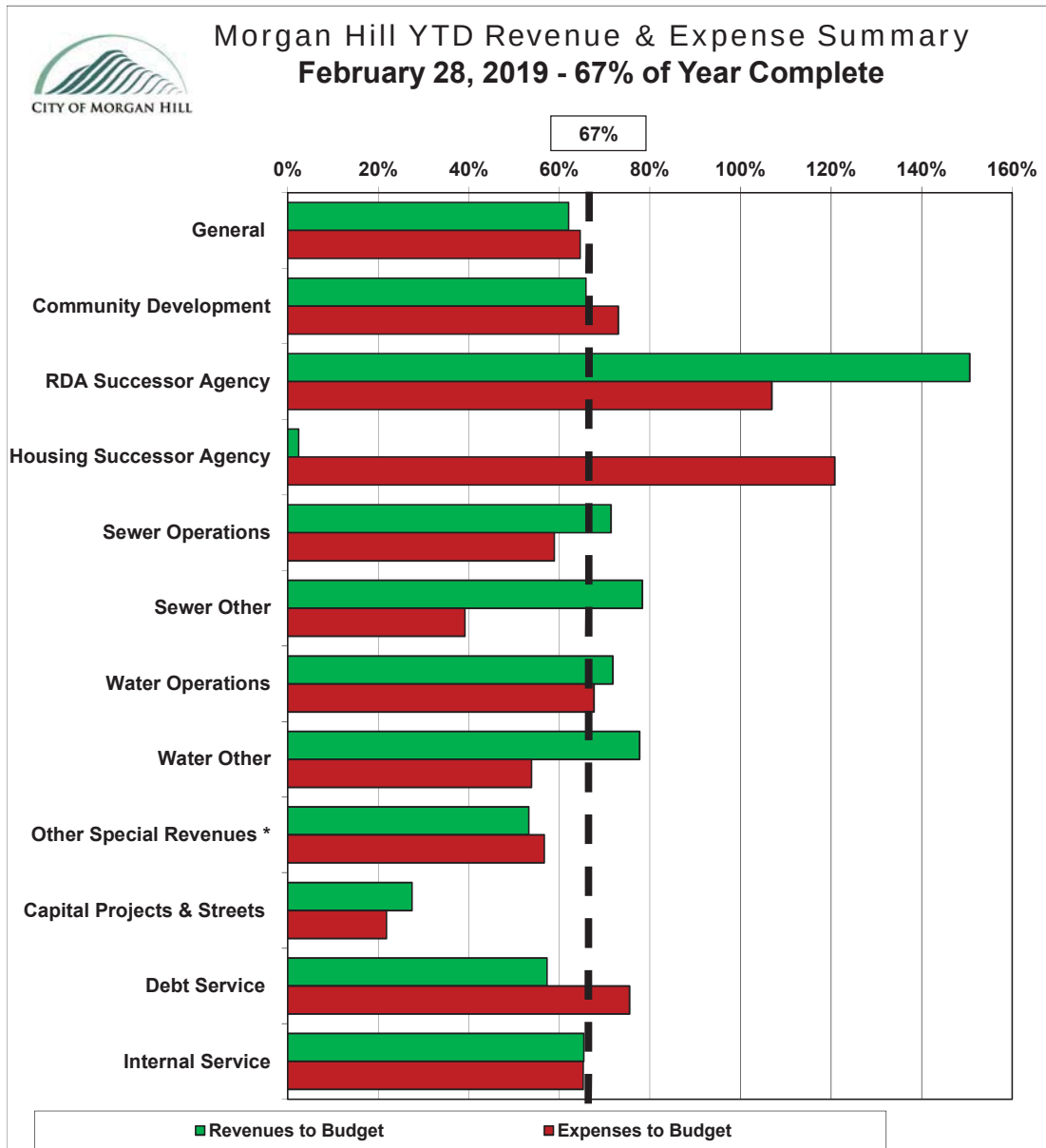
- **Investments** – No purchases were made during the month of February 2019. Total interest earnings received on investments were \$45,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
February 28, 1019 - 67% of Year Complete



CITY OF MORGAN HILL

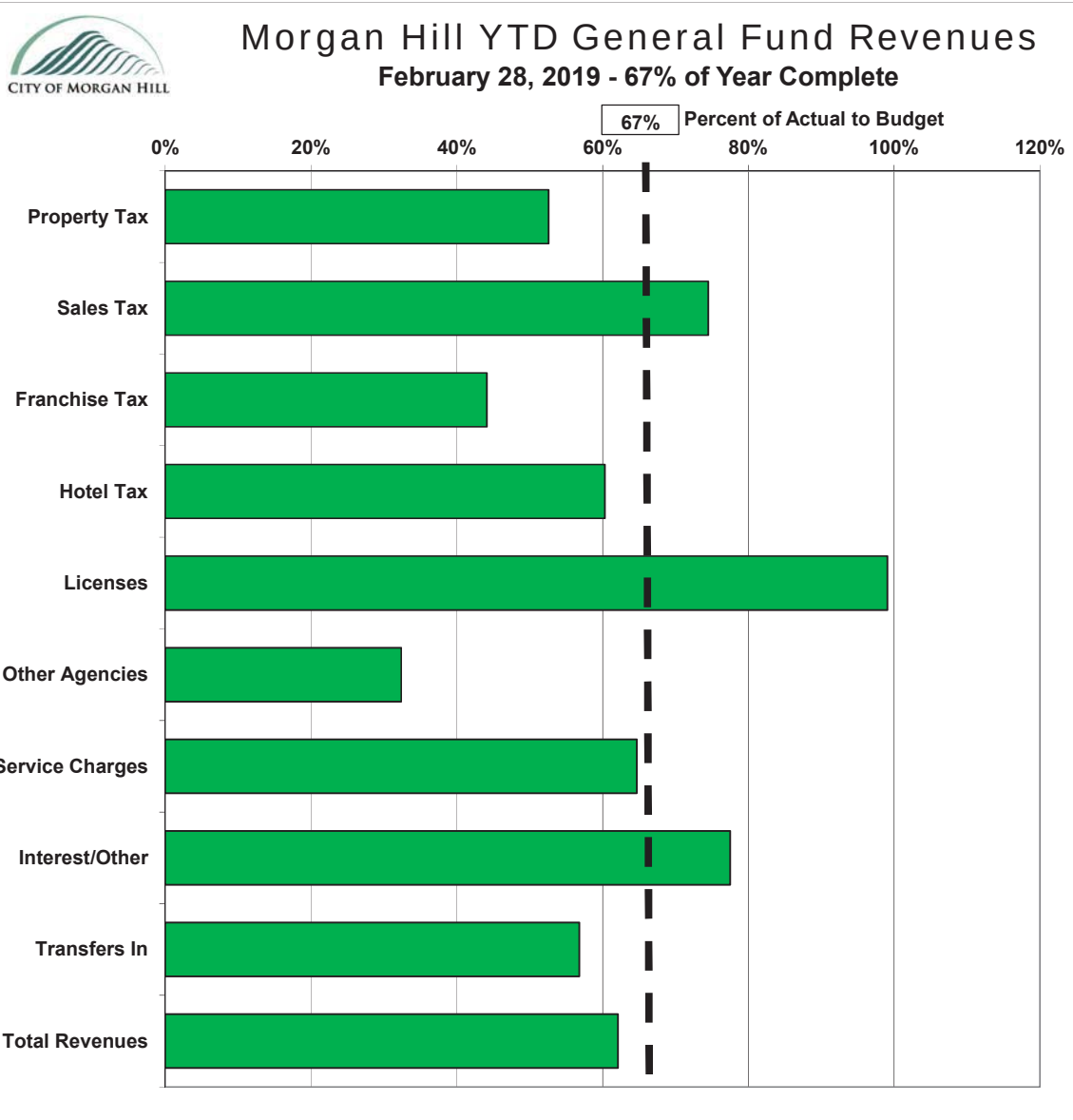
Prepared by:
FINANCE DIVISION



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 25,140,222	62%	\$ 28,475,799	65%
Community Development	3,214,624	66%	4,558,187	73%
RDA Successor Agency	11,969,106	151%	8,535,682	107%
Housing Successor Agency	58,012	2%	4,445,655	121%
Sewer Operations	7,676,122	71%	6,661,044	59%
Sewer Other	6,084,282	78%	6,044,648	39%
Water Operations	9,871,457	72%	9,107,710	68%
Water Other	2,927,524	78%	3,183,661	54%
Other Special Revenues *	2,197,187	53%	3,128,119	57%
Capital Projects & Streets	11,598,737	27%	13,209,297	22%
Debt Service	386,383	57%	520,326	76%
Internal Service	7,796,876	65%	7,566,811	65%
TOTAL FOR ALL FUNDS	\$ 88,920,531	59%	\$ 95,436,937	51%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



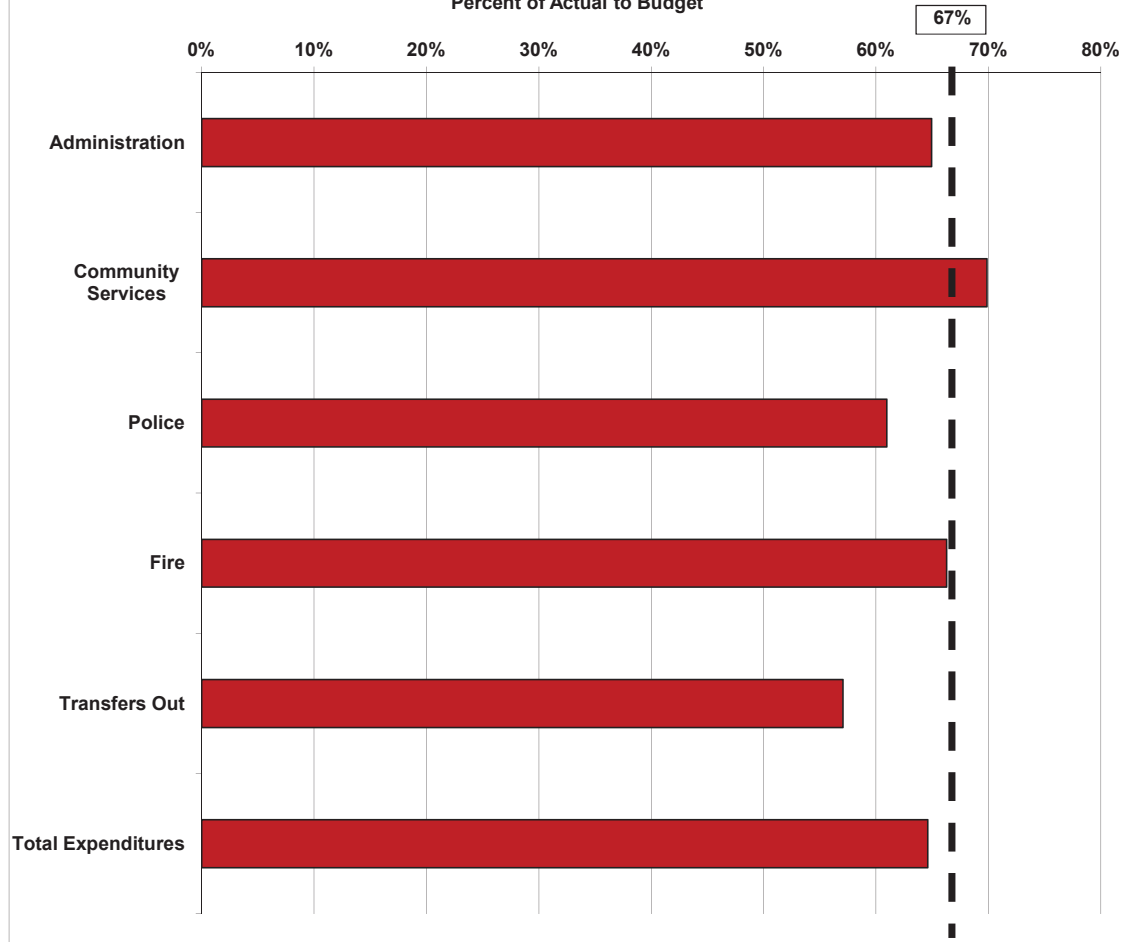
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 11,813,532	\$ 6,218,862	53%	\$ 5,554,278	12%
Sales Tax	9,981,124	7,433,325	75%	6,981,182	6%
Franchise Tax	2,164,190	955,035	44%	886,218	8%
Hotel Tax	2,754,000	1,660,732	60%	1,566,734	6%
Licenses	200,800	199,072	99%	186,341	7%
Other Agencies	546,332	177,131	32%	424,284	-58%
Service Charges	9,993,089	6,467,257	65%	6,034,377	7%
Interest/Other	1,406,042	1,089,035	78%	2,271,121	-52%
Transfers In	1,653,560	939,774	57%	933,368	1%
TOTAL REVENUES	\$ 40,512,669	\$ 25,140,222	62%	\$ 24,837,903	1%



Morgan Hill YTD General Fund Expenditures

February 28, 2019 - 67% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,043,269	\$ 3,275,611	65%	\$ 5,530,002	-41%
Community Services	12,540,603	8,760,652	70%	7,815,157	12%
Police	17,406,718	10,612,785	61%	10,050,216	6%
Fire	6,959,059	4,612,727	66%	3,956,099	17%
Transfers Out	2,127,498	1,214,024	57%	1,330,134	-9%
TOTAL EXPENDITURES	\$ 44,077,146	\$ 28,475,799	65%	\$ 28,681,609	-1%

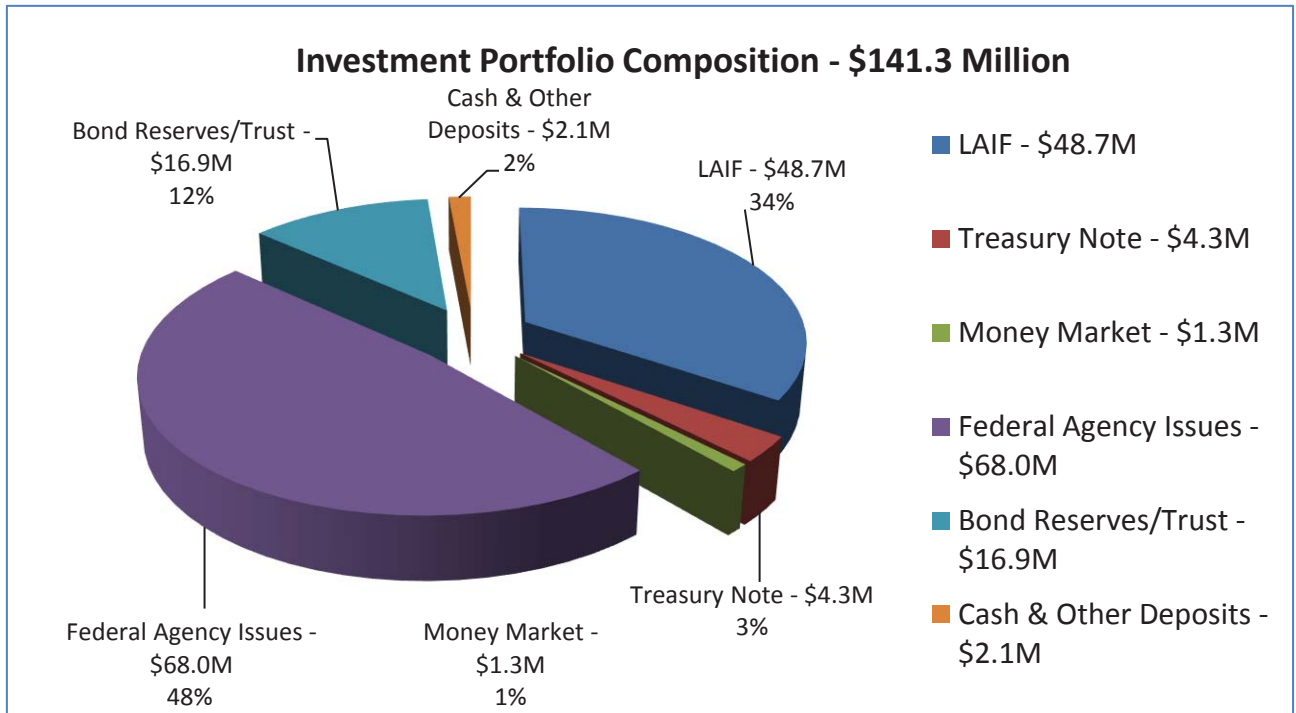


City of Morgan Hill
Recreation Report - Fiscal Year 2018-19
For the Month and Eight Months Ended February 28, 2019
67% of Year Complete

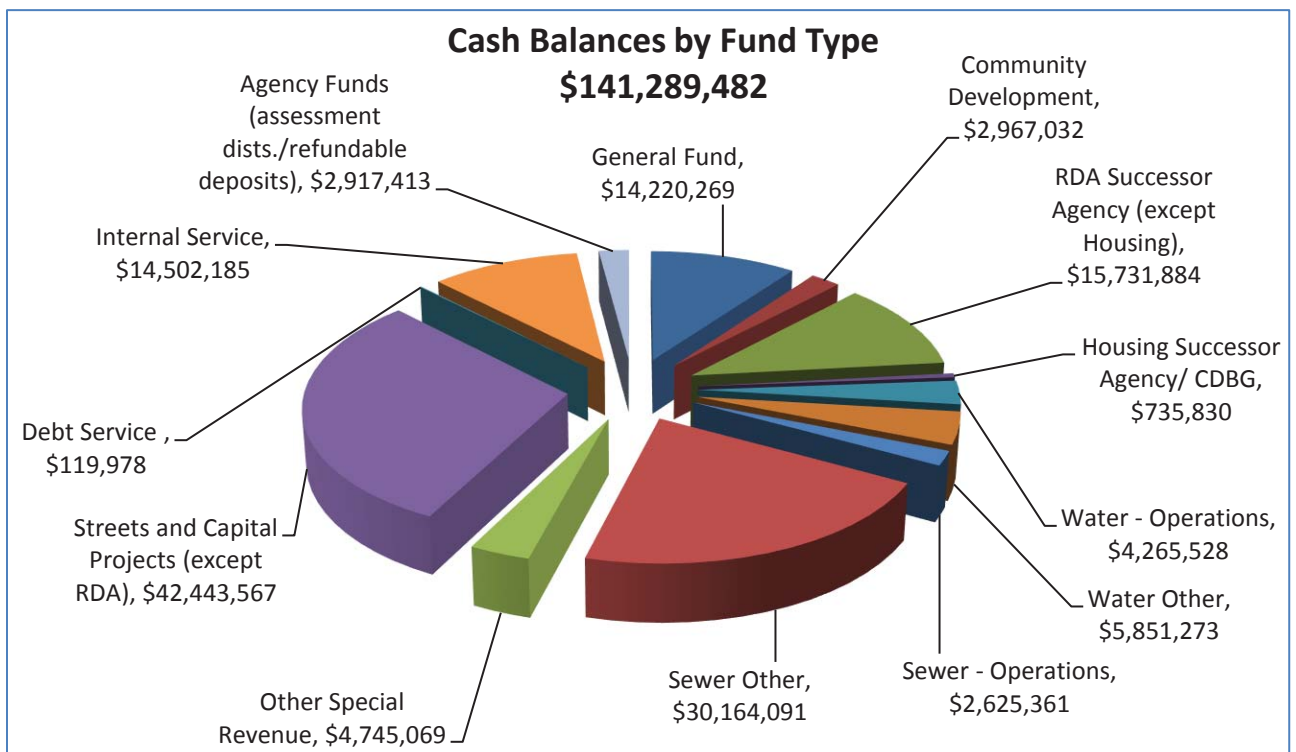
	<u>Budget</u>	<u>February 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,241,196	\$ 454,369	\$ 4,167,426	
Facility Rentals	898,700	74,640	651,594	
Community Services	147,840	40,112	77,692	
Transfers in	75,000	6,250	50,000	
Total Revenues	<u>\$ 7,362,736</u>	<u>\$ 575,372</u>	<u>\$ 4,946,712</u>	67%
Less: Expenditures				
Membership & Program Services	\$ 6,309,009	\$ 346,957	\$ 3,702,287	
Facility Rentals	1,355,732	106,355	865,911	
Community Services	653,307	39,753	363,675	
Total Expenditures	<u>\$ 8,318,049</u>	<u>\$ 493,063</u>	<u>\$ 4,931,873</u>	59%
Net Impact without encumbrances	<u>\$ (955,313)</u>	<u>\$ 82,308</u>	<u>\$ 14,839</u>	
Encumbrances	-	-	1,015,947	
Net Impact with encumbrances	<u>\$ (955,313)</u>	<u>\$ 82,308</u>	<u>\$(1,001,108)</u>	

City of Morgan Hill
Monthly Investment Report - February 28, 2019

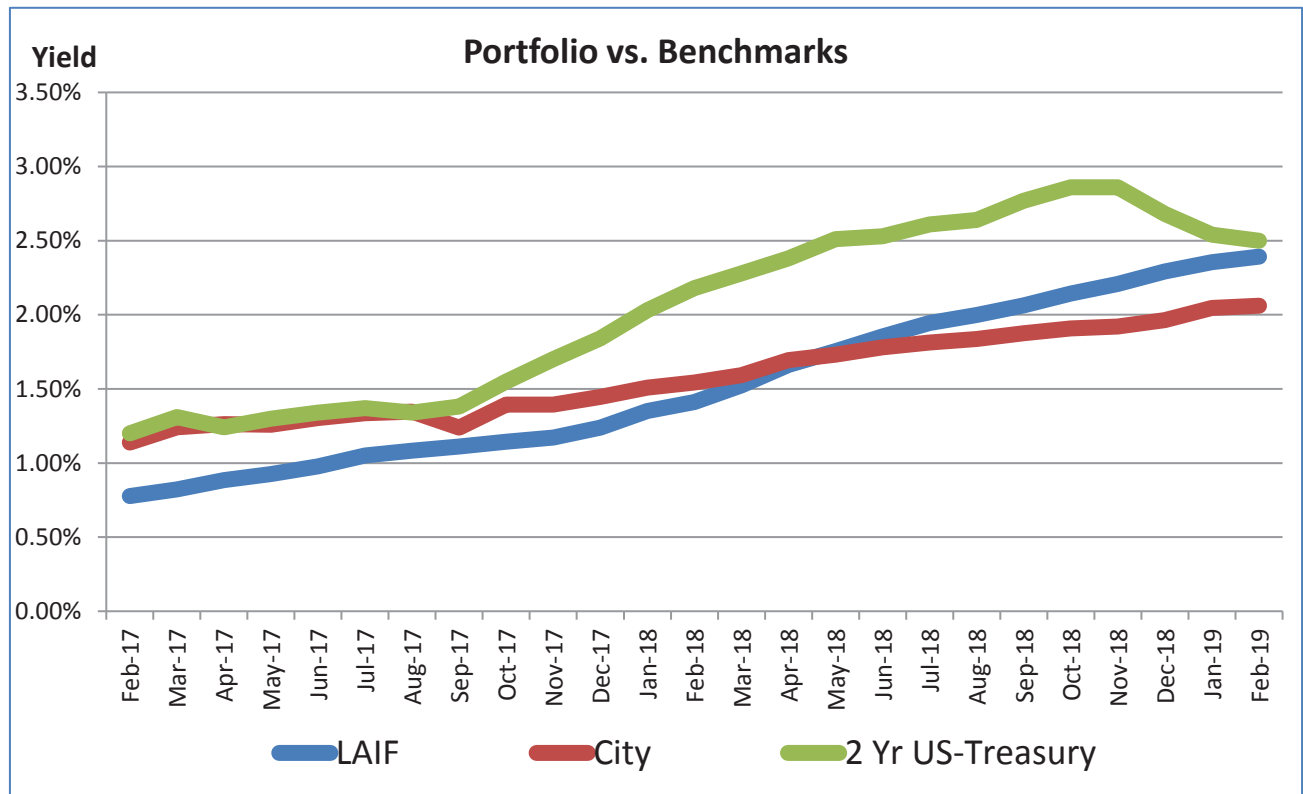
The following are the snapshots of City's investment portfolio as of February 28, 2019. The first chart shows the portfolio composition by investment type:



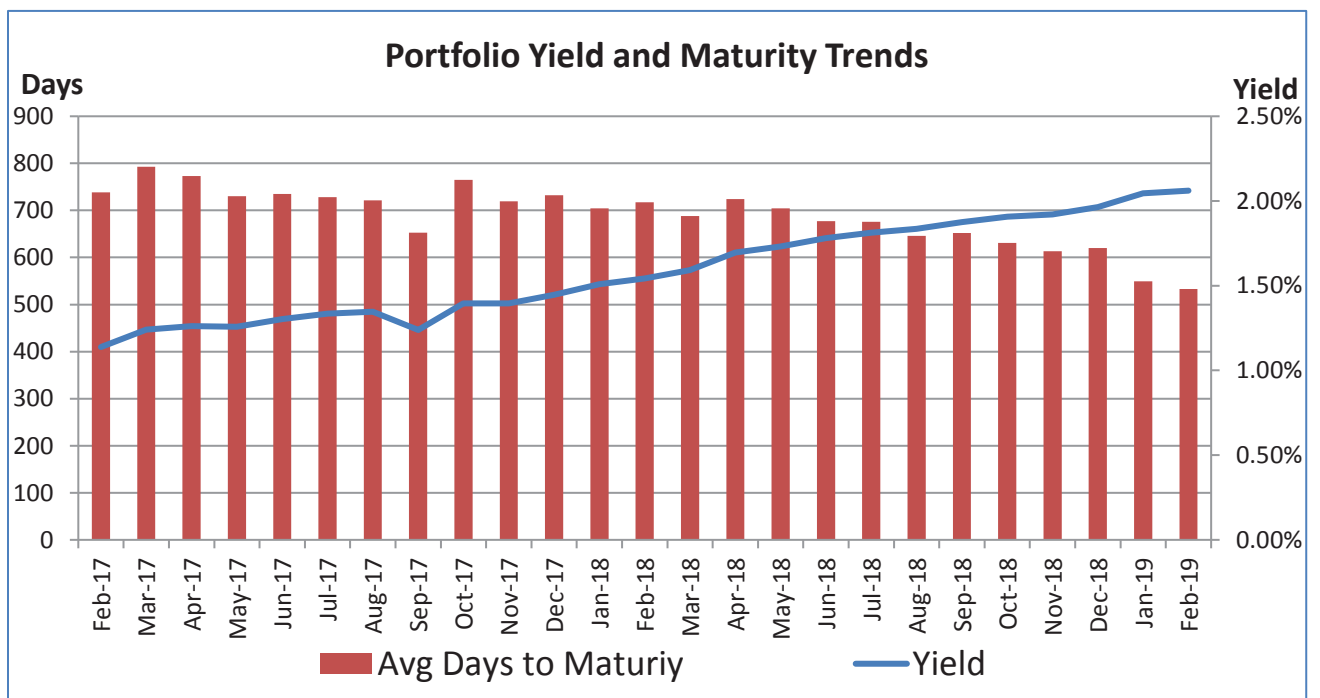
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of February 28, 2019

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 48,684,710	34.46%	\$ 48,638,514	2.39%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.83%	3,943,360	1.70%	4/19/2019	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.83%	3,906,840	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.83%	3,886,960	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.42%	1,953,860	1.65%	3/29/2019	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.83%	3,886,560	1.60%	3/29/2019	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.83%	3,900,600	1.60%	4/27/2019	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.83%	3,863,560	1.55%	4/28/2019	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.42%	1,952,620	1.65%	4/28/2019	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.83%	3,894,800	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.12%	2,927,760	1.65%	3/23/2019	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.83%	3,901,400	1.63%	3/23/2019	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.83%	3,925,120	1.88%	3/26/2019	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.92%	1,279,512	2.15%	3/29/2019	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.72%	3,787,207	2.15%	10/19/2022	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	2.94%	4,076,711	2.20%	4/26/2019	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.12%	2,971,740	2.50%	4/30/2019	1/30/2023
Treasury Note	4/30/2018	4,289,720	3.04%	4,323,870	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,589,720	42.18%	\$ 58,382,480	1.82%		
Money Market		\$ 1,214,570	0.86%	\$ 1,214,570	2.38%		
Total City Managed/Average		\$ 109,489,000	77.49%	\$ 108,235,562	2.20%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	749,914	0.53%	745,890	1.18%	7/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,988	0.53%	745,485	1.25%	5/23/2019	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.53%	745,440	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	10/7/2016	749,938	0.53%	744,810	1.29%	3/12/2019	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,973	0.53%	747,780	1.22%	5/23/2019	5/23/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,985	0.53%	744,443	1.25%	3/30/2019	9/30/2019
Fed Home Loan Mortgage	12/13/2016	1,001,010	0.71%	998,440	1.35%	5/30/2019	5/30/2019
Fed Home Loan Mortgage	12/29/2016	749,767	0.53%	748,860	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	740,813	0.52%	738,283	1.39%	6/20/2019	6/20/2019
Fed Home Loan Bank	6/19/2018	947,659	0.67%	947,445	2.38%	5/28/2019	5/28/2019
Fed Home Loan Mortgage	9/14/2018	820,485	0.58%	820,652	2.56%	8/1/2019	8/1/2019
Fed Home Loan Bank	9/26/2018	746,638	0.53%	748,733	2.80%	3/30/2020	3/30/2020
Fed Home Loan Bank	11/6/2018	739,054	0.52%	743,895	2.87%	11/15/2019	11/15/2019
Fed Home Loan Mortgage	1/18/2019	999,018	0.71%	999,650	2.59%	4/23/2020	4/23/2020
Fed Home Loan Bank	1/31/2019	1,493,071	1.06%	1,493,145	2.42%	5/8/2019	5/8/2019
Money Market		106,244	0.08%	106,244	2.38%		
Sub Total/Average		\$ 12,843,556	9.09%	\$ 12,819,194	1.87%		
Bond Reserve Accounts - Held By Trustees		\$ 14,705,310	10.41%	\$ 14,732,164			
Cash/Deposits		\$ 2,064,212	1.46%	\$ 2,064,212			
PARS Trust		\$ 2,187,404	1.55%	\$ 2,453,530			
GRAND TOTAL/AVERAGE		\$ 141,289,482	100.00%	\$ 140,304,663			

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF FEBRUARY 28, 2019
FOR THE FISCAL YEAR OF 2018-19

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	2.39%	\$ 44,679,231	31.62%	\$ 44,636,837
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.39%	4,005,478	2.83%	4,001,678
Federal Issues	All Funds Pooled	1.50%	68,037,312	48.15%	66,771,559
US Treasury Notes	All Funds Pooled	2.73%	4,289,720	3.04%	4,323,870
Dreyfus Treas Cash Management Acct	All Funds Pooled	2.38%	1,320,813	0.93%	1,320,813
	SUBTOTAL		\$ 122,332,556	86.58%	\$ 121,054,757
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	2.05%	245	0.00%	245
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	2.05%	311	0.00%	311
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.38%	9,105,520	6.44%	9,105,520
US Treasury Notes - Reserve Acct.	Successor Fund	1.26%	5,074,237	3.59%	5,101,091
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	2.05%	258,840	0.18%	258,840
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	2.05%	266,157	0.19%	266,157
	SUBTOTAL		14,705,310	10.41%	14,732,164
Other Cash/Deposits					
General Checking	All Funds		2,027,100	1.43%	2,027,100
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			1,387,404	0.98%	1,571,089
PARS - PENSION Trust			800,000	0.57%	882,442
	SUBTOTAL		4,251,616	3.01%	4,517,742
Total Cash and Investments			\$ 141,289,482	100.00%	\$ 140,304,663

CASH ACTIVITY SUMMARY
FY 2018-19

Fund Type	07/01/18 Balance	Change in Cash Balance	2/28/2019 Balance
General Fund	\$ 15,044,885	\$ (824,617)	\$ 14,220,269
Community Development	3,419,872	(452,839)	2,967,032
RDA Successor Agency (except Housing)	12,277,198	3,454,686	15,731,884
Housing Successor Agency/ CDBG	4,150,303	(3,414,473)	735,830
Water - Operations	2,317,454	1,948,075	4,265,528
Water Other	4,954,819	896,454	5,851,273
Sewer - Operations	1,505,059	1,120,302	2,625,361
Sewer Other	29,212,866	951,225	30,164,091
Other Special Revenue	5,052,285	(307,216)	4,745,069
Streets and Capital Projects (except RDA)	42,155,711	287,856	42,443,567
Debt Service	253,454	(133,476)	119,978
Internal Service	12,991,987	1,510,198	14,502,185
Agency Funds (assessment dists./refundable deposits)	4,116,381	(1,198,969)	2,917,413
Total	\$ 137,452,276	\$ 3,837,206	\$ 141,289,482

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by: Harjot Sangha, Accounting Manager

Approved by:

Reviewed by: Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 10,131,882	\$ 10,131,882	\$ 5,367,378	53%	\$ 5,140,072	\$ 227,306	4%
Property Tax - RPTTF Residual Distribution	1,405,500	1,405,500	704,304	50%	265,874	438,430	165%
Property Tax - Supplemental Roll	276,150	276,150	147,180	53%	148,332	(1,152)	-1%
Sales Tax	9,601,124	9,601,124	7,219,074	75%	6,777,313	441,761	7%
Public Safety Sales Tax	380,000	380,000	214,251	56%	203,869	10,382	5%
Transient Occupancy Taxes	2,754,000	2,754,000	1,660,732	60%	1,566,734	93,998	6%
Franchise (Refuse, Cable, PG&E)	2,164,190	2,164,190	955,035	44%	886,218	68,816	8%
Property Transfer Tax	505,000	505,000	318,034	63%	326,097	(8,063)	-2%
TOTAL TAXES	27,217,846	27,217,846	16,585,987	61%	15,314,509	1,271,477	8%
LICENSES/PERMITS							
Business License	196,000	196,000	195,154	100%	183,118	12,036	7%
Other Permits	4,800	4,800	3,918	82%	3,223	695	22%
TOTAL LICENSES/PERMITS	200,800	200,800	199,072	99%	186,341	12,732	7%
FINES AND PENALTIES							
Parking Enforcement	8,250	8,250	5,309	64%	4,281	1,028	24%
Bails & Fines	71,500	71,500	58,581	82%	34,419	24,162	70%
Administrative Citations	9,500	9,500	1,156	12%	13,300	(12,144)	-91%
TOTAL FINES AND PENALTIES	89,250	89,250	65,046	73%	52,000	13,046	25%
OTHER AGENCIES							
Motor Vehicle in-Lieu	23,934	23,934	21,366	89%	23,237	(1,871)	-8%
Other Revenue - Other Agencies	271,398	546,332	177,131	32%	424,284	(247,153)	-58%
TOTAL OTHER AGENCIES	295,332	570,266	198,498	35%	447,521	(249,023)	-56%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,000	33,000	27,845	84%	19,696	8,149	41%
Business License Application Review	36,000	36,000	31,082	86%	24,852	6,230	25%
Membership Services & Rec Programs	6,241,196	6,241,196	4,167,426	67%	3,881,048	286,378	7%
Facility Rentals	898,700	898,700	651,594	73%	661,201	(9,607)	-1%
Community Services	147,840	147,840	77,692	53%	72,267	5,424	8%
General Administration Overhead	1,709,712	1,709,712	1,137,408	67%	880,192	257,216	29%
Other Charges Current Services	926,641	926,641	374,210	40%	495,121	(120,911)	-24%
TOTAL CURRENT SERVICES	9,993,089	9,993,089	6,467,257	65%	6,034,377	432,880	7%
OTHER REVENUE							
Use of money/property	458,589	458,589	280,410	61%	224,192	56,218	25%
Other Revenues	254,014	329,269	404,179	123%	1,645,595	(1,241,416)	-75%
TOTAL OTHER REVENUE	712,603	787,858	684,589	87%	1,869,787	(1,185,198)	-63%
TRANSFERS IN							
Asset Seizure	-	15,840	-	0%	-	-	0%
Public Safety	100,000	100,000	48,809	49%	81,000	(32,191)	-40%
Streets	738,968	738,968	358,460	49%	323,000	35,460	11%
Police Impact	25,000	25,000	16,664	67%	16,664	-	n/a
Sewer Operations	349,376	349,376	232,920	67%	231,352	1,568	1%
Water Operations	349,376	349,376	232,920	67%	231,352	1,568	1%
Park Development	75,000	75,000	50,000	67%	50,000	-	n/a
TOTAL TRANSFERS IN	1,637,720	1,653,560	939,774	57%	933,368	6,406	1%
TOTAL GENERAL FUND	40,146,640	40,512,669	25,140,222	62%	24,837,903	302,319	1%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	751,089	751,089	406,761	54%	431,846	(25,085)	-6%
Interest / Other Revenue/Other Charges	-	-	1,730	n/a	640	1,090	170%
202 STREET MAINTENANCE	751,089	751,089	408,491	54%	432,486	(23,995)	-6%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	202	202	680	337%	188	492	261%
Police Grant/SLEF/JAG	100,000	100,000	90,413	90%	81,083	9,330	12%
205 PUBLIC SAFETY TRUST	100,202	100,202	91,093	91%	81,271	9,822	12%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,996,450	2,996,450	1,847,852	62%	1,571,888	275,965	18%
Planning Fees	1,396,529	1,396,529	1,013,358	73%	695,216	318,142	46%
Engineering Fees	462,524	462,524	319,238	69%	641,433	(322,195)	-50%
Other Revenue/Current Charges	24,265	24,265	34,175	141%	31,512	2,663	8%
206 COMMUNITY DEVELOPMENT	4,879,768	4,879,768	3,214,624	66%	2,940,049	274,575	9%
207 LONG RANGE PLANNING	741,894	741,894	465,849	63%	432,230	33,619	8%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	2,821	2,821	646	23%	1,730	(1,084)	-63%
215 and 216 HCD BLOCK GRANT	2,821	2,821	646	23%	1,730	(1,084)	-63%
225 ASSET SEIZURE	1,670	1,670	32,697	1958%	1,106	31,591	2855%
229 LIGHTING AND LANDSCAPE	188,591	188,591	99,329	53%	95,302	4,027	4%
230 COMMUNITY FACILITIES DISTRICT	44,198	44,198	34,248	77%	23,458	10,790	46%
232 ENVIRONMENTAL PROGRAMS	394,158	394,158	297,214	75%	320,649	(23,436)	-7%
234 MOBILE HOME PARK RENT STAB.	661	661	9,011	1363%	2,803	6,208	221%
235 SENIOR HOUSING	3,347	3,347	2,221	66%	1,646	575	35%
236 HOUSING MITIGATION	1,613,912	2,613,912	1,148,861	44%	1,986,964	(838,103)	-42%
240 EMPLOYEE ASSISTANCE	28,949	28,949	14,679	51%	18,509	(3,830)	-21%
247 ENVIRONMENT REMEDIATION	2,118	2,118	1,340	63%	1,046	294	28%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,946,430	7,946,430	11,969,106	151%	8,809,418	3,159,688	36%
255 HOUSING SUCCESSOR AGENCY	2,386,006	2,386,006	58,012	2%	219,826	(161,814)	-74%
TOTAL SPECIAL REVENUE FUNDS	19,085,815	20,085,815	17,847,420	89%	15,368,494	2,478,926	16%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	7,959,013	8,032,013	1,579,204	20%	1,737,558	(158,354)	-9%
302 PARK MAINTENANCE	1,320,332	1,320,332	629,419	48%	1,168,369	(538,950)	-46%
303 LOCAL DRAINAGE	1,394,482	1,394,482	499,370	36%	1,695,725	(1,196,355)	-71%
304 LOCAL DRAINAGE/NON AB1600	80,981	80,981	120,303	149%	145,183	(24,881)	-17%
306 AGRICULTURE & OPEN SPACE PRESERVATION	2,652,538	2,652,538	1,979,530	75%	623,212	1,356,318	218%
308 STREET CIP	3,861,662	3,861,662	2,037,713	53%	2,089,307	(51,594)	-2%
309 TRAFFIC IMPACT	17,251,157	19,501,157	1,907,473	10%	253,188	1,654,285	653%
311 POLICE IMPACT	277,713	277,713	234,614	84%	184,215	50,399	27%
313 FIRE IMPACT	349,306	349,306	243,757	70%	55,958	187,800	336%
346 PUBLIC FACILITIES NON-AB1600	590,499	590,499	135,009	23%	77,113	57,896	75%
347 PUBLIC FACILITIES IMPACT	198,932	269,672	166,776	62%	125,589	41,187	33%
348 LIBRARY	909,565	909,565	636,779	70%	423,439	213,340	50%
350 UNDERGROUNDING	45,800	45,800	141,445	309%	200,871	(59,425)	-30%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	684,678	749,778	33,187	4%	84,755	(51,569)	-61%
360 COMMUNITY/REC IMPACT FUND	1,275,010	1,415,260	845,666	60%	687,935	157,731	23%
TOTAL CAPITAL PROJECTS FUNDS	38,851,668	41,450,758	11,190,246	27%	9,552,416	1,637,829	17%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	298,856	298,856	199,018	67%	196,893	2,125	1%
441 POLICE FACILITY BOND	375,764	375,764	187,365	50%	229,232	(41,868)	-18%
TOTAL DEBT SERVICE FUNDS	674,620	674,620	386,383	57%	426,126	(39,742)	-9%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,391,000	10,391,000	6,943,270	67%	6,474,099	469,171	7%
Interest Income/Transfers	37,151	37,151	20,004	54%	16,331	3,673	22%
Other Revenue/Current Charges	318,700	318,700	712,848	224%	212,474	500,374	235%
640 SEWER OPERATION	10,746,851	10,746,851	7,676,122	71%	6,702,904	973,218	15%
641 SEWER EXPANSION							
Interest Income	215,856	215,856	174,623	81%	108,930	65,693	60%
Development Impact Fee	4,717,263	4,717,263	3,956,496	84%	2,336,124	1,620,372	69%
Transfers/Other	-	-	-	0%	0	(0)	-100%
641 SEWER EXPANSION	4,933,119	4,933,119	4,131,119	84%	2,445,054	1,686,065	69%
642 SEWER RATE STABILIZATION	38,641	38,641	25,514	66%	18,923	6,591	35%
643 SEWER-CAPITAL PROJECT	2,797,976	2,797,976	1,927,648	69%	1,655,590	272,058	16%
TOTAL SEWER FUNDS	18,516,587	18,516,587	13,760,404	74%	10,822,471	2,937,932	27%
650 WATER OPERATION							
Water Sales	12,435,000	12,435,000	8,827,237	71%	7,719,569	1,107,668	14%
Meter Install & Service	123,000	123,000	98,647	80%	217,720	(119,073)	-55%
Transfers-In / Interest Income	440,840	440,840	299,934	68%	291,561	8,373	3%
Other Revenue/Current Charges	752,660	752,660	645,639	86%	549,317	96,322	18%
650 WATER OPERATION	13,751,500	13,751,500	9,871,457	72%	8,778,166	1,093,290	12%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	47,561	47,561	28,455	60%	26,860	1,595	6%
Development Impact Fee	1,311,698	1,311,698	1,184,076	90%	660,720	523,356	79%
651 WATER EXPANSION	1,359,259	1,359,259	1,212,531	89%	687,580	524,951	76%
652 Water Rate Stabilization	8,223	8,223	5,458	66%	338,328	(332,870)	-98%
653 Water Capital Project	2,400,895	2,400,895	1,709,534	71%	909,355	800,180	88%
TOTAL WATER FUNDS	17,519,877	17,519,877	12,798,981	73%	10,713,430	2,085,551	19%
TOTAL ENTERPRISE FUNDS	36,036,464	36,036,464	26,559,384	74%	21,535,901	5,023,483	23%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,870,983	1,870,983	1,260,021	67%	1,071,844	188,177	18%
740 BUILDING MAINTENANCE	3,326,619	3,380,619	2,254,598	67%	2,076,179	178,419	9%
741 BUILDING REPLACEMENT	789,958	789,958	510,859	65%	330,387	180,472	55%
745 CIP ADMINISTRATION	1,780,750	1,780,750	852,067	48%	895,355	(43,288)	-5%
760 UNEMPLOYMENT INSURANCE	2,324	2,324	1,561	67%	1,224	338	28%
770 WORKERS COMPENSATION	775,343	775,343	530,746	68%	696,510	(165,764)	-24%
790 EQUIPMENT REPLACEMENT	1,064,433	1,123,757	798,566	71%	666,753	131,813	20%
791 EMPLOYEE BENEFITS	1,171,099	1,171,099	905,486	77%	409,328	496,159	121%
793 CORPORATION YARD COMMISSION	-	-	2,830	0%	1,850	981	53%
795 GENERAL LIABILITY INSURANCE	1,020,581	1,020,581	680,142	67%	633,005	47,138	7%
TOTAL INTERNAL SERVICE FUNDS	11,802,090	11,915,414	7,796,876	65%	6,782,434	1,014,443	15%
TOTAL FOR ALL FUNDS	\$ 146,597,297	\$ 150,675,740	\$ 88,920,531	59%	\$ 78,503,274	\$ 10,417,257	13%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Eight Months Ended February 28, 2019
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 35,625	\$ 337,607	\$ 245,374	\$ 25,453	\$ 270,827	80%	\$ 181,000
	CITY ATTORNEY	45,939	768,318	408,903	119,318	528,221	69%	481,000
	CITY MANAGER	32,481	433,799	259,415	64,851	324,266	75%	2,021,000
	HUMAN RESOURCES	53,528	846,813	530,232	23,478	553,710	65%	461,000
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	57,579	614,068	376,024	4,800	380,824	62%	381,000
	Elections	1,144	322,533	136,685	-	136,685	42%	61,000
	COUNCIL SVCS & RECORDS MGMT	58,722	936,601	512,709	4,800	517,509	55%	441,000
	FINANCE	124,953	1,720,130	1,053,102	27,976	1,081,078	63%	1,051,000
	TOTAL ADMINISTRATION	351,249	5,043,269	3,009,736	265,875	3,275,611	65%	4,671,000
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	346,957	6,309,009	3,702,287	930,400	4,632,687	73%	3,491,000
	Recreation Facility Rentals	106,355	1,355,732	865,911	29,536	895,447	66%	851,000
	Community Services	39,753	653,307	363,675	56,010	419,685	64%	441,000
	Environmental Services	16,556	303,894	138,060	-	138,060	45%	121,000
	Street Maintenance	182,486	2,362,851	1,457,592	223,210	1,680,802	71%	1,251,000
	Downtown Maintenance	21,428	354,644	217,172	24,796	241,968	68%	171,000
	Cable Television	1,712	21,581	13,619	-	13,619	63%	11,000
	COMMUNITY SERVICES	715,246	11,361,018	6,758,315	1,263,953	8,022,268	71%	6,361,000
	CODE COMPLIANCE	12,258	150,464	95,883	-	95,883	64%	71,000
	CONGESTION MANAGEMENT	1,304	81,861	38,328	-	38,328	47%	51,000
	ECONOMIC DEVELOPMENT PROGRAMS	46,572	947,260	459,758	144,414	604,172		
	TOTAL COMMUNITY SERVICES	775,381	12,540,603	7,352,285	1,408,367	8,760,652	70%	6,491,000
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	89,866	1,222,942	813,544	31,453	844,997	69%	751,000
	Field Operations	618,206	9,285,273	5,621,582	181,176	5,802,758	62%	4,971,000
	Support Services	173,865	2,288,547	1,431,415	11,071	1,442,487	63%	1,341,000
	Emergency Services/Haz Mat	13,720	187,057	109,085	-	109,085	58%	111,000
	Special Operations	251,219	2,748,496	1,384,004	-	1,384,004	50%	1,731,000
	Dispatch Services	125,828	1,674,402	1,024,425	5,029	1,029,454	61%	1,021,000
	POLICE	1,272,704	17,406,718	10,384,055	228,729	10,612,785	61%	9,941,000
	FIRE	659,833	6,959,059	4,504,371	108,356	4,612,727	66%	3,911,000
	TOTAL PUBLIC SAFETY	1,932,537	24,365,777	14,888,427	337,085	15,225,512	62%	13,861,000
IV. TRANSFERS								
	Other	151,753	2,127,498	1,214,024	-	1,214,024	57%	1,331,000
	TOTAL TRANSFERS	151,753	2,127,498	1,214,024	-	1,214,024	57%	1,331,000
	TOTAL GENERAL FUND	3,210,919	44,077,146	26,464,471	2,011,328	28,475,799	65%	26,351,000

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2018-19
For the Month and Eight Months Ended February 28, 2019
67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	326	742,877	361,068	-	361,068	49%	32%
205	PUBLIC SAFETY/SUPP.LAW	545	106,536	53,169	-	53,169	50%	8%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	149,501	2,597,350	1,411,227	304,188	1,715,416	66%	1,21%
	Building	198,104	1,976,108	1,168,262	202,795	1,371,057	69%	1,13%
	Engineering	109,281	1,668,062	884,928	586,787	1,471,715	88%	82%
206	COMMUNITY DEVELOPMENT FUND	456,886	6,241,520	3,464,417	1,093,770	4,558,187	73%	3,17%
207	LONG RANGE PLANNING	81,703	1,383,881	416,981	532,032	949,013	69%	38%
215/216	CDBG	413	4,961	3,640	-	3,640	73%	14%
225	ASSET SEIZURE	-	15,840	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	14,805	195,274	123,574	19,955	143,529	74%	11%
230	COMMUNITY FACILITIES DISTRICT	1,251	46,262	15,243	-	15,243	33%	1%
232	ENVIRONMENT PROGRAMS	30,999	406,727	246,916	-	246,916	61%	26%
234	MOBILE HOME PARK	34	405	272	-	272	67%	-
236	HOUSING MITIGATION	71,250	3,323,394	1,549,120	157,188	1,706,308	51%	40%
240	EMPLOYEE ASSISTANCE	78	28,430	6,182	-	6,182	22%	1%
247	ENVIRONMENTAL REMEDIATION	104	-	3,039	807	3,846	0%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	9,263	7,983,635	8,511,792	23,890	8,535,682	107%	5,14%
255	HOUSING SUCCESSOR AGENCY	175,683	3,679,973	3,693,442	752,213	4,445,655	121%	1,43%
TOTAL SPECIAL REVENUE FUNDS		843,340	24,159,715	18,448,855	2,579,856	21,028,711	87%	11,49%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	78,209	8,952,955	303,307	758,904	1,062,211	12%	3,67%
302	PARK MAINTENANCE	73,074	1,248,941	723,173	172,243	895,415	72%	2,12%
303	LOCAL DRAINAGE	2,864	2,773,416	71,723	8,226	79,949	3%	9%
304	LOCAL DRAIN. NON-AB1600	6,452	338,627	8,091	-	8,091	2%	5%
306	AGRICULTURE & OPEN SPACE PRESERVATION	171,306	8,483,054	2,689,276	58,054	2,747,331	32%	3%
308	STREET CIP	43,235	5,392,576	1,714,358	486,657	2,201,015	41%	2,10%
309	TRAFFIC IMPACT	22,676	22,743,433	4,675,799	158,176	4,833,975	21%	1,58%
311	POLICE IMPACT	2,357	228,096	119,774	314	120,088	53%	14%
313	FIRE IMPACT	259	172,227	23,868	314	24,182	14%	1%
346	PUBLIC FAC.NON AB1600	6,856	1,041,119	126,272	9,379	135,650	13%	51%
347	PUBLIC FACILITIES IMPACT	198	145,959	3,569	314	3,883	3%	1%
348	LIBRARY IMPACT	62,299	3,849,962	396,641	80,596	477,237	12%	21%
350	UNDERGROUNDING	85	56,024	680	-	680	1%	-
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	18,299	1,830,740	50,714	11,835	62,549	3%	23%
360	COMM/REC CENTER IMPACT	5,576	2,419,177	64,941	131,031	195,972	0%	1%
TOTAL CAPITAL PROJECTS FUNDS		493,745	59,676,307	10,972,186	1,876,043	12,848,229	22%	10,71%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	799	308,656	225,101	-	225,101	73%	20%
441	POLICE FACILITY BOND DEBT	305	380,313	295,225	-	295,225	78%	29%
TOTAL DEBT SERVICE FUNDS		1,104	688,969	520,326	-	520,326	76%	50%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Eight Months Ended February 28, 2019
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	774,126	11,311,787	6,475,332	185,712	6,661,044	59%	6,511,000
641	SEWER CAPITAL EXPANSION	260,836	4,406,573	1,018,243	410,231	1,428,474	32%	978,000
642	SEWER RATE STABILIZATION	86	1,027	688	-	688	67%	0
643	SEWER-CAPITAL PROJECTS	71,492	11,033,664	3,963,366	652,119	4,615,485	42%	2,651,000
TOTAL SEWER FUND(S)		1,106,540	26,753,051	11,457,629	1,248,062	12,705,691	47%	10,159,000
WATER								
	Water Operations	728,815	12,440,123	7,003,880	1,467,397	8,471,278	68%	6,521,000
	Utility Billing	60,132	809,160	502,895	25,964	528,859	65%	478,000
	Water Conservation	6,274	210,082	57,573	50,000	107,573	51%	51,000
650	WATER OPERATIONS	795,221	13,459,365	7,564,348	1,543,362	9,107,710	68%	7,050,000
651	WATER CAPITAL EXPANSION	158,013	3,374,572	1,361,691	969,888	2,331,579	69%	298,000
652	WATER RATE STABILIZATION	28	335	224	-	224	67%	0
653	WATER-CAPITAL PROJECTS	20,335	2,535,148	706,360	145,497	851,857	34%	1,471,000
TOTAL WATER FUND(S)		973,597	19,369,421	9,632,624	2,658,747	12,291,371	63%	8,827,000
TOTAL ENTERPRISE FUNDS		2,080,137	46,122,472	21,090,252	3,906,809	24,997,062	54%	18,976,000
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	137,943	2,013,703	1,001,989	57,156	1,059,145	53%	1,130,000
740	BUILDING MAINTENANCE	288,604	3,430,986	1,955,217	434,270	2,389,487	70%	1,960,000
741	BUILDING REPLACEMENT	6,392	429,806	232,055	48,132	280,186	65%	300,000
745	CIP ADMINISTRATION	111,729	1,813,012	860,096	33,657	893,753	49%	890,000
760	UNEMPLOYMENT	6,512	10,000	7,442	-	7,442	74%	0
770	WORKERS COMPENSATION	61,489	947,795	509,166	-	509,166	54%	890,000
790	EQUIPMENT REPLACEMENT	245,603	1,332,012	245,623	558,093	803,716	60%	640,000
791	EMPLOYEE BENEFITS FUND	50,000	600,000	775,336	-	775,336	129%	530,000
793	CORP YARD COMMISSION	-	1,903	1,220	-	1,220	0%	0
795	GEN. LIABILITY INSURANCE	8,460	1,010,346	847,358	-	847,358	84%	680,000
TOTAL INTERNAL SERVICE FUNDS		916,732	11,589,562	6,435,502	1,131,308	7,566,811	65%	7,070,000
REPORT TOTAL		\$ 7,545,977	\$ 186,314,170	\$ 83,931,593	\$ 11,505,344	\$ 95,436,937	51%	\$ 75,136,000

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

Fund No.	Fund	Fund Balance 06-30-18	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 17,604,727	\$ 25,140,222	62%	\$ 26,464,471	60%	\$ (1,324,249)	\$ 2,011,328	\$ 14,269,151
TOTAL GENERAL FUND		\$ 17,604,727	\$ 25,140,222	62%	\$ 26,464,471	60%	\$ (1,324,249)	\$ 2,011,328	\$ 14,269,151
202	STREET MAINTENANCE	58,830	\$ 408,491	54%	\$ 361,068	59%	\$ 47,423	\$ -	\$ 106,253
205	PUBLIC SAFETY/SUPPL. LAW	50,422	91,093	91%	53,169	53%	37,924	-	88,346
206	COMMUNITY DEVELOPMENT	2,001,953	3,214,624	66%	3,464,417	56%	(249,793)	1,093,770	658,389
207	LONG RANGE PLANNING	1,160,548	465,849	63%	416,981	30%	48,868	532,032	677,384
215 / 216	CDBG	59,981	646	23%	3,640	0%	(2,994)	-	56,987
225	ASSET SEIZURE	111,921	32,697	1958%	-	0%	32,697	-	144,618
229	LIGHTING AND LANDSCAPE	157,826	99,329	53%	123,574	63%	(24,245)	19,955	113,626
230	COMMUNITY FACILITIES DISTRICT	82,203	34,248	77%	15,243	0%	19,004	-	101,207
232	ENVIRONMENTAL PROGRAMS	243,732	297,214	75%	246,916	61%	50,298	-	294,030
234	MOBILE HOME PK RENT STAB.	43,345	9,011	1363%	272	67%	8,739	-	52,084
235	SENIOR HOUSING	224,078	2,221	66%	-	0%	2,221	-	226,299
236	HOUSING MITIGATION	2,714,194	1,148,861	44%	1,549,120	47%	(400,260)	157,188	2,156,747
240	EMPLOYEE ASSISTANCE	38,932	14,679	51%	6,182	22%	8,496	-	47,428
247	ENVIRONMENT REMEDIATION	135,819	1,340	63%	3,039	0%	(1,699)	807	133,313
250	COMH-SUCCESSOR AGENCY-MHRDA	(877,559)	11,969,106	151%	8,511,792	107%	3,457,315	14,203,647	(11,623,891)
255	HOUSING SUCCESSOR AGENCY	4,072,877	58,012	2%	3,693,442	100%	(3,635,430)	752,213	(314,766)
260	PUBLIC ART	111	-	n/a	-	-	-	-	111
TOTAL SPECIAL REVENUE FUNDS		\$ 10,279,213	\$ 17,847,420	89%	\$ 18,448,855	76%	\$ (601,435)	\$ 16,759,613	\$ (7,081,835)
301	PARK DEV. IMPACT FUND	\$ 2,787,306	\$ 1,579,204	20%	\$ 303,307	3%	\$ 1,275,897	\$ 758,904	\$ 3,304,299
302	PARK MAINTENANCE	4,265,806	629,419	48%	723,173	58%	(93,754)	172,243	3,999,810
303	LOCAL DRAINAGE	10,405,902	499,370	36%	71,723	3%	427,647	8,226	10,825,323
304	LOCAL DRAINAGE/NON-AB1600	1,409,474	120,303	149%	8,091	2%	112,211	-	1,521,685
306	AGRICULTURE AND OPEN SPACE PRESERV	7,017,877	1,979,530	75%	2,689,276	32%	(709,747)	58,054	6,250,076
308	STREET CIP	2,333,919	2,037,713	53%	1,714,358	32%	323,355	486,657	2,170,617
309	TRAFFIC IMPACT FUND	3,437,980	1,907,473	10%	4,675,799	21%	(2,768,326)	158,176	511,478
311	POLICE IMPACT FUND	(736,934)	234,614	84%	119,774	53%	114,840	314	(622,408)
313	FIRE IMPACT FUND	3,906,952	243,757	70%	23,868	14%	219,889	314	4,126,527
346	PUBLIC FACILITIES NON-AB1600	166,110	135,009	23%	126,272	12%	8,738	314	174,534
347	PUBLIC FACILITIES IMPACT FUND	520,300	166,776	62%	3,569	2%	163,206	80,596	602,910
348	LIBRARY IMPACT FUND	2,371,544	636,779	70%	396,641	10%	240,138	-	2,611,682
350	UNDERGROUNDING	707,205	141,445	309%	680	1%	140,765	11,835	836,136
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,502,442	33,187	4%	50,714	3%	(17,527)	131,031	1,353,884
360	COMM/REC CTR IMPACT FUND	1,113,663	845,666	60%	64,941	0%	780,725	-	1,894,388
TOTAL CAPITAL PROJECT FUNDS		\$ 41,209,546	\$ 11,190,246	27%	\$ 10,972,186	18%	\$ 218,059	\$ 1,866,664	\$ 39,560,941
420	CIVIC CENTER DEBT	\$ 171,658	\$ 199,018	67%	\$ 225,101	73%	\$ (26,083)	\$ 245	\$ 145,331
441	POLICE FACILITY BOND DEBT	82,263	187,365	50%	295,225	78%	(107,860)	311	(25,909)
TOTAL DEBT SERVICE FUNDS		\$ 253,921	\$ 386,383	57%	\$ 520,326	76%	\$ (133,943)	\$ 556	\$ 119,422



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

Fund No.	Fund	Fund Balance 06-30-18	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,901,439	\$ 7,676,122	71%	\$ 6,475,332	57%	\$ 1,200,790	185,712	3,916,518
641	SEWER IMPACT FUND*	15,556,702	4,131,119	84%	1,018,243	23%	3,112,877	410,231	18,259,347
642	SEWER RATE STABILIZATION	2,574,831	25,514	66%	688	67%	24,826	-	2,599,657
643	SEWER-CAPITAL PROJECTS	9,316,726	1,927,648	69%	3,963,366	36%	(2,035,718)	652,119	6,628,889
650	WATER OPERATIONS	3,409,384	9,871,457	72%	7,564,348	56%	2,307,108	1,543,362	4,173,131
651	WATER IMPACT FUND*	2,680,718	1,212,531	89%	1,361,691	40%	(149,160)	969,888	1,561,670
652	WATER RATE STABILIZATION	514,170	5,458	66%	224	67%	5,234	-	519,404
653	WATER -CAPITAL PROJECT	564,089	1,709,534	71%	706,360	28%	1,003,175	145,497	1,421,766
TOTAL ENTERPRISE FUNDS		\$ 37,518,059	\$ 26,559,384	74%	\$ 21,090,252	46%	\$ 5,469,132	\$ 3,906,809	\$ 39,080,382

730	INFORMATION SERVICES	\$ 591,635	\$ 1,260,021	67%	\$ 1,001,989	50%	\$ 258,032	\$ 57,156	\$ 792,511
740	BUILDING MAINTENANCE	(4,788)	2,254,598	67%	1,955,217	57%	299,381	434,270	(139,677)
741	BUILDING REPLACEMENT	2,081,486	510,859	65%	232,055	54%	278,804	48,132	2,312,158
745	CIP ENGINEERING	62,962	852,067	48%	860,096	47%	(8,029)	33,657	21,276
760	UNEMPLOYMENT	152,405	1,561	67%	7,442	74%	(5,881)	-	146,524
770	WORKERS COMPENSATION	1,763,179	530,746	68%	509,166	54%	21,579	30,000	1,754,758
790	EQUIPMENT REPLACEMENT	4,432,003	798,566	71%	245,623	18%	552,943	558,093	4,426,853
791	EMPLOYEE BENEFITS FUNDS	(364,078)	905,486	77%	775,336	129%	130,150	-	(233,928)
793	CORP YARD COMMISSION	-	2,830	0%	1,220	0%	1,611	-	1,611
795	GEN. LIABILITY INSURANCE	1,341,056	680,142	67%	847,358	84%	(167,215)	-	1,173,841
TOTAL INTERNAL SERVICE FUNDS		\$ 10,055,860	\$ 7,796,876	65%	\$ 6,435,502	56%	\$ 1,361,374	\$ 1,161,308	\$ 10,255,926

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,604,727	\$ 25,140,222	62%	\$ 26,464,471	60%	\$ (1,324,249)	\$ 2,011,328	\$ 14,269,151
SPECIAL REVENUE GROUP	10,279,213	17,847,420	89%	18,448,855	76%	(601,435)	16,759,613	(7,081,835)
DEBT SERVICE GROUP	253,921	386,383	57%	520,326	76%	(133,943)	556	119,422
CAPITAL PROJECTS GROUP	41,209,546	11,190,246	27%	10,972,186	18%	218,059	1,866,664	39,560,941
ENTERPRISE GROUP	37,518,059	26,559,384	74%	21,090,252	46%	5,469,132	3,906,809	39,080,382
INTERNAL SERVICE GROUP	10,055,860	7,796,876	65%	6,435,502	56%	1,361,374	1,161,308	10,255,926
TOTAL ALL GROUPS	\$ 116,921,326	\$ 88,920,531	59%	\$ 83,931,593	45%	\$ 4,988,938	\$ 25,706,278	\$ 96,203,986

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Financial Stewardship
Housing
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

On March 20, 2019, the City Council introduced Ordinance No. 2300 New Series, by the following roll call vote: AYES: Carr, McKay, Constantine; NOES: Martinez Beltran; ABSTAIN: None; ABSENT: Spring.

Ordinance 2300 will approve a Development Agreement between the City of Morgan Hill and the Latala Group, LLC. This Development Agreement contains the Residential Development Control System (RDCS) commitments for 49 Downtown RDCS

allotments. On March 20, 2019, City Council requested and approved the project provide payment of in-lieu fees, consistent with the Morgan Hill Inclusionary Housing Ordinance, rather than provide the affordable housing units on-site. The Development Agreement was modified to incorporate this change. Prior to the scheduled second reading of the Ordinance on April 3rd, it was discovered that there was an inconsistency in the amount of the affordable housing fund contribution in the DA and the item was subsequently continued to the meeting of April 17th.

The project has committed to the estimated payment of \$948,103 for the inclusionary housing in-lieu fee based upon the actual square footage of the project at the time of construction. In addition, the DA reflects an additional 5% or estimated \$47,405 contribution to the affordable housing fund pledged by the Developer for a total estimated payment of \$995,508. The fees will be collected at the time of issuance of Certificates of Occupancy.

Ordinance 2300 contains only the project commitments made through the RDCS process. The project also has an approved Disposition and Development Agreement (DDA), in which all other commitments relative to timing of construction, the Depot Street vacation and sale, Depot Street realignment and commercial office space construction, and sale to the City of Morgan Hill are memorialized.

COMMUNITY ENGAGEMENT: Inform

All prior City Council actions were publicly noticed for the item including the Downtown Housing and Retail Capacity, Trends, and Opportunities workshop with the Planning Commission at the July 24, 2018 meeting.

In addition, the Developer met with:

- ☐ Jeff Dixon on June 15, 2018 representing the Freedom Fest event
- ☐ Downtown Restaurant Association on August 13, 2018
- ☐ Downtown Association on August 16, 2018
- ☐ Chamber of Commerce on August 28, 2018
- ☐ Sunday Minnich representing the Mardi Gras event on September 10, 2018
- ☐ Chamber of Commerce Economic Development Committee on September 13, 2018
- ☐ Cricket Rubino representing Bingo at the CCC on September 13, 2018.

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.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 18, 2018 – ENA was presented and approved by City Council.

- July 24, 2018 – Planning Commission Workshop on Downtown Housing and Retail Capacity, Trends, and Opportunities.
- August 21, 2018 – Presentation to the Parks and Recreation Commission for the opportunity to purchase the 3,000 square foot office space within the proposed development. Parks and Recreation Commission recommended approval to City Council.
- September 5, 2018 – Presented City Council the opportunity to purchase the 3,000 square foot office building for non-profits, to be developed as part of the project.
- October 3, 2018 – Approved Disposition Development Agreement for the sale of .29-acres of former Depot Street right-of-way and realignment of Depot Street to Church Street in conjunction with the redevelopment of the Hale Lumber site.
- October 17, 2018 – City Council adopted Ordinance No. 2282 N.S., approving General Plan and Zoning Amendments for the Depot Street right-of-way as the first step towards realigning Depot Street.
- January 22, 2019 – Planning Commission awarded 49 Downtown allotments and recommended approval of the RDCS Development Agreement to memorialize the commitments for those units.
- February 20, 2019 – The Council received the presentation, opened public comment, and continued the item to a date certain for staff to report back with Downtown Set-a-Side Units as it relates to RDCS, tree replacement plan, current development, and construction Downtown, and Depot Street circulation as it relates to future grade separations and Quiet Zones.
- March 20, 2019 – The Council approved the Development Agreement with the understanding that the developer will pay the affordable housing in-lieu fee instead of building the inclusionary units.

FISCAL AND RESOURCE IMPACT:

Depot Street Realignment with Parking Lot Enhancements

The estimated cost of construction for the realignment of Depot Street with CCC parking lot enhancements is a total of \$901,726. The resources to pay for the realignment of Depot Street and parking lot enhancements are outlined within the approved DDA.

Office Building

The project includes a 3,000 square foot office building that the City would like to purchase for non-profit services from the Recreation Center Impact Fund (360). An appraisal was completed for the proposed structure, assessing the price at \$800,000. On September 5, 2018, the Council was provided options for funding.

CEQA (California Environmental Quality Act):

The Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental Quality Act (CEQA) Guidelines Section 15175(a), identified the impacts of the Downtown Specific Plan in order to streamline the later environment review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan FEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from (in conformance with CEQA Guidelines Section 15176(d)).

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH #2015022074).

CEQA Guidelines § 15164 states that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in § 15162 calling for preparation of a subsequent EIR have occurred.

An Addendum was prepared to provide a program-level CEQA analysis of the proposed project, as part of the adopted 2009 Downtown Specific Plan EIR. The Addendum found no impacts that were not previously disclosed in the General Plan FEIR or the Downtown Specific Plan Master FEIR, nor would it result in a substantial increase in the magnitude of any significant environmental impacts previously identified.

LINKS/ATTACHMENTS:

1. 2300 Depot Latale RDCS DA
2. Revised DA

ORDINANCE NO. 2300, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2018-
0007: DEPOT-LATALA FOR A 49-UNIT MIXED USE
DEVELOPMENT LOCATED ON THE EASTERLY SIDE OF
DEPOT STREET NORTH OF EAST DUNNE AVENUE (APN
726-13-049)**

**THE CITY COUNCIL OF THE CITY MORGAN HILL DOES
ORDAIN AS FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code (MHMC), awarded 49 Downtown RDCS set-aside building allotments to application RDCS2018-0002 Depot-Latala. Additionally, pursuant to MHMC Chapter 18.116.040, the Planning Commission recommended approval of the Development Agreement.

SECTION 2. The City Council of the City of Morgan Hill adopted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the MHMC.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

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 accepts the recommendation of the Planning Commission and further finds that the development proposal and Development Agreement approved by this Ordinance are consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and the Downtown Specific Plan. The project would provide 49, residential units in a mixed use development, as well as the realignment of Depot Street. 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 proposed mixed-use development is permitted within the Mixed Use-Downtown Specific Plan area and would be compatible with the surrounding residential and small business 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 approved the payment of an in-lieu fee for the Inclusionary Housing requirement for the project at the March 20, 2019 meeting. These commitments are described within Exhibit C of the Development Agreement. This Development Agreement satisfies the Inclusionary Housing Ordinance requirements.

SECTION 9. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is a mixed-use residential development that would include the same normal daily operations of other surrounding uses.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement was analyzed pursuant to 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/Addendum previously prepared for purposes of the Development Agreement and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision

shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF MARCH 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 17th DAY OF APRIL 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:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: May 18, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2300, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of April 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

**DEVELOPMENT AGREEMENT
DA2018-0007**

by and between the
CITY OF MORGAN HILL
a California municipal corporation

and
THE LATALA GROUP, LLC
a California Limited Liability Company

regarding the
THE DEPOT-LATALA MIXED USE RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 THE LATALA GROUP, LLC
 REGARDING THE
 THE DEPOT-LATALA MIXED USE 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 The Latala Group, LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. Downtown Exempt allotments awarded pursuant to an RDCS application (RDCS2018-0002: Depot-Latala) and associated public benefit commitments;
2. Environmental Assessment EA2018-0013; and,
3. Disposition and Development Agreement DA2018-0005.

The Existing Approvals are more particularly described in the Addendum to the 2035 General Plan Final EIR and 2009 Morgan Hill Downtown Specific Plan Final EIR for the Morgan Hill Hale Lumber Land Exchange Project and the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 22, 2019, the Morgan Hill Planning Commission awarded 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 January 22, 2019, 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 49 units in a mixed-use residential development, as more particularly described in the RDCS Application RDCS2018-0002:Depot-Latala as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 2.28 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 RDSCS 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 – RDCS2018-0002:Depot -Latala and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission on January 22, 2019 and City Council on February 20, 2019) shall be incorporated into this Agreement by this reference.

(d) Compliance with Inclusionary Housing Ordinance. Developer is required to comply with Inclusionary Housing Ordinance Number 2278 that enacted Chapter 14.04 of the Morgan Hill Municipal Code by constructing ten percent inclusionary units on-site or by an alternative means of compliance. On March 20, 2019, the City Council adopted an amendment to the Inclusionary Housing Ordinance (Ordinance Number 2299) allowing payment of an in-lieu fee as an alternative to on-site construction subject to City Council approval. On March 20, 2019 the City Council approved the payment of the in-lieu fee by Developer for this project as described in Exhibit C. This Development Agreement satisfies the Inclusionary Housing requirement in Ordinances 2278 and 2299.

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 and allotment adjustments for ongoing projects 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.

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

If to Developer: The Latala Group, LLC
1999 South Bascom Avenue, Suite 700
Campbell, CA 95008
Tel: (408)848-0300
Email: Paul@latalahomes.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

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

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

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:

s/ _____

Name/Title [print]

Date: _____

*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: Revised DA (2274 : Depot Latale Ordinance Adoption)

EXHIBIT A

**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED**

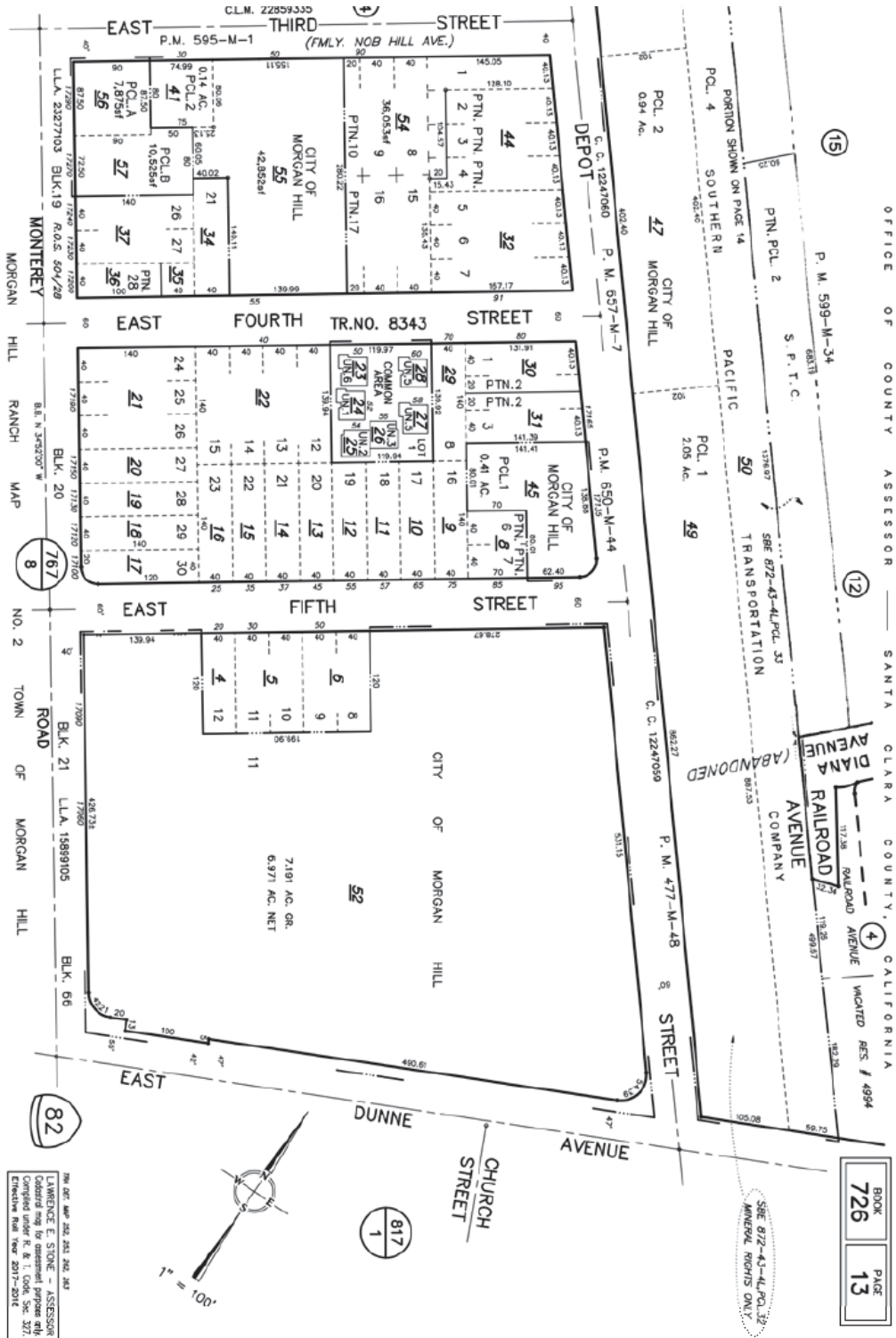
The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and described as follows:

Parcel Number 1, as shown on that certain Parcel Map recorded July 5, 1994, in Book 657, Page 7 of Maps, in the City of Morgan Hill, County of Santa Clara, State of California.

Excepting therefrom, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals but without entering upon or using the surface of the property, and in such manner as not to damage the surface of the property, as reserved in document recorded June 1, 1999 As Instrument No. 14836987, of Official Records of said County.

APN: 726-13-049

Attachment: Revised DA (2274 : Depot Latale Ordinance Adoption)



Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

EXHIBIT B**DESCRIPTION OF PROJECT**

RDCS APPLICATION NO. RDCS2018-0002:DEPOT-LATALA FOR A DEVELOPMENT THAT INCLUDES 40 TOWNHOME STYLE CONDOMINIUMS AND NINE RESIDENTIAL FLATS IN A MIXED USE DEVELOPMENT WITHIN THE MORGAN HILL DOWNTOWN SPECIFIC PLAN AREA.

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

EXHIBIT B

-1-

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to the Development proposed in the RDCS application dated November 7, 2018 (or Application No. RDCS2018-0002: Depot-Latala). 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*
	SCHOOLS			
4.	Student Transportation Improvements	Applicant will contribute \$1,000 per unit to contribute to the City's Safe Access to Schools Fund to be used to construct physical improvements to enhance safe student access to MHUSD schools.	Prior to issuance of building permit	\$1,000 per unit
	LOCATION			
6.a	Water distribution lines	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.	Prior to Improvement Plan approval	N/A
6.b	Wastewater collection	The project does not require extending or replacing existing sewer pipes or lift stations	Prior to Improvement Plan approval	N/A

EXHIBIT C

-1-

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		outside of the project site. However, the project may be required to extend the sanitary sewer line along the entire length of project frontage.		
6.c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the project.	Prior to Improvement Plan approval	N/A
	AFFORDABLE HOUSING			
2.	Voluntary Contribution to Housing Fund	Project commits to contributing to the City's Affordable Housing Fund at a rate of 5% of baseline contribution. Total Livable Area: 71,826 34,300.00 square feet Per square foot fee: \$ 13.20 Baseline fee: 948,103.20 452,760.00 (total) Baseline fee per unit: \$19,349.04 9,240 (per unit) % of Baseline fee: 5% Voluntary fee estimate: \$47,405.16	Inclusionary Housing Agreement Required Prior to issuance of Certificate of Occupancy building permit.	\$ 2,772.00 per unit \$ 47,405.16 voluntary contribution based on estimated in-lieu fee for project
3.	Inclusionary Housing -In-Lieu Housing Fees	The project incorporates below market rate (BMR) units within the project for a mixed income community with 10 percent of the project designated as deed restricted for sale affordable units. The designated affordability limits shall be 81% AMI for six percent of the units (3 units) and 110% AMI for four percent of the units (2 units).	Inclusionary Housing Agreement required. The In-lieu fee payment is required prior to issuance of Certificate of Occupancy.	N/A In-lieu fees shall be calculated based on the fee schedule in effect at the

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		To satisfy the City's Inclusionary Housing requirement specified in Chapter 14.04 (Inclusionary Housing) of the City's Municipal Code, the applicant shall be required to pay an In-lieu fee payment. The fee of \$13.20 per square foot is equivalent to the cost to a developer of providing 10% affordable units onsite. Current In-lieu fee estimate: \$13.20 x 71,826 square feet = \$948,103.20		time the fee is paid
	HOUSING DIVERSITY			
2.	Diversity of Housing Types	The project shall provide three housing types within the development consisting of at least 10 percent of the total number of units: Triplex or Quadplex (16%), Single Family attached (65%) and Mixed Use Residential (18%)	Prior to Design Review Permit approval	N/A
3.	Variation in Housing Size	There shall be three different housing size categories within the development consisting of at least 10 percent of the total number of units in the project. There shall be a minimum of 35 percent variation between the smallest and largest floor plan for project.	Prior to Design Review Permit approval	N/A
4.	Small Units	Ten percent of the units within the project shall be small units.	Prior to Design Review Permit approval	N/A
	PARKS AND OPEN SPACE			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.	On-Site Recreational Amenities	The project shall provide on-site recreational amenities to serve the residents, which shall include three separate shade trellis areas and two barbecue areas.	Prior to Design Review Permit approval	N/A
7.	Amenities for Age Group	The project shall provide on-site social and recreational amenities for various age groups, which shall include shaded areas for teens to socialize and barbecue areas for adults.	Prior to Design Review Permit approval	N/A
10.	Open Space Design	The project shall provide common open space and outdoor amenities, which shall include courtyards that are visible from living areas and private open space for attached units (at least 25% above zoning district requirement).	Prior to Design Review Permit approval	N/A
ENVIRONMENTAL PROTECTION				
1.	Energy Efficiency	The project shall exceed the minimum building energy efficiency requirement by the California Energy Code by 10 percent.	Prior to issuance of building permit.	N/A
2.	On-site Solar Energy Generation	The project shall incorporate an on-site solar energy generation system that will offset at least 60 percent of the projects annual electrical energy costs.	Prior to issuance of building permit.	N/A
3.	Indoor Water Use	The project exceeds the minimum indoor water efficiency and conservation requirements of the California Green Building Standards Code by 5 percent.	Prior to issuance of building permit.	N/A
4.a	Natural Turf	Less than 50 percent of the landscaped area shall contain natural turf.	Prior to issuance of building permit.	N/A

EXHIBIT C

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.b	No Natural Turf Outside Common Areas	The project shall contain no natural turf outside common areas used for active play.	Prior to issuance of building permit.	N/A
4.e	Exceeds Outdoor Water Efficiency 30%	The project shall exceed outdoor water efficiency standards by 30 percent.	Prior to issuance of building permit.	N/A
	TRANSPORTATION			
3.	Off-Site Street and Parking Improvements or Fund Contribution	The project shall construct and/or fund off-site street roadway improvements as described in the Disposition and Development Agreement by and between the City of Morgan Hill and the Latala Group dated November 20, 2018.	Prior to Improvement Plan approval	N/A
5.a	Aligns and connects streets	The project shall align and connect streets intersecting the project boundary with all adjoining streets. The northerly entrance would align with Fifth Street; the southerly entrance aligns with the new Depot Street knuckle (leg one and two).	Prior to Improvement Plan approval	N/A
5.b	Extends Streets	The project shall extend streets to adjoining undeveloped land to provide access to undeveloped land in the event of its future development. The northerly terminus of the private drive aisle stubs to the common property line between the project and CMH parking lot.	Prior to Improvement Plan approval	N/A
5.c	Off-street bicycle and pedestrian connections	The project shall provide off-street bicycle and pedestrian connections, including private or public parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement,	Prior to Improvement Plan approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		dedication or other similar method to guarantee it remains accessible to the general public. As part of the re-alignment of Depot Street and re-striping of the Community and Cultural Center parking lot, a publicly-accessible pedestrian path shall be constructed to connect the Depot knuckle to Dunne Avenue.		
6.c	Direct pedestrian connections	The project shall provide direct pedestrian connections with minimal physical barriers from all units to common open space, recreational facilities, and other project amenities.	Prior to Improvement Plan approval	N/A
6.d	Neighborhood traffic management techniques	The project shall incorporate neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulbouts, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Prior to Improvement Plan approval	N/A
7.	Electric Vehicle Charging Stations	The project shall install all connections and equipment necessary for electrical vehicle charging stations to be ready for use by residents and visitors upon project completion.	Prior to Improvement Plan approval	N/A
	MUNICIPAL INFRASTRUCTURE			
1.	Water Infrastructure	The project shall construct off-site water infrastructure improvements as described in the Disposition and Development Agreement by and between the City of Morgan Hill and the Latala Group dated November 20, 2018.	Prior to Improvement Plan approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.	Wastewater Infrastructure	The project shall construct off-site wastewater infrastructure improvements as described in the Disposition and Development Agreement by and between the City of Morgan Hill and the Latala Group dated November 20, 2018.	Prior to Improvement Plan approval	N/A
5.a	Installs broadband conduit in public right-of-way	Broadband conduit shall be included within the re-aligned Depot Street public right-of-way.	Prior to Improvement Plan approval	N/A
5.b	Installs broadband conduit to home/buildings	Broadband conduit laterals shall be installed to each building.	Prior to issuance of building permit.	N/A
5.c	Pre-installs indoor conduit	The project shall install indoor conduit, wiring and other necessary infrastructure to accommodate broadband service to each unit.	Prior to issuance of building permit.	N/A
	PROJECT QUALITY			
1.a	Front Porches	A minimum of 50 percent of homes facing a street or common interior courtyard shall include a front porch. Porches must be part of the 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.	Prior to Design Review Permit approval	N/A
1.b	Balconies Facing Street or Courtyard	A minimum of 25 percent of homes facing a street or common interior courtyard shall 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.	Prior to Design Review Permit approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.c	Balconies Facing Alleys	A minimum of 25 percent of homes abutting a shared alley shall include a balcony overlooking the alley, parking area, or drive aisle.	Prior to Design Review Permit approval	N/A
1.d	Façade Articulation and Finishes	Front building facades shall include feature finishes to break up blank, flat walls, including but not limited to windows, shutters, awnings, balconies, bay windows, and stone enhancements.	Prior to Design Review Permit approval	N/A
1.e	360-degree Architecture	The project shall include full and consistent articulation and design detail on all building facades.	Prior to Design Review Permit approval	N/A
1.f	Corner Treatments	For projects where the side or rear of a home faces a street or common courtyard street, the project shall incorporate facade feature finishes, including but not limited to window, shutters, awning, balconies, bay windows, and some enhancements.	Prior to Design Review Permit approval	N/A
1.h	Individual Residences-Attached Projects	Large buildings have been architecturally subdivided so that they appear as individual residences or small groups of units. Buildings shall incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	Prior to Design Review Permit approval	N/A
1.i	Residential-Scale Design Elements-Attached Projects	Buildings shall incorporate design details, including but not limited to porches, projections, eaves, bay windows, and other similar	Prior to Design Review Permit approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		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 shall face streets along the project perimeter for projects: • Fronting an existing residential or collector street; or • Located Downtown	Prior to Design Review Permit approval	N/A
2.e	Roof Line Variation	The project shall provide variation in roof lines through changes in roof height to provide breaks in building massing.	Prior to Design Review Permit approval	N/A
2.j	Adjacent Building Types-Attached Projects	The project shall match building types along project edge with adjacent land that is developed to its ultimate potential use according to the General Plan or applicable zoning.	Prior to Design Review Permit approval	N/A
3.b	Landscaping-Visual Relief	Landscaping shall be placed and designed to minimize the appearance of building bulk and mass.	Prior to Design Review Permit approval	N/A
3.c	Exterior Lighting	Exterior lighting fixtures shall be architecturally integrated with the primary building's design, style, material, and colors.	Prior to Design Review Permit approval	N/A
3.e	Public/Private Transitions	The project shall include transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation.	Prior to Design Review Permit approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.f	Mechanical Equipment	All mechanical equipment shall be screened from the public right-of-way and common areas enclosed within an architecturally compatible structure. Equipment closures are screened through landscaping.	Prior to Design Review Permit approval	N/A
4.a	Garage Door Orientation	Garage doors shall not face the front street. All garages are configured on the site such that garage doors face either the side or rear of the property, or screened by buildings or landscaping is provided to avoid a direct line of sight to garage doors from public spaces.	Prior to Design Review Permit approval	N/A
4.c	Garage Door Design-Detailing	Garage doors shall feature windows or architectural detailing consistent with the main dwelling.	Prior to Design Review Permit approval	N/A
4.e	Parking-Attached Projects	The project shall locate 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 shall not be located between a building and any public sidewalk or street.	Prior to Design Review Permit approval	N/A
4.f	Screening	Parking visible from a public street shall be screened with fences, walls, and/or landscaping.	Prior to Design Review Permit approval	N/A
4.i	Pavement Design	Areas for vehicle parking and circulation shall feature paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	Prior to Design Review Permit approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.a	Home Automation	Project shall install home automation devices within the unit for \$1,000 in device value per unit.	Prior to Building Permit Approval	\$1,000 per unit



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

ADOPT ORDINANCE 2301 NEW SERIES, AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2301, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

On April 3, 2019, the City Council introduced Ordinance No. 2301 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

A recent ruling by the Federal Communications Commission (FCC) requires the City to approve Small Cell Design Standards for wireless facilities located within the public right-of-way by April 15, 2019. In order to facilitate the newly adopted standards, the City needs to amend to Chapter 18.96 (Wireless Communication Facilities) to remove use permit language related to wireless communication facilities in the right of way. The amendment to the Zoning code aligns with a new permit process for small cells located within the public right-of-way through the issuance of an encroachment permit and the execution of a Small Cell License (SCL) agreement between the City and the wireless provider.

COMMUNITY ENGAGEMENT: Inform

A hearing notice was published in the Morgan Hill Times ten (10) days prior to the Planning Commission hearing on March 12, 2019. Verizon Wireless provided public comment in favor of the zoning code amendments proposed. Another hearing notice was published ten (10) days prior to the City Council hearing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 12, 2019, Planning Commission conducted a public hearing on a proposed amendment to Title 18, Division 1, Chapter 18.96 (Wireless Communications) and adopted a resolution recommending City Council approve the Zoning Code amendment.

FISCAL AND RESOURCE IMPACT:

The recommended actions amending Title 18, Division 1, Chapter 18.96 (Wireless Communications) are to comply with the new FCC Ruling. The work for this City initiated amendment was accommodated in the Economic Development and Planning Divisions' budget and workplan.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Small cell deployments on pole mounted facilities in the right-of-way are exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

LINKS/ATTACHMENTS:

1. 2301 Wireless in right of way

ORDINANCE NO. 2301, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 18.96.040 (REQUIRED PERMITS), 18.96.060 (SECTION 6409(a) MODIFICATIONS), 18.96.070 (PREFERRED SITING AND LOCATION), and 18.96.080 (DEVELOPMENT STANDARDS) OF CHAPTER 18.96 (WIRELESS COMMUNICATION FACILITIES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING SMALL CELL DEPLOYMENTS ON POLE MOUNTED FACILITIES WITHIN THE CITY RIGHT-OF-WAY

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 18.96.040 (Required Permits) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.040 - Required permits.

- A. Conditional Use Permit. Planning commission approval of a conditional use permit is required for all new facilities and modifications outside the public right-of-way, except for facilities requiring an administrative use permit or a Section 6409(a) Permit as identified below.
- B. Administrative Use Permit. Community development director approval of an administrative use permit is required for the following facilities:
 - 1. A collocation to an existing facility that is not eligible for a Section 6409(a) permit.
 - 2. A modification to an eligible support structure that is not eligible for a Section 6409(a) permit.
 - 3. Building- and facade-mounted facilities in a non-residential zoning district where the facility is completely concealed from public view and architecturally integrated into the existing support structure.
 - 4. A micro wireless facility in a non-residential zoning district.
- C. Section 6409(a) Permit. Modifications to an existing facility that do not result in a substantial change as defined by FCC regulations may be eligible for a Section 6409(a) permit. See Section 18.96.060 (Section 6409(a) Modifications).

SECTION 2. Section 18.96.060 (Section 6409(a) modifications) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.060 - Section 6409(a) modifications.

- A. Purpose. This section describes the process and requirements for the approval of an "eligible facilities request" that does not cause a "substantial change" to an existing facility as defined by FCC regulations.
- B. Eligible Facilities Request Defined. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as a request for modification of an existing tower or base station that does not substantially change the physical dimensions of the tower or base station, involving
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment; or
 - 3. Replacement of transmission equipment.
- C. Substantial Change Defined. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, defined according to the facility type and location as follows:
 - 1. Towers Outside the Public Right-of-Way. For towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 - 2. Monopoles in the Public Right-of-Way. For monopoles in the public rights-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than six feet from the edge of the wireless monopoles; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or

- d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (ten percent) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- 3. All Towers and Base Stations. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the community development director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.
- 4. Interpretation of Thresholds.
 - a. The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.
 - b. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).
- D. Permit Required. Approval of an eligible facilities request as defined above requires community development director approval of a Section 6409(a) Permit.
- E. Applications. Applications for a Section 6409(a) Permit shall contain all information and materials specified in Section 18.96.050.B (Application Contents) except as follows:
 - 1. Section 6409(a) Permit applications are not required to include a statement of purpose (Section 18.96.050.B.1) or an alternative sites analysis (Section 18.96.050.B.5).
 - 2. The application must include a detailed explanation as to why the applicant believes that the application qualifies as an eligible facility request subject to a Section 6409(a) Permit.
 - 3. For applications involving a collocation or modification to an eligible support structure, the application must be accompanied by all prior approvals for the existing facility (including but not limited to all conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment), as well as all permit applications with required application materials for each separate

permit required by the city for the proposed facility, including but not limited to a building permit and an encroachment permit (if applicable).

- F. Public Notice. Before the community development director may approve a Section 6409(a) Permit application, notice of the application shall be posted on site at least ten calendar days prior to the city taking action on the application and shall contain the following information:
1. A general explanation of the proposed modification or collocation;
 2. A general description of the location of the real property that is the subject of the application; and
 3. The following statement: "Federal law may require approval of this application pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a)."
- G. Basis for Approval.
1. This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a), and the applicable FCC and court decisions and determinations relating to the same. In the event that a court of competent jurisdiction invalidates all or any portion of Section 6409(a) or a FCC rule or regulation that interprets Section 6409(a), such that federal law would not mandate approval for any eligible facilities request, then all proposed modifications to existing facilities subject to this section must be approved by an administrative use permit, or conditional use permit, as applicable, and subject to the discretion of the community development director.
 2. The community development director shall approve a Section 6409(a) Permit upon finding that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change as defined above.
 3. In addition to any other alternative recourse permitted under federal law, the community development director may deny a Section 6409(a) permit upon finding that the proposed collocation or modification:
 - a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety;
 - b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification;
 - c. Involves the replacement of the entire support structure; or
 - d. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
 4. A denial of a Section 6409(a) permit application shall be without prejudice to the applicant, the real property owner, or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, administrative use permit, or Section 6409(a) permit as appropriate.

- H. Appeals. Community development director decisions on a Section 6409(a) Permit are final and may not be appealed.
- I. No Permit Term Extension.
 - 1. The approval of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station.
 - 2. A Section 6409(a) permit does not extend the permit term for any conditional use permit, administrative use permit, or other underlying regulatory approval and its term shall be coterminous with the underlying permit for the subject tower or base station.
- J. Applicant Notifications for Deemed Granted Remedies.
 - 1. Under state and/or federal law, the city's failure to act on a wireless communications facility permit application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions, accounting for tolling, may result in the permit being deemed granted by operation of law.
 - 2. To the extent federal or state law provides a "deemed granted" remedy for wireless communications facility applications not timely acted upon by the city, no such application shall be deemed granted unless and until the applicant satisfies the following requirements:
 - a. Submits a complete application package consistent with the application procedures specified in this chapter and applicable federal and state laws and regulations.
 - b. Following the date by which the city must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide notice to the city that the application is deemed granted by operation of law.
- K. Accelerated Permit Terms Due to Invalidation.
 - 1. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) permit, the permit or permits issued in connection with such 6409(a) modification(s) shall automatically expire one year from the effective date of the judicial order.
 - 2. A permit holder is not required to remove its improvements approved under the invalidated Section 6409(a) permit if the permit holder submits an application for a conditional use permit or administrative use permit for those improvements before the one-year period ends.
- L. No Waiver of Standing. The approval of a Section 6409(a) permit shall not be construed to waive any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) modification.

SECTION 3. Section 18.96.070 (Preferred siting and location) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.070 - Preferred siting and location.

The following siting and location preferences apply to all proposed new facilities and substantial changes to existing facilities. The community development director may require the applicant to submit an alternative sites analysis and evidence to demonstrate that a proposed facility could not be feasibly installed in a preferred site or location.

- A. Preferred Siting. To the extent possible, all proposed facilities should be sited according to the following preferences, ordered from most preferred to least preferred:
 1. Collocations on existing base stations outside the rights-of-way; then
 2. Collocations on towers outside the rights-of-way; then
 3. New building-mounted facilities outside the rights-of-way; then
 4. New towers outside the rights-of-way.
- B. Preferred Locations — General. All applicants should, to the extent possible, propose new facilities and substantial changes to existing facilities in non-residential zones.
- C. Preferred Locations — Non-Residential Zones. To the extent possible, all proposed facilities in non-residential zones should be located according to the following preferences, ordered from most preferred to least preferred:
 1. City owned or controlled parcels; then
 2. Parcels in the public facilities (PF) zone; then
 3. Parcels in the industrial (CI, IO, IC, IL, IG) zones; then
 4. Parcels in the commercial (CN, CG, CH, CS) zones;
 5. Parcels in the sports recreation leisure (SRL) zone.
 6. Parcels in the mixed use (MU-D, MU-N, MUF) zones.
- D. Preferred Locations -Residential and Open Space Zones. If a facility is proposed in a residential (RE, RDL, RDH, RAL, RAM, RAH)), a residential Planned Development, or open space (OS) zone, all facilities should be located according to the following preferences, ordered from most preferred to least preferred:
 1. City owned or controlled parcels; then
 2. Parcels that contain non-residential uses and do not contain residential uses; then
 3. Parcels that contain non-residential conditional uses and do contain residential uses; then
 4. Parcels that do not contain single-family homes; then
 5. All other parcels.

SECTION 4. Section 18.96.080 (Development standards) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.080 - Development standards.

A. General Design Standards. All facilities must conform to the following design standards.

1. Concealment. All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property must be completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:
 - a. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse, or dumpster corral; then
 - b. Within a new structure designed to integrate with or mimic the adjacent existing structure; then
 - c. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.
2. Height.
 - a. All new facilities and substantial changes to existing facilities must not exceed the height limit in the applicable zone except as allowed in Paragraph b below.
 - b. The review authority may approve a height exception up to 8 feet above the height limit when a proposed facility is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any towers or utility poles.
3. Setbacks. All facilities must comply with all setback requirements in the applicable zone.
4. Collocation. Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.
5. Landscaping. In addition to any landscaping required by the city for concealment or screening purposes, the applicant shall install and maintain additional landscaping to replace any existing landscaping displaced during the construction or installation of the facility.
6. Backup or Standby Power Sources and Generators. The city may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility cannot feasibly achieve its power needs with batteries, fuel cells or other similarly non-polluting, low noise-level means.
7. Lights.
 - a. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may exempt an applicant from this requirement when the applicant demonstrates a substantial public safety need.

- b. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the city to the maximum extent feasible.
 - 8. Noise. All transmission equipment and other equipment (including without limitation air conditioners and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in municipal code Chapter 8.28 (Noise).
 - 9. Signage.
 - a. A facility may not display any signage or advertisements unless expressly allowed by the city in a written approval, recommended under FCC regulations or required by law or permit condition.
 - b. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 - 10. Code Compliance. A permit holder shall design and maintain all facilities in compliance with all applicable federal, state, and local laws, codes, regulations, ordinances, or other rules.
- B. Tower-Mounted Facilities.
- 1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new towers applications should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks, and water tanks); then
 - b. Faux trees; then
 - c. Monopoles that do not conceal the antennas within a concealment device.
 - 2. Tower-mounted Equipment. All tower-mounted equipment shall be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
 - 3. Ground-mounted Equipment. Ground-mounted equipment shall be concealed with opaque fences or other opaque enclosures. The city may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
 - 4. Concealment Standards for Faux Trees. All faux tree facilities shall comply with the following standards:
 - a. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least eighteen inches.
 - b. The canopy shall be naturally tapered to mimic the particular tree species.

- c. All tower-mounted equipment, including antennas, equipment cabinets, cables, mounts, and brackets, shall be painted flat natural colors to mimic the particular tree species.
 - d. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage.
 - e. The entire vertical structure shall be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.
- C. Building and Facade Mounted Facilities.
- 1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new building and facade mounted facilities should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Completely concealed and architecturally integrated facade or rooftop mounted base stations which are not visible from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
 - b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys, and water tanks); then
 - c. Facade-mounted facilities incorporated into "pop-out" screen boxes designed to be architecturally consistent with the original support structure; then
 - d. Exposed facade-mounted and rooftop antennas.
 - 2. Ground-mounted Equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, outdoor ground-mounted equipment shall be concealed with opaque fences or landscape features that mimic the adjacent structures (including, but not limited to, dumpster corrals and other accessory structures).

Section 4. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 5. **Effective Date; Posting.** This Ordinance shall take effect on May 18, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 3rd DAY OF APRIL 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF APRIL 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:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: May 18, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2300, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of April 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2301 Wireless in right of way (2276 : Adopt Ordinance 2301 - Wireless in right-of-way)

DRAFT



Meeting Minutes City Council

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

Wednesday, April 3, 2019 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 6:00 p.m. for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

TELECONFERENCE

Council Member Spring participated in the regular meeting via teleconference as follows:

Crowne Plaza, Greater Noida
 Institutional Green 1, Surajpur Chowk
 Greater Noida, Uttar Pradesh -201306

Public comment from the teleconference location was allowed.

SPECIAL MEETING

6:00 P.M.

Minutes Acceptance: Minutes of Apr 3, 2019 6:00 PM (CONSENT CALENDAR)

CALL TO ORDER

Mayor Constantine called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Remote	7:03 PM
Yvonne Martinez Beltran	Council Member	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

CLOSED SESSION

City Attorney Donald Larkin announced the closed session item.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 6:01 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:01 p.m.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (CA Gov Code Section 54956.9(a))

Patton et al. v. City of Morgan Hill, et al. Case No. 16-CV-303044

REGULAR MEETING

7:00 P.M.

RECONVENE

The regular meeting convened at 7:03 p.m.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action from the closed session item.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr shared that he serves on the Board of Directors for the Valley Transportation

Authority (VTA) representing the cities of Morgan Hill and Gilroy. He reminded the community that the VTA is going through a process of developing the "Next Network" which lays out how they will be providing services. The plan is viewable on the VTA's website. Starting in April, committees will begin looking at the plan and in May it will be brought before the Board for final approval. There will be some changes to the services in South County including possible changes to the express bus services and services will be added to line 68. He encouraged the community to keep reviewing the plan throughout the process and providing feedback, before it gets to the Board in May.

He shared that the City has been working with Valley Water on a flood control project that is designed to alleviate the significant flooding that happens in Downtown Morgan Hill and parts of both northern and southern Morgan Hill. This project has been in the works for decades. Recently the Army Corps of Engineers issued the final permit that has been needed to begin construction on this project. Valley Water will now put the project out to bid and hopes to begin construction this summer. This project will provide flood protection to Downtown Morgan Hill, to over 1,000 homes and 500 businesses, and over 1,000 acres of farmland that is flooded on a routine basis. For those folks that have to pay high flood insurance rates, those rates will change once this project is completed. We are very excited that this project is getting started. When it does get started, you will receive lots of communication from both the City of Morgan Hill and Valley Water about how the construction may impact your lives.

He concluded by sharing that the wastewater treatment plant that Morgan Hill shares with Gilroy was just awarded top awards from the California Water Environment Association as both "Plant of the Year" and "Operator of the Year." These are significant awards that demonstrate environmental stewardship, plant operations, permit compliance, and cost effectiveness.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She recommended that items 6 and 13 be continued to the April 17, 2019 City Council meeting.

She shared that next week on Wednesday, April 10, 2019, Valley Water will have an environmental and project status update for the Anderson Dam Seismic Retrofit Project. That will take place at 6:00 p.m. at the Community and Cultural Center.

City Manager Christina Turner, Assistant City Manager Leslie Little, and the City Council recognized and thanked Principal Planner John Baty for his outstanding service to the City and wished him well in his new adventures.

OTHER REPORTS

Mayor Constantine shared that in regard to the interviews to fill vacancies on the Library, Culture, and Arts commission that took place on March 20, 2019, the Council re-appointed Katie Khera and Poonam Chabra and appointed Jake Thompson and Suman Ganapthy to serve terms ending April 1, 2021.

PUBLIC COMMENT

The public comment was opened at 7:18 p.m.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda continuing items 6 and 13 to the April 17, 2019 City Council meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 3, 4, 5, and 7.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

1. APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

Recommendation:

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

2. ITEM PULLED FOR DISCUSSION

3. APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT

Recommendation:

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

4. RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT

Recommendation:

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

5. RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Recommendation:

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

6. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, 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.

Item continued to the April 17, 2019 City Council meeting.

7. APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

Recommendation:

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

8. ITEM PULLED FOR SEPARATE VOTE

ITEM PULLED FOR SEPARATE VOTE

APPROVE THE MARCH 20, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT:	APPROVED [4 TO 0]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSTAIN:	Spring

ITEM PULLED FOR DISCUSSION

2. APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)

Recommendation:

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

Principal Planner John Baty presented the report.

The public comment was opened at 7:22 p.m.

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

MOTION:

Approving the recommended action.

RESULT: AUTHORIZED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr, McKay

OTHER BUSINESS

9. PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

Recommendation:

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

Program Administrator Anthony Eulo, Principal Planner John Baty, and Assistant City Manager Leslie Little presented the report.

The public comment was opened at 8:05 p.m.

Gordon Jacoby was called to speak.

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

RESULT: NO ACTION TAKEN

The meeting recessed at 8:49 p.m.

The meeting reconvened at 8:57 p.m.

10. APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

Recommendation:

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

Economic Development Manager John Lang presented the report.

The public comment was opened at 9:40 p.m. The following people were called to speak:

Trevor Bacolini

Ginbar Ketema

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

MOTION:

Approving the small cell license agreement, small cell design standards, authorizing the City Engineer to amend the standards as necessary, and authorizing the City Manager to negotiate, amend, and execute small cell license agreements consistent with the small cell design standards for up to forty-four City owned street light poles for each telecommunication provider.

RESULT: APPROVED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr, McKay

PUBLIC HEARING

11. INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

Economic Development Manager John Lang and Economic Development Fellow Alexandra Noble presented the report.

The public hearing was opened at 10:11 p.m.

Trevor Bacolini was called to speak.

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

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

12. PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

Maintenance Services Coordinator Keri Russell presented the report.

The public hearing was opened at 10:17 p.m.

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

The meeting was recessed at 10:19 p.m.

The meeting was reconvened at 10:24 p.m.

MOTION:

Adopting resolution A.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Carr, McKay
ABSENT:	Martinez Beltran

13. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

Item continued to the April 17, 2019 City Council meeting.

RESULT:	CONTINUED TO A FUTURE MEETING
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14. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

Recommendation:

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Principal Planner John Baty presented the report.

The public hearing was opened at 10:35 p.m.

Dick Oliver was called to speak.

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

MOTION:

Extending the meeting to 11:30 p.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Approving the recommended actions.

RESULT:	DETERMINED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

15. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

Recommendation:

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Principal Planner John Baty presented the report.

The public hearing was opened at 11:17 p.m. The following people were called to speak:

Phil Kerr

Gershon Yakir

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

MOTION:

Extending the meeting to 11:45 p.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

MOTION:

Extending the meeting to 12:15 a.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

MOTION:

Approving the recommended actions.

RESULT:	DETERMINED [3 TO 1]
MOVER:	Rich Constantine, Mayor
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
NAYS:	Martinez Beltran
ABSENT:	Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting was adjourned in honor of John Baty at 12:13 a.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

Minutes Acceptance: Minutes of Apr 3, 2019 6:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2019

RECOMMENDATION(S)

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to present Recology South Valley's (Recology) request for an adjustment in the maximum allowable solid waste rates charged within the City for City Council consideration and action.

One of the provisions of Recology's franchise agreement has historically been that service rate increases are based upon changes in the Consumer Price Index. With the amendment to the franchise agreement approved in 2014, rate amendments are now based on changes in both the Consumer Price Index and the price of compressed natural gas. The calculated rate adjustment requested this year for these factors is a 3.38% increase.

In addition to the above normal annual adjustment, a change in needed services has generated the need for an additional adjustment this year. As a result of State legislation and regulation, the City and Recology are required to significantly expand the provision of organic waste collection services to commercial accounts. CalRecycle, the State agency that regulates the City, is closely monitoring the City's implementation of this law to ensure that it is rigorously followed. The increased volume of organic waste, increases the overall costs of collecting, handling, and composting commercial organics. These costs are significantly higher than the cost of simply landfilling organic materials and necessitate additional trucks and drivers. Recology's overall rates need to be further adjusted to cover these costs. The incremental adjustment for the required service change is an additional 2.30%.

In accordance with their franchise agreement with the City, Recology submitted the attached timely request for a rate adjustment and staff has determined that Recology's

rate application follows the formula prescribed in the amended franchise agreement. The total calculated rate adjustment requested this year is a 5.68% increase. For residential customers, this adjustment applied to the current, basic residential service rate of \$31.60 is \$1.79 per month. With the approval of this adjustment, the maximum permitted monthly charge for flatland customers will be \$33.39 and the maximum permitted monthly charge for hillside customers will be \$36.32. For a business getting a 3-yard dumpster serviced once per week, the maximum allowable monthly rate will rise from \$347.56 to \$367.30.

It is recommended that the Council adopt the resolution increasing the maximum allowed rates for solid waste management services for July 2019 – June 2020.

COMMUNITY ENGAGEMENT: Inform

The community will be informed about the rate amendment via notices in the bills they receive from Recology.

ALTERNATIVE ACTIONS:

Not applicable as the City is contractually obligated to approve this amendment to the maximum rates for the normal annual adjustment, and if the City did not approve the additional service rate to add the additional services, significant fines would result.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has evaluated solid waste rate adjustments annually for the past seventeen years. In 2014, the City Council approved an amendment to the franchise agreement which changed the formula for the annual process.

FISCAL AND RESOURCE IMPACT:

The City's annual franchise fee revenues will increase by approximately \$60,000 under the proposed rate adjustments. This increase will be incorporated into the City's budget and financial forecast to be presented during the mid-cycle budget update. Franchise fee is a revenue source of the General Fund (010). Processing this application is an anticipated and included activity in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

This action will not result in physical changes to the environment and it is not a project under the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Recology Rate Resolution 2019
2. 2019 Rate Application

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN ADJUSTMENT TO SOLID WASTE COLLECTION RATES FOR 2019

WHEREAS, the City of Morgan Hill (the "City") has approved a franchise agreement with Recology South Valley ("Recology") that establishes a methodology for regulating the maximum rates that Recology can charge to Morgan Hill customers; and

WHEREAS, Recology has submitted an application for a rate adjustment that substantially complies with the methodology in the Agreement; and

WHEREAS, the cost of living, as indicated by the consumer price index, and the cost of motor fuels have increased during the past year causing an increase in the cost of providing service; and

WHEREAS, additional organic collection services for businesses are needed to be added to the community in order to remain in compliance with State regulations; and

WHEREAS, providing these additional services necessitates amending solid waste rates in order to recover costs; and

WHEREAS, Recology has agreed to provide notice in their next garbage billing explaining the rate adjustment process; and

WHEREAS, further reasons supporting the rate adjustment described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Solid Waste Management Rate Adjustment for 2019" submitted for City Council consideration at its meeting of April 17, 2019, 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, 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 that Recology South Valley is hereby authorized to adjust their rates up to the maximum levels listed on the rate schedule attached hereto as Exhibit A.

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 17th day of April 2019 by the following vote.

AYES:

COUNCIL MEMBERS:

NOES:

COUNCIL MEMBERS:

ABSENT:

COUNCIL MEMBERS:

ABSTAIN:

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. adopted by the City Council at the Regular Meeting on April 17, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	31.60	1.79	33.39
SGL FAM - NO STREET SWEEPING	31.21	1.77	32.98
HILLSIDE RESIDENTIAL	34.37	1.95	36.32
HILLSIDE RESIDENTIAL - NO SWEEPING	33.89	1.92	35.81
LOW INCOME	25.39	1.44	26.83
LOW INCOME - NO ST SWEEPING	25.08	1.42	26.50
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	42.07	2.39	44.46
BULKY MATERIAL (EACH EXTRA ITEM)	16.81	0.95	17.76
SIDE/BACKYARD SERV	12.61	0.72	13.33
GARBAGE TOTE RENTAL	5.35	0.30	5.65
RETURNED TRIP COLLECTION	32.92	1.87	34.79
<u>Commercial Rates</u>			
1 CAN COMM	19.33	1.10	20.43
2 CANS COMM	31.68	1.80	33.48
3 CANS COMM	44.10	2.50	46.60
4 CANS COMM	56.53	3.21	59.74
5 CANS COMM	68.94	3.92	72.86
6 CANS COMM	81.37	4.62	85.99
7 CANS COMM	93.74	5.32	99.06
8 CANS COMM	106.13	6.03	112.16
9 CANS COMM	118.55	6.73	125.28
10 CANS COMM	130.95	7.44	138.39
<u>ORGANICS</u>			
1 CAN COMM			16.34
2 CANS COMM			26.78
3 CANS COMM			37.28
4 CANS COMM			47.79
5 CANS COMM			58.29
6 CANS COMM			68.79
7 CANS COMM			79.25
8 CANS COMM			89.73
9 CANS COMM			100.22
10 CANS COMM			110.71
2 YD 1 X WEEK	239.94	13.63	253.57
2 YD 2 X WEEK	454.94	25.84	480.78
2 YD 3 X WEEK	669.91	38.05	707.96
2 YD 4 X WEEK	884.90	50.26	935.16
2 YD 5 X WEEK	1,099.85	62.47	1,162.32
2 YD 6 X WEEK	1,313.26	74.59	1,387.85
1/2 3 YD 1 X WEEK	173.78	9.87	183.65
3 YD 1 X WEEK	347.56	19.74	367.30
3 YD 2 X WEEK	661.87	37.59	699.46
3 YD 3 X WEEK	976.25	55.45	1,031.70

Attachment: Recology Rate Resolution 2019 (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

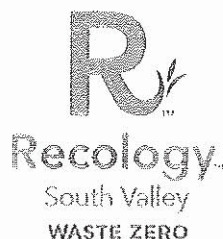
DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
3 YD 4 X WEEK	1,290.52	73.30	1,363.82
3 YD 5 X WEEK	1,604.84	91.15	1,695.99
3 YD 6 X WEEK	1,919.14	109.01	2,028.15
4 YD 1 X WEEK	449.73	25.54	475.27
4 YD 2 X WEEK	854.67	48.55	903.22
4 YD 3 X WEEK	1,259.64	71.55	1,331.19
4 YD 4 X WEEK	1,664.64	94.55	1,759.19
4 YD 5 X WEEK	2,069.59	117.55	2,187.14
4 YD 6 X WEEK	2,474.56	140.56	2,615.12
6 YD 1 X WEEK	671.94	38.17	710.11
6 YD 2 X WEEK	1,285.94	73.04	1,358.98
6 YD 3 X WEEK	1,899.93	107.92	2,007.85
6 YD 4 X WEEK	2,513.96	142.79	2,656.75
6 YD 5 X WEEK	3,127.98	177.67	3,305.65
6 YD 6 X WEEK	3,741.98	212.54	3,954.52
SPECIAL COLLECTION	27.61	1.57	29.18
ORGANICS			
1 YD 1 X WEEK			139.97
1 YD 2 X WEEK			265.39
1 YD 3 X WEEK			390.79
1 YD 4 X WEEK			516.21
1 YD 5 X WEEK			641.60
1 YD 6 X WEEK			766.09
2 YD 1 X WEEK			202.86
2 YD 2 X WEEK			384.62
2 YD 3 X WEEK			566.37
2 YD 4 X WEEK			748.13
2 YD 5 X WEEK			929.86
2 YD 6 X WEEK			1,110.28
1/2 3 YD 1 X WEEK			146.92
3 YD 1 X WEEK			293.84
3 YD 2 X WEEK			559.57
3 YD 3 X WEEK			825.36
3 YD 4 X WEEK			1,091.06
3 YD 5 X WEEK			1,356.79
3 YD 6 X WEEK			1,622.52
4 YD 1 X WEEK			380.22
4 YD 2 X WEEK			722.58
4 YD 3 X WEEK			1,064.95
4 YD 4 X WEEK			1,407.35
4 YD 5 X WEEK			1,749.71
4 YD 6 X WEEK			2,092.10
6 YD 1 X WEEK			568.09
6 YD 2 X WEEK			1,087.18
6 YD 3 X WEEK			1,606.28
6 YD 4 X WEEK			2,125.40

Attachment: Recology Rate Resolution 2019 (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
6 YD 5 X WEEK			2,644.52
6 YD 6 X WEEK			3,163.62
SPECIAL COLLECTION			23.34
REGULAR COMPACTOR (PER YARD)	43.62	2.48	46.10
RECYCLE COMPACTOR (PER YARD)	25.79	1.46	27.25
SUPER COMPACTOR (PER YARD)	87.22	4.95	92.17
20 YARD DEBRIS BOX	480.06	27.27	507.33
35 YARD DEBRIS BOX	685.82	38.95	724.77
40 YARD DEBRIS BOX	800.16	45.45	845.61
ORGANICS			
20 YARD DEBRIS BOX			405.86
35 YARD DEBRIS BOX			579.82
40 YARD DEBRIS BOX			676.49
PERM RENTAL	254.34	14.45	268.79
PERM DISPOSAL (PER YARD)	23.92	1.36	25.28
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	245.38	13.94	259.32
40 YARD OTHER RECYCLABLES	409.01	23.23	432.24
20 YARD DEBRIS BOX HILLSIDE	598.56	34.00	632.56
40 YARD DEBRIS BOX HILLSIDE	918.22	52.15	970.37
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	378.04	21.47	399.51
2 YARD COMPACTOR 2 X WEEK	756.07	42.94	799.01
2 YARD COMPACTOR 3 X WEEK	1,134.11	64.42	1,198.53
3 YARD COMPACTOR 1 X WEEK	567.06	32.21	599.27
3 YARD COMPACTOR 2 X WEEK	1,134.11	64.42	1,198.53
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	755.90	42.94	798.84
2 YARD COMPACTOR 2 X WEEK	1,511.80	85.87	1,597.67
2 YARD COMPACTOR 3 X WEEK	2,267.70	128.81	2,396.51
3 YARD COMPACTOR 1 X WEEK	1,133.85	64.40	1,198.25
3 YARD COMPACTOR 2 X WEEK	2,267.70	128.81	2,396.51
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: Recology Rate Resolution 2019 (2280 : Recology Rate Adjustment)



March 4, 2019

Mr. Anthony Eulo
Program Administrator
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: Revised July 2018 Rate Adjustment

Dear Anthony:

As outlined in section 6 of the Amended and Restated franchise agreement, we submit our request for a 5.68% adjustment to the collection rates effective July 1, 2019. 3.38% is attributed to the existing contractual formula and 2.30% is related to cost of commercial organics.

Section 6 (B) in the First Amendment describes using November to November index values for both the Consumer Price Index (CPI) for all Urban Consumers for the San Francisco/Oakland Metropolitan Area and the Department of Energy's Clean Cities Alternative Fuel Price Report.

The Bureau of Labor Statistics publishes the CPI index every other month; therefore the CPI index is not published in November. Additionally, the Department of Energy publishes the Alternative Fuel Price Report in October and January, therefore November is not available. Both indices are available in October.

For consistency purposes, and to most closely match the original Franchise Agreement we have used the October 2017 to October 2018 indexes in both cases as we did last year.

Attached are the following exhibits:

Exhibit 1 - CPI Calculation

CPI calculation using the formula described section 6 of the Amendment and Restated franchise agreement. Using October 2017 to October 2018 indexes.

Exhibit 2 – CPI Documentation

A Copy of the printout from the U.S. Department of Labor - Bureau of Labor Statistics web site displaying the required values of the CPI calculation.

Exhibit 3 – Clean Cities Alternative Fuel Price Report Documentation

Table 6 compressed Natural Gas (relative to Diesel) West Coast report

Exhibit 4 – Rate Schedule

This table applies the CPI factor and Fuel index to the current rates and calculates the adjusted new rates for July 1, 2019.

I have also included backup data outlining the additional cost of the commercial organics program.

Should you have any questions or need additional information, please call me at (408) 846-1395.

Sincerely,



Phil Couchee
General Manager
Recology South Valley

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATE ADJUSTMENT
EFFECTIVE JULY 1, 2019**

CPI RATE ADJUSTMENT

Formula outlined in Section 6 (B) First Amendment of
December 13, 2005 Franchise Agreement.

$$\frac{X (I) - X (I-2)}{X (I-2)}$$

Consumer Price Index Values

X (I) = October, 2018 = 289.673

X (I-2) = October, 2017 = 277.570

$$\text{CPI} = \frac{289.673 - 277.570}{277.570}$$

CPI = 4.36%

70% of CPI = 3.05%

***Pacific Gas & Electric's
G-NGV1 Schedule***

X (I) = October, 2018 = 2.85

X (I-2) = October, 2017 = 2.76

$$\text{MFI} = \frac{2.85 - 2.76}{2.76}$$

MFI = 3.26%

10% of MFI = 0.33%

Net index rate percentage adjustment

3.38%

AB 1826 Adjustment

2.30%

Total rate adjustment

5.68%

Attachment: 2019 Rate Application (2280 : Recology Rate Adjustment)

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019**

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	31.60	1.79	33.39
SGL FAM - NO STREET SWEEPING	31.21	1.77	32.98
HILLSIDE RESIDENTIAL	34.37	1.95	36.32
HILLSIDE RESIDENTIAL - NO SWEEPING	33.89	1.92	35.81
LOW INCOME	25.39	1.44	26.83
LOW INCOME - NO ST SWEEPING	25.08	1.42	26.50
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	42.07	2.39	44.46
BULKY MATERIAL (EACH EXTRA ITEM)	16.81	0.95	17.76
SIDE/BACKYARD SERV	12.61	0.72	13.33
GARBAGE TOTE RENTAL	5.35	0.30	5.65
RETURNED TRIP COLLECTION	32.92	1.87	34.79
<u>Commercial Rates</u>			
1 CAN COMM	19.33	1.10	20.43
2 CANS COMM	31.68	1.80	33.48
3 CANS COMM	44.10	2.50	46.60
4 CANS COMM	56.53	3.21	59.74
5 CANS COMM	68.94	3.92	72.86
6 CANS COMM	81.37	4.62	85.99
7 CANS COMM	93.74	5.32	99.06
8 CANS COMM	106.13	6.03	112.16
9 CANS COMM	118.55	6.73	125.28
10 CANS COMM	130.95	7.44	138.39
ORGANICS			
1 CAN COMM			16.34
2 CANS COMM			26.78
3 CANS COMM			37.28
4 CANS COMM			47.79
5 CANS COMM			58.29
6 CANS COMM			68.79
7 CANS COMM			79.25
8 CANS COMM			89.73
9 CANS COMM			100.22
10 CANS COMM			110.71
2 YD 1 X WEEK	239.94	13.63	253.57
2 YD 2 X WEEK	454.94	25.84	480.78
2 YD 3 X WEEK	669.91	38.05	707.96
2 YD 4 X WEEK	884.90	50.26	935.16
2 YD 5 X WEEK	1,099.85	62.47	1,162.32
2 YD 6 X WEEK	1,313.26	74.59	1,387.85
1/2 3 YD 1 X WEEK	173.78	9.87	183.65
3 YD 1 X WEEK	347.56	19.74	367.30
3 YD 2 X WEEK	661.87	37.59	699.46
3 YD 3 X WEEK	976.25	55.45	1,031.70
3 YD 4 X WEEK	1,290.52	73.30	1,363.82
3 YD 5 X WEEK	1,604.84	91.15	1,695.99
3 YD 6 X WEEK	1,919.14	109.01	2,028.15
4 YD 1 X WEEK	449.73	25.54	475.27
4 YD 2 X WEEK	854.67	48.55	903.22
4 YD 3 X WEEK	1,259.64	71.55	1,331.19
4 YD 4 X WEEK	1,664.64	94.55	1,759.19
4 YD 5 X WEEK	2,069.59	117.55	2,187.14
4 YD 6 X WEEK	2,474.56	140.56	2,615.12
6 YD 1 X WEEK	671.94	38.17	710.11
6 YD 2 X WEEK	1,285.94	73.04	1,358.98
6 YD 3 X WEEK	1,899.93	107.92	2,007.85
6 YD 4 X WEEK	2,513.96	142.79	2,656.75
6 YD 5 X WEEK	3,127.98	177.67	3,305.65
6 YD 6 X WEEK	3,741.98	212.54	3,954.52
SPECIAL COLLECTION	27.61	1.57	29.18
ORGANICS			
1 YD 1 X WEEK			139.97
1 YD 2 X WEEK			265.39
1 YD 3 X WEEK			390.79

Attachment: 2019 Rate Application (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
1 YD 4 X WEEK			516.21
1 YD 5 X WEEK			641.60
1 YD 6 X WEEK			766.09
2 YD 1 X WEEK			202.86
2 YD 2 X WEEK			384.62
2 YD 3 X WEEK			566.37
2 YD 4 X WEEK			748.13
2 YD 5 X WEEK			929.86
2 YD 6 X WEEK			1,110.28
1/2 3 YD 1 X WEEK			146.92
3 YD 1 X WEEK			293.84
3 YD 2 X WEEK			559.57
3 YD 3 X WEEK			825.36
3 YD 4 X WEEK			1,091.06
3 YD 5 X WEEK			1,356.79
3 YD 6 X WEEK			1,622.52
4 YD 1 X WEEK			380.22
4 YD 2 X WEEK			722.58
4 YD 3 X WEEK			1,064.95
4 YD 4 X WEEK			1,407.35
4 YD 5 X WEEK			1,749.71
4 YD 6 X WEEK			2,092.10
6 YD 1 X WEEK			568.09
6 YD 2 X WEEK			1,087.18
6 YD 3 X WEEK			1,606.28
6 YD 4 X WEEK			2,125.40
6 YD 5 X WEEK			2,644.52
6 YD 6 X WEEK			3,163.62
SPECIAL COLLECTION			23.34
REGULAR COMPACTOR (PER YARD)	43.62	2.48	46.10
RECYCLE COMPACTOR (PER YARD)	25.79	1.46	27.25
SUPER COMPACTOR (PER YARD)	87.22	4.95	92.17
20 YARD DEBRIS BOX	480.06	27.27	507.33
35 YARD DEBRIS BOX	685.82	38.95	724.77
40 YARD DEBRIS BOX	800.16	45.45	845.61
ORGANICS			
20 YARD DEBRIS BOX			405.86
35 YARD DEBRIS BOX			579.82
40 YARD DEBRIS BOX			676.49
PERM RENTAL	254.34	14.45	268.79
PERM DISPOSAL (PER YARD)	23.92	1.36	25.28
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	245.38	13.94	259.32
40 YARD OTHER RECYCLABLES	409.01	23.23	432.24
20 YARD DEBRIS BOX HILLSIDE	598.56	34.00	632.56
40 YARD DEBRIS BOX HILLSIDE	918.22	52.15	970.37
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	378.04	21.47	399.51
2 YARD COMPACTOR 2 X WEEK	756.07	42.94	799.01
2 YARD COMPACTOR 3 X WEEK	1,134.11	64.42	1,198.53
3 YARD COMPACTOR 1 X WEEK	567.06	32.21	599.27
3 YARD COMPACTOR 2 X WEEK	1,134.11	64.42	1,198.53
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	755.90	42.94	798.84
2 YARD COMPACTOR 2 X WEEK	1,511.80	85.87	1,597.67
2 YARD COMPACTOR 3 X WEEK	2,267.70	128.81	2,396.51
3 YARD COMPACTOR 1 X WEEK	1,133.85	64.40	1,198.25
3 YARD COMPACTOR 2 X WEEK	2,267.70	128.81	2,396.51
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: 2019 Rate Application (2280 : Recology Rate Adjustment)

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Databases, Tables & Calculators by Subject

Change Output Options:

From: 2008 To: 2018


☐ include graphs ☐ include annual averages

[More Formatting Options](#)

Data extracted on: February 21, 2019 (11:28:57 AM)

CPI-All Urban Consumers (Current Series)

Series Id: CUUR549BSA0

Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2008		219.612		222.074		225.181		225.411		225.824		218.528	222.767	221.730	223.800
2009		222.166		223.854		225.692		225.801		226.051		224.239	224.395	223.305	225.480
2010		226.145		227.697		228.110		227.954		228.107		227.658	227.469	226.994	227.940
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.690
2012		236.980		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.200
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.150
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.460
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.420
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.770
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.540
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.420

Compressed Natural Gas (Relative to Diesel)

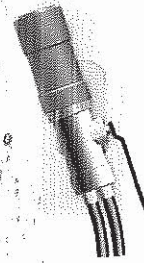
TABLE 6
Compressed Natural Gas (CNG) and Diesel
Average Retail Prices by Region

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.90	\$3.32	-\$0.42
Central Atlantic	\$2.60	\$3.31	-\$0.71
Lower Atlantic	\$2.38	\$3.20	-\$0.82
Midwest	\$2.30	\$3.28	-\$0.98
Gulf Coast	\$2.38	\$2.99	-\$0.61
Rocky Mountain	\$2.15	\$3.24	-\$1.09
West Coast	\$2.85	\$3.98	-\$1.13
NATIONAL AVERAGE	\$2.48	\$3.36	-\$0.88

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis, between October 1 and October 15, 2018.

Compressed Natural Gas (Relative to Diesel)

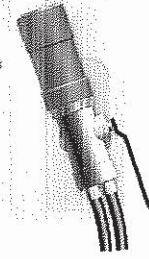
TABLE 6
Compressed Natural Gas (CNG) and Diesel
Average Retail Prices by Region

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.76	\$2.81	-\$0.05
Central Atlantic	\$2.51	\$2.97	-\$0.46
Lower Atlantic	\$2.38	\$2.74	-\$0.36
Midwest	\$2.28	\$2.68	-\$0.40
Gulf Coast	\$2.34	\$2.48	-\$0.14
Rocky Mountain	\$2.26	\$2.63	-\$0.37
West Coast	\$2.76	\$3.13	-\$0.37
NATIONAL AVERAGE	\$2.45	\$2.76	-\$0.31

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$ DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis, between October 1 and October 16, 2017.



Special - Regular Meeting Agenda

City Council

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

Wednesday, April 17, 2019 5:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 p.m. for the purpose of conducting Planning Commission interviews.

5:00 p.m. Planning Commission interviews

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

PLANNING COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL SIX (6) SEATS ON THE PLANNING COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY MANAGER QUARTERLY RECOGNITIONS

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

YOUTH ACTION COUNCIL ASSET # 9 - SERVICE TO OTHERS

PROCLAMATIONS

Proclaiming the Week of April 14th through April 20th as
National Telecommunicator's Week

LEGISLATIVE UPDATE

Assembly Member Robert Rivas

RECOGNITIONS

Daniel Redfield and Norma Bussing for their Service on the Library, Culture, and Arts Commission

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. APPROVE SECOND AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve Second Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project to a revised not to exceed total of \$583,433; and
2. Authorize the City Manager to execute and administer the amended agreement.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

Recommendation:

1. Approve the Third Amendment to Consultant Agreement with Asset Protection Group Private Security Inc. to a revised not exceed total of \$145,000 for four years; and
2. Authorize the City Manager to execute and administer the amended agreement.

4. APPROVAL OF DENNIS KENNEDY AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

Recommendation:

Authorize the City Manager to execute, administer, and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Dennis Kennedy Aquatics Center.

5. ACCEPT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES/ DEPARTMENT OF HOMELAND SECURITY FOR PORTABLE BARRICADE SYSTEM

Recommendation:

1. Adopt a resolution:
 - a. Accepting grant funds from the Santa Clara County Office of Emergency Services via the Department of Homeland Security in the amount of \$90,000, for the purchase of portable vehicle incursion barriers; and
 - b. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$90,000 in the Police Department budget for the capital expenditures; and
2. Authorize the City Manager to approve purchase order in the amount of \$90,000 with Delta Scientific Corporation.

6. APPROVE PURCHASE OF THREE HEART MONITOR AND DEFIBRILLATOR DEVICES

Recommendation:

1. Adopt resolution amending the City's adopted Fiscal Year (FY) 2018-19 Budget to appropriate \$40,000 from the General Fund (010) for the purchase of three Advanced Life Support (ALS) Heart Monitor Defibrillator devices; and
2. Authorize the City Manager to approve the purchase order in the amount of \$121,162, for the purchase of said devices from Physio-Control, Inc.

7. APPROVE 3 YEAR PROPERTY LEASE AGREEMENT WITH MONUMENT (TECHON) CONSTRUCTION AT 16200 VINEYARD BOULEVARD

Recommendation:

Approve and authorize the City Manager to amend and execute a new Standard Lease Agreement with Monument Construction dba Techcon for the property located at 16200 Vineyard Blvd with an initial annual lease amount of \$68,424.

8. APPROVE COMMUNITY PROMOTIONS FUNDING REQUESTS FOR FISCAL YEAR 2019-20

Recommendation:

Approve Fiscal Year (FY) 2019-20 Community Promotions funding requests totaling \$47,000.

9. APPOINT EMERGENCY STANDBY COUNCIL

Recommendation:

Appoint former City Council Members Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan as Emergency Standby Council Members to be called upon as needed in the event of an emergency.

10. ACCEPT FEBRUARY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

11. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, 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.

12. ADOPT ORDINANCE 2301 NEW SERIES, AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

Waive the reading, adopt Ordinance No. 2301, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

13. APPROVE THE APRIL 3, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

14. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2019

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2019.

Estimated Time: 15 Minutes

CONTINUED PUBLIC HEARINGS

15. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES - ITEM CONTINUING TO THE MAY 15, 2019 CITY COUNCIL MEETING

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:

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill:

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

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 Community History ·
Enhancing Diversity and Inclusiveness · Advancing Regional Initiatives

2019-2020 STRATEGIC PRIORITIES

Agricultural Preservation
Cannabis Policy
Community Engagement and Messaging
Economic Development
Financial Stewardship
High Speed Rail
Homelessness
Housing Infrastructure
Telecommunications
Traffic/Transportation



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

INTERVIEWS TO FILL SIX (6) SEATS ON THE PLANNING COMMISSION

RECOMMENDATION(S)

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Community History

2019 Strategic Priorities

Economic Development
Financial Stewardship

REPORT NARRATIVE:

The City Council is recruiting to fill 6 seats on the Planning Commission. Two seats have a term ending June 1, 2021 and four seats have a term ending on June 1, 2023. On December 12, 2018, Planning Commissioners Yvonne Martinez Beltran and John McKay were sworn in to serve on the City Council, vacating their seats on the commission with terms expiring on June 1, 2021. On February 20, 2019, Andrew Froumis, Chip Williams, Chris Woods, and Ken Murray were interviewed to fill the two vacant seats on the commission. After conducting interviews, the Council directed staff to re-open the recruitment in an effort to get a diverse pool of applicants. Staff coupled the recruitment to fill the two vacant seats with a recruitment to fill the four seats with terms expiring on June 1, 2019. The recruitment resulted in a total of ten more applicants including the four incumbents; Joe Mueller, Juan Miguel Munoz-Morris, Liam Downey, and Wayne Tanda, along with six new applicants; James Dill, Laura Gonzalez-Escoto, Malisha Kumar, Paul Morgan, Sally Casas, and Victor Gaxiola.

All applicants have been invited and confirmed availability to interview before the City Council on April 17, 2019. Their applications are attached for Council consideration.

COMMUNITY ENGAGEMENT: Involve

Recruitment efforts were undertaken to encourage citizens to apply for City Council appointment consideration to the Planning Commission via the Morgan Hill Times, City Website, Government Access Channel, Facebook, NextDoor, outreach to community groups, and the weekly 411 emails.

ALTERNATIVE ACTIONS:

The City Council may choose to make appointments to fill all, some, or none of the six seats up for appointment. If the City Council desires, it could decide to re-open the application process to solicit more applicants to fill those seats not appointed at the April 17, 2019 meeting.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Planning Commissioners serve four-year terms with possible reappointment consideration. Every year, recruitment efforts are conducted to maintain the seven (7) member Commission.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with the actions to interview and appoint, as the recruitment and appointment process is accommodated in the Administrative Services operating budget.

CEQA (California Environmental Quality Act):

Not a project.

The interview and appointment of commissioners is not a project, as defined in Section 15378 of the State CEQA guidelines.

LINKS/ATTACHMENTS:

1. chapter 2.22 Master Provisions for boards and commissions
2. Chapter 2.36 Planning Commission
3. Joe Mueller Application Packet_Redacted
4. Juan Miguel Munoz-Morris application packet_redacted
5. Liam Downey Application Packet_Redacted
6. Wayne Tanda Application Packet_Redacted
7. Andrew Froumis Application Packet_Redacted
8. Chip Williams Application Packet_Redacted
9. Chris Wood Application Packet_Redacted
10. Ken Murray Application Packet_Redacted
11. James Dill Application Packet_Redacted
12. Laura Gonzalez-Escoto Application Package_Redacted
13. Malisha Kumar Application Packet_Redacted
14. Paul Morgan Application Packet_Redacted
15. Sally Casas Application Packet_Redacted
16. Victor Gaxiola Application Packet_Redacted

Chapter 2.22 - MASTER PROVISIONS FOR BOARDS AND COMMISSIONS*

Sections:

2.22.010 - Establishment of boards and commissions.

- A. There are established within the city the following boards and commissions:
 - 1. Planning commission;
 - 2. Parks and recreation commission;
 - 3. Library, culture and arts commission; and
 - 4. Disaster council.
- B. Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents.
- C. Members shall be appointed by the mayor subject to approval of a majority vote of the city council and may be removed without cause by vote of any three members of the city council.
- D. The appointment terms of members may be extended, at the discretion of the city council, until such time as a successor member may be appointed and take office.
- E. Vacancies in the commission occurring other than by expiration of term shall be filled for the unexpired term in the same manner as original appointments.
- F. The members of the commission shall organize the commission and shall elect from its members a chair and vice-chair and such other officers as may be necessary in accordance with adopted city council policy.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No 1930 N.S., § 2, 4-22-2009; Ord. No. 1935 N.S., § 1, 6-3-2009)

2.22.030 - Clerk and secretary.

The city clerk or designate shall also act as clerk for each of the boards and commissions and shall have authority to sign any official notices and also to certify any resolution of the commissions or boards. The city council may appoint a person not a member of the commission or board to act as secretary of the

commission or board. The secretary shall keep a record of all proceedings of said board or commission, its resolutions, its findings and actions, which records shall be a public record and kept with the city clerk in the City Hall building.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.040 - Rules of procedure.

- A. The chair shall preside at all meetings of the board or commission. The vice chair shall assume the duties of the chair in the absence of or in case of inability of the chair.
- B. A majority of the members of the commission or board shall constitute a quorum for the transaction of business.
- C. Unless otherwise specified herein, each board or commission may adopt its own rules and regulations for the transaction of its business. Such rules shall be subject to approval of the city council before becoming effective.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.050 - Rules of attendance.

If any member is absent from three of any six consecutive regular board or commission meetings, unless such absence is with the permission of the chair, or vice chair in absence of the chair, expressed in the official minutes, the member's seat shall be deemed vacated. The city manager shall so notify the city council and the council shall take action to fill the seat within a reasonable period of time.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.060 - Meetings.

Unless otherwise specified, the commission shall hold regular meetings once every two months at a designated time and place which shall be fixed and determined by the commission and entered upon in its minutes. Special meetings of the commission may be called at any time by the chair or by a majority of the members of the board upon notice being given to all members of the board and to all news media at least twenty-four hours in advance of the meetings, as required by the laws of the state of California.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No. 1930 N.S., § 3, 4-22-2009)

2.22.070 - Compensation.

Members of the boards and commissions shall serve without compensation but may receive reimbursement for actual and necessary expenditures made or incurred in the performance of their prescribed duties in accordance with state law and the Municipal Code and policies of the city of Morgan Hill.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.080 - Effect.

Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the city council or city officers as defined by the laws of the state of California or by this Municipal Code. Except as otherwise set forth in Chapter 2.36, the city council declares that the public interest and convenience require the appointment of the boards and commissions established pursuant to Section 2.22.010 to act purely in an advisory capacity to the city council.

(Ord. 1778 N.S. § 2 (part), 2006)

Chapter 2.36 - PLANNING COMMISSION*

Sections:

2.36.010 - Created—Statutory authority.

The planning commission is established pursuant to the authority contained in Chapter 3 of Title VII of the California Government Code, entitled "Local Planning, " as existing or hereafter amended. Reference shall be made to said Chapter 3 for interpretation of this chapter.

(Ord. 811 N.S. § 1 (II-3-1), 1987)

2.36.020 - Membership—Terms of office—Vacancies.

- A. The city planning commission shall consist of seven members. Members of the planning commission shall serve the following terms:
1. In the year 1998, three members shall be appointed to serve terms ending June 1, 2001;
 2. The four members who were appointed in 1996 shall serve terms ending June 1, 1999;
 3. Thereafter, all terms shall be for four years and shall expire on June 1st.

(Ord. 1778 N.S. § 5, 2006; Ord. 1407 N.S. § 2, 1998; Ord. 1083 N.S. § 1, 1992; Ord. 811 N.S. § 1 (II-3-2), 1987)

2.36.030 - Meetings.

The commission shall hold regular meetings at least twice a month or as otherwise deemed necessary by the commission. All meetings of the commission shall be held in the city council chambers at City Hall or other location designated by minute order of the city council or at a location deemed necessary or appropriate by the planning commission.

(Ord. 1197 N.S. § 1 (part), 1994; Ord. 811 N.S. § 1 (II-3-3), 1987)

2.36.040 - Powers and duties.

The planning commission shall have the powers and shall perform all the duties conferred and imposed upon city planning commissions by the applicable provisions of Chapter 3 of Title VII of the Government Code of the state and, in addition, the planning commission shall:

- A. Perform all the functions assigned to the commission by the subdivision and zoning ordinances (Titles 17 and 18 of this code) of the city, and all general laws of the state of California;
- B. Serve as an advisory body to the city council on matters related to city growth and

development and on such other matters as may be requested by the council;

- C. Promote public interest in and understanding of the subdivision and zoning ordinances of the city, and also of all master plans and other official plans and regulations pertaining to planning which have been approved officially by the city council;
- D. Review and advise the city council on all proposed amendments to Title 17, Subdivisions, and Title 18, Planning and Land Use Regulations;
- E. Approve or disapprove application for designation of cultural resources and historic districts pursuant to Chapter 18.75 of this code, or as amended;
- F. Approve or disapprove permits sought to remove or demolish a cultural resource, cultural resource site or historic district pursuant to Chapter 18.75 of this code, or as amended.

(Ord. 1111 N.S. §§ 2, 3, 1992; Ord. 899 N.S. § 18, 1989; Ord. 811 N.S. § 1 (II-3-4), 1987)

Print**Commission Application - Submission #15386****Date Submitted: 4/10/2019****First Name**

Joseph

Last Name

Mueller

Address1**Address2**

3

City

Morgan Hill

State

CA

Zip

95037

Home Phone Number

)

Cell Phone Number**email address****Occupation**

Retired, Academic Coach

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

I do not own property in Morgan Hill

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Joe Mueller Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

App Cover Letter..docx

Please upload a resume*

Mueller_Joseph_Resume.doc

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

Co-Chair 1990 General Plan Update Committee
1984-88 Mobile Home Rent Advisory Committee
1984-88 Personnel Board
1989-now Morgan Hill Planning Commission
South County Join Planning Advisory Committee (PC Representative)
2 Fire Master Plans.
2035 General Plan Update RDCS Update Task Force

What skills and/or experience do you possess that would be important to your role as a commissioner?*

Skills: Active listener, Collaboration, Problem solving, Third Alternative and the ability to keep the big picture in focus while working the fine details of a project or plan.
Experience: 30 years on the Morgan Hill Planning Commission including finding a third alternative solutions which are acceptable to the vast majority, if not all, of the stakeholders.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The PC has two major roles.

1. The PC advises the CC on matters related to the growth and development of the City including zoning changes, zoning code changes, General Plan changes, and Development Agreements.
2. The PC makes final decisions on RDCS Project scores, Award of RDCS Development Allocations, Conditional Use Permits and Tentative Maps.

There are additional roles given to the PC in the Municipal Code.

What would you like to accomplish as a commissioner?*

1. Transparent, fair, open, and inviting PC processes that those appearing before the PC know they will be heard.
2. We have several long, term projects that I would like to see completed. They include the Monterey Corridor Plans, Single Family Attached, town home, development standards, neighborhood commercial development standards. In addition, we need to work on the tree preservation programs.

What are the greatest opportunities facing the community in regards to this commission?*

The greatest opportunity for Morgan Hill is also a very large challenge-Housing. There are two parts to this opportunity. First, California Housing Law has dramatically changed in the last couple of years and is continuing to change annually. The implementing rules are still being clarified and determined. We need to adapt to the new legal framework while building the City the residents want. The second component of this challenge is the new Housing Cycle.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

☐ Yes

☒ No

Are you currently serving on a committee

☐ Yes

☒ No

Are you assigned to a special project?

☐ Yes

☒ No

If you are assigned to a special project, please describe the project.

Please review the [City Council Ethics Policy](#)

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Joseph Mueller

Date*

4/10/2019

9:45 AM

Attachment: Joe Mueller Application Packet_Redacted (2289 : Planning Commission Interviews)

April 9, 2019

Dear Mayor and City Council

I am applying for appointment to the Planning Commission for another four years. As I stated in my application, the largest challenge facing Morgan Hill is housing. The State is making very significant changes to California Housing Law every legislative session. The implementing rules are still being determined and clarified. In addition to the changing laws a new Housing Cycle is coming and the rules are changing for developing the new Housing Element for the General Plan.

I believe my experience on the Planning Commission and ability to see and keep in focus both the big picture and details of a plan or project will be very valuable to the Planning Commission.

Thank you for considering my application

Sincerely

Joe Mueller

Attachment: Joe Mueller Application Packet_Redacted (2289 : Planning Commission Interviews)

JOSEPH H. MUELLER

Morgan Hill, CA 95037

Director

Performance-driven, Director level management professional, who has focused on the transfer of technology products into manufacturing. With record of success building teams and focusing activities to accelerate productivity and improve quality. Skilled in collaborating at all levels of an organization and with managing multiple products from product launch to EOL including on site and high-volume off-shore production.

Operational Leadership:	Strategy Implementation • Change Management • Team Building • Team Mentoring • Staff Development
Program Management:	Quality Control • Prototype Testing • DVT/DMT Testing • Product Engineering • Process Improvement • Solution Development • Delivery • Demand Planning • Problem Identification & Resolution • Product Lifecycle Management
Engineering Department:	Employee development • multi-discipline team leadership • internal and external collaboration • problem prevention and solving

PROFESSIONAL EXPERIENCE

Extreme Learning Center –Morgan Hill, CA (2013 – Present)

Academic Coach

Academic Coach for 1 on 5 group homework support for grades 1 to 6. Academic Coach for 1 on 3 and 1 on 1 for middle school and high school students in math (up to AP Calculus) and Physics (AP Physics) and college students in math and physics. SAT and ACT Coach for group and 1 on 1

Extreme Learning – Morgan Hill, CA (2011 – 2013).

Academic Coach, Logistics Assistant

Academic Coach for 1 on 3 online tutoring of students in grades 1 to 10 in Language Arts and Math. Academic Coach (1 on 1) for advanced math and physics. Logistics Assistant involved a wide range of activities around the distribution of systems to be used by online students including data entry in Salesforce CRM system, shipment preparation, and student warranty support.

SEAGATE TECHNOLOGY — Scotts Valley, CA • 2005–2007

World's largest hard drive and storage solutions manufacturer.

Senior Manager

Delivered strong and sustainable results leading Account Management and Demand Planning Teams in Customer Service Organization, and subsequently as internal expert in RMS warranty system.

- **Led integration activities** following Maxtor acquisition to seamlessly incorporate Maxtor CSO account teams and customers into Seagate CSO operations and systems.
- **Slashed pending defects** in return for credit process by 90%.
- **Warranty Repair Factory** demand planning and performance monitoring.

3dfx INTERACTIVE — San Jose, CA • 1999–2000

Manufacturer of 3D graphics processing units and graphics cards.

Senior Program Manager

Directed cross-functional core team to achieve timely development of chip set and associated board products. Reported monthly to senior staff regarding program scheduling, chip functionality, and risk mitigation actions.

- **Transformed core team focus** from chip set to entire end product, resulting in smoother transition from development into production.
- **Improved team effectiveness** by championing continuous improvement that instituted a culture of excellence.

QUANTUM CORP. — Milpitas, CA • 1993–1999

Manufacturer of data storage products.

Director of Product Engineering (1998–1999)

Resolved all technical issues of Fireball™ product line as leader of product engineering team. Served as member of Fireball™ Operations Team responsible for the day-to-day operations of product line. Operations Team reported to division executive staff.

- **Introduced technical team concept and technical integrator role** as part of initiative to restructure Operations Team and decrease division staff time necessary to monitor production.
- **Reduced number of escalations** to senior management by strengthening relationships between tech team and major OEM account teams, resulting in timely resolution of technical issues.
- **Identified \$40M in potential cost savings** through rigorous review of product costs.
- **Strengthened OEM drive qualification support** by gaining support for a Product Engineering Manager to become a “Qual. Champion” customer-facing position to provide technical support for account team product qualification.

QUANTUM CORPORATION (continued)

Product Engineering Manager (1993–1998)

Built and led 13-member product engineering team to support volume production of key disk drive, and directed 3-member component engineering team to support 6 drive teams within desktop division.

- **Achieved resolution of technical problems** beyond skill set of direct reports by establishing company-wide, internal partnerships with other engineering teams possessing specialized knowledge, reducing resolution time and improving efficiency.
- **Initiated cross-cultural training** by influencing division leaders to restart Japanese language and culture classes for new US employees, resulting in several hundred employees completing classes that improved their communication abilities and willingness to travel to rural Japanese facility.

KALOK — Sunnyvale, CA • 1991– 1993

Hard drive disk manufacturer.

Director of Product Engineering

Provided strategic and tactical leadership for disk drive production support at off-shore and partner manufacturing operations in the Philippines, Japan, and Bulgaria.

- **Built a high-performing team** of product engineers/disk drive professionals with 100 man years of experience capable of resolving all production issues, freeing DE team to focus on new designs.
- **Improved pilot line operation** to enable volume manufacturing with yields of 90%+ for new drive and manufacturing process.
- **Cultivated strong relationships** with manufacturing engineers in the Philippines, facilitating swift resolution of problems without sending US engineers to site and introduction of second drive into volume production.

MAXTOR — San Jose, CA • 1989– 1991

Hard drive disk manufacturer.

Test Engineering Manager

Designed and built all test equipment (except servo-writer design) to ensure quality production at volume manufacturing operation in Singapore.

- **Shortened duration of critical path activities** of new 3 ½” disk drive manufacturing ramp by removing test equipment, accomplished within 2 months by focusing team on key deliverables.
- **Rescued \$1M capital in progress write-off** by completing tester development.

U. S. Patents: 4,468,712 and 4,472,750

EDUCATION

EMBA, Pepperdine University — Malibu, CA
BSEE, University of Michigan — Ann Arbor, MI

10 - Commission Member

Contact Information -- Person ID: 5602421

Name: Juan Miguel Munoz-Morris Address: [REDACTED]
Morgan Hill, California 95037
US

Home Phone: [REDACTED] Alternate Phone:
Email: [REDACTED] Former Last
Name:
Month and Day of
Birth:

Personal Information

Driver's License: Yes, California , [REDACTED] Class C
Can you, after employment, submit proof of
your legal right to work in the United States? Yes
What is your highest level of education? Master's Degree

Preferences

Preferred Salary:
Types of positions you will accept: Regular
Types of work you will accept: Full Time
Day , Evening ,
Types of shifts you will accept: Night , Rotating
, Weekends

Objective

I wish to improve my community and the lives of its citizens through civil
service. I wish to guide the community to a better, more sustainable future while
at the same time preserving our cultural and historical heritage.

Education

College <i>Santa Monica College</i> www.smc.edu 8/2009 - Present Santa Monica, California	Did you graduate: No College Major/Minor: Continuing Education Units Completed: 9 Semester Degree Received: No Degree
Graduate School <i>Purdue University</i> 8/2010 - 7/2011 Hannover, International	Did you graduate: Yes College Major/Minor: International Business Administration Degree Received: Master's
College <i>California Polytechnic Institute</i> www.calpoly.edu 9/2001 - 12/2005 San Luis Obispo, California	Did you graduate: Yes College Major/Minor: Modern Languages and Literatures Units Completed: 180 Quarter Degree Received: Bachelor's
High School <i>Atascadero High School</i> 8/1997 - 6/2001 Atascadero, California	Did you graduate: Yes Highest Level Completed: 12 Did you receive a GED? No Degree Received: High School Diploma

Work Experience

Management Ananlyst Hours worked per week: 40

12/2016 - Present

County of Santa Clara Social Services
Agency
333 W. Julian St
San Jose, California 95110

Monthly Salary: \$0.00

Name of Supervisor: Jorge Montes - Program
Manager II

May we contact this employer? Yes

Duties

Responsible for managing the full lifecycle for contracts with internal and external contractors. Prepare RFP documents, negotiate contract terms, establish service goals and measurable outcomes, manage monthly/quarterly documentation, review financial information and performance, provide reports and analysis for senior staff. Develop intergovernmental agreements, interagency agreements and MOUs with partner agencies. Coordinate renewals and contract approvals by the Board of Supervisors and Procurement team, work with program managers to ensure appropriate service delivery. Other duties as needed.

Reason for Leaving

N/A

ASO II, Prevention & Outreach

8/2015 - 11/2016

County of San Luis Obispo Behavioral
Health Department
2180 Johnson St
San Luis Obispo, California 93401

Hours worked per week: 40

Monthly Salary: \$0.00

of Employees Supervised: 2

Name of Supervisor: Frank Warren - Division
Manager, Prevention & Outreach

May we contact this employer? Yes

Duties

Responsible for the management of Prevention and Early Intervention (PEI) and Innovation (INN) Program components of the Mental Health Services Act (MHSA)

Collect and analyze program data following State guidelines as approved by MHSOAC, and report program outcomes to the State in the Annual Update and 3- Year Expenditure Plan

Coordinate with the Innovation Stakeholder group in the development of INN projects. Prepare Innovation Plan and present to local stakeholder groups as well as seek approval from State

Serve as Ethnic Services Manager, participating in policy forums and updating the Cultural Competence Plan as per CBHDA and DHCS guidelines.

Maintain regular, professional communication with community based organizations, and provide guidance and assistance regarding program requirements, invoicing, data collection and reporting, RFP and grant preparation, and participate in local stakeholder groups as appropriate

Provide Outreach and information to residents and partners at local events.

Provide assistance related to programmatic requirements to counselors, service providers and other partners to ensure accuracy and timeliness of data.

Other duties as needed

Reason for Leaving

Relocated to San Jose/Morgan Hill area

Supplier Account Manager

9/2013 - 11/2014

Superior Foods
www.superiorfoods.com
275 Westgate Dr
Watsonville, California 95076

Hours worked per week: 40

Monthly Salary: \$4,000.00

of Employees Supervised: 0

Name of Supervisor: Asun Romero - Director of
Supply and Procurement

May we contact this employer? Yes

Duties

- Monitor Master Contracts' performance from approval to end, confirm volumes and specifications, and identify at-risk contracts for non-completion. Make adjustments and ensure visibility to all parties

- Coordinate all shipments from plants throughout Latin America, Asia, and Europe. Adjust shipments based on plant capacity/capability, and sales and customer needs

- Communicate changing priorities, and serve as main point of contact and CSR for suppliers
- Assist suppliers with packaging needs, shipping line inquiries, documentation, and communicate supplier needs to Sales and Operations. Manage the process of vetting and sampling product offerings, and communicate findings to Sales, Operations, Quality Assurance, and Supply Chain
- Maintain product catalogs for all suppliers and identify new industry trends
- Prepare and share weekly reports with Executive Team, Sales, Supply Chain, and Operations
- Coordinate with Sales Development and partners/suppliers to identify new business opportunities
- Assist Accounting team with the processing of debits and credits, pricing, cash flows and inventory calculations
- Internal Auditor, C-TPAT Committee

Reason for Leaving

Departmental restructuring, position terminated

Communications & Engagement Specialist, Sustainability

8/2011 - 8/2013

Driscoll's
www.driscolls.com
345 Westridge Dr.
Watsonville, California 95076

Hours worked per week: 40
Monthly Salary: \$4,000.00
of Employees Supervised: 0
Name of Supervisor: Katie Montano - Sustainability Manager
May we contact this employer? No

Duties

- Define the communications, engagement, marketing and education strategy for Sustainability, including desired outcomes and metrics
- Track and communicate progress for all sustainability activity in North America and Mexico, leveraging SharePoint and traditional communications channels
- Write and/or coordinate all internal communications for newsletters, reports and online presence
- Create slides, photos, video, etc., and present to appropriate internal audiences on all aspects of Driscoll's sustainability
- Establish employee educational workshops; prepare and conduct trainings for all employees aimed at increasing awareness and engagement based on sustainability goals for the company; travel to all sites to conduct training
- Manage all Green Team structure, activity, budgets and projects. Increased membership by 20%
- Elevate department's visibility internally, making sustainability part of all planning processes and employee trainings; collaborate across functional teams and regional offices both locally and internationally
- Stay current on sustainability trends and technologies; identify best practices, reporting requirements and benchmark Driscoll's performance against other companies
- Represent company externally and participate in industry membership groups where appropriate

Reason for Leaving

The communications efforts were outsourced, and thus the position was terminated

Residential Greening Program Director's Assistant

10/2009 - 8/2010

Sustainable Works
www.sustainableworks.org
1744 Pearl St.
Santa Monica, California 90405
(310) 458-8716

Hours worked per week: 15
Monthly Salary: \$0.00
Name of Supervisor: Barent Roth - Executive Director
May we contact this employer? Yes

Duties

Assist Residential Program Director and other staff in promoting the company's mission statement. Answer calls, schedule meetings and provide information to visitors and students. Update contacts, data entry, manage workshop materials, and outreach.
Special projects: The complete translation of their book, Sustainable Works WorksBook to Spanish.

Instructor, student sustainable workshops. Lead crew of college students in learning about key global, national and local issues/problems relating to sustainability. Topics include Water, Energy, Waste, Chemicals, Transportation and Shopping and Food.

Reason for Leaving

I was an intern, and left to go to graduate school.

Certificates and Licenses

Type: Apttus Quote to Cash Certified

Number: Certificate without number

Issued by: Apttus

Date Issued: 2 /2015 Date Expires:

Skills

Office Skills

Typing: 45

Data Entry: 0

Other Skills

Microsoft Office Tools Expert - 10 years and 0 months

Technical Research Skilled - 5 years and 0 months

Languages

Spanish - Speak, Read, Write

French - Speak, Read, Write

Additional Information

Volunteer Experience

Volunteer, San Luis Obispo County Animal Services- Dog Walker

Community Committee Chairman, Superior Foods

Internal Auditor, CTPAT Committee, Superior Foods

Member, Development Committee for the Santa Cruz Animal Shelter.

Multiple beach cleanups coordinated by Heal the Bay and Save Our Shores, among others

Volunteer Coordinator, UCLA Opportunity Green Expo, 2009

Honors & Awards

Eco Star Award, 2009- Sustainable Works

References

Professional

Zarate, Laura

Executive Assistant to Health Agency

Director

2180 Johnson St.

San Luis Obispo, California 93401

8055506080

Professional

Chavez, Crystal

Management Analyst

Watsonville, California

408.755.7719

crystal.chavez@ssa.sccgov.org

Resume**Text Resume**

City of Morgan Hill has chosen not to collect this information for this job posting.

Attachments

Attachment	File Name	File Type	Created By
City of Morgan Hill Cover Letter.docx	City of Morgan Hill Cover Letter.docx	Cover Letter	Job Seeker
CV 2017.docx	CV 2017.docx	Resume	Job Seeker

Agency-Wide Questions

1. Q: Were you ever discharged from employment or forced to resign?

A: Yes

2. Q: Are you now or have you ever been employed by the City of Morgan Hill?

A: No

3. Q: Do you have a relative who is an official or employee of the City of Morgan Hill?

A: No

Supplemental Questions

1. Q: Which commission are you interested in serving?

A: Parks and Recreation Commission
Planning Commission

2. Q: Please attach a resume or briefly describe your background listing the qualifications and skills which you can contribute to the Commission.

A: I believe that my resume demonstrates that I am committed to thinking globally but acting locally in order to maximize impact. I want to bring a global perspective to the Commission and be able to adapt it for local impact. My experience with team leadership, supervision, program/event management, contract negotiations and desire to be a student first, then a teacher would complement the work of the Commission. My desire to improve my community will fuel my determination to provide sound, sustainable recommendations and solutions to the challenges ahead.

3. Q: Have you served on any other citizen advisory commissions or committees? If so, please list and briefly explain the purpose of each committee.

A: I was a member of the San Luis Obispo County Suicide Prevention Council. The council met regularly to develop a countywide suicide prevention framework, as well as promote suicide awareness through outreach and policy recommendations. As a member of the team I personally worked with the Board of Supervisors to proclaim September 2016 as Suicide Prevention and Awareness Month in SLO County.

4. Q: What do you believe to be the role of the commission you are interested in serving on and why would you like to serve on this commission?

A: I would like to serve on the Planning and/or Parks and Rec Commissions because they are both intimately connected to the way the community grows, evolves and improves. I would like to actively participate in the conversations guiding the development of policies and recommendations for both the natural and built environments of Morgan Hill. The commission provides a way for the community to express their thoughts and have them turned into actions, as well as act as an advisory body for matters concerning overall city planning. I would like to be an active participant of the efforts to make Morgan Hill a leading municipality in Santa Clara County and the greater Bay area.

- 5.** Q: What skills and/or experience do you believe would be important to your role as a commissioner?
- A: I think a good commissioner has to know how to listen to public concerns and then translate those into actions, recommendations, and policies. A good commissioner is a problem solver who is capable of thinking laterally, incorporate new methods into traditional processes, and have enough flexibility to make changes as needed. A good commissioner also needs to be impartial, and know how to balance their personal opinion and the majority opinion, and should always put the collective above the individual.
-
- 6.** Q: How would you know if the commission is successful in supporting the City Council's Goals, Priorities, and Strategies?
- A: As a former member of the American Evaluation Association, I know the value of having clear goals and expectations and would bring a similar approach to my work as Commissioner. As a contract manager for a public entity, I have been able to negotiate program deliverables with service providers and establish measurable outcomes and measurement tools. Success could be measured in a combination of ways to include positive community feedback on projects, meeting targets/goals, and evaluating financial performance among others.
-
- 7.** Q: What would you like to accomplish as a member of the commission?
- A: Simply put, I would like to end my tenure as Commissioner by leaving the Morgan Hill community better off than it was the start of my term. I do not have specific goals in mind as I believe I would need to become familiar with present and past work before suggesting new projects.
-
- 8.** Q: What are the greatest opportunities facing the community in regards to this commission?
- A: Morgan Hill is an ideal place to live because of where it is located and its natural surroundings. It's close enough to the big urban centers but far enough as well. I think that one of the greatest challenges for the community in the next few years will be to manage the demand for growth in a sustainable way, ensuring the city doesn't lose its identity or charm. The expansion of public transportation and the preservation of a rural feel are two interesting opportunities where the Commissions, and Morgan Hill as a whole, can drastically shape the future of the area.
-
- 9.** Q: If you are an incumbent seeking reappointment, check all that apply:
- A: You are assigned to a special project
-
- 10.** Q: If you are assigned to a special project, please identify the project:
- A: PLEASE NOTE: I checked option 3 on question 9 because I had to make a selection on that required questions. I am not assigned to any special projects, nor am I a current member of any commission.

City of Morgan Hill
Application as Commissioner

05.22.2017

Dear Sir or Madam,

Please consider my attached application for the position of Planning Commissioner.

I am a MBA graduate of Purdue University's international business school in Hannover, Germany, where I completed my studies in 2011. Along with my academic qualifications I have a background in corporate sustainability, supply chain and procurement, and most recently in public service as a program and contract manager.

After my graduate degree I worked for several years in the Sustainability team at Driscoll's. During my time there, I performed data analysis of sustainability metrics, worked to streamline and automate the collection of data, and performed research on new technologies, including ROI and feasibility studies. I also developed and managed the team's outreach and education programs as part of its greater communication strategy, and oversaw the projects undertaken by Green Teams in the US and Mexico. I was a quarterly contributor to the corporate newsletter, and one of its editors for Spanish content. Our team coordinated with and supported most departments within the company, allowing me to work on projects ranging from introducing biodegradable packaging, energy upgrades, water conservation, composting and waste reduction.

In my current role I manage the procurement and delivery of social services for Santa Clara County, participating on the entire contract lifecycle. I have experience developing RFPs and other solicitation documents, managing bid processes, coordinating the evaluation and awarding of contracts, as well as negotiating terms and deliverables, payment structures, and tracking the financial performance of public programs. I have worked with the Board of Supervisors to approve programming, resolutions, and to provide information and context on important services.

As a homeowner and resident of Morgan Hill I wish to become an active member of my community, guiding the planning and development of the area. I am a strong believer in volunteerism and in giving back locally. I have strived to find ways in which to do so beyond my professional career, whether it was participating in beach cleanups in the Santa Cruz area, volunteering as a dog walker at the Santa Cruz and San Luis Obispo County shelters, or volunteering in sporting events to promote a healthy lifestyle. Becoming a Commissioner would allow me to continue to grow my passion for local engagement, and do so at a higher level.

I feel that my professional and academic background has provided me with the knowledge necessary to succeed as Commissioner. My passion for volunteerism will inject a new energy to the important work of the commission. I welcome the opportunity to discuss the role and my suitability for it through an interview at your convenience, and look forward to hearing from you.

Yours sincerely,

Juan Miguel Muñoz Morris

Attachment: Juan Miguel Munoz-Morris application packet_redacted (2289 : Planning Commission Interviews)

Juan Miguel Muñoz-Morris

Morgan Hill, CA 95037

Phone:

CORE COMPETENCIES

- Corporate training and communications
- Sustainability Data Analysis
- International education & business experience
- Native speaker of Spanish and English

EDUCATION:

M.B.A., Purdue University, Krannert School of Management, West Lafayette, Indiana USA	2010-2011
M.B.A., Leibniz University, Hannover, Lower Saxony Germany	2010-2011
B.A., Modern Languages and Literatures, California Polytechnic State University, San Luis Obispo	2001-2005

EMPLOYMENT HISTORY:

Management Analyst, County of Santa Clara Social Services Agency December 2016-Present

- Coordinating contacts including creation of request for proposal, bid tracking, drafting purchase orders, and ongoing contract administration
- Overseeing payable functions of the team
- Perform data and program analysis and prepare reports for vendors, County Management and the public
- Setting and scheduling meetings and workshops; managing those meetings.
- Serve as point of contact for Community Based Organizations

Administrative Services Officer II, County of San Luis Obispo Behavioral Health Dept. August 2015- December 2016

- Day to day management of Innovation and Early Intervention programs under the Mental Health Services Act (MHSA or Proposition 63) programming
- Participate in State level committee meetings and provide feedback to the Mental Health Services Oversight and Accountability Commission (MHSOAC). Participate in planning meetings for MHSA as well as attend Behavioral Health Board meetings to present new projects and inform the Board of new developments
- Prepare RFPs, review bids and develop contracts, coordinate with the Board of Supervisors for contract execution
- Perform program data analysis and create reports and executive summaries
- Participate in local committees and commissions. Member of the SLO County Suicide Prevention Council
- Serve as Ethnic Services Manager and member of Cultural Competence Committee
- Develop, launch and manage the department's social media strategy. Curate content in both English and Spanish for various platforms, respond to requests/comments, and leverage social media for departmental goals (@slobehavioralhealth)
- Participate in and manage outreach activities, such as Bike Breakfast 2016, National Alliance on Mental Illness (NAMI) Local Chapter meetings, benefit walks and film festivals
- Additional duties as requested

Supplier Account Manager. Superior Foods September 2013- November 2014

- Monitor Master Contracts' performance from approval to end, confirm volumes and specifications, and identify at-risk contracts for non-completion. Make adjustments and ensure visibility to all parties
- Coordinate all shipments from plants throughout Latin America, Asia, and Europe. Adjust shipments based on plant capacity/capability, and sales and customer needs
- Participate in the demand and supply planning processes, and make weekly adjustments to forecasts.
- Monitor production of goods and communicate any changes to Sales and Operations teams.
- Communicate changing priorities, and serve as main point of contact and CSR for suppliers
- Maintain product catalogs and certification documents for all suppliers and identify new industry trends
- Prepare and share weekly reports with Executive Team, Sales, Supply Chain, and Operations
- Coordinate with Sales Development and partners/suppliers to identify new business opportunities
- Assist Accounting team with the processing of debits and credits, pricing, cash flows and inventory calculations
- Internal Auditor, C-TPAT Committee, and Chair of the Community Committee

Attachment: Juan Miguel Munoz-Morris application packet_redacted (2289 : Planning Commission Interviews)

Communications & Engagement Specialist, Sustainability, Driscoll's Strawberries

January 2012- August 2013

- Define the communications, engagement, marketing and education strategy for Sustainability
- Track and communicate progress for all sustainability activity in North America and Mexico, leveraging SharePoint and traditional communications channels
- Write and/or coordinate all internal communications for newsletters, reports and online presence
- Create slides, photos, video, etc., and present to internal audiences on all aspects of Driscoll's sustainability
- Establish employee educational workshops; prepare and conduct trainings for all employees aimed at increasing awareness and engagement based on sustainability goals for the company; travel to all sites to conduct training
- Manage all Green Team structure, activity, budgets and projects. Increased membership by 20%
- Elevate department's visibility internally, making sustainability part of all planning processes and employee trainings; collaborate across functional teams and regional offices both locally and internationally
- Stay current on sustainability trends and technologies; identify best practices, reporting requirements and benchmark Driscoll's performance against other companies
- Represent company externally and participate in industry membership groups where appropriate

Sustainability Data Analyst, Driscoll's Strawberries

August 2011- January 2012

- Complete retroactive data collection and analysis for 2010 metrics; work with external suppliers to streamline data collection and automation
- Verify and consolidate sustainability data; control for accuracy and completeness
- Apply data to conduct cost-benefit analysis and ROI calculations on new sustainability projects, including lighting retrofits and waste audits at all corporate offices, with a cost savings of \$600,000 annually
- Prepare executive reports emphasizing resource efficiency and underscoring areas for improvement
- Incorporate new tools for cross-departmental collaboration in the automation of data collection
- Research, recommend, and implement a new sustainability management system (SMS) to streamline and automate the collection process, reducing labor costs, eliminating redundancies and limiting human error

Consultant, Rohstoff Recycling GmbH, Dortmund, Germany

January 2011-May 2011

- Consulting internship during international MBA program in Hannover, Germany
- Research and estimate current size, growth rate, and trends of scrap metal market in Germany
- Evaluate financial ramifications for company of investment in various new scrap metal sorting technologies
- Deliver a profitability and feasibility report, including final recommendation. Using these findings, the company invested in a scrap metal sorting system that provided a new revenue stream worth 13M EUR over 7 years
- Project team speaker/coordinator; maintain regular communication with company executives; compile and present information and findings to the board

Office Manager, Sustainable Works, Santa Monica, USA

August 2009 - August 2010

- Manage daily office functions, including customer inquiries, interviewing candidates, and coordinate office staff
- Collaborate with sponsors/partners of the organization in the preparation and management of events, including UCLA's Opportunity Green Business Conference, 2009
- Act as representative of the organization in Associated Student Body meetings at Santa Monica College
- Take initiative to start new projects, including the complete translation into Spanish of the organization's student handbook. Project manager and lead translator/editor
- Instructor, Student Sustainable Workshops for Santa Monica College students

AWARDS, HONORS, AND CERTIFICATIONS:

- Apttus Quote to Cash Certified (February 2015)
- Member, Santa Cruz County Animal Services Development Committee (2011-Present)
- Dean's List, Purdue University (Spring 2011)
- GISMA Foundation scholarship recipient (2010-11)
- Recipient of the Sustainable Works Eco Star Award, for outstanding achievements in the Residential and Student Greening Programs. (September 2010)
- Scholarly Essay Award recipient, School of Liberal Arts, Cal Poly University (May 2005)
- Dean's List, Cal Poly University (Spring 2002)

Attachment: Juan Miguel Munoz-Morris application packet_redacted (2289 : Planning Commission Interviews)

Received
City of Morgan Hill

MAY 12 2015

City Clerk



CITY OF MORGAN HILL

APPLICATION FOR APPOINTMENT TO COMMISSION OR COMMITTEE

(In order to be considered for appointment, this application form must be fully executed and all questions answered by applicant, including those who are Incumbents. If you prefer to type your answers on the form, an electronic version will be e-mailed to you upon request.)

Name: Liam Downey *E-mail Address: _____

*Home address: _____ *City: Morgan Hill

*Telephone: (Work) (408) _____ (Home) (408) _____ (Cell) (408) _____

Occupation: Business Consultant Employer: The Redstone Group Inc.

Number of Years lived within City Limits: 7 Are you a registered voter? Yes ☒ No ☐

If not a MH resident, years worked in City Limits: _____ -or-

Years lived within the MH School District boundary: _____

Do you have any relatives currently employed by the City of Morgan Hill? Yes ☐ No ☒

Properties owned in Morgan Hill/Address(es): _____

*I consent to the release to the public of the above contact information marked with an *: Yes ☒ No ☐

QUESTIONNAIRE

(Please attach additional sheets, as necessary, to provide complete answers)

1. Please attach a resumé, or briefly describe your background, listing the qualifications and skills, which you can contribute to the Commission.

See supplied summary of qualifications attached to this application

2. Have you served on any other citizen advisory commissions or committees? If so, please list and briefly explain the purpose of each committee.

Yes, member of the Complete Streets Stakeholder Committee. Joined as a non downtown business citizen representative

3. What do you believe to be the role of the Commission, and why you would like to serve on this Commission?

Ensure that planning applications, review process, public considerations and final recommendations support the city regulations, development plans and well being of the community and local economy. I wish to serve as I am a very interested in the ongoing development, sustainability and success of Morgan Hill as a community and business location

4. What skills and experience do you believe would be important to your role as a Commissioner?

I have 35 years of leadership, facilitation, committee participation, facilitation, and decision making. I work well on teams, in public and large forums, and in difficult environments and situations. I have a reputation for being fair, balanced, ethical and collaborative. I facilitate well, know how to participate, lead (when necessary) and conduct meetings, decision forums, public and large forum reviews and debates. I have a lot of experience with fiscal policies and adherence, large scale planning analysis, impact analysis, and recommending and implementing solutions

S:\Commission & Committees\Application\Generic Commission Application.doc

Updated: 3/4/2011

5. How would you know if the Commission is successful in supporting the City Council's Goals?

Acceptance of the commissions recommendations on planning matters the majority of the time shows a synergy between the commission and the council. Positive feedback and experience from applicants, resident and impacted parties on the planning process and decision making forums and meetings. Low rework of analysis and decisions.

6. What would you like to accomplish as a member of the Commission?

Ensure that the continued economic development and viability of the community is sustained in conjunction with a balance of the needs of the citizens, general community, our environment and the long term plans and objectives of the Morgan Hill community. I want to ensure fairness, respect and the ability for all to feel represented and the right decisions are made for the overall good of Morgan Hill and its citizens

7. What are the greatest opportunities facing the community in regards to this Commission?

Commissions can often be perceived to be unbalanced, biased, and overly influenced by developers, businesses, and activists. It is difficult to find balance between the objectives of the developers, the local businesses and the community. Recent environmental challenges like water, conservation, traffic and recycling pose challenges with the need for ongoing economic change and development. City housing demands for the greater Silicon valley puts pressure on expansion and hyper growth. The commission must strive to be fair to all, be balanced, ethical, follow the conditions and terms of zoning and planning regulations.

8. If you are an incumbent seeking reappointment:

- Are you currently serving on a Committee?
- Are you next in line to serve as Chair or Vice-Chair?
- Are you assigned to a special project?
- If assigned to a special project, please identify the project:

Yes	☐	No	☐
Yes	☐	No	☐
Yes	☐	No	☐

Name of commission

9. I am interested in serving on the following Commission or Committee? Please indicate:

☐ **LIBRARY, CULTURAL AND ARTS COMMISSION**

The Library, Culture and Arts Commission provides the City Council with advice and recommendations regarding the adequacy of library facilities; seeks opportunities for city sponsored artistic and performance opportunities; encourages community involvement in the arts; and reviews and recommends works of art to be acquired by the City or installed on public property. This seven member Committee meets on the second Tuesday of odd numbered months at 7:00 p.m. at the Morgan Hill Library.

☐ **PARKS & RECREATION COMMISSION**

The Parks and Recreation Commission provides the City Council with advice and recommendations on recreation programs, activities and resources. The Commission also plans for the future growth and development of parks facilities and recreation programming. This seven member Commission meets on the third Tuesday of odd numbered months at 7:00 p.m.

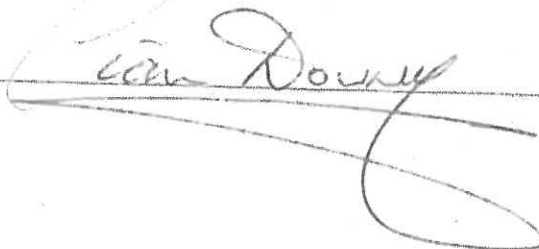
☒ **PLANNING COMMISSION**

The Planning Commission performs duties and exercises power and authority with regard to planning, subdivisions, zoning, zoning administration, residential development control, and other land use regulatory controls as prescribed by ordinance and state law. The Commission serves as an advisory body to the City Council on Zoning and General Plan related matters. The Commission is a seven member body, and each commissioner serves a term of four years and meets on the second and fourth Tuesday each month.

By my signature below, I acknowledge that I will be subject to the City's Conflict of Interest Code; the City Council's requirement of a two hour "Fair Political Practices Commission AB1234 Ethics" training session, and the requirement to file Statements of Economic Interest forms with the City of Morgan Hill when I assume office, annually thereafter, and when leaving office.

By my signature below, I consent to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee, and confirm that I have read the attached Ethics Policy; that I do subscribe to this Policy; that I will apply it to the specific responsibilities which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.

SIGNATURE: _____



Date: _____

5/11/15

Attachment: Liam Downey Application Packet_Redacted (2289 : Planning Commission Interviews)

Liam Downey

Morgan Hill Resident and Business Owner

LinkedIn Profile: _____

SUMMARY OF QUALIFICATIONS

I is a resident of Morgan Hill since 2009. We found our dream home, in a dream community that has proven to everything and more than expected. I live with his wife Loyola, and 3 grown up children and 2 grand children who all live in the Morgan Hill and Gilroy area.

I am a 25 year veteran business consultant and advisor, serving many of Silicon valley's large corporations and leaders. My (self owned) boutique consulting company and team focus on business transformation, business process design and implementation, change management and large event and group facilitation and decision-making

Having lived and worked across Europe and now California for the past 16 years, I feel that I can bring a fresh and balanced, and sometimes alternative perspective on life, community, economic sustainability and environmental stability. I am an avid supporter of our City's well being and sustainability and the well being of our citizens as a whole.

I have a long and respected reputation for being fair, balanced, providing sound business and management coaching and advice, and being a true problem solver. Not only do I analyze, I also revel in recommending and managing solutions from beginning to end.

I have experience with the following attributes that would be relevant to a role on a city commission or other committee.

- Leadership
- Strong team player
- Ethical and balanced – fairness and respect as a priority
- Decision Making and decision advisory services
- Process and Policy design and implementation
- Policy adherence
- Change management – understanding the phases and challenges with good and bad change
- Small and large group facilitation
- Public Speaking and presentation
- Committee/Group facilitation
- Vendor / inter company relations
- Contract and other business event negotiations and facilitation

I am looking for ways to contribute to the community and the development and management of our city. I believe I bring a wealth of experience that could benefit many aspects of our community, and look forward to the opportunity to speak with the interview committee and how I can contribute.

Liam Downey

Morgan Hill, CA 95037

Print**Commission Application - Submission #15385****Date Submitted: 4/9/2019****First Name**

Wayne

Last Name

Tanda

Address1**Address2****City**

Morgan Hill

State

CA.

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Consultant

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Wayne Tanda Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Letter of Interest.docx

Please upload a resume*

Wayne Tanda Resume Planning Commission.docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

Morgan Hill Parks and Recreation Commission
Morgan Hill Planning Commission

What skills and/or experience do you possess that would be important to your role as a commissioner?*

12 years experience as a Morgan Hill Planning Commission and 48 years experience working in and for local governmental agencies

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the Commission is to execute the responsibilities delegated to it by the City. I have enjoyed that role as a Morgan Hill Planning Commissioner.

What would you like to accomplish as a commissioner?*

Over the next 4 years I would like to participate in the City's management of growth in the new era of the State's involvement in local land use planning.

Attachment: Wayne Tanda Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

The greatest opportunity for the Commission is to influence the City's policies related to the rate, quality, and mixture of growth; the interpretation and effective application of land use policies on individual projects; and the inclusion of the community in the decision making process.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Wayne Tanda

Date*

4/10/2019

8:00 AM

Attachment: Wayne Tanda Application Packet_Redacted (2289 : Planning Commission Interviews)

April 10, 2019

Honorable Mayor Constantine and Members of the City Council,

This is to express my interest in the position of Commissioner on the Morgan Hill Planning Commission. It has been my pleasure and honor to serve on the Commission for the past 12 years. During the current term I enjoyed the challenge of being the chair of the Commission through the update of the City's Residential Development Control System. The yearlong effort allowed me to gain a better appreciation of the diverse points of view in the Morgan Hill community and the intricacies and rational of the RDCS. I felt that the effort was worth the results. That we were making a real difference.

I was not sure that I would apply for another term on the Planning Commission, but concluded that my contribution to the Commission was the best way to continue to serve the City that has been our home for over 40 years.

Regards,

Wayne Tanda

Wayne K. Tanda Resume

Work experience	2012 - Present	Municipal Resource Group, LLC	Danville, Calif.
	Principal Consultant, Public Works, Engineering, and Community Development		
	Responsible for public works, engineering, and community development organizational and performance analysis, strategic planning and execution, leadership and management training, and executive coaching		
	2005 – 2011	County of Monterey	Salinas, Calif.
	Director, Resource Management Agency		
	Responsible for the County's land use related programs including planning, development services, engineering, utilities, affordable housing, redevelopment, buildings, roads, bridges, fleet, real estate, property management, code compliance, sustainability, and countywide capital improvements. Staff of 310		
	2002 – 2005	City of Los Angeles	Los Angeles, Calif.
	General Manager, Department of Transportation		
	Responsible for the City's transportation planning, development review, capital programming, public transit, traffic management, public parking, traffic control, taxi and pipeline regulations, and emergency response. Staff of 2050		
	1992 - 2002	City of San Jose	San Jose, Calif.
	Director, Department of Transportation		
	Responsible for the City's services and infrastructure related to public rights-of-way and parking facilities including transportation planning, capital improvement programming, traffic operations, and the maintenance of roads, sewers, drainage, landscaping, street lights, and traffic controls. Staff of 540		
	1990-92	City of San Jose	San Jose, Calif.
	Assistant Director, San Jose International Airport		
	Responsible for daily operations of San Jose Norman Y. Mineta International Airport including facility development, maintenance, airside and landside operations, finance, real estate, and emergency services		
	1990	City of San Jose	San Jose, Calif.
	Assistant Director, Department of Recreation, Parks & Neighborhood Services		
	Responsible for recreation services, neighborhood parks, regional facilities, and senior, youth, therapeutic and community service programs		

Wayne K. Tanda

- | | | |
|--|------------------|------------------|
| 1987-1989 | City of San Jose | San Jose, Calif. |
| Assistant Director, Department of Traffic | | |
| <ul style="list-style-type: none"> Responsible for traffic engineering, signal systems, neighborhood programs, traffic control and street light maintenance, and parking programs | | |
| 1980 - 1986 | City of San Jose | San Jose, Calif. |
| Deputy City Traffic Engineer, Department of Traffic | | |
| <ul style="list-style-type: none"> Division manager responsible for traffic studies, bicycle and pedestrian improvements, safety programs, senior paratransit, and traffic device maintenance | | |
| 1978 - 1980 | City of San Jose | San Jose, Calif. |
| Senior Civil Engineer, Department of Public Works | | |
| <ul style="list-style-type: none"> Section head in charge of traffic engineering program | | |
| 1975 -1978 | City of San Jose | San Jose, Calif. |
| Associate Civil Engineer, Department of Public Works | | |
| <ul style="list-style-type: none"> Unit leader for transportation planning and traffic capital improvement programming | | |
| 1973-1975 | City of San Jose | San Jose, Calif. |
| Assistant Civil Engineer, Department of Public Works | | |
| <ul style="list-style-type: none"> Project engineer for the Update of the Transportation Element of the San Jose General Plan (2 year project) | | |
| 1971 - 1972 | City of San Jose | San Jose, Calif. |
| Junior Civil Engineer | | |
| <ul style="list-style-type: none"> Construction engineer and transportation planner | | |
-
- | | | | |
|--|--|---------------------------|-------------------|
| Education | 1994 | Harvard University | Cambridge, MA |
| | <ul style="list-style-type: none"> Certificate for State and Local Senior Executives | | |
| | 1981 | Golden Gate University | San Francisco, CA |
| | <ul style="list-style-type: none"> Master of Public Administration, State and Local Governance | | |
| | 1973 | San Jose State University | San Jose, CA |
| | <ul style="list-style-type: none"> Master of Science in Civil Engineering, emphasis in transportation | | |
| 1971 | San Jose State College | San Jose, CA | |
| <ul style="list-style-type: none"> Bachelor of Science in Civil Engineering, emphasis in structures | | | |

Wayne K. Tanda

Professional Registrations

- Registered Professional Civil Engineer, #27328, State of California
- Registered Professional Traffic Engineer, #1142, State of California

Professional Memberships

- Institute of Transportation Engineers, Life Member
- American Public Works Association

Community Activities

- Japanese American Citizens League National Convention, Convention Chairman, 2013-2014
- San Jose State University College of Engineering, Graduate Course Instructor on Special Topics in Transportation, 2012 - present
- Ann Sobrato High School, Football and Track and Field Coach, Morgan Hill, 2011 - 2013
- City of Morgan Hill Planning Commission, Chair and Member, 2007 – present
- San Jose State University College of Business (Mineta Transportation Institute), Course Instructor on Leadership and Management, 2007 - 2008
- City of Morgan Hill Parks and Recreation Commission, Chair and Member, 1998 – 2002
- San Jose State University Advisory Council for Civil Engineering, Member, 1997 - 2002
- Association of Asian American City Employees, Member and Conference Moderator, 1994 - 2002
- San Jose State University College of Engineering, Course Instructor on Leadership and Management, Lecturer, Keynote Speaker, and Panelist, 1989 - 2002
- San Jose Japanese American Citizens League, President and member, Board of Directors and Advisory Committee, 1980 - present

Print**Commission Application - Submission #14967****Date Submitted: 1/21/2019****First Name**

Andrew

Last Name

Froumis

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Retired Executive

Are you a registered voter?

yes

Please list any properties you own in Morgan Hill

Own home a , Morgan Hill, 95037

Do you have any relatives currently employed by the City of Morgan Hill?

No

Attachment: Andrew Froumis Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Parks and Recreation Commission ▼

Please upload a letter of interest or cover letter*

RESUME14.doc

Please upload a resume*

RESUME14.doc

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No

What skills and/or experience do you possess that would be important to your role as a commissioner?*

Besides being a 20 year resident in Morgan Hill, I have been involved in Operations and Planning on various projects, including Government contracting and in the private sector.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

It's my understanding that this commission is primarily responsible for the growth and control of Morgan Hill's development.

What would you like to accomplish as a commissioner?*

Assure the growth of Morgan Hill continues with adequate infrastructure to handle increase demands resulting from the growth.

Attachment: Andrew Froumis Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

To help maintain quality of living in Morgan Hill, while it continues to grow as a desired location for residents and businesses.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**☐ Yes☐ No**Are you currently serving on a committee**☐ Yes☐ No**Are you assigned to a special project?**☐ Yes☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Andrew J. Froumis

Date*

1/21/2019

7:45 AM

ANDREW J. FROUMIS

, Morgan Hill, CA 95037 (408)

EDUCATION

MBA - Business Management, St. Ambrose University, Iowa 1983
 BA - Business Administration, St. Ambrose University, Iowa 1980
 Ph.D. - Business Administration, International Business, UOP 2002

OBJECTIVE An Executive Materials/Operations position with a progressive organization.

EXPERIENCE & ACCOMPLISHMENTS:

Applied Materials - Sante Clara, California

1997 - Present **Senior Director of Materials, Quality and Reliability**

Applied Materials is the world leading supplier of Semi-Conductor manufacturing equipment. The company designs, manufactures, distributes, and markets semi-conductor equipment used in the manufacture of computer chips by all manufacturers in the industry. Applied Material's facilities are located throughout the world.

Materials responsibilities include the management of professional purchasing personnel. All production and indirect materials for the leading division, along with inventory control are the primary tasks. Led efforts to reduce the costs of purchases meeting corporate goals and also increased inventory turns meeting the goal of 12 turns on high cost materials. Quality and Reliability responsibilities include the leadership and management of operations towards Quality Assurance of process to prevent problems, product improvement, development of the corporate Quality Management System, reduction of defects in products, software, and services delivered to the customer, improved reliability measured in "up time" of the systems, and greater length of time between maintenance at the customer. In the area of new product introduction, responsibilities include the development of automated tools/fixtures for testing of systems and resolving issues prior to customer delivery. Currently responsible for the documentation of procedures and progressing towards ISO certification as a milestone progression towards total quality management.

ACHIEVEMENTS

- Designed and deployed the QMS(Quality Management System) for the entire enterprise. Identified key milestones for measuring level of deployment and efficiency of QMS deployment.
- Utilized world class Quality performance measures to determine customer satisfaction and manage the CLCA (closed loop corrective action) process.
- Developed goals for Quality standards and provided training to all personnel in the operations and software disciplines of the organization.
- Established Quality standards for components and modules that were outsourced for optimum utilization of resources. Successfully outsourced major modules to include gas delivery systems, sub assemblies, and software development.

Accuride International Incorporated - Sante Fe Springs, California

Attachment: Andrew Froumis Application Packet_Redacted (2289 : Planning Commission Interviews)

1996 - 1997 Vice President of Materials and Logistics

Accuride International Incorporated is the world leading supplier of metallic slides and components for various industries including automotive, computer, electronic, appliance and assembly industries. The company designs, manufactures, distributes, and markets advanced design assemblies used in the manufacture of high quality end products. Accuride's manufacturing facilities are located in four North American locations, Mexico, United Kingdom, Germany, and Japan.

Responsible for the Purchasing, Master Scheduling, Planning, Distribution, Inventory control, Receiving, Shipping and Stockroom functions throughout all the worldwide located facilities.. Corporate responsibilities include the development of Supplier Certification, Negotiations of major subcontracts, establishment of blanket orders with long term suppliers, manage the development of procedures, successfully achieve ISO 9001 Certification, and develop required skills in materials personnel. Manage inventory turns through the implementation of J.I.T. and developed highly responsive suppliers while improving vendor relationships. Responsibilities include both line reporting structure for material's personnel and staff to the office of the president as an executive board member.

SILICON VALLEY GROUP - Thermco Systems Division, Orange, California

1994 - 1996 Corporate Director of Materials

Silicon Valley Group, Inc.(SVG), Thermco Systems Division is a leading supplier of automated wafer processing equipment for the worldwide semiconductor industry. The division designs, manufactures, and markets technically sophisticated capital equipment used in the primary stages of semiconductor manufacturing.

Responsible for the Purchasing, Master Scheduling, Planning, Inventory control, Receiving, Shipping and Stockroom functions. Corporate responsibilities include the development of Supplier Certification, Negotiations of major subcontracts, establishment of blanket orders with long term suppliers, manage the development of procedures, successfully achieve ISO 9001 Certification, and develop required skills in materials personnel. Manage inventory turns through the implementation of J.I.T. and developed highly responsive suppliers while improving vendor relationships.

ACHIEVEMENTS

- Lead the negotiation of multi-million dollar electronic components, such as, MOS memories, ASIC's and passive components, controllers and subsystems agreements resulting in substantial cost savings.
- Utilized world class material's metrics to benchmark the organization and identify areas requiring further improvement.
- Developed and control budgets within the corporate objective of 2%. Train personnel to incorporate target pricing in meeting materials goals.
- Reduced the materials cost as a percentage of sales through negotiations from 65% to 52%.
- Improved inventory turns with JIT while eliminating shortages to manufacturing's requirements.
- Implemented customer satisfaction metrics through the use of surveys and questionnaires.
- Developed Supplier Certification resulting in reduced inspection while improving supplier quality and delivery performance. Completed certification of 45 suppliers representing 60% of dollars spent.

- Increased efficiency 25% of the purchasing group by restructuring from a geographic buying responsibility to a commodity buying structure.
- Promoted personnel development by presenting TQM philosophy, ISO 9000 implementation, Juran Problem Solving, Statistical Process Control, GMAT preparation and Situational Leadership to divisional personnel.
- Implemented \$8M procurements with international suppliers to satisfy offset obligations on sales to foreign customers.

McDonnell Douglas - Long Beach, California

1990-1994 Director of Procurement

Directed the group that procured or produced all prime product materials. Established business objectives, means to measure and direct the division towards supporting corporate goals. Negotiated short and long term contracts with cost reduction objectives. Established major contracts with foreign sources including currency exchange rates, electronic data exchange, and MRP II planning. Implemented offset contracts to satisfy foreign obligations.

1987-1990 Manager of Procurement

Supervised purchasing professionals for the procurement of major systems, avionics, electronics, for the communication industry and the successful launch of satellites and classified projects.

ACHIEVEMENTS

- Reduced manufacturing costs \$16M and influenced long range strategic planning by establishing innovative contracts which eliminated the backlog of manufacturing hours.
- Produced \$3M of additional sales of prime products while serving as translator/host for two European businessmen.
- Supervised 145 professional procurement personnel in the procurement of prime product to include electrical and electronic components such as robotics, mechanical systems and other complicated assemblies.
- Reduced costs by developing, implementing, and monitoring target pricing.

Caterpillar, Inc. 1973-1987

1981-1987 Purchasing Manager Caterpillar, Inc. Aurora, Illinois

Managed the group responsible for the procurement of \$1 Bil. of components for the production of the world leading capital equipment.

ACHIEVEMENTS

- Optimized efficiency by evaluating the workload and reorganizing personnel in the materials division at the 4th largest component of Caterpillar, Inc.

- Reduced prices of materials 10% annually by developing and implementing an innovative pricing strategy.
- Headed a team that reduced supplier costs 5% or \$14M by leading a "Supplier Day" seminar with 1200 of Caterpillar Inc. suppliers of prime product.
- Demonstrated effective teaching skills of three MBA classes at Aurora University in which my students outsourced full time faculty students on standardized exams.

1978-1981 **Quality Assurance Supervisor** Caterpillar, Inc. Davenport, Iowa

Accumulated quality data for supplier quality performance. Aided Purchasing by visiting suppliers, analyzing their quality plans and correcting any deficiencies found. Performed routine audits with existing suppliers to assure conformance. Established "Supplier Certification" that progressively improved supplier quality ultimately resulting in a "No Inspection" plan reducing costs of materials purchased by 15%.

1973- 1978 **Manufacturing Supervisor/Operations** Caterpillar, Inc. Davenport Iowa

Supervised 130 employees in assembling and packaging parts. Scheduled priorities to feed assembly line with needed material.

1973-1977 **Management Apprentice**

Worked supervisory positions including: times study, quality assurance, training, materials, accounting, engineering, and planning. Operated plant controlling data bases and input data into IBM Vac center.

RELEVANT EXPERIENCE

Conducted seminars in Purchasing, "Just In Time", MRP II, Electronic Data Communication, Inventory Reduction, Target Pricing, Quality and Process Improvement (ISO), Total Quality Management.

Currently teaching three MBA courses at University of Phoenix and Aurora University; "Human Resource Management," "Financial Management for the Profit Sector" and "Organization Theory and Design."

PERSONAL

54 years old, married 33 years, two grown children. U.S. Army Veteran (Viet Nam Veteran)

REFERENCES WILL BE FURNISHED UPON REQUEST

Print**Commission Application - Submission #15090****Date Submitted: 2/13/2019****First Name**

Howell

Last Name

Williams

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Retired

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

Home a

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Chip Williams Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Chip Williams - Cover Letter.pdf

Please upload a resume*

Chip Williams Resume.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

None

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I have extensive experience managing technical businesses and projects in complex operational environments. I have broad technical competence and demonstrated ability to objectively evaluate all alternatives when formulating decisions. I hold my personal and professional integrity inviolate and beyond compromise for any reason.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The primary role of the Planning Commission is to evaluate development plans with respect to the City General Plan, and when applicable allocate units per the RDCS, and provide a recommendation for approval/denial to the City Council. I have read the General Plan; I found it to be a well structured and comprehensive document for guiding the continued evolution of the City.

What would you like to accomplish as a commissioner?*

I would seek to contribute to the process of managing the growth and development of Morgan Hill in a fashion that is sustainable both fiscally and environmentally to the benefit of all of our residents. I would like to see Morgan Hill become the model for successful and sustainable growth in the region and the State.

What are the greatest opportunities facing the community in regards to this commission?*

Continuous growth in this region is inevitable given the continued prosperity of the Silicon Valley. We have the opportunity to grow this community in a fashion that is both sustainable and enriching to all that choose to make Morgan Hill their home.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Howell P. Williams

Date*

2/13/2019

12:45 PM

Chip Williams

Morgan Hill, CA 95037

City of Morgan Hill

Dear members of the City Council:

My wife Bonnie and I have lived in Morgan Hill since 1983. We love living here and adore this community. During most of the past 36 years I found little time outside of my professional commitments to actively engage in the evolution of our community. I am now retired and have both the time and desire to serve this community.

I believe that my professional experience and abilities can be of significant value to the City as a member of the Planning Commission. I request your consideration of my application for appointment to this Commission.

Sincerely,

Chip Williams

Howell P. Williams (Chip)

Morgan Hill, CA 95037

SUMMARY

Retired senior business leader with a rich mix of operations, business development, product marketing, and general management experience. I have a track record of success building new teams and turning around under performing business units in technically demanding environments.

PROFESSIONAL EXPERIENCE

Siemens Smart Grid Division, 1998 – 2015

Business Manager, California Operations (2004) – Business segment P&L and site general manager of the Energy Automation facility in Mountain View, CA. This segment includes all business functions with the exception of purchasing and HR that are provided as corporate functions from division HQ. The primary role of the site is to address the small to mid-range energy control center market, with direct sales responsibility in North America (NAFTA) and to provide product management, sales support, ongoing innovation and global supply of the Siemens Spectrum Power™ TG SCADA/EMS product line, one of a family of Spectrum Power control system platforms offered by Siemens. This operation provides direct-to-end customer delivery and services for customers in the Americas, plus Saudi Arabia, Australia, New Zealand, and the Netherlands. In other geographies we supply software only to a regional Siemens unit for integration and delivery. Key accomplishment was rescuing this business that had not been consistently profitable before acquisition by Siemens and was on the verge of being shutdown following several years of unsuccessful attempts at integration. The business returned a slight profit in 2004 and since 2005 has delivered consistent EBIT ~ 10%. Current outlook is strong with substantial growth opportunity, particularly in distribution automation driven by SmartGrid investment. The Siemens organization has had several restructurings during this time with this business operation now an element of the Smart Grid Division within the Infrastructure & Cities Sector.

Operations Manager (2002, Siemens PT&D) – Transition role following integration of the Telegyr Systems business into the Siemens Energy Management division. Primary efforts during this period were fulfilling current customer obligations while responding to a variety of corporate restructuring and product rationalization concepts driven from the division.

Director, Product Delivery (1999, Telegyr Systems, Inc.) – Established Product Delivery Centers in the USA and Switzerland for the Telegyr NMS for Windows control center product line. Managed the USA Delivery Center operations responsible for the delivery of 45 Telegyr NMS systems (over 3 year period) to customers in Canada, Peru, Brazil, and USA. A significant accomplishment was to achieve profitability during the first year of operations with significant improvements as we scaled up volume.

Senior Marketing Manager (1998, Landis & Gyr/Telegyr Systems, Inc.) – Responsible for market analysis, product requirements definition, and global market introductions. The most significant accomplishment was a Microsoft Windows based, utility class electrical network control system (SCADA) targeted for small to mid range utility customers. Market introduction included branding, pricing structure, sales collateral and advertising, business model (factory production, delivery/install, and maintenance service). The key process innovation was to apply product oriented delivery methods to what had traditionally been a custom project business model and thereby dramatically reduce cost and delivery time for a control center that was functionally competitive with custom project implementations. This was to be

Howell P. Williams (Chip)

accomplished by establishing two Product Delivery Centers, one in USA to service the Americas and one in Switzerland to service Europe.

General Electric Company (Nuclear Energy), 1980 - 1998

Senior Manager, Nuclear Measurement & Control Systems – Led a business unit responsible for a ~\$20 million nuclear measurement and control (NUMAC) systems business serving original installation and retrofit applications markets. This organization was responsible for technical sales support, pricing, proposals, project management, product development, hardware and software design, materials management, production control (manufacturing was out-sourced), delivery, installation/startup and all customer interactions. When I accepted the position the business was operating at a loss. Turned the business into a highly profitable one by restructuring the organization to reduce management overhead, identifying and rewarding key individual contributors to drive accountability throughout the team, implementing rigorous configuration control constraints to minimize scope creep, and renegotiating with several customers as well as our out-source manufacturer. Acquired new orders and completed system deliveries to customers in Japan, Mexico, Sweden, and USA.

Senior Manager, Business Development – Established and led a marketing and business development team for a \$100 million replacement equipment and services business. Consolidated and managed all new product development activities from conception through initial sale. Evaluated strategic alliance opportunities with companies in Canada, Mexico, Spain, Taiwan, and USA.

Senior Manager, Electrical Products – Established and led a cross-functional product team providing replacement electrical, instrumentation, and control system products. This business team of 30 people was responsible for sales, pricing, application engineering, all materials logistics including purchasing and inventory, delivery, and customer service for both nuclear safety-related and nonsafety-related equipment originally manufactured by GE Nuclear as well as by various GE commercial product departments and non-GE manufacturers. Key accomplishments were reducing delivery cycles by 50%, increasing profit margins, and increasing sales volume through improved customer satisfaction. This team was a model of success that was to be emulated with other product lines.

Senior Manager, Materials Services Engineering – As part of a major re-organization of the Nuclear division, established and led a new organization comprised of 5 departments (one located in Pennsylvania, the others in California) providing all technical support functions for the replacement parts & services business. Functions provided included technical sales support, product application engineering, new product qualification including requirements for nuclear safety-related applications, and electronics test and repair services.

Senior Program Manager – Directed GE's nuclear equipment qualification programs establishing compliance to IEEE standards and U.S. Regulatory requirements for nuclear safety-related systems. Established engineering standards for specifying equipment performance requirements at a systems and component level; managed the environmental and seismic testing programs for approximately 100 major equipment assemblies and control instrumentation.

Program Manager – Managed cost, schedules and established program technical requirements to meet new U.S. Regulatory requirements for nuclear power plant safety systems.

Howell P. Williams (Chip)

Quadrex Corporation, 1977 – 1980

Senior Engineer - Performed as the project engineer for design qualification of safety systems equipment at a commercial nuclear power project in Texas. Established and managed project schedule to support construction schedule; integrated activities between the onsite constructor, the utility staff in Dallas, and the architect-engineer staff in New York City.

Engineer - Performed analytical assignments involving environmental risk assessment and site evaluation for commercial nuclear power projects and U.S. Department of Energy facilities.

EDUCATION

B.S., Environmental Resources Management, The Pennsylvania State University, State College, Pennsylvania.

Numerous corporate sales, business, management, and leadership courses including at GE's Management Development Institute (Crotonville).

VOLUNTEER ACTIVITIES

Monterey Bay Aquarium, 1984 – 1998

Maintenance Diver & Dive Team Leader – Performed routine underwater maintenance of large exhibit tanks, public feeding shows, and open water specimen collection dives. (total over 700 dives).

Print**Commission Application - Submission #14974****Date Submitted: 1/22/2019****First Name**

Chris

Last Name

Wood

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Just retired, was Electrical Engineer W/Oracle

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

my house:

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Chris Wood Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Chris_Wood_Planning_Comission.pdf

Please upload a resume*

Chris_Wood_Resume_Current.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No, just Computer Industry ones.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

President of Holiday Lakes HOA board during the DAWITO development issue. Negotiated an outcome to protect Holiday Lake residents and preserve most all at risk green space for HLE use forever.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

Understand the master plan for Morgan hill, and pertinent state, county and local zoning regulations, and under their guidance suggest the best possible solutions to the Mayor and City Council.

What would you like to accomplish as a commissioner?*

Insure the City and its residents have the best information to allow them to make the optimal trade offs on Growth Control, Infill vs Outfill of the city, Locations and number of affordable housing units developed going forward, green space preservation and banking for future park, recreation or school use. Said another way, setting up Morgan Hill for growth and change that all its citizens benefit from.

What are the greatest opportunities facing the community in regards to this commission?*

Laying out the future road and transportation needs now and preserving necessary rights of way, Insuring our city's and citizens needs are taken into account by High Speed Rail (Assuming it gets built), moving now to protect our northern and southern borders from undesirable development, re-build our relationship with LAFCO, and the list goes on. Summary: Understanding what has to happen now to ensure our best possible future.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Leighton C. Wood Jr.

Date*

1/22/2019

11:30 AM

Leighton C. Wood Jr.

Morgan Hill, CA 95037

To whom it may concern

The City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

Reference: Planning Commission Vacancies

Dear Sir or Madam:

Given that I have recently retired from a 40+ year career in various computer & storage disciplines, it's now time to give back to the community I have called home for 38 years since 1981; Morgan Hill. You can read my resumé to see what I did for whom, so I won't belabor it here.

What may be of more import is the fact that I am a disciplined electrical engineer who approaches problems in a methodical, apolitical manner with a simple goal of defining and implementing the best reasonable solution to whatever the problem is.

While this would be my first assignment in a municipal environment, I have served on and led multiple industry wide commissions and panels setting technical (And by definition political) specifications for various I/O and Networking protocols so am very familiar of working in a group with multiple points of view and often very divergent ideas of what constitutes success; while guiding the parties (or cajoling, if you will) to some group-wide convergence on a path forward that's good enough for everybody.

I would be very interested in applying these skills to the Planning Commission. Our future will be writ in large part by the decisions we make today, so we best do a good job of it.

Leighton C. (Chris) Wood Jr.

Attachment: Chris Wood Application Packet_Redacted (2289 : Planning Commission Interviews)

Morgan Hill, CA 95037

Leighton C. (Chris) Wood Jr.

Director of Product Management, Flash Storage, Oracle USA.

(10/1/11/ – 12/31/2018)

Storage Technology Development / Adoption / Deployment
File Systems / Archiving / Data Protection & Recovery / Business Continuance
Customer Facing Evangelist & Architect: Implementers to C-Level Executives
30+ Years storage experience – “I know what works and what doesn’t”

Extremely experienced Storage executive with a strong focus on current data management software from both a management perspective as well as an operational one. Focused on actual solutions to customer problems vs. products and features. Excellent competitive skills as well as having a deep knowledge of the storage industry overall – Hardware and Software.

Represented SUN for 10 years, then Pillar Data Systems and now Oracle USA on a global basis as the key corporate Storage visionary and guru for the past 12 years; was the most requested speaker by name at Sun’s Executive Briefing Center and is well known in the storage industry overall.

My Interest Area: Obtaining a position with a high customer facing content where my unique skill of explaining very complex technologies and architectures that paint both the technological and the business value picture as they apply to any given customer problem or need. This includes building a team of individuals that know how to develop, manage, market and sell based on specific, quantifiable values to the end user.

Accomplishments

- **2X YoY growth in Pillar Axiom Sales W/W.** After Oracle acquired Pillar Data Systems on October 1, 2011, Mr. Wood integrated the Pillar Axiom 600 storage system into the Oracle “Red Stack” and launched it world-wide. Booked sales are up 200+% and committed sales pipe is up 3X+ in one year.
- **Conceived, and led a team of five people who developed and brought to market** the *Content Infrastructure System* (CIS), a complete integrated multi-tiered storage appliance that delivered a completely transparent policy-based 4 tier archiving platform with built in data protection and remote replication. The CIS became the first appliance ever sold by Sun, and was the model for all follow-on offerings including the Infinite Archive initiative and Oracle’s Engineered Systems.
- **Board Chairman** of the Sun Data Management Ambassadors (DMA’s); Sun’s elite global storage pre-sales architecture team. Responsible for up-leveling the field skill base and integrating the STK elite SE’s into the DMA program.
- **Conceived, and led a team of three people who developed and brought to Sun’s global sales force** the *Network Storage Solutions Rack* (NSSR), a complete storage data management “demo in a can” that could simulate almost any backup, archive, data replication and/or recovery scenario that a customer might want to see. The NSSR was credited with driving hundreds of millions in storage sales over two years.
- **Represented the field as a voting member** on the corporate *Product Approval Committee* (PAC); responsible for managing the complete lifecycle of all storage products from conception to EOL.
- **Earned the reputation** as the “Go to Guy” to assist in selling and closing large, complex competitive storage deals. Directly credited with over 70+ million dollar deals over the last few years.

What Others Say¹

- “When they made Chris, they broke the mold”
- “If Chris tells you it will work; you can take that to the bank”
- “Chris possesses what few can claim. Fully understanding the philosophy of data management.”
- “Chris’ industry knowledge and experience is 2nd to none.”

Professional Experience

Director of Product Management: Oracle USA (10/11-Present)

- Responsible for product management, pricing, go to market for the Oracle FS1-2 Flash Storage System; also responsible for field readiness for Oracle’s sales and SE force W/W.

Director of Marketing: Pillar Data Systems, San Jose, CA (3/10 – 10/11)

- Responsible for Pillar’s entire Enterprise Data Protection strategy and delivery, SSD integration and delivery strategy.
- Other responsibilities and deliverables are similar to prior Chief Technologist job at Sun Microsystems.

Principle: Storage and Data Management, LLC (6/09 – 10/11)

- Advised the Financial Services Sector on M&A and competitive activity in the storage vertical: Primarily hedge funds and/or large banks with internal hedge funds.
- Clients included: Bain Capital, Goldman Sachs, Blackrock, Barclays Global Investors, Oppenheimer Funds, DE Shaw and 20 others.
- **Director and Chief Technologist: Technical Sales and Marketing, Sun Microsystems, Network Storage Division (3/02 to 6/09)**
- Evangelize Sun’s technology World-Wide and deliver comprehensive data storage and data management solutions.
- Responsible for delivering to Sun’s sales force all technical sales and marketing support
 - Direct delivery: I/O architecture assistance, design reviews, level five escalation support and global technical support.
- All storage related collateral including: white papers, benchmarks (Sun and third party), including both software and hardware products.
- Developed and deployed sophisticated Proof of Concepts (POCs) as well as customer solution focused demos and benchmarks.

Director: SAN Strategy, and Chief Technologist, Storage Marketing, Sun Microsystems (1/99 to 3/02)

- Developed and drove Sun’s SAN strategy and development that took Sun from simple FC-AL direct and hub attached devices to the most robust and high function SAN offering in the industry.
- Delivered Sun’s “*Enterprise Continuity*” solution based on Sun-Cluster 3.1, DWDM equipment and enhancements to Sun’s device drivers to allow for geographically dispersed data centers to operate as a single logical data

VP Sales and Marketing, MaxStrat Corporation (3/94 to 1/99)

- Drove revenue from \$Zero to \$35 million annually at MaxStrat
- Hired and deployed a complete sales and service force developed a core sales/service and support channel strategy worldwide while establishing key reseller agreements within key vertical markets we served.
- Sold the company to Sun Microsystems in January of 1999, and joined Sun.

Director of Architecture, Open Systems DAS, IBM Corporation (6/90 to 3/94)

- Developed the “Extended Count Key Data” (ECKD) instruction set for all MVS (Z/OS) I/O devices
- Architected and delivered the 9570 disk array subsystem and conceived and architected the initial RAMAC II array

¹ All Comments and more were posted by their respective authors on LinkedIn.

Prior Jobs:

- Manager of Large Systems OEM Storage Products, IBM Corporation (4/84 to 6/90)
- Marketing Manager, IBM Corporation, Sacramento CA. (1/81 to 4/84)
- Regional Sales Manager, SNA & Networking, IBM Corporation, NY (3/77 to 1/81)
- Systems Engineer and Marketing Representative, IBM Corporation, Newark, NJ.

- **Publications and Dissertations**

- Over 25 peer-reviewed publications, hundreds of articles, interviews and citations, etc. List available on request. Google it with the following arguments:
 - “Chris Wood” +storage (Use the parens.)

- **Professional Societies and Patents**

- IEEE Mass Storage Technical Committee (MS/TC), SNIA Managed Storage: MSI/Blue Fin and DMF)
- Filed and received three patents relating to:
 - 01 Intelligent power optimized array data placement, (Follow-on MAID patent) (5,900,007)
 - 02 Large data store with power management (The “MAID” patent), (5,423,046)
 - 03 Non-degrading block interleaved data protection. (RAID –8) (5,301,297)

- **Education**

- Union College, Schenectady, NY.
 - BA: Economics; BS: Electrical Engineering

Print**Commission Application - Submission #14810****Date Submitted: 12/19/2018****First Name**

Ken

Last Name

Murray

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

non-profit director

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Ken Murray Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

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Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

Planning Commission.docx

Please upload a resume*

Ken Murray 2018 Resume.docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I have not served on a Citizens advisory Committee.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

- 1) Understanding of the General Plan, Morgan Hill's Strategic direction and familiarity of the planning process
- 2) Active Listening - the ability to rapidly and thoroughly understand applicants, staff and legal perspectives
- 3) Strong analytical skills to facilitate collaborative solutions to difficult issues
- 4) Unbiased perspective
- 5) Willing to do the homework !

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The planning commission is an advisory commission to the City Council, on matters involving zoning, residential and commercial projects and the impact that these projects have on traffic, commercial / residential boundaries and the residents of Morgan Hill. I would like to serve on this commission to be a part of the solution for the problems we facing regarding RHNA targets, new legislation and growing our commercial space for job growth.

What would you like to accomplish as a commissioner?*

An aspirational goal would be to meet our RHNA targets, General Plan / financial objections, and new legislation requirements while having Morgan Hill becoming known as the most business friendly city in Santa Clara County for commercial and residential developers.

What are the greatest opportunities facing the community in regards to this commission?*

Measure S is comprehensive and solid residential growth control system. The issue will be what will become State mandated for low income housing and residential growth. The reduces residential growth has a negative impact on the general fund. If we could ramp up commercial development in the 110 commercial properties of possible interest, to help offset the reduced residential financial impact and lead to job growth in the City

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.**Please review the City Council Ethics Policy**

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Morgan Hill

Date*

12/19/2018

5:45 PM

Honorable Mayor Constantine & City Council Members

I love Morgan Hill. And I feel an obligation to help and serve in our community. Based on this desire to serve, I respectfully submit my application and resume for consideration as a member the Morgan Hill Planning Commission.

Since moving to Morgan Hill, I have been actively involved in serving our community through non-profits, Rotary International and the Morgan Hill Chamber of Commerce.

I became a Chamber Member and Director, at the suggestion of former Mayor Tate, to assist in the process of bringing better and higher paying jobs to our community. Jobs are a critical element of a balanced and controlled growth strategy for Morgan Hill. As a Chamber Board Member, I have led the Chamber's Economic Development Committee and now currently lead the newly created Government Relations Committee.

During these Chamber efforts, I have thoroughly enjoyed working and getting to know many of the City staff, City leadership and Council Members. I see the opportunity to serve on the Planning Commission as an opportunity to expand on my Chamber experience and I would thoroughly enjoy having the opportunity to serve our City on the Commission.

After reviewing my resume, hopefully you will find that my background and experience would be beneficial to the Commission.

Sincerely

Ken Murray

Kenneth Gerard Murray

(408)

Mobile

www.linkedin.com/in/kengmurray

Executive Profile

An entrepreneurial and transformational technology executive who has successfully developed and led organizations within the computation, cloud, storage, and network markets.

Capabilities

- ✓ Experience Silicon Valley executive having served as CEO, COO and other senior management positions
- ✓ Proven strategic business & financial planning skills
- ✓ Expert customer success program leadership
- ✓ JKeen business acumen across multiple industries
- ✓ Successful technical support & service leadership
- ✓ Professional services growth & enhancement
- ✓ Corporate development and organization integration
- ✓ Collaborative cross-functional leadership

Core Accomplishments

- ✓ Responsible for over \$20B in sales revenue over my career resulting in the hiring of over 2500 employees
- ✓ Led/participated in the purchase, sale, and integration of 6 organizations
- ✓ Led the development and execution of corporate standard engineering processes for software, hardware and services
- ✓ Cultivated high performance teams by growing employee competencies which enabled our teams' results
- ✓ Developed global corporate standards for sales and account management processes within medium and large enterprises

Professional Experience

Non Profit Director and Community Volunteer

1/2013 – present

For the past 5 years I have been involved in Morgan Hill volunteer work including Rotary International, and the Morgan Hill Chamber of Commerce where I currently lead the Government Relations Committee. Previously I have led the Chamber's Economic Development Committee where we focused on bringing more and better jobs to Morgan Hill.

Founder and Owner of Kabana Grill

Wasabe Ventures LLC, Lahaina, HI

1/2012 – 12/2013

Wasabe Ventures LLC was formed to open and operate a large, 150 person capacity, fine dining restaurant on the island of Maui. As the lead investor, I become actively involved in the operations when the Operating Partner left the business. The business was a great culinary success, including winning "Maui's Best New Restaurant" and Open Table's Diners Choice award. For personal reasons the restaurant is now closed.

Senior Vice-President – Sales, Marketing & Customer Success

DecisionOne, Devon, PA

12/2009 – 1/2012

DecisionOne is one of the largest multivendor services providers in North America. I was responsible for growing global revenue through customer acquisition, international expansion, and the introduction of new, higher margin IT services to catalyze the sale of the company.

- ✓ Achieved revenue performance at 103% and 107% of quota
- ✓ Built and implemented a standard sales process increasing the company's win/lose ratio by 50%
- ✓ Established Strategic Account Program growing YoY revenues by 27%
- ✓ Established a scalable Customer Success organization to establish customer expectations and report on D1 performance relative to expectations resulting in delighted customers, winning 2 beta service trials and retaining a \$28 M annual contract
- ✓ Lead participant in the identification, negotiations, purchase and integration of Anacom and CXP
- ✓ Actively negotiated the sale of the company to Glodyne and then led 23 of the company's 32 integration initiatives

Vice-President - Global Services & Sales

Rackable Systems/SGI, Fremont, CA

1/2008 – 12/2009

Rackable was a public company focused on providing "ecological" data center computing products for the cloud, providing the lowest cost, highest density, X86 server architectures available in the market. I was responsible for the stabilization and growth of all global services. Rackable Systems purchased SGI and changed the name of the company to SGI in 2009.

- ✓ Restructured the services organization to profitably improve the customer experience resulting in the highest renewal rates (94%+) in the company's history
- ✓ Grew services revenue by 42% and bookings by 210%, while generating Rackable's first profitable year in services
- ✓ Led the development of 6 strategic accounts growing revenue over 43% YoY
- ✓ Significantly improved each key process indicator (KPI) within the services business including 357% improvement in service response time, 432% reduction in service parts inventory, and 126% improvement in installation satisfactions
- ✓ Established a service introduction process resulting in new support and installations services at Rackable, including cloud container based services for Microsoft datacenters.

- ✓ Actively participated in the due diligence and acquisition of SGI and led the integration of support and professional services

Americas Global Services Director

NetApp, Sunnyvale, CA

10/2004 – 1/2008

NetApp is a leading supplier of enterprise storage and data management solutions. During my tenor at NetApp the organization was focused on the development of strategic accounts to drive revenue growth.

- ✓ Led the growth of the strategic account customer success organization to 15 GSMs with a \$95M services quota (102%) in support of a \$532M overall sales goal for FY08
- ✓ Served as the services thought leader on the evolution of the Strategic Account (TEA) sales organization utilizing value based selling, executive relationship development, and account P&Ls
- ✓ Established global customer template for ITIL based enterprise data center support and operational process to dramatically improve TEA customer experiences resulting in above target revenue growth
- ✓ Led the development of the Supportability Index methodology which enabled NetApp's selection into Gartner's Leader quadrant for services

CEO, Co-founder & Investor

Cenergize, Los Gatos CA

1/2003 – 9/2004

Cenergize was a startup focused on the integration of unstructured data within structured environments such as email. The first release of the product enabled the tracking of work flow contained within email for Outlook

- ✓ Established initial technical and support team
- ✓ Developed and launched initial product and first customer
- ✓ Established and presented the Cenergize business plan to 11 venture capitalist funds

President & CEO

Mockingbird Networks, Cupertino, CA

6/2001 – 12/2002

Mockingbird Networks was a 175 person, TCV/Alcatel backed private company providing next generation VoIP infrastructure to enable voice enabled applications such as Siri. The product was also used as a VoIP gateway to connect to SS7 networks

- ✓ Drove initial company revenues by delivering VoIP solutions resulting in an increase in revenue from \$0 to \$11M
- ✓ Established processes and metrics for software & hardware and service development resulting in 2 major on time product releases

COO

Appiant Technologies, Pleasanton, CA

3/2000 – 6/2001

Appiant Technologies was a publicly traded company where I led the re-invention of the company from a voice mail system integrator into an ASP for unified communications/information services.

- ✓ Developed an Americas sale force and drove sales of new product from 0 to \$13M, while growing sales of the existing product lines by 12%
- ✓ Led the development and launch of the InUnision voice enabled unified communications service using a distributed software engineering team
- ✓ Established the company's IT operations capabilities to support a 200,000 user VoIP network in partnership with Cisco

Hewlett-Packard Company, Mountain View, CA

5/1978 – 2/2000

During my tenure at Hewlett-Packard I held a variety of sales, sales leadership, services and senior management positions including:

New Services Marketing Director

08/1999 – 02/2000

Western Area General Manager

11/1997 – 08/1999

North American Field Development Manager

01/1995 – 10/1997

Global Account General Manager

10/1992 – 12/1994

Area Sales Manager

11/1990 – 10/1992

District Sales Manager

11/1987 – 10/1990

Field Marketing Manager

06/1985 – 10/1987

Sales

05/1978 – 05/1985

Affiliations and Recognition

Member of Michigan Technological University's Industrial Advisory Board

Michigan Technological University Engineering Academy

Education

St. Thomas College, St Paul, MN

MBA, International Organizational Behavior (Honors)

Michigan Technological University, Houghton, MI

BS, Control Systems, Circuit Design, Computing, and IC Design (Honors)

Print**Commission Application - Submission #15211****Date Submitted: 3/5/2019****First Name**

james

Last Name

dill

Address1**Address2****City**

morgan hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Realtor/Broker

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: James Dill Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Library, Culture, and Arts Commission ▼

Please upload a letter of interest or cover letter*

Backup of Letter of Intent MH Planning Commissio
03-05-2019.wbk

Please upload a resume*

2 page resume.docx

Attachment: James Dill Application Packet_Redacted (2289 : Planning Commission Interviews)

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

Committees:

Santa Clara County Association of Realtors - SCCAOR

Chair, Professional Standards Committee

Provide opportunities for training for the Professional Standards Committee in the National Association of Realtors Code of Ethics COE, and Arbitration as a panel member and for the presiding officer. Oversee and make recommendations in deliberations from findings from testimony and documentation.

Provide a vehicle for Realtors, Sellers, and Buyers to have a hearing in a safe and non-legal atmosphere without the expense of attorneys.

Chair, Education Committee

Facilitate and guide committee members in decision making on new and revised programs for the members of the Association. Interview prospective trainers with new programs to be presented to the members of the Association.

Grievance Committee

Review grievances that are brought before the Association either from a Realtor, Seller and or Buyer for violations of the Code of Ethics and determine if there were violations, to move them to the hearing phase of the Professional Standards Committee.

Membership Committee

Continuing to recruit and explore ways to retain members of the Association either by adding benefits such as the Professional Standards and activities for retention.

Silicon Valley Association of Realtors - SILVAR

Grievance Committee

Review grievances that are brought before the Association either from a Realtor, Seller and or Buyer for violations of the Code of Ethics and determine if there were violations, to move them to the hearing phase of the Professional Standards Committee.

Professional Standards Committee – Ethics and Arbitration

Purpose of the committee is to hear grievance using the National Association of Realtors Code of Ethics from either a Realtor, Seller, and or Buyer. The Committee will also arbitrate, hear disputes regarding money from Realtors, Brokers, Sellers and or Buyers.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

My background in real estate both in residential, vacate land, and commercial will provide the Commissioners and City Council with a perspective from a local resident who works with local organizations such as CERT, Community Emergency Response Team and CAB, Community Asset Builders.

My background and formal education in instructional design where I systematically break down complex issues then provide a roadmap to address the issues(s). My background and current position as Chair of the Professional Standards Committee where I preside over disputes of the Code of Ethics and for money through Arbitration with Realtors, Brokers, Sellers, and or Buyers.

And as a Director for the California Association of Realtors CAR, where I attend quarterly meetings of Directors throughout California determining and addressing issues of their local communities.

Attachment: James Dill Application Packet_Redacted (2289 : Planning Commission Interviews)

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the commission is an advisory to the Morgan Hill City Council, it is not a policy making committee. The Planning Commission make recommendations to the City Council for adoption, general plan or specific plan for the specific development of the city. The Planning Commission are administrators of the City Zoning Ordinance and Subdivision Ordinance. Develop the future vision: Legislative recommendations to Council: Adoption of local laws, policies or regulations of general applicability.

What would you like to accomplish as a commissioner?*

Affordable housing.

I would like to accomplish a partnership with local employers who are having difficulty moving into areas with their company but find that their employees cannot afford to live in the city they are employed in. I want to find ways either through grants, below market real estate, or reduction in rent through a tax credit for the owner of the property.

What are the greatest opportunities facing the community in regards to this commission?*

Affordable housing. How do we as a city entice/incentivize employers to come into Morgan Hill and have them not concerned with their employees commuting from other cities because of the expense of living is too high for the employee.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

james dill

Date*

3/5/2019

1:30 PM

Dear Morgan Hill City Council,

I am interested in being a member of the Morgan Hill Planning Commission and ask that you consider me for one of the current open seats. I am no stranger to the Morgan Hill area having moved to Morgan Hill fifteen years ago. As you probably recall, I ran for the position of Planning Commission several year ago. I am serious in my commitment to Morgan Hill's expansion and our residents.

As an interested member of our community and an active Realtor for the past fifteen years, I would like to volunteer my time, skills, and talents to assist in planning the future of our town. I am Community Emergency Response Team (CERT) member and an active member of our real estate community.

My interest in seeking appointment to the Planning Commission is my deep desire to serve the city of Morgan Hill; it is my home. My recent experience with the development of parts of the Morgan Hill's expansion plan and the knowledge of the city with my desire of affordable housing, makes me an ideal candidate for the commission.

These experiences have provided me the opportunity to better understand the challenges of managing our growth, improving our infrastructure, and further developing our business'.

I respectfully request your support in being appointed to the Morgan Hill's Planning Commission.

Thank you for your consideration.

James Dill

JAMES DILL

Morgan Hill, CA |

OPERATIONS EXECUTIVE

Higher Education / Leadership & Development / Instructional Design / Human Resources

Professional Summary:

- Repeated success guiding sizeable, cross-functional operations, excelling in instructional design projects, driving the theory and practice of design, development, utilization, management, and evaluation of strategies and resources for learning.
- Spearhead identification and analysis of gaps in knowledge, collaborating with subject matter experts to resolve issues and develop learning strategies while implementing theory and research processes to design and employ learning materials that produce successful outcomes for learners.
- Expertise in streamlining, organizing, restructuring, and managing high-end environments leading to successful achievement of goals and objects through proficiency in forecasting, budgeting, financial analysis and strategic planning.
- Recognized for exceptional drive and progressive experience in designing instructional management systems, evaluating eLearning materials, designing and revamping new and established learning models, implementing feedback from program reviews, and delivering professional development focused on innovations in both learning design and education.

Areas of Expertise:

- Design Thinking Models
- Risk Analysis/Management
- Emergency Response
- Process Redesign
- Statistical Analysis
- Instructional Design Theory
- Innovative Delivery Methods
- Needs Assessment
- Project Management
- Content Development
- Learning Resources
- eLearning Expertise

Notable Career Achievements

Propelled operational success of multiple organizations through extensive interdisciplinary knowledge, cross-cultural competency, as well as commitment and passion for learning and technology, effectively communicating both visually and verbally and designing measurable objectives based on the learner's needs.

Piloted dozens of instructional design projects, developing appropriate instructional strategy and structure which reflects an understanding of the diversity of learners.

Drove increased membership into Realtor Association for Professional Standards through cultivation of relationships in the community and collaboration with key stakeholders, including the District Attorney.

Streamlined successful professional development, mentoring new agents in contracts, disclosures, and real estate transactions, coaching new Presiding Officers through Code of Ethics and Arbitrations hearings, and guiding real estate agents in the industry.

*Instrumental in **innovative business consultation**, facilitating entrepreneurs through the startup process.*

*Recognized as **Chair of the Professional Standards Board**, providing services to other real estate associations.*

Spearhead conflict resolution among stakeholders, mediating between the public, agents, and brokers in real estate transactions.

*Orchestrate high end events resulting in **successful fundraising efforts** in the community.*

*Integral in **accessing funds for veterans** as the Chair of the Veterans homeless committee, dedicated to assessing need and prioritizing funds to service organizations.*

Career Experience

Assessment & Evaluation | 2016

StaffMark

Instructional Designer & Trainer, Contractor | 2016

Henkels & McCoy Green Cadre / Work2future, State of California Program

- **Courses Taught:** *fundamental instruction in the green environment, green construction practices, and green building rating systems. Instructed, First Aid/CPR/AED/ for adult/child/pediatric including choking and Blood Borne Pathogens.*
- **Training Program Design & Development:** *Business Analysis, Project Management, Business Planning, Critical Thinking, Entrepreneurship, Introduction to Computers (Microsoft Suite, Word, Excel, and Power Point), Project Management, and Project Management Warehouse.*

Regional West Coast Manufacturing Learning Manager 1999-2001

Instructional System Design & Evaluation Manager | 2001

Flextronics International, San Jose, CA

Instructional Designer, Lean Manufacturing | 2012

Cisco Systems

Teaching Experience

Employment Development Department | Community Emergency Response Team | Flextronics International | Henkel's & McCoy | KLA – Tencor | San Jose Metropolitan Adult Education, Aviation | Santa Clara County Association of REALTORS | South County REALTORS Alliance | West Valley & Mission CC | Wings West Airline/American Airlines Regional Airline | Work2Future

Additional Experience

Owner/Operator | Aviation World, Flight School

Pilot | American Airlines Regionals

Educator/Trainer | San Jose State University, Aeronautics | Ground School | Flight Simulation | Aircraft Operation

Steering Committee | Bay Area REALTOR® Leadership Academy (BARLA)

Educational Background

Ed.D. Curriculum & Instruction | University of San Francisco

Business Analysis | San Jose State University

B.A. Psychology - Sociology | San Jose State University

Instructional Technology | San Jose State University

Human Resource Management | University of Santa Cruz

Instructor Certification | American Red Cross

First Aid / CPR / AED / Adult / Child / Pediatric | American Red Cross

Blood Borne Pathogen | American Red Cross

Certified Flight Instructor | Federal Aviation Administration

Commission Application

Name (First and Last)*

e-mail address:*

Home Phone Number:*

Cell Phone Number:*

Home Address:*

City:*

Occupation:*

Are you a registered voter?*

Do you have any relatives currently employed by the City of Morgan Hill?*

Please list any properties you own in Morgan Hill.*

Laura Gonzalez-Escoto

Morgan Hill

Retired local government

Yes ▼

No ▼

Information regarding the Planning Commission:

Information regarding the Parks and Recreation Commission:

Information on the Library, Culture, and Arts Commission:

Please indicate which commission your are interested in serving on. *

Please indicate the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload cover letter/letter of interest.

Please upload resume.

Have you ever served on any other citizen advisory commissions or committees? If yes, please list and briefly explain the purpose of each one.*

[Planning Commission](#)

[Parks and Recreation Commission](#)

[Library, Culture, and Arts Commission](#)

Planning Commission ▼

[Laura Gonzalez Planning Commission cover ltr.docx](#)

[Resume Planning Commission.docx](#)

Please see resume.

What skills and experience do you believe would be important to your role as commissioner?*

The lens I bring includes professional knowledge of development issues, problem solving abilities, former experience of serving on the Planning Commission and expertise in affordable housing which is of primary importance to all cities in CA.

What do you believe to be the role of the commission and why would you like to serve on this commission?*

The Commission serves as an advisory body to the City Council on development and issues and challenges related to development and City growth. I believe the Commission will work best with a healthy mix of long time residents and newcomers, and gender and cultural diversity. I can add to this diversity mix.

What would you like to accomplish as a commissioner?*

I would like to be a responsible, productive and contributing member to the Commission.

What are the greatest opportunities facing the community in regards to this commission?*

Attachment: Laura Gonzalez-Escoto Application Package_Redacted (2289 : Planning Commission Interviews)

Challenges and opportunities are often intertwined. I believe timely concerns include 1. development of an affordable housing plan 2. implementation of the approved General Plan while remaining open to changes to the Plan based on current conditions and climate 3. investing in a respectful culture since development and community growth are areas that "hit home" and have deep impacts.

If you are an incumbent seeking reappointment:

Are you currently serving on a committee?

Are you next in line to serve as Chair or Vice-Chair?

Are you assigned to a special project?

If you are assigned to a special project, please identify the project:

☐ Yes

☐ No

☐ Yes

☐ No

☐ Yes

☐ No

Please read the City Council Ethics:

Please type name and date to sign.

By my signature, I agree to comply with all government regulations, should I be

appointed to serve on a City of Morgan Hill Commission or Committee

and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities which

I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings

to which I am appointed, unless excused by the Chair.*

[Ethics Policy](#)

Laura Gonzalez-Escoto, 4/2/2019

* indicates required fields.

Attachment: Laura Gonzalez-Escoto Application Package_Redacted (2289 : Planning Commission Interviews)

Laura Gonzalez-Escoto

Morgan hill, CA. 95037

Honorable Mayor Rich Constantine
And Members of the City Council
City Hall
Morgan Hill, CA. 95037

Dear Mayor Constantine and Members of the City Council,

Thank you for your consideration of my application for the City of Morgan Hill Planning Commission. I am interested in serving out a two (2) year term for a seat vacated by newly elected City Council member/s. I bring experience as a former Planning Commissioner as well as a former local government employee with deep knowledge about development in general and intensive knowledge about affordable housing. I am also a long-time resident, having lived primarily in the City's downtown since 1977. I also bring the perspective of women, and at this time of my life, of seniors as well. Additionally, as a Latina, I bring a unique lens to development issues. I am proud of the diverse make-up of the City Council and I believe the City's Planning Commission should be equally diverse. Thank you for your consideration.

Sincerely,

Laura Gonzalez-Escoto

I

LAURA GONZALEZ-ESCOTO

Morgan Hill, CA. 95037

STRENGTHS and EXPERTISE

- Confident public speaker.
- Strong analytical and experience-based foundation in redevelopment, including in-fill development, in-fill development, mixed use, project coordination and management and environmental remediation.
- Highly experienced in the development of award-winning affordable housing programs, policies and development.
- Over 20 years of local government experience primarily in redevelopment, affordable housing, and general management.

EXPERIENCE

CITY OF FREMONT, CALIFORNIA

Redevelopment Agency Director, 2004-05

Assistant Redevelopment Agency Director, 2001-04

Special Assistant for Housing, 1998-01

Initially hired as a Special Assistant for Housing to help the City articulate its vision for affordable housing. The Council approved a Five Point Program for Affordable Housing and strong community support was developed. Became a permanent employee and was hired as Assistant Director with primary responsibility for the affordable housing program. Eventually promoted to Director and worked hard to preserve the historic heritage within the Redevelopment Agency's three (3) project areas while advancing a strong economic development vision. Launched the commercial façade improvement program, expanded the housing rehabilitation program, and worked to acquire numerous parcels for redevelopment, engaged in extensive clean-up activity, relocation and development negotiations.

MACSA, San Jose, CA

Project Director, Mayfair Neighborhood Improvement Project, 1997-98

Working with hundreds of community and neighborhood leaders, government representatives and community organizations, and under the umbrella of the premier Latino service agency, MACSA, developed and mobilized a coalition to form a shared vision to improve the Mayfair neighborhood located in East San Jose. This successful articulation of improvement strategies embodied in a strongly supported neighborhood improvement plan resulted in an initial investment of \$5 million from the Flora and Hewlett Packard Foundation to launch the improvement plan.

SAN JOSE REDEVELOPMENT AGENCY**Project Coordinator, 1996-97**

Worked within the Project Management Division to coordinate the Guadalupe River Park Project, a massive flood control project that also included extensive urban development of parks, pathways, signage and development along the river. Partners included State Fish and Game, the City of San Jose, the Santa Clara Valley Water District, and two community committees consisting of elected officials and community leaders.

STATE OF CALIFORNIA, ASSEMBLYMAN JOHN VASCONCELLOS**Field Representative, District Office, San Jose, CA, 1984-85**

Responded to constituents and represented the Assemblyman locally at numerous events. Issue areas included taxation, seniors, transportation and housing.

SOUTH COUNTY ALTERNATIVES**Co-founder and first Director, La Isla Pacifica Shelter for Abused Women, Gilroy, CA 1977-84**

Co-founded and directed the first and only Shelter for abused women in South County which is still operational under the umbrella of Community Solutions. This award-winning Shelter was one of the first bi-lingual (Spanish) shelters in the State. Helped to lead the formation of the California Women of Color Coalition against domestic violence. Selected by the California State Police Academy (POST) to participate in preparing the first general orders and training module for all California Police Departments in responding to domestic violence.

EDUCATION

Bachelor of Science, Human Resources and Organizational Behavior]
University of San Francisco, 1985

COMMUNITY SERVICE

Currently on the Board of Directors for the Edward Boss Prado Foundation and serve as the volunteer liaison between Cecelia's Closet and Food Pantry (a Foundation program) and the Morgan Hill Unified School District who send family referrals. I am a long-time active supporter of what is now the Silicon Valley Boys and Girls Club and a current volunteer reading tutor. Served on the Downtown Association Board and helped to launch a resident's subcommittee. Served as the City of Morgan Hill Citizen's representative to the County Housing and Community Development (HCD) citizen's Committee. Served on the City of Morgan Hill Economic Development committee formulated in response to the demise of the Redevelopment Agency. Volunteer for many community-wide events.

Print**Commission Application - Submission #15201****Date Submitted: 3/4/2019****First Name**

Malisha

Last Name

Kumar

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

C-Level Executive

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

Our family owns a home at _____ and commercial building at _____ in Morgan Hill.

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Malisha Kumar Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Library, Culture, and Arts Commission ▼

Please upload a letter of interest or cover letter*

Kumar_Malisha_Cover_Letter.pdf

Please upload a resume*

Kumar_Malisha_Resume_2019.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No

What skills and/or experience do you possess that would be important to your role as a commissioner?*

My career was spent working with my family in a small business. Because of this, I have a unique ability to take the 3rd person point of view. I have learned to step back from problems and analyze it from all directions. I enjoy coming up with strategies to meet targeted goals especially when the goal seems almost out of reach. Finally, I have excellent critical thinking skills which allows me to take large amounts of information and process it down to the fine details.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the commission is to serve as an advisory board to the city council regarding planning and development in the city. The commissions job is to work to ensure that the general plan of the city is being implemented while saving money, improving economic development, and improving the quality of life in our city. But most importantly, it is the role of the commission to connect the people of Morgan Hill to its community, giving them a sense of place.

As a resident of Morgan Hill and former family business owner, I would appreciate the opportunity to help this city grow while keeping the community in mind. Our city has so much potential and I am excited to see what this town does with the opportunities it is given.

Attachment: Malisha Kumar Application Packet_Redacted (2289 : Planning Commission Interviews)

What would you like to accomplish as a commissioner?*

As a planning commissioner, I hope to contribute to the positive growth of our city. I hope to help guide the city in seeing the its goals come to fruition. Mostly... I want to give back.

What are the greatest opportunities facing the community in regards to this commission?*

The community has so many great opportunities with the planning commission. With the commission the city has the opportunity to come together, find its identity and innovate. Now more than ever, with our heightened political awareness, this community has the opportunity to shape this town and have a voice.

If you are an incumbent seeking reappointment:

Are you next in line to serve as Chair or Vice-Chair?

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Malisha Kumar

Date*

3/4/2019

10:00 AM

Malisha Kumar

| Morgan Hill, CA 95037

(

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

Dear City of Morgan Hill;

Since attending city council meetings over the past year, I have become very interested in the on goings of the city and its commitment to the community. I saw that there is an opening on the Planning Commission and I am very excited to be considered for the opportunity to work with the members of the Planning Commission to see the vision of the City fulfilled.

A resident of Morgan Hill and having run a business in town, I bring a new perspective to planning. I have a unique ability to be objective and to see beyond what the current situation is presenting us and to look ahead to the consequences of a decision.

I hope you will consider me to fill the vacancy on the Planning Commission and I look forward to meeting with those involved.

Kind Regards,
Malisha Kumar

Attachment: Malisha Kumar Application Packet_Redacted (2289 : Planning Commission Interviews)

Malisha Kumar

| Morgan Hill, CA 95037

Qualifications

For over 20 years I have had the unique opportunity to work for a family owned manufacturing business. From running the day-to-day business to becoming part of the leadership team, I have 20+ years of experience in supply chain management and optimization, inventory optimization, and strategic planning. Strategy and how supply chain and operations can positively impact the overall goals of the business is my passion. I am a quick thinker, adaptable, and can effectively bring people together to solve a problem and exceed company expectations.

Professional Experience

AHK Electronic Sheet Metal, INC

Morgan Hill, CA

Consultant

November 2016 – January 2017

- Following the successful acquisition of AHK, I worked to ensure a successful transition between the outgoing and in-coming management teams in order to keep service to the customers seamless.

CEO/Vice-President of Operations

2010-2016

- Worked with the owner to strategically plan the negotiation and successful acquisition of AHK.
- Oversaw the development of strategic plans to advance the company's mission and objectives and to promote revenue, profitability, and growth. Outcomes showed continued growth in employee hiring (45 total employees) and increases in overall revenues.
- Oversaw the development and continuous improvement of the ISO 9001:2008 quality system including quality objectives, preventative action measures and continued process improvements. Audits consistently reported 0 major non-conformances year over year.
- Worked with company supervisors to investigate and implement ideas for quality improvement, increasing productivity, and reducing cost using analytical and quantitative methods. Cost reductions measured between 1-2% of unit cost year over year depending.
- Developed and successfully managed processing schedules and production orders concerning inventory requirements, staffing requirements, work procedures and duty assignments, considering budgetary limitations, time constraints and forecasts.
- Implemented performance, quality and efficiency measures to achieve aggressive production goals. Maintained a consistent record of 99% on time delivery for all customers.
- Used measurements, analysis and process alternatives to arrive at best practices and potential for value added services such as subassembly.
- Collaborated with a high functioning team researching and developing a foreign expansion plan for the company to enter into lower cost regions. This report was presented to the owner for consideration.
- Drove daily production activities with effective communication and leadership.
- Worked closely with customers to improve customer relationships and to meet customer requirements.

Operations Manager

2005 – 2010

- Responsible for ensuring the company provides outstanding products and services to its customers through high quality, competitive costs, and on-time delivery.
- Worked closely with the executive team to drive the continuous improvement of production processes. Process improvements included acquiring a specialized ERP system to help track production flow and allow for more accurate costing.
- Responsible for supporting the operation's overall business strategy by providing leadership and direction to the operations of the facility.

Malisha Kumar

| Morgan Hill, CA 95037

- Worked with management to add painting to the production process. This significantly reduced outside service cost (~\$100,000 per month) and allowed for further cost reductions to the customers.
- Advised on the acquisition of a Strippit CNC Laser in order to add capacity to the shop floor. Considerations included cost, production volume to support the purchase, training and customer need.
- Advised on the acquisition of an Amada Fabri-Vision Inspection machine in order to ensure a higher standard of quality for the customer.
- Responsible for the implementation and management of the ISO 9001:2008 quality system.

Office Manager

1999 – 2005

- Responsible for the day-to-day activities of the office and office staff including order fulfillment, customer service, inventory management, purchasing and payroll.

Education

Santa Clara University

Santa Clara, CA

- *Master of Business Administration* *June 2017*
 - ❖ *Authored two case studies based on my own experiences. Both case studies will be used within Santa Clara University's School of Business.*
VK Precision Sheet Metal, INC: A Case Study (A, B)
 - ❖ *Spring 2017 Capstone Project: A deep dive analysis of Intel's acquisition of Mobileye and the strategy behind it.*

Stanford Graduate School of Business

Palo Alto, CA

- *Certificate: Executive Program for Women Leaders*

*May 2015***Santa Clara University**

Santa Clara, CA

- *Bachelor of Science in Anthropology*
 - *Emphasis in Human Services*

*June 1999***Additional**

- Participant in the Design Challenge of Redesigning Work to Increase the Presence of Woman Leaders | Stanford Graduate School of Business | July 2016
- Championed Jacob's Walk for CURED: A 5K walk to raise money for medical research for Eosinophil Disease.
- Highly active in the Autism Awareness community, Eosinophilic Awareness community and advocate for parents with children with special needs.
- Professional Certificate in Cannabis Science and Medicine, University of Vermont 2018
- Volunteer with 4H Market Sheep Project 2017
- Member AAUW
- Member Rotary Morgan Hill
- Volunteer at Cecelia's Closet & Food Pantry, Morgan Hill
- Volunteer at South Valley Community Theater, Morgan Hill

Print**Commission Application - Submission #15381****Date Submitted: 4/9/2019****First Name**

Paul

Last Name

Morgan

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

GIS Analyst

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Paul Morgan Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

PaulMorgan_Letter_PlanningCommission.pdf

Please upload a resume*

PaulMorganResume_PlanningCommission.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I have not served on any citizen advisory commissions or committees in Morgan Hill.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I have a unique set of skills and experience that will add value to the Planning Commission. My undergraduate training was in Planning and Resource Management. As a graduate student, my thesis focused on using Geographic Information Systems (GIS) to detect land use change. My career includes over 20 years in the geospatial technology industry where I currently work as a GIS Analyst. I have also owned and operated small businesses and been a part-time Geography Instructor at several Community Colleges in the Bay Area. Beyond my education and career experience, I feel I have strong interpersonal skills and am good at respectfully listening to and considering multiple viewpoints. I work well both in group settings and on an individual level.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The Commission serves as an advisory body to the City Council relative to planning issues. The role of the Planning Commission is to help ensure that development and growth follow the principles and objectives of the City's General Plan.

Attachment: Paul Morgan Application Packet_Redacted (2289 : Planning Commission Interviews)

What would you like to accomplish as a commissioner?*

As a commissioner, I would like to help ensure the long-term interests of the entire community as it applies to land use and development. I would like to help make sure we are providing a full mix of development opportunities and types that efficiently use resources while preserving open space areas.

What are the greatest opportunities facing the community in regards to this commission?*

The greatest opportunities facing Morgan Hill are to continue to enhance and preserve the character the makes our community a desirable place to live, work and play. Morgan Hill can continue to distinguish itself in the region as a unique and vibrant community.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**☐ Yes☒ No**Are you currently serving on a committee**☐ Yes☒ No**Are you assigned to a special project?**☐ Yes☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Paul Morgan

Date*

4/9/2019

12:45 AM

Morgan Hill City Clerk

April 8, 2019

To Whom it May Concern:

With this letter and online submissions, please find the necessary application and documentation for consideration to serve as a member of the Morgan Hill Planning Commission.

As a relatively new resident to Morgan Hill, I have quickly grown to appreciate the wonderful community that I now call home. Morgan Hill staff and leaders have clearly invested in the planning process and created a vision for the City's future. As a citizen, I would like to help guide and shape that vision.

My education and experience provide a good foundation to serve as a Planning Commissioner. My undergraduate degree is in Geography with an emphasis on Planning and Resource Management. In my graduate studies, my thesis studied the use of Geographic Information Systems (GIS) to detect and monitor land use changes. The bulk of my career has been in mapping and geospatial technology. I have also owned small businesses and am aware of the impacts that the business community faces relative to zoning and land use issues. In the early 2000s, I was appointed as a member of the City of Logan, Utah Planning Commission where I served nearly 3 years before returning to the Bay Area.

Growing up in the Bay Area, I have a great appreciation for this unique part of the world. Morgan Hill is navigating the challenges faced with increasing development demands. Providing a proper balance of opportunities for its residents, businesses and visitors while preserving and enhancing their quality of life and wisely using their resources is an ongoing endeavor that I hope to play a small part in.

I appreciate your time and consideration.

Respectfully,



Paul Morgan

PAUL MORGAN, GISP

Morgan Hill, CA ·

OBJECTIVE

Consideration for opportunity to serve as a member of the Morgan Hill Planning Commission.

PROFESSIONAL EXPERIENCE

GIS ANALYST

Santa Clara County Fire Dept.

06/15-PRESENT

Los Gatos, CA

- Coordinate GIS and mapping to support Fire Department Operations

OWNER

Mapworqs, LLC dba Geographic Journeys Tours

04/18-PRESENT

Morgan Hill, CA

- Oversaw operations, marketing, financial and personnel of two franchise locations

PART-TIME LECTURER

Diablo Valley, De Anza, Las Positas and Ohlone Colleges

1/07-PRESENT

Bay Area, CA

- Teach Physical Geography Lecture & Lab, California Geography and Geographic Information Systems

FIRE GIS ANALYST

Alameda County Regional Emergency Communication Center/Alameda Co. Fire Dept.

05/06-06/15

Livermore, CA

- Coordinate GIS and mapping for Fire and EMS 911 Dispatch Center

OWNER

Gandolfo's Deli

03/03-03/07

Logan, UT

- Oversaw operations, marketing, financial and personnel of two franchise locations

GIS ADMINISTRATOR

City of Logan

1/01-03/03

Logan, UT

- Coordinated all aspects of GIS and geospatial technology for the City of Logan, UT

GIS SPECIALIST II

City of Logan

8/97-12/00

Logan, UT

- Responsible for daily operation and maintenance of Logan City's GIS

CIVIC and COMMITTEE EXPERIENCE

TECHNICAL COMMITTEE MEMBER

National Fire Protection Association (NFPA)

12/08-PRESENT

Quincy, MA

- Serve on National Fire Protection Association (NFPA) Technical Standard Committee for Data Exchange in the Fire Service (NFPA Standard 950/951)

PLANNING COMMISSIONER

City of Logan Planning Commission

06/03-05/06

Logan, UT

- Served as an Planning Commissioner for the City of Logan, UT

EDUCATIONAL TRAINING**MASTER OF SCIENCE***Utah State University***10/94-12/00***Logan, UT*

- Completed Masters Degree in Geography with emphasis in GIS
- Thesis topic: "The Integration of GIS and Aerial Photography Techniques for the Study of Urban Land Use in Logan, UT"

BACHELOR OF SCIENCE*Brigham Young University***1/89-4/94***Provo, UT*

- Received undergraduate degree in Geography--emphasis in Planning and Resource Management

Print**Commission Application - Submission #15387****Date Submitted: 4/10/2019****First Name**

Sally

Last Name

Casas

Address1**Address2****City**

Morgan Hill

State

Ca.

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Para Educator

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill

N/A

Do you have any relatives currently employed by the City of Morgan Hill?

No ▼

Attachment: Sally Casas Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Planning Commission ▼

Please upload a letter of interest or cover letter*

Sally Casas_Cover Letter.docx

Please upload a resume*

Sally Casas_Resume .docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I served on the parks & recreation and downtown planning committee workshops with community members to design parks and beautification of the Morgan Hill downtown area. I also participated in the Downtown Association for several years.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I have personal experience living in low income housing studios. I have been a member of the Morgan Hill Community Garden for 10 yrs and serve on their Oversight Committee.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the Planning Commission is to decide allocations and land use; building growth and zoning. The commission is responsible for soliciting community input by organizing workshops for resident participation. Ultimately, reporting to the Economic Developing Department and City Council. I have grown roots in Morgan Hill since December of 2000 when I moved back to the Bay Area via Los Angeles. I work and live in Morgan Hill. Graduating from the 2014 Morgan Hill Leadership Program gave me an in-depth view of Morgan Hill economic landscape as well as the intricacies of City Government.

What would you like to accomplish as a commissioner?*

I would love to start a conversation on creative ways to meet our housing goals. By investigating, collaborating and planning with commission members my vision would be an all inclusive housing plan benefiting the present and future Morgan Hill population.

What are the greatest opportunities facing the community in regards to this commission?*

A greatest opportunities facing the community in regards to the planning commission will be the willingness of the commission to "think out of the box" in terms of striving for viable and sustainable housing solutions.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Sally Casas

Date*

4/10/2019

10:45 AM



SALLY CASAS

, Morgan Hill, CA, 95037 |

4/8/19

City Clerk's Office
Morgan Hill
11575 Peak Ave, Morgan Hill, CA 95037

Dear Recipient:

In my eighteen-year career as a Para Educator I've worked in a variety of community schools with teachers, students and administrators diverse in personalities and teaching styles as an itinerant Para Educator. My focus above all were the student's academic needs. Working at one school with incarcerated youth at Boys James Ranch in Morgan Hill was the position I chose in 2007.

My choices in volunteer work are related to my passion to be a productive community member using whatever skills I have accumulated. Such as my time with the Downtown Association, the Morgan Hill Community Garden and most important Leadership Morgan Hill 2014. The skills I have gained from my volunteer and work experience is why I would be a good fit for the position.

In my present job I collaborate with teachers, administrators, mental health providers and probation staff and their supervisors for guidance and to share important behaviors exhibited by the students during class time. I have honed my verbal and written communication skills to relay information throughout the day.

I would love the opportunity to discuss how I can contribute to your team. Thank you in advance for taking my application to this position into consideration, I look forward to hearing from you.

Sincerely,

Sally Casas



SALLY CASAS

, Morgan Hill, CA, 95037| (

OBJECTIVE

Working in collaboration with other members of the Planning Commission, City of Morgan Hill

EXPERIENCE

Santa Clara County of Education

Para Educator | April 2001

- Tutoring incarcerated youth at the lock down facility: Blue Ridge High School at Boys James Ranch. I work with students that have IEP's and general ed. students in the classroom supporting them in English, Math, History, Science, etc.

EDUCATION

Associate Degree in Automotive Repair Technology | Cerritos College | Graduated in May of 1989

Associate Degree in Administration of Justice | Cerritos College | Graduated in December of 2000

AWARDS AND ACKNOWLEDGEMENTS

- People Acting in Community Together Award (2008)
- Graduate of 2014 Leadership Morgan Hill

VOLUNTEER

- Restorative Justice Program (2003)
- El Torro after school Tutoring Program for Elementary Students (2003 - 2005)
- Downtown Association (2004 – 2008)
- 500 Mile Native American Marathon Run (2004 – 2009)
- Morgan Hill Community Garden (2009 – Present)
- Cecelia's Closet (2016 – Present)

Print**Commission Application - Submission #15224****Date Submitted: 3/7/2019****First Name**

Victor

Last Name

Gaxiola

Address1**Address2****City**

Morgan Hill

State

California

Zip

95037

Home Phone Number

)

Cell Phone Number

)

email address**Occupation**

Investment Advisor Representative

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

Attachment: Victor Gaxiola Application Packet_Redacted (2289 : Planning Commission Interviews)

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Please upload a letter of interest or cover letter*

PlanningCommissionCoverLetter.VictorGaxiola.docx

Please upload a resume*

VictorGaxiola-2019.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I served on the Library, Culture and Arts Commission in Morgan Hill- helped make recommendations on city art projects and library needs.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

In both my personal and professional life I've had the good fortune to have developed a wealth of experience collaborating with others and making key decisions. I've been an appointed trustee on a library board, served on the Library, Culture and Arts Commission in Morgan Hill, and was President of the Leadership Morgan Hill Board for one year as part of a three year term.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

I understand that it is our responsibility to assist and provide advice and recommendations to the city council on matters regarding city growth and development. I would like to serve because I grew up in this community and know that it is going to continue to grow. I'd like to be involved in the process to make measured steps in that growth for the benefit of our community.

What would you like to accomplish as a commissioner?*

I would like to be a good steward of our citizens and get closer to the inner workings of our local government.

Attachment: Victor Gaxiola Application Packet_Redacted (2289 : Planning Commission Interviews)

What are the greatest opportunities facing the community in regards to this commission?*

I think the greatest opportunities facing the community is the growth we are likely to experience in the next decade. We want to be sure that the growth matches the needs of our community while maintaining both the standard of living that our citizens expect while attracting new businesses and neighbors.

If you are an incumbent seeking reappointment:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☒ No

Are you currently serving on a committee

- ☐ Yes
☒ No

Are you assigned to a special project?

- ☐ Yes
☒ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Victor Gaxiola

Date*

3/7/2019

5:00 PM

VICTOR GAXIOLA

, Morgan Hill, CA 95037 |

March 7, 2019

Dear City of Morgan Hill and its citizens,

I am submitting my application to serve on the Planning Commission of the City and fill one of the vacant seats available. Having grown up in this city, and as a small business owner, I take great pride in being a part of its ongoing development.

I wish to serve and represent the citizens of this city by providing guidance and advice to our City Council on matters related to city growth and development. I have experience serving on boards and commissions and am familiar with the protocol as well as the responsibility placed on those who participate. I served on the Public Library the Library, Culture & Arts Commission in Morgan Hill, was a graduate of Leadership Morgan Hill, class of 2009, and for three years was on the Leadership Morgan Hill Board- my final year as President.

Our city is growing, and will continue to grow, and it's vital that we take measured steps to ensure that we make great decisions along the way. I'd like to be part of the process and give back to the community that has given me so much throughout the years.

Sincerely,

Victor Gaxiola

Attachment: Victor Gaxiola Application Packet_Redacted (2289 : Planning Commission Interviews)

VICTOR GAXIOLA

INSIGHTS AND LEADERSHIP FOR A DIGITAL FUTURE

I am a financial services and wealth management leader with a passion for digital innovation. Drawing from diverse industry experience across competitive and fast-paced environments, I combine strategic vision and creative leadership to empower financial success. Whether promoting innovative strategies as an industry thought leader, or developing relationships as an award-winning consultant, I provide the knowledge and tools to promote adaptation and growth.

CAREER HISTORY



01/2019 - Present // Morgan Hill, CA
Tech Girl Financial - Co-Founder & Investment Advisor Representative



8/2017 - 7/2018 // Remote & Knoxville, TN
Lirio LLC - VP Behavioral Marketing (formerly VP Sales & Marketing)



3/2014 - 8/2017 // San Francisco, CA
Hearsay Systems - Head of Customer Advocacy



5/2012 - 3/2014 // Redwood City, CA
Actiance - Subject Matter Expert for Social Media Marketing



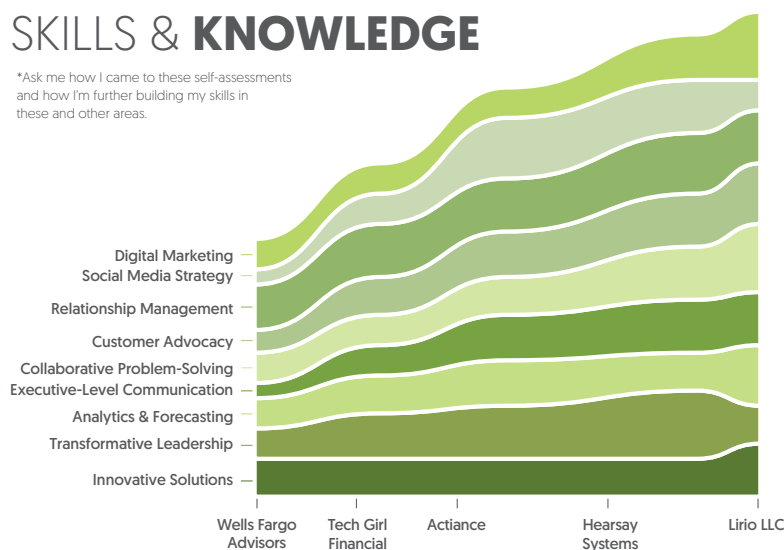
10/2010 - 5/2012 // Morgan Hill, CA
Tech Girl Financial - Co-Founder & Financial Advisor



8/2004 - 10/2010 // Woodstock, IL & San Jose, CA
Wells Fargo Advisors - Financial Consultant

SKILLS & KNOWLEDGE

*Ask me how I came to these self-assessments and how I'm further building my skills in these and other areas.



MAJOR IMPACTS

With Lirio, I spearhead the launch of our **Behavioral Finances software** program to the wealth management industry, partnering with Investcloud to develop an **AI-driven risk profile system**.

At Hearsay Systems, I expanded the size of our Customer Advisory Board **by 300%** while introducing a new **integrated regional meeting network** that included teams in major cities across the nation.

INDUSTRY ENGAGEMENT

I take pride in my engagement with the industry and the general public, contributing articles, interviews and think pieces for a diverse range of media outlets.

benefitsPRO

ThinkAdvisor

FAMILY WEALTHREPORT

FA

AB

RIABiz

San Francisco Chronicle

InvestmentNews

proactive advisor magazine

ORICentral

B BrightTALK

Wealth Management.com

EDUCATION



1989 - 1993
**B.A. Interpersonal Communication
Studies University of California
Los Angeles (UCLA)**

BY THE NUMBERS

29+

years of career experience as a digital strategy consultant and marketing innovator across the banking, hospitality, transportation, financial services and technology industries

70+

appearances and speaking engagements as a thought-leader in sales, marketing and client relationship management

25K+

downloads of my Hearsay Systems podcast, where I discuss business and financial strategy with over 100 industry leaders

500%

growth in attendance for annual Hearsay Summit by leveraging social media exposure and influencer networks

\$40M

in assets under management with Tech Girl Financial

\$100K

in short-term marketing expenses avoided by re-orienting marketing strategy, providing a scalable, extensible solution to securing greater technology access for financial advisors

WHAT THEY SAY

"Victor has a great eye for spotting trends and reading audiences. **His insight and personability make him an asset to our industry** as well as a strategic thought leader within our professional community."

Amy Webber, President and CEO of Cambridge Investment Research

"**Victor brings fresh creativity and builds quality relationships** with both clients and internal teams. He is a pleasure to work with!"

Clara Shih, CEO + Founder of Hearsay Systems

"Not everyone shines under pressure and adapts to change, but **Victor seemed to thrive on managing unexpected hurdles or clarifying complex ideas** to customers and executives alike."

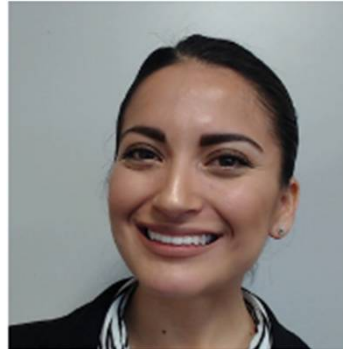
Jeremy Floyd, Founder of Lirio LLC

Welcome New Teammates



Reema Andrade
Municipal Services Assistant

Brenda Gonzalez
Police Officer Recruit



Eddy Gutierrez
Police Officer



Welcome New Teammates



Jared Huddleston
Animal Services Officer



Raksha Poria
Legal Specialist



Sarah Una'Dia
Police Officer



Teammate Promotions

Victor Benitez

Multi-Service Officer to Police Officer



Tim Conlon

Utility Worker I to Utility Worker II



Mario Jimenez

Assistant Engineer to Associate Engineer

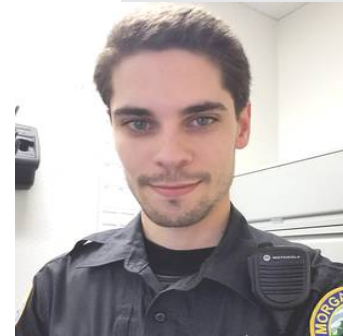


Teammate Promotions



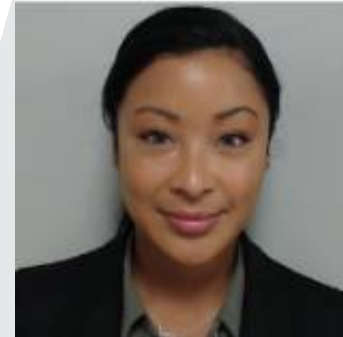
Tyler Pecsok

Animal Services Officer to
Multi-Service Officer



Kira Sareli

Police Officer Recruit to Police Officer



Retirements

Toni Maiquez

Public Safety Dispatcher
28 Years of Service



Kathi Bailey

Paralegal
21 Years of Service



April

Developmental Asset #9

Service to Others

Young person serves in the community one hour or more per week.

How does this take place in our community?

- o Many community events where people can help out.
- o New opportunities provided by the city.
- o Provide food for people in need.
- o Creek cleanup for people to volunteer.

How this applies to YAC?



- o YAC takes pride in helping our community.
- o We get to know our community.
- o We help put on various events:
 - 50+ Ball
 - YLMH
 - National Night Out
 - Taste of Morgan hill
 - Morgan Hill Library Events
 - Art a la Carte
 - Earth Day
 - Get Fit



April Complementary Asset #8 Youth as Resources

Young people are given useful
roles in the community.

How youth are resources within the community?

- o Need for youth volunteers.
- o Bonding between different generations.
- o Ways that Youth help in the community:
 - Clubs
 - Helping at community events
 - To make a difference





How would you like the youth to be more involved in our community?





CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

APPROVE SECOND AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Approve Second Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project to a revised not to exceed total of \$583,433; and
2. Authorize the City Manager to execute and administer the amended agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

Upon the passage of the County's Measure B sales tax initiative in November 2016, the Morgan Hill City Council moved to approve a Service Agreement for Design Professionals with Mark Thomas & Company in the not to exceed amount of \$401,873 to complete the design for the Hale Avenue Extension Project. The project involves the construction of a new two-lane multi-modal roadway from the Main Avenue and Hale Avenue intersection to the Spring Avenue and Dewitt Avenue intersection. The service agreement scope of work included: updating and finalizing construction plans and specifications prepared in 2011, the preparation of right-of-way acquisition documents, geotechnical evaluation(s), etc.

A First Amendment was approved by City Council on April 18, 2018 to increase Mark Thomas & Company's scope of work to include; the design of cul de sacs at the ends of Warren Avenue and Nob Hill Terrace, sound wall architectural design support, underground conversion design of overhead utilities, Habitat Agency permit coordination, and design coordination with the Water District's PL-566 Phase II Project. This amendment increased the total not to exceed contract amount to \$494,733.

Upon staff's review of the latest plan set, several plan modifications were identified that would improve traffic movement at the project intersections. There were also a number of value engineering adjustments identified by staff. The increase scope of work will include; alignment modifications to the Spring/Dewitt intersection and the Hale/Main intersection, project lighting modifications and pavement section redesign. The additional design work will improve traffic flow and reduce construction costs. The improvements will also reduce ongoing maintenance costs. Staff therefore recommends that Mark Thomas & Company's scope of work be amended to include these elements at a cost not to exceed \$88,700, as reflected in the Second Amendment.

The Second Amendment would increase the agreement's not to exceed amount to \$583,433 (\$494,733 plus \$88,700). It is estimated that the final design of the project will be completed this summer and be ready to bid pending the availability of Measure B funds, securing the needed right-of-way from PG&E, and obtaining the necessary environmental permits for the project.

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. In addition, the City hired David J. Powers and Associates to complete the Environmental Impact Report (EIR) for the project. This process solicits input from the community regarding environmental impacts from the project. Additional community meetings and input will be required to complete the EIR and staff will make notifications as required by the California Environmental Quality Act (CEQA) process.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with the service agreement amendment at this time and direct staff to wait until more information is available regarding the Measure B funding allocation timing and process. This action could put the project in jeopardy of receiving funding and ultimately delay the construction of the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 18, 2017, City Council approved a Service Agreement for Design Professionals with Mark Thomas & Company to complete the construction plans for the Hale Avenue extension Project for \$401,873.

On April 18, 2018, City Council approved a First Amendment with Mark Thomas & Company for additional scope of work not to exceed \$494,733.

FISCAL AND RESOURCE IMPACT:

The Second Amendment with Mark Thomas & Company increases the agreement amount by \$88,700 to a total not to exceed amount of \$583,433. Sufficient funds and budgetary appropriations are available in the FY 2018-19 through 2023-24 Capital Improvement Program, under the Hale Avenue Extension project, for this Second Amendment. A portion of the projected savings from the reduction in construction costs will be used to cover the increased scope in design services. The total amount

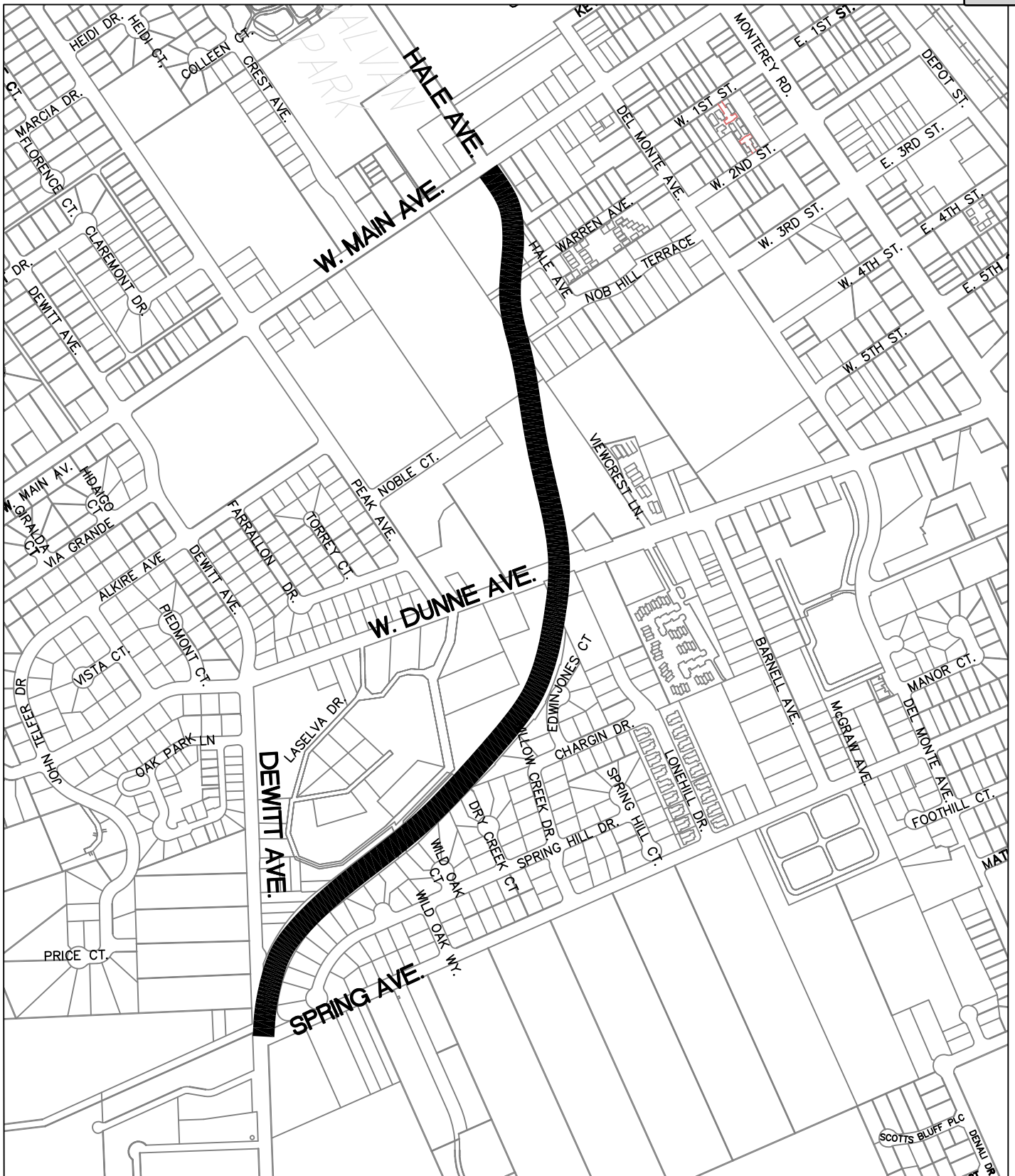
budgeted for FY 2018-19 for this project is \$19,650,000 from Traffic Impact Fund (309), project #546007.

CEQA (California Environmental Quality Act):
Project.

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

LINKS/ATTACHMENTS:

1. Project Location Map
2. Mark Thomas Company 2nd Amendment - Final

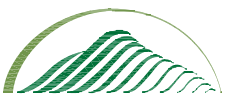


Attachment: Project Location Map (2251 : Second Amendment with Mark Thomas for Hale Extension)

SCALE: NTS

City of Morgan Hill

ENGINEERING & UTILITIES



CITY OF MORGAN HILL

N:\PROJECTS\CIP\STREETS\546007-Santa Teresa Const\Staff Reports\hale plot 8-24-11.dwg

LOCATION PLAN

Hale Avenue Extension

Date: 4/17/19

Drwn by: DIG

PAGE 1 OF 1

Packet Pg. 118

SECOND AMENDMENT TO AGREEMENT MARK THOMAS & COMPANY

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MARK THOMAS & COMPANY, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017 for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO 00/DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 24, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND 00/DOLLARS (\$494,733.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from February 6, 2017 until December 31, 2020. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in revised Exhibit "B" dated March 21, 2019, attached hereto and incorporated herein by this reference."

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

"4.1. Amount. Compensation under this Agreement shall not exceed a total amount of FIVE HUNDRED EIGHTY-THREE THOUSAND FOUR HUNDRED THIRTY-THREE AND No/00 DOLLARS (\$583,433.00) during the term set forth in Section 2 above, and shall be billed based on the rate and basis set forth in the revised **Exhibit B** dated March 21, 2019 for the additional scope of work added by this Second Amendment, attached hereto and incorporated herein by this reference; **Exhibit B** dated February 15, 2018 for the additional scope of work added by First Amendment; and **Exhibit B** dated January 5, 2017 attached to the CONSULTANT AGREEMENT. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement."

D. Pursuant to the terms set forth in Paragraph 4.1 Amount, Compensation is based on the rate and bases set forth in Exhibit B. As of the Effective Date of this amendment, CONSULTANT'S billing rates have increased and are set forth in the revised Exhibit "2" dated March 21, 2019, approved by CITY and attached hereto and incorporated herein by this reference.

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

"9. **Compliance with Law.**

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

9.2 Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY

GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

MARK THOMAS & COMPANY

Donald A. Larkin, City Attorney

Date: _____

By: 

Title: Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 3/28/19



By: Matt Brogan

Title: Secretary

Print Name and Title of Signer.

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

Date: 3/28/19

EXHIBIT 1

FIRST AMENDMENT TO AGREEMENT
MARK THOMAS & COMPANY

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 4/24/18 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, MARK THOMAS & COMPANY, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on April, 18, 2018.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017, for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from February 6, 2017, until December 31, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the additional services set forth in revised Exhibit "B" dated February 15, 2018, attached hereto and incorporated herein by this reference."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed a total amount of FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$494,733.00) during the term set forth in Section 2 above, and shall be billed based on the rate and basis set forth in the revised **Exhibit B** dated February 15, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated

sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement."

D. Paragraph 20.1 shall be amended and replaced in its entirety by the following:

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

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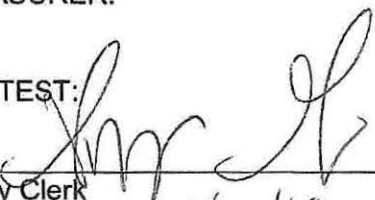
[Signatures on Next Page]

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

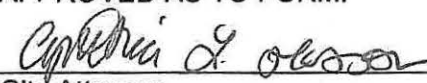
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

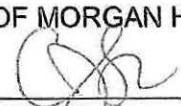
ATTEST:

Deputy City Clerk 
 Date: 4/25/18

APPROVED AS TO FORM:

Assistant City Attorney 
 Date: 4-23-18

CITY OF MORGAN HILL


 City Manager

Date: 4/24/18

MARK THOMAS & COMPANY

By:

Title:


 Soosha Dansky, Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

3/7/18

By:

Title:

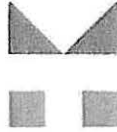

 R. Matt Brogan, Secretary

Print Name and Title of Signer.

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

Date:

3/6/18



MARK THOMAS

EXHIBIT "B" DATED FEBRUARY 15, 2018

February 15, 2018

Project No.: SJ-17101

Mr. David Gittleson
City of Morgan Hill
Peak Avenue
Morgan Hill, CA 9

RE: Hale Avenue Extension- Additional Services

Dear David:

Mark Thomas requests additional budget for the Hale Avenue Extension Plans, Specifications, and Estimate (PS&E) and Environmental Permitting for the following additional services requested by the City:

SCOPE OF SERVICES

IMPROVEMENTS TO WESTERN TERMINUS' OF WARREN AVENUE AND NOB HILL TERRACE

The City has requested that the construction of cul-de-sacs at the western terminus of Warren Avenue and Nob Hill Terrace be added to the project. This will require additional field surveys of supplemental topography as this area is outside the limits of the original project topography. The work will require preparation of additional Site Topography and Demolition, Horizontal Control, Plan & Profile, Cross Sections, Pavement Elevations, Drainage System Plan & Profile, Utility Plan, Erosion Control, Lighting, Signing & Striping, and Construction Detail Plan sheets. Additional Geotechnical Investigation will be required to confirm soil characteristics and provide R-Values for pavement design. Construction of the improvements will require additional Right-of Way Acquisition plats and legal descriptions for the PG&E parcel.

FEE: \$19,950

SOUNDWALL AND RETAINING WALL ALTERNATIVES

The City has requested that alternatives be studied for the soundwalls and retaining walls shown on the 95% plans. The study will include up to 3 options for walls of different architectural and structural design and approximate unit costs for each wall type.

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

February 15, 2018

FEE: \$9,500

UTILITY UNDERGROUNDING- FEASIBILITY STUDY

The City has requested that Mark Thomas review the undergrounding of existing overhead utilities in the vicinity of the Hale Avenue Extension project. Pennino Management Group, as a subconsultant to Mark Thomas, will review the existing facilities and confirm the potential for undergrounding the facilities under PG&E Rule 20B Utility Undergrounding District.

FEE: \$10,000 including subconsultant mark-up

UTILITY UNDERGROUNDING- FINAL DESIGN NOB HILL TERRACE TO WEST MAIN AVENUE.

The Pennino Management Group, as a subconsultant to Mark Thomas, will prepare base information and coordinate the design by PG&E under Rule 20B of the undergrounding of existing overhead utilities in the vicinity of the project between Nob Hill Terrace and West Main Avenue, as shown on the attached exhibit.

FEE: \$25,000 including subconsultant mark-up

SCVHA COORDINATION AND SCVHP COMPLIANCE

The City has requested additional services from our environmental subconsultant, WRA, in preparation of documentation and coordination with the SCVHA and SCVHP. See attached additional services request from WRA.

FEE: \$3,410 including subconsultant mark-up

COORDINATE DESIGN WITH SCVWD'S PL-566 STORM WATER IMPROVEMENT PROJECT

The City has requested that the plans be revised at the West Main Avenue/Hale Avenue intersection to accommodate the SCVWD project to construct a by-pass tunnel west of existing Upper Llagas Creek, in the alignment of the proposed Hale Avenue Extension. The design of Hale Avenue will need to be modified to avoid conflicts with the tunnel.

February 15, 2018

FEE: \$25,000

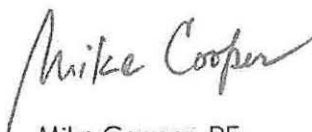
TOTAL ESTIMATED FEE: \$92,860.

All work will be performed on a time and material basis, at hourly rates shown in the Rate Schedule attached, in accordance with our current agreement for consulting services for this project.

Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

MARK THOMAS



Mike Cooper, PE
Senior Project Manager

Accepted:

Signature

Name/Title

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)



HALE AVENUE EXTENSION PROJECT
CITY OF MORGAN HILL, CALIFORNIA

CHANGE ORDER 1
ADDITIONAL BIOLOGICAL SUPPORT SERVICES

Prepared for:

Admas Zewdie
1960 Zanker Road
San Jose, California, 95112

July 21, 2017

WRA Project No. 21059-1

PURPOSE

The purpose of this Change Order is to request funding not previously scoped in order to facilitate coordination with the Santa Clara Valley Habitat Agency (SCVHA) related to the Santa Clara Valley Habitat Plan (SCVHP) for the Hale Avenue Extension Project in the City of Morgan Hill in Santa Clara County.

ADDITIONAL SERVICES

- SCVHA coordination
- SCVHP compliance

CHANGE ORDER

Task 1: Santa Clara Valley Habitat Plan Coordination

The City of Morgan Hill is a participant in the Santa Clara Valley Habitat Plan (Habitat Plan; Santa Clara County 2012). The Habitat Plan's purpose is to provide streamlined permitting for sensitive habitats and endangered species, including outlined mitigation approaches through the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers (USACE). WRA will incorporate the relevant Habitat Plan avoidance and minimization measures into the USACE and the Regional Water Quality Control Board (RWQCB) permit applications as deemed applicable through coordination with the SCVHA.

SCHEDULE

WRA is available to begin work on this project immediately upon receiving authorization to proceed.

STAFFING

Amanda McCarthy will be the principal in charge of the project. She will be assisted by, Leslie Lazarotti, project manager, and qualified project staff.

ASSUMPTIONS

The following assumptions have been made in the preparation of this Change Order:

- Permitting fees to regulatory agencies are not included under this Change Order

ESTIMATED COST

The estimated cost for these services is provided below. This cost is based on assumptions provided in the Change Order. The estimated cost is subject to change based on specific conditions that arise during the conduct of this work.

Task	Budget
1. SCVHA Coordination and SCVHP Mitigation Compliance	\$3,100
Total	\$3,100

TERMS AND CONDITIONS

The conditions contained in the existing Contract Agreement dated February 10th, 2017 will apply to this Change Order.

APPROVAL TO PROCEED

The work can be initiated with a letter of authorization, through acknowledgment of this Change Order by signing a copy of this Change Order below, or by Purchase Order issued to WRA.

Scope of Work and Estimated Budget accepted by:

Signature _____		Date _____
Printed Name and Title _____		Email _____
Firm Name _____		Phone Number _____
Street Address _____		Fax Number _____
City _____	State _____	Zip Code _____
For WRA, Inc.		
Principal _____		Date _____



Bryan Pennino

President

Michael Locke

Vice President

Phillip Pennino

Secretary/Treasurer

February 7, 2018

Mr. Mike Cooper
Mark Thomas & Company
2290 North First Street, Suite 304
San Jose, CA 95131

Subject: PG&E Electric and Fiber Underground Coordination – Morgan Hill

Dear Mr. Cooper:

We appreciate the opportunity to discuss Electric & Fiber Coordination Services for the Morgan Hill project located in Morgan Hill, CA. As discussed, we believe Pennino Management Group (PMG) is uniquely qualified to provide Dry Utilities Coordination Services on the project.

This Letter of Engagement includes our proposed Scope of Work and Fee Schedule to successfully connect services for electric & fiber based on the information provided to PMG. PMG is ready and eager to begin work immediately.

Upon approval of this Letter of Engagement, PMG will begin with the Scope of Services as referenced on page two. Approval of this Letter of Engagement also confirms acceptance of the Fee Schedule referenced on page three. Please note these are estimated hours and Mark Thomas & Company will only be billed on the actual hours worked on the Morgan Hill project.

Please accept this Letter of Engagement by signing in the signature block below. Return the signed Letter of Engagement to PMG via standard mail or electronic mail, whichever is more convenient for you. Upon receipt, we will begin work immediately. Again, thank you and we look forward to working together.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Pennino Management Group

Phillip Pennino
Secretary/Treasurer

On behalf of Mark Thomas & Company the above referenced Letter of Engagement, attached Scope of Work and Fee Schedule is accepted:

Signature: _____

Title: _____

Mark Thomas & Company

Mr. Mike Cooper
February 6, 2018
Page 2

PENNINO
CONSTRUCTION MANAGEMENT & ARCHITECTURE

To assist Mark Thomas & Company with evaluation and design coordination for PG&E and Fiber Services to the Morgan Hill project. To facilitate the work, PMG has developed six (6) separate tasks.

Task 1 Utilities Research & Review for Dry Utility's needs.

- Meet & review dry utilities requirements for project.
- Evaluate options for Electric and Fiber Services.
- Meet with Utilities to discuss service options and requirements.
- Establish submittal schedule and target completion date.

Task 2 PG&E Submittal

- Prepare documents for electric submittal.
- Submit applications to PG&E.
- Contact PG&E after application to review submittal.

Task 3 Design Coordination

- Coordinate utilities meetings when appropriate.
- Monitor and follow-up with utilities through engineering and contract approvals to ensure timely completion.
- Coordinate necessary easements and legal descriptions between Developer & Utilities.

Task 3.5 Contracts & Payment

- Review PG&E/AH Control
- Monitor Payment & Release

Task 4 Temporary Power for Construction (Not Included)

- Meet with Contractor to determine temporary service and timeline.
- Submit PG&E application.
- Coordinate PG&E inspections and meter set.

Task 5 Construction

- Coordinate Construction Schedule.
- Complete site visits during construction of dry utilities.
- Make sure Contractor installs dry utilities per Utility design.
- Respond to any questions/concerns from Dry Utilities.

Task 6 Fiber Coordination

- Provide primary schematic design.
- Submit application for fiber services.
- Coordinate fiber installation.
- Review construction documents and contracts.
- Coordinate communication installation with General Contractor.

Task 7 Close Out

- Prepare Closeout Documents.
- Complete Project Binder.

Scope of Work



Request for Proposal
Design Coordination Construction Management for Morgan Hill

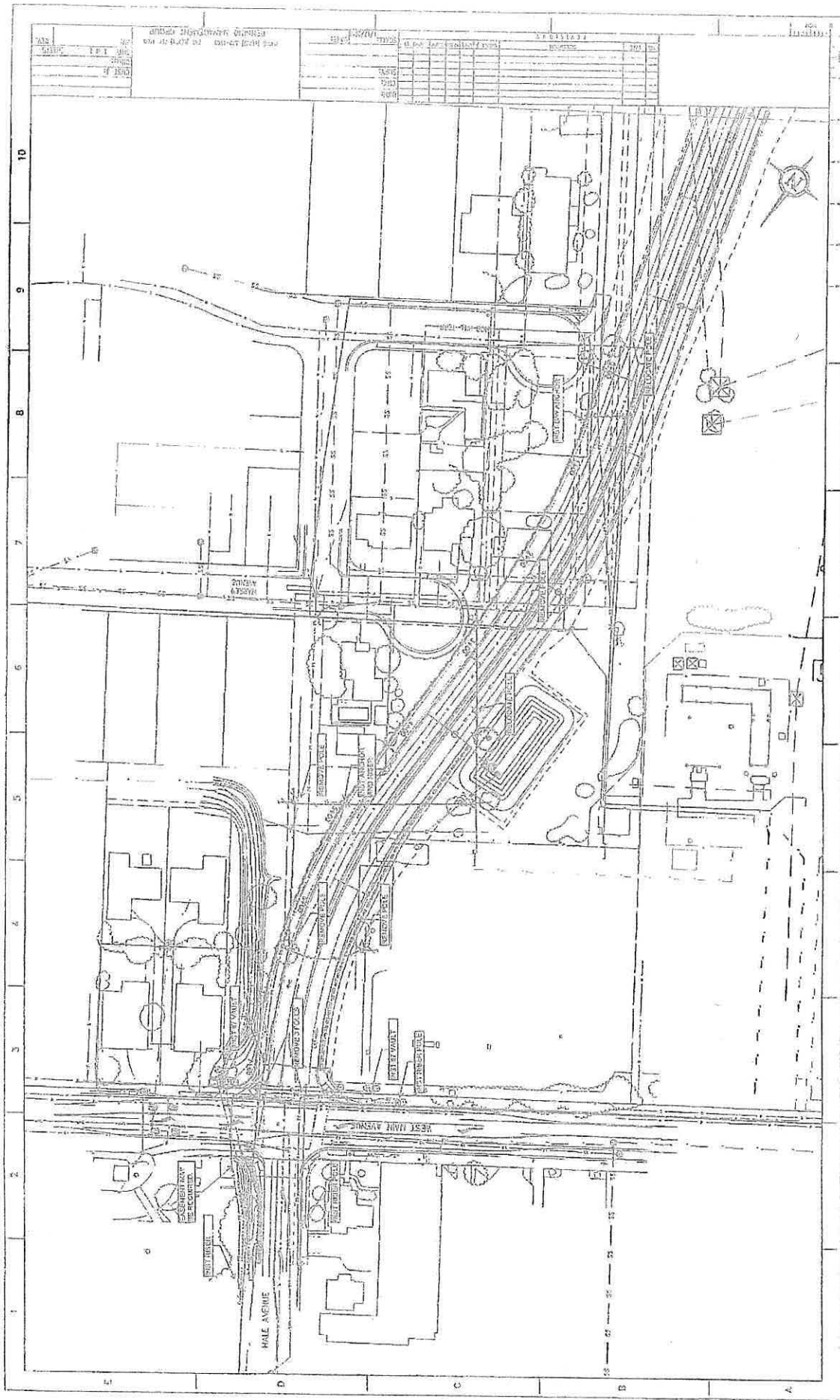
Cost Proposal
 Submitted by Pennino Management Group
 February 6, 2018

Pennino Management Group (PMG) has estimated the following hours & fees associated with the various tasks presented in the Scope of Work. The following Fee Schedule has been prepared based on the current available information. PMG will only bill for hours worked on the project and will obtain written consent from Mark Thomas for any additional contract amendments.

Position	Name	Company	Pre-Construction					Construction			Closeout	Total Hours	Rate (per hr.)	Total Fee
			Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18			
Task 1: Utilities Research & Review for Dry Utilities Needs														
Project Manager	Philip Pennino	PMG										4	\$ 195.00	\$ 780.00
Project Support	Kristin MacDonald	PMG										1	\$ 100.00	\$ 100.00
Task 2: PSD&E Submittal														
Project Manager	Phil Pennino	PMG			2							2	\$ 195.00	\$ 390.00
Project Support	Kristin MacDonald	PMG			1							1	\$ 100.00	\$ 100.00
Task 3: Design Coordination														
Project Manager	Philip Pennino	PMG				6	5					11	\$ 195.00	\$ 2,145.00
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 3.5: Contracts and Payment														
Project Manager	Phil Pennino	PMG										3	\$ 195.00	\$ 585.00
Project Support	Kristin MacDonald	PMG										1	\$ 100.00	\$ 100.00
Task 4: Temporary Power for Construction														
Project Manager	Philip Pennino	PMG										0	\$ 195.00	\$ -
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 5: Construction														
Project Manager	Philip Pennino	PMG						6	7	6		19	\$ 195.00	\$ 3,705.00
Project Support	Kristin MacDonald	PMG						1	1	1		3	\$ 100.00	\$ 300.00
Task 6: Fiber Coordination														
Project Manager	Philip Pennino	PMG	4	4	4			3	3	3		21	\$ 195.00	\$ 4,095.00
Project Support	Kristin MacDonald	PMG										0	\$ 100.00	\$ -
Task 7: Close Out														
Project Manager	Philip Pennino	PMG									1	1	\$ 195.00	\$ 195.00
Project Support	Kristin MacDonald	PMG									1	1	\$ 100.00	\$ 100.00
Sub-Consultants														
MFLZ Design	Mike Leroy	MFLZ	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00						\$ 6,000.00
														\$ 6,000.00
														\$ -
Direct Expenses														
Mileage	N/A	N/A	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00	\$ 110.00					\$ 1,090.00
Travel	N/A	N/A												\$ 880.00
Reimbursable (printing, postage, etc.)	N/A	N/A	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 45.00				\$ 125.00
GRAND TOTAL														\$ 19,215.00

Reimbursable Expenses:

- Mileage is billed at \$0.545 per mile
- Printing is billed at B&W \$0.0205 & Color \$0.0943
- Out of Pocket Expenses (billed at cost plus 10% and includes such items as travel expenses, freight, equipment rental fees, subcontractors, postage, printing or reproduction fees, supplies, etc.)





February 8, 2018
Proposal PA18.1007.PR

Michael Cooper
Mark Thomas & Company
3000 Oak Road, Suite 650
Walnut Creek, CA 94597

Proposal for Geotechnical Services, Hale Avenue Extension – Warren Avenue & Nob Hill Terrace Cul-de-sacs, Morgan Hill, California

Geo-Logic Associates (GLA) is pleased to present this proposal to provide geotechnical services related to the design of cul-de-sacs at the western termini of Warren Avenue and Nob Hill Terrace associated with the Hale Avenue Extension project in Morgan Hill, California.

PURPOSE AND SCOPE OF SERVICES

The objective of our investigation is to explore the existing pavement sections at the west end of Warren Avenue and Nob Hill Terrace, sample and test the subgrade soil, and provide recommendations for grading and pavement sections for the cul-de-sacs. Our proposed scope of services is discussed below.

1. A site reconnaissance to observe surface site conditions and to mark the exploration locations for Underground Service Alert (USA).
2. Obtain an encroachment permit from City of Morgan Hill for our field work. Because traffic at the west end of these streets is very light, we plan to provide minimal traffic control with cones and signs during our work.
3. Notify Underground Service Alert of our exploration so their member companies can check the boring locations for underground utilities.
4. Coordinate our field exploration with the City.
5. Drill two (2) exploratory borings up to a depth of about 2 feet to measure the existing pavement section and to identify the subgrade soil. Bulk sample of the subgrade soil will be collected for laboratory testing.
6. Perform laboratory R-value testing on the bulk samples.
7. Perform engineering analysis of the collected data.
8. Prepare a letter presenting our findings and recommendations. The letter will summarize work we performed, the existing pavement sections, and recommendations for grading and pavement sections for the new cul-de-sacs.

UNDERSTANDING AND ASSUMPTIONS

This proposal is based on the following assumptions:

- An encroachment permit is required by the City of Morgan Hill which will require traffic control plans. We have assumed the City will not require the traffic control plans to be prepared and signed by a registered Traffic Engineer. Additional fee will be required if the traffic control plans are to be prepared and signed by a registered Traffic Engineer.
- Traffic at the work areas is very light; therefore, only limited traffic control with cones and signs will be provided during our field work. If full traffic control is required, additional fees will be necessary.

SCHEDULE

We are prepared to begin work with your written approval. The project schedule will largely depend on the permit process and drilling equipment availability. After drilling, laboratory testing would take about two weeks to complete. Our letter should be ready about two weeks after completion of laboratory testing.

FEE

We propose to perform the above scope of work for a Lump Sum of \$6,800. Monthly invoices will be submitted for work completed. If additional services beyond those listed above are required during this investigation, such as meetings, or due to unforeseen conditions, additional authorization will be requested.

AUTHORIZATION

Please provide a change order to our current contract with your firm on the Hale Avenue Extension project.

CLOSURE

We appreciate the opportunity to provide these services. If you have any questions, please contact us at (408) 778-2818.

Sincerely,

Geo-Logic Associates



Chalerm (Beeson) Liang, GE
Supervising Geotechnical Engineer



RATE SCHEDULE (I-1)

EXHIBIT A

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2018*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$412
Principal	\$381
Sr. Engineering Manager	\$322
Engineering Manager	\$276
Practice Area Leader	\$276
Sr. Project Manager	\$233
Sr. Technical Lead	\$233
Project Manager	\$192
Technical Lead	\$192
Sr. Project Engineer	\$162
Sr. Technical Engineer	\$162
Project Engineer	\$140
Design Engineer II	\$124
Design Engineer I	\$101
Sr. Technician	\$119
Technician	\$86
Intern	\$59

Survey Services

Sr. Survey Manager	\$215
Survey Manager	\$200
Sr. Project Surveyor	\$180
Project Surveyor	\$150
Sr. Surveyor	\$135
Surveyor	\$120
Lead Survey Technician	\$145
Sr. Survey Technician	\$120
Survey Technician	\$100
Survey Intern	\$70
Single Chief	\$130
Single Chainman	\$115
Apprentice	\$75
1 Person Field Crew	\$170
2 Person Field Crew	\$270
3 Person Field Crew	\$350

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$243
LAUD Division Manager	\$206
Sr. LAUD Project Manager	\$181
LAUD Project Manager	\$165
Sr. Project Landscape Architect	\$124
Project Landscape Architect	\$108
Landscape Designer	\$84
Intern	\$59

Project Support/Coordination Services

Sr. Project Accountant	\$124
Project Accountant	\$101
Sr. Project Coordinator	\$121
Project Coordinator	\$97
Sr. Project Assistant	\$90
Project Assistant	\$65
Sr. Technical Writer	\$105
Technical Writer	\$65
Sr. Graphic Designer	\$113
Graphic Designer	\$81

Special Services

Sr. Inspector	\$121
Inspector	\$87
Expert Witness	\$390
Strategic Consulting	\$390

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2018

PAGE 1 OF 1

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

126-04-17-008

EXHIBIT "1"

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
Mark Thomas & Company

THIS AGREEMENT is entered into and becomes effective on 2/6/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Mark Thomas & Company 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 January 18, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to complete the Hale Avenue Extension project plans and specifications as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$401,873. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred One Thousand Eight Hundred Seventy Three dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. Insurance Types and Amounts.

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

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

7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

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

10. Independent Contractor. CONSULTANT is an independent contractor and not an agent or employee of CITY.

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

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

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

Address of CONSULTANT is as follows:

Mark Thomas & Company
attn: Mike Cooper, Senior Project Manager
2290 North First Street, Suite 304
San Jose, CA 95131

Address of CITY is as follows:

Development Services Center	with a copy to:
attn: David Gittleson	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. Maintenance of Records.

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

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

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

- 20.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

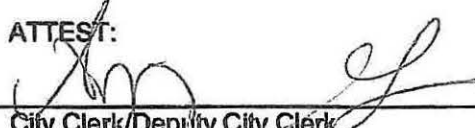
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

 Michelle Wilson

Print Name

Date: 2/7/17

APPROVED AS TO FORM:

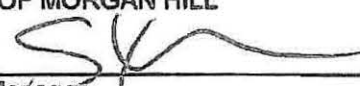

 City Attorney

Donald A. Larkin

Print Name

Date: 2/2/2017

CITY OF MORGAN HILL

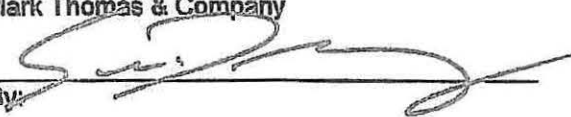

 City Manager

Steve Rymer

Print Name

Date: 2/6/17

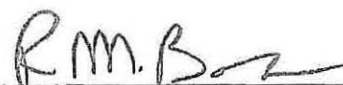
Mark Thomas & Company

By: 

Title: Sasha Dansky, Principal/Vice President
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: January 5, 2017


 By:

Title: Matt Brezan, Secretary
 Print Name and Title of Signer.

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

Date: January 5, 2017

**EXHIBIT A
SCOPE OF SERVICES**

Exhibit A
HALE AVENUE EXTENSION PROJECT

SCOPE OF WORK

January 5, 2017

City of Morgan Hill (City) and Mark Thomas & Company, Inc. (MTCO) entered into an agreement for the preparation of contract documents for the Hale Avenue Extension project in April 2011. The project is to extend Hale Avenue from its present terminus at West Main Avenue in the north to the junction of Spring Avenue and DeWitt Avenue in the south, a distance of approximately 4,700 feet. The new road will have one traffic lane in each direction and a median. Bicycle/pedestrian paths, sidewalks, shoulder areas, landscape areas, bio swales, retaining walls and sound walls are proposed along sections of the roadways. Other proposed improvements include new storm drainage facilities, two stormwater detention ponds, water mains, and light standards. The project was developed to the 90% completion level before it was suspended in 2013. The contract for the project has subsequently expired. City would like to complete the contract documents to prepare the project for construction in 2018. The scope of work presented below has been developed based on a meeting held between City and MTCO on December 17, 2015, and subsequent communications with the City. MTCO will perform the work described herein, and will diligently perform this scope of work and will be responsible for items of work under this agreement to the extent that issues arising from the performance of these services are within our reasonable control and that MTCO's obligation to indemnify and defend are limited to the extent actually caused by MTCO in the performance of this scope of work.

The scope of work assumes that the project features remain unchanged from the previous contract with the following exceptions:

- In conformance with current C.3 requirements, add Biotreatment facilities to treat stormwater runoff from the portions of the new roadway that will not be draining to the detention ponds.
- Add soundwall per EIR
- Convert plans to Civil 3D- Optional
- Convert specifications to Caltrans 2015-Optional

1. Project Management

- Supervise, coordinate, and monitor project development.
- Maintain and coordinate project files throughout the contract period.
- Prepare and regularly update a detailed Critical Path Method (CPM) schedule.
- Prepare and submit monthly progress reports.
- Provide a monthly invoice, by task, that will present charges at agreed to hourly rates.
- Perform Quality Assurance/Quality Control review at milestone submittals.

Deliverables:

- *CPM Schedule and Monthly Updates*
- *Monthly Invoices and Progress Reports*
- *Quality Process Documentation*

2. Surveying

2.1. Plats and Legal Descriptions

- Prepare plat exhibits and legal descriptions for easement and right-of-way acquisitions. One plat exhibit and legal description per parcel will be prepared showing Public Street Easements, Slope Easements and Temporary Construction Easements. Separate plats and legal descriptions will be prepared for public utility easements and utility vacations. One round of review comments will be incorporated. The anticipated number of plat exhibits and legal descriptions is as follows:

Acquisition Type	Number of Plats & Legals
Public Street Easements, Slope Easements and Temporary Construction Easements	15
Public Utility Easements	5
Utility Vacations	5

2.2. Supplemental Field Surveys

- Conform Topographic Survey - Topographic surveys will be conducted at up to four (4) locations to assist in the determination of conform elevations.
- Positive Utility Pothole Survey - The locations and elevations of positive utility potholes will be surveyed using Real Time Kinematic (RTK) GPS or conventional survey methods.

Deliverables:

- *Plats and Legal Descriptions (25 total)*
- *AutoCAD file with topographic survey information*

3. Geotechnical Report

- Review the Draft Geotechnical Report that has been prepared for the project in 2012.
- Incorporate comments from City.
- Perform a site reconnaissance to observe existing surface conditions, focusing on changes since the draft report was prepared.
- Prepare a 100% final geotechnical investigation report presenting findings, conclusions and recommendations for the project.

Deliverables:

- *Final Geotechnical Report (10 copies)*

4. Potholing

- Contract with a potholing firm to perform up to ten (10) potholes of existing utilities at locations where proposed improvements may conflict with existing utilities. Pothole locations will be determined based on utility mapping obtained from utility companies.
- Locations and elevations of the potholes will be surveyed under Task 2.2.

Deliverables:

- *Layout location and depth of pothole results*

5. Utility Company Coordination

- Utility Identification and Verification – Collect updated as-built information of existing utilities from utility companies and City. Verify that existing utilities have been shown in the project plans.
- Utility Relocation Exhibits - Identify utility conflicts and prepare relocation exhibits to be used in coordinating with utility companies as they design the relocations of their utilities for up to three (3) utility companies.
- Utility Relocation Coordination - Coordinate with up to three (3) utility companies for relocations. MTCO will review relocation plans to be prepared by the utility companies. MTCO will review liability letters submitted by utility companies, and if necessary, prepare a draft utility agreement for City's signature. MTCO will also prepare utility relocation notices.

Deliverables:

- *Copies of correspondence with utility companies*
- *Utility relocation exhibits*

6. Meetings

6.1. Project Coordination Meetings

- Hold a kick-off meeting with City staff.
- Hold up to six (5) coordination meetings with stakeholders and City staff to coordinate project progress.
- Prepare meeting agenda and minutes for the above meetings.

6.2. Commission and Council Meetings

- Assist City in making up to two (2) presentation to City commissions and Council.
- Prepare draft presentation material (PowerPoint) for City's use in these presentation.
- Attend meetings to assist City staff in responding to questions from commissioners and council members. This will be considered extra work, and will be performed when requested by the City, on a time and material basis

Deliverables:

- *Meeting agenda (6 meetings)*
- *Meeting minutes (6 meetings)*
- *Draft PowerPoint presentations (2 meetings) – This will be considered extra work, and will be performed when requested by the City, on a time and material basis.*

7. Contract Documents

7.1. 95% PS&E Submittal

- Review previously submitted 90% Plans, Specifications and Estimate (PS&E) package for conformance with current design standards and guidelines.
- Update PS&E package to conform to current design standards and guidelines. The basis of the technical specifications shall be the Caltrans Standard Special Provisions for the 2015 Standard Specifications.

- Update project plans to comply with current C.3 requirements including Bioretention basins.
- Revised Civil plans to be in Civil 3D format.
- Review quantity estimates, update unit prices, and prepare an updated cost estimate.

7.2. 100% Submittal

- Prepare the 100% level of PS&E documents for the project that will be considered ready for bid advertisement.
- Update and incorporate comments received on the 90% submittal into the 100% PS&E documents.
- Revise cross sections of the improvements at 50-foot intervals on tangents, at 25-foot interval for curves and at locations of vertical and horizontal alignment changes, in Civil 3D format. The cross sections shall be to scale and presented on grid sheets to match bid plans. The cross-sections will not be part of the contract documents, but are rather intended to be provided to the contractor as supplemental information.
- Contract Bid Documents - Prepare and submit Contract Bid Documents to the City for final review and comment.
- Incorporate one (1) round of reviews and prepare a bid package. Comments are anticipated to be minor. City will be responsible for reproduction of the bid documents.
- Combine technical specifications with City-provided boiler plate specifications for final production.

Deliverables:

- *95% Plans, Specifications, Estimate – 6 hard copies (11"x17")*
- *100% Plans, Specifications, Estimate – 6 hard copies (11"x17")*
- *Design Cross Sections – 1 copy (11"x17")*
- *Bid Set – PDF copy*

8. Permitting Support

- Tree Inventory and Report - conduct an inventory and assessment of all Significant Trees pursuant to the City of Morgan Hill Tree Ordinance (Chapter 12.32 of the Municipal Code – Restrictions on Removal of Significant Trees) within and adjacent to the Project Area.
- Wetland Delineation - conduct protocol level jurisdictional wetlands delineation. Prepare a Section 404 jurisdictional wetlands delineation report in the format required by the local District of the Corps of Engineers along with a report and map of potential jurisdictional areas.
- Rare Plant Surveys and Report – conduct a protocol-level rare plant survey. This survey would be timed to coincide with the peak-blooming period of rare plant species known from the project vicinity.
- Section 404 Nationwide Permit Application – Prepare and submit a pre-construction notification (PCN) to the Corps for consideration under the Nationwide Permit program. Attend site visits with the Corps and respond to questions from the Corps about the PCN and the project.
- Section 401 Water Quality Certification – Prepare and submit a Section 401 Water Quality Certification to the Regional Water Quality Control Board (RWQCB).

- Section 1602 Streambed Alteration Agreement - prepare and submit a Section 1602 Lake and Streambed Alteration Agreement (LSAA) for the project. The LSAA covers maintenance activities with the potential to alter a stream- or lake-bed or –bank, in addition to potential wildlife habitat on their margins.
- Section 7 Biological Assessment and Coordination - prepare the Section 7 Biological Assessment report and coordinate with USFWS upon consultation initiation by the Corps.
- Provide consultation services in verifying that the mitigation measures identified in the environmental documents (to be provided by the City) are properly incorporated in the design document.
- NOTE: Portions of the work detailed above may be able to be eliminated if covered in the Project EIR currently being prepared for the City.

Deliverables:

- ***Significant Tree Assessment Report***
- ***Wetland Delineation Report***
- ***Rare Plant Survey Report***
- ***Section 404 Permit Package***
- ***Section 401 form***
- ***Section 1602 Permit Package***
- ***Section 7 Biological Assessment***

9. Bidding Support- OPTIONAL- May be included in subsequent contract amendment at time of construction.

- Provide minor clarification of PS&E documents
- Provide information in response to bidders' questions regarding the bid documents
- Attend Pre-Bid Meeting
- Prepare addenda to the bid documents
- Attend Bid Opening and assist in preparation of a bid summary

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

Deliverables:

- ***Responses to bidders' questions***
- ***Addenda to contract documents***

10. Construction Support- OPTIONAL- May be included in subsequent contract amendment at the time of construction.

10.1. Design Support During Construction

- Attend a pre-construction meeting
- Provide ongoing consultation and interpretation of contract documents

- Respond to Requests for Information (RFI) made by the Contractor as coordinated through the Resident Engineer
- Perform periodic field visits at the request of the Resident Engineer
- Provide design support to address unforeseen conflicts encountered in the field
- Review change orders and make recommendations for approval
- Review submittals and shop drawings and recommend revisions or acceptance

Deliverables:

- *Responses to submittals and RFIs*

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

10.2. Record Drawings

- Review for completeness and accuracy marked-up drawings provided by the Resident Engineer.
- Provide "as-built" record drawings on Mylar using the marked-up Contractor drawings.
- Consultant has provided a budget for this task as an estimate only. Actual level of effort will be determined when red-lined plans are provided to the Consultant by City's construction manager.

Deliverables:

- *One (1) set of Mylar as-built drawings*

11. Optional Tasks – NOT INCLUDED IN THIS CONTRACT SCOPE AND FEE

11.1. Field Percolation Testing

- Perform field percolation tests in the two proposed detention pond areas:
 - Perform a site reconnaissance to mark locations of our exploration. City will secure right-of-entry to the testing sites.
 - Drill and prepare six percolation test holes (three at each detention pond sites) to a depth of about 5 feet below ground surface.
 - Perform percolation tests in the test holes to measure percolation rates.
 - Perform engineering analysis of the collected data.
 - Include the measured percolation rates in the 100% geotechnical investigation report discussed above.

11.2. Right of Way Acquisition Support

- Prepare individual acquisition exhibits on aerial photo background for use by City's right of way acquisition team for discussion with home owners.

- Install “show-me” stakes for proposed acquisition areas to assist City’s right of way acquisition team when negotiating with property owners. All show-me stakes will be provided within a single 5-day period. Show-me stakes outside of this window can be provided as extra work.

Exhibit B
City of Morgan Hill
Hale Avenue Extension Project
MARK THOMAS & COMPANY, INC.
1/5/2017

	MTCs														Subconsultants						TOTAL COST				
	Principal	Senior Project Manager	Senior PM (Structural)	Senior Survey Manager	Senior Project Engineer	Senior Technical Engineer	Senior Technical Engineer (Structural)	Design Engineer	Project Surveyor	Senior Survey Technician	Graphic Designer	Project Coordinator	2 Person Field Party and Vehicle	Total Hours	Labor Cost	Expenses	Total	Pacific Geotechnical Engineering	Phoenix Design Group	Y&C Transportation Consultants, Inc.		WRA Environmental Consultants, Inc.	Sub Mark Up 5%		
	\$357	\$225	\$225	\$210	\$158	\$158	\$158	\$117	\$158	\$123	\$78	\$116	\$297												
100	Task 1: Project Management																								
	1	Project Management	8	80								16		104	\$22,712		\$22,712					-	\$22,712		
	Subtotal Phase 100		8	80	0	0	0	0	0	0	0	16	0	104	\$22,712	\$0	\$22,712	\$0	\$0	\$0	\$0	\$0	\$22,712		
200	Task 2: Surveying																								
	1	2.1 Plats and Legal Descriptions			50				85	250				385	\$54,680		\$54,680					-	\$54,680		
	2	2.2. Supplemental Field Surveys			4				8	24			24	60	\$12,184		\$12,184					-	\$12,184		
	Subtotal Phase 200		0	0	0	54	0	0	0	93	274	0	0	24	445	\$66,864	\$0	\$66,864	\$0	\$0	\$0	\$0	\$66,864		
250	Task 3: Geotechnical Report																								
	1	Geotechnical Report		2				8						10	\$1,714		\$1,714	14,875				744	\$17,333		
	Subtotal Phase 250		0	2	0	0	8	0	0	0	0	0	0	10	\$1,714	\$0	\$1,714	\$14,875	\$0	\$0	\$0	\$744	\$17,333		
251	Task 4: Potholing																								
	1	Potholing				4			8					12	\$1,568	\$12,000	\$13,568					-	\$13,568		
	Subtotal Phase 251		0	0	0	0	4	0	0	8	0	0	0	12	\$1,568	\$12,000	\$13,568	\$0	\$0	\$0	\$0	\$0	\$13,568		
252	Task 5: Utility Coordination																								
	1	Utility Coordination		16			40		60					116	\$16,940		\$16,940					-	\$16,940		
	Subtotal Phase 252		0	16	0	0	40	0	0	60	0	0	0	116	\$16,940	\$0	\$16,940	\$0	\$0	\$0	\$0	\$0	\$16,940		
440	Task 6: Meetings																								
	1	6.1. Project Coordination Meetings		16	3		16							35	\$6,803		\$6,803					-	\$6,803		
	Subtotal Phase 440		0	16	3	0	16				0	0	0	35	\$6,803	\$0	\$6,803	\$0	\$0	\$0	\$0	\$0	\$6,803		
540	Task 7: Contract Documents																								
	1	7.1. 95% PS&E Submittal		12	11		80	120	28	120		48		419	\$61,143		\$61,143					-	\$61,143		
	2	7.2. 100% Submittal		12	6		60	120	8	120		24		350	\$50,746		\$50,746	28,020	18,000		2,301	\$99,067			
	Subtotal Phase 540		0	24	17	0	140	240	36	240	0	72	0	769	\$111,889	\$0	\$111,889	\$0	\$28,020	\$18,000	\$0	\$2,301	\$160,210		
550	Task 8: Permitting Support																								
	1	Permitting Support		12			24							36	\$6,492		\$6,492				\$7,900	2,895	\$67,287		
	Subtotal Phase 550		0	12	0	0	24	0	0	0	0	0	0	36	\$6,492	\$0	\$6,492	\$0	\$0	\$0	\$57,900	\$2,895	\$67,287		
SUBTOTAL PS&E PHASE HOURS			8	150	20	54	232	240	36	308	93	346	0	16	24	1527							1,527		
SUBTOTAL PS&E PHASE COST			\$2,856	\$33,750	\$4,500	\$11,340	\$36,656	\$37,920	\$5,688	\$36,036	\$14,694	\$42,558	\$0	\$1,856	\$7,128		\$234,982	\$12,000	\$246,982	\$14,875	\$28,020	\$18,000	\$57,900	\$5,940	\$371,717
OPTIONAL TASKS																									
	1	CAD conversion		4			8	16				8		36	\$5,316		\$5,316					-	\$5,316		
	2	Specification conversion					40	40							\$12,640		\$12,640					-	\$12,640		
	3	Contingency													\$0		\$0					-	\$12,200		

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT B
 MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
 Expires June 30, 2017*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$388
Principal	\$357
Sr. Engineering Manager	\$313
Engineering Manager	\$267
Practice Area Leader	\$267
Sr. Project Manager	\$225
Sr. Technical Lead	\$225
Project Manager	\$186
Technical Lead	\$178
Sr. Project Engineer	\$158
Sr. Technical Engineer	\$158
Project Engineer	\$135
Design Engineer II	\$117
Design Engineer I	\$97
Sr. Technician	\$113
Technician	\$81
Intern	\$56

Survey Services

Sr. Survey Manager	\$210
Survey Manager	\$200
Sr. Project Surveyor	\$184
Project Surveyor	\$158
Sr. Surveyor	\$144
Surveyor	\$119
Lead Survey Technician	\$148
Sr. Survey Technician	\$123
Survey Technician	\$87
Survey Intern	\$70
Single Chief	\$128
Single Chainman	\$112
Apprentice	\$76
1 Person Field Crew	\$170
2 Person Field Crew	\$297
3 Person Field Crew	\$382

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$236
LAUD Division Manager	\$200
Sr. LAUD Project Manager	\$174
LAUD Project Manager	\$158
Sr. Project Landscape Architect	\$119
Project Landscape Architect	\$104
Landscape Designer	\$81
Intern	\$56

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

Page 1 of 2

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

EXHIBIT B
 MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
 Expires June 30, 2017*

HOURLY CHARGE RATES

Special Services

Sr. Inspector	\$116
Inspector	\$82
Expert Witness	\$390
Strategic Consulting	\$390

Project Support/Coordination Services

Sr. Project Accountant	\$121
Project Accountant	\$98
Sr. Project Coordinator	\$116
Project Coordinator	\$93
Sr. Project Assistant	\$87
Project Assistant	\$62
Sr. Technical Writer	\$102
Technical Writer	\$64
Sr. Graphic Designer	\$109
Graphic Designer	\$78

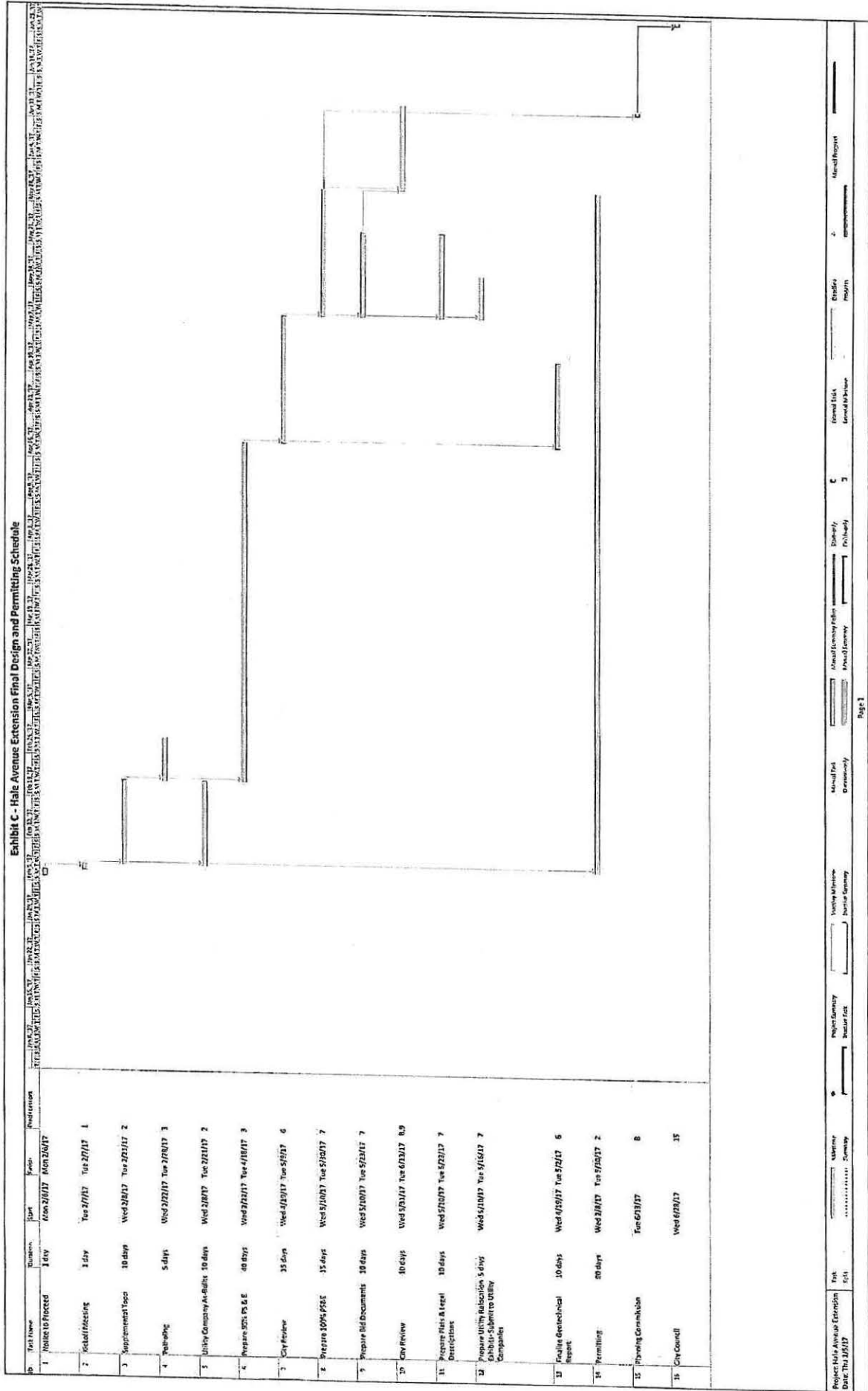
OTHER DIRECT COSTS

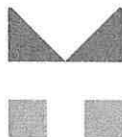
Reimbursables including, but not limited to:	
Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

EXHIBIT C
SCHEDULE OF PERFORMANCE

Exhibit C - Hale Avenue Extension Final Design and Permitting Schedule





MARK THOMAS

March 21, 2019

Project No.: SJ-17101

Mr. David Gittleson
City of Morgan Hill
Peak Avenue
Morgan Hill, CA 95037

RE: Hale Avenue Extension- Additional Services

Dear David:

As previously discussed, Mark Thomas kindly requests a budget increase for the Hale Avenue Extension (Project) Plans, Specifications, and Estimate (PS&E) and Environmental Permitting as additional scope of work is necessary in order to complete the project.

SCOPE OF SERVICES

INTERSECTION IMPROVEMENTS:

REVISIONS TO SPRING-HALE INTERSECTION

The Spring/Hale intersection must be revised to widen northbound DeWitt Avenue at the approach to Spring Avenue, and to extend the median island to prohibit left turns from Buck Hill to northbound Dewitt. This will eliminate the three way stop and reduce congestion.

REVISIONS TO HALE/MAIN INTERSECTION

Due to the PL-566 project, Hale Avenue will require complete reconstruction and widening between Main Avenue and Hillwood Lane. This will affect the intersection of Hale and Main. Thus, the Hale Extension project must be revised at Hale/Main to align with the future widening of Hale Avenue.

STREET LIGHT AND PEDESTRIAN IMPROVEMENTS

Reposition street lights to be consistent with the other segments of Hale Avenue. The pedestrian path shall be aligned to follow the curvature of the roadway thus eliminating pedestrian lighting, and add curbs/gutters to secure the roadway in place.



► March 21, 2019

ENVIRONMENTAL PERMITTING

The permits also need to be revised to include the SCVWD PL-566 project improvements. Additional revisions have been required from the environmental agencies that were unforeseen. See attached Scope and Fee from WRA.

Basin Research Associates will prepare a **Historic Properties Survey and Report**, as required by the Corps. BASIN proposes to develop a Historic Properties Survey Report/Finding of Effect (HPSR) document to meet the requirements of the Corps. BASIN's primary tasks will focus on: (1) reviewing previous archaeological surveys and completing an archaeological assessment that identifies cultural resources within 500 feet of the proposed project location; and, (2) utilize the information obtained on the location, type and distribution of any resources to review potential project impacts and develop appropriate mitigation actions.

The identification effort will include: (1) development of an Archaeological Area of Potential Effects (APE); (2) completion of an archival and literature search within 0.25 miles by the California Historic Resources Information System, Northwest Information Center (CHRIS/NWIC); (3) an archaeological field review of project areas; (4) a request to the Native American Heritage Commission (NAHC) for a review of the Sacred Lands File; and, (5) contact with locally knowledgeable Native Americans identified by the NAHC. The field review will be completed by an Archaeologist who meets the Standards of the Secretary of the Interior for archaeology.

The results will be prepared in a *Historic Properties Survey Report* (HPSR) format and provide a description of the project, present minimal background context and regulatory information, provide the results of the archival and field research, a discussion of the archaeological sensitivity of the proposed projects, and, the results of Native American consultation and other interested party consultation. The *Finding of Effect* (FOE) component of the document will discuss if any significant historic properties will be affected by the project with mitigation or protection measures recommended as appropriate.

Appendices will include, as appropriate, graphics and photographs; the results of the records search; and, Native American consultation. BASIN anticipates one comment round.



(408) 453-5373
2290 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

MARKTHOMAS.COM

Packet Pg. 162

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

► March 21, 2019

OPTIONAL SERVICES

Optional services on an "as needed basis" as directed by the City.

TOTAL ESTIMATED FEE: **\$88,700**

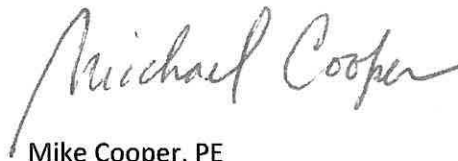
Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

MARK THOMAS



Sasha Dansky, PE
Principal/Vice President



Mike Cooper, PE
Project Manager



(408) 453-5373
2290 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

MARKTHOMAS.COM

Packet Pg. 163

Attachment: Mark Thomas Company 2nd Amendment - Final (2251 : Second Amendment with Mark Thomas for Hale Extension)

COST PROPOSAL FOR PROJECT SCOPE - Morgan Hill: Hale Avenue Extension Project

MARK THOMAS	Mark Thomas																		Subconsultants					TOTAL COST	
	Principal	Sr. Project Manager	Sr. Project Engineer	Design Engineer II	Design Engineer I	Survey Manager	Project Surveyor	Survey Technician	Apprentice	2 person Field Crew	LAUD Project Manager	Landscape Designer	Sr. Project Accountant	Project Accountant	Sr. Project Coordinator	Sr. Project Assistant	Project Assistant	Total Hours	Total MT Cost	Y&C TRANSPORTATION DBE	WRA DBE	PENNINO Non-DBE	BASIN RESEARCH ASSOCIATES DBE		Sub Mark Up 10%
	\$357	\$225	\$158	\$117	\$97	\$200	\$158	\$87	\$76	\$297	\$158	\$81	\$121	\$98	\$116	\$87	\$62								
1.0 REVISIONS TO SPRING/HALE INTERSECTION																									
1.1 Revisions to Spring/Hale Intersection and Media	2	8		40	40													90	\$11,074	5,000	2,500		-	\$750	\$19,324
Subtotal Phase 1	2	8	0	40	40	0	0	0	0	0	0	0	0	0	0	0	0	90	\$11,074	\$5,000	\$2,500	\$0	\$0	\$750	\$19,324
2.0 REVISIONS TO HALE/MAIN INTERSECTION																									
2.1 Revisions to Hale/Main Intersection	2	8		10	20													40	\$5,624	-	-	-	-	\$0	\$5,624
Subtotal Phase 2	2	8	0	10	20	0	0	0	0	0	0	0	0	0	0	0	0	40	\$5,624	\$0	\$0	\$0	\$0	\$0	\$5,624
3.0 STREET LIGHTS																									
3.1 Street lights		2		4														6	\$838	5,000	-	-	-	\$500	\$6,338
Subtotal Phase 3	0	2	0	4		0	0	0	0	0	0	0	0	0	0	0	0	6	\$838	\$5,000	\$0	\$0	\$0	\$500	\$6,338
4.0 PEDESTRIAN PATH, FLUSH CURBS AND MAINTENANCE BANDS																									
4.1 Pedestrian path, flush curbs and maintenance bands		2		4	40													46	\$4,798	-	-	-	-	\$0	\$4,798
Subtotal Phase 4	0	2	0	4	40	0	0	0	0	0	0	0	0	0	0	0	0	46	\$4,798	\$0	\$0	\$0	\$0	\$0	\$4,798
5.0 PEDESTRIAN PATH LIGHTS																									
5.1 Pedestrian path lights		2		4	16													22	\$2,470		-	-	-	\$0	\$2,470
Subtotal Phase 5	0	2	0	4	16	0	0	0	0	0	0	0	0	0	0	0	0	22	\$2,470	\$0	\$0	\$0	\$0	\$0	\$2,470
6.0 ENVIRONMENTAL PERMITTING																									
6.1 Environmental Permitting																		0	\$0	-	21,500	-	-	\$2,150	\$23,650
6.2 Historic Properties Survey Report																		0	\$0	-	-	-	10,000	\$1,000	\$11,000
Subtotal Phase 6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$21,500	\$0	\$10,000	\$3,150	\$34,650
TOTAL HOURS	4	22	0	58	120	0	0	0	0	0	0	0	0	0	0	0	0	204		0	0	0	0		204
Anticipated Salry Increases																			\$0	\$0	\$0	\$0	\$0	\$0	\$0
OTHER DIRECT COSTS																			\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL COST	\$1,428	\$4,950	\$0	\$6,786	\$11,640	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$24,804	\$10,000	\$24,000	\$0	\$10,000	\$4,400	\$73,204
OPTIONAL TASKS																									
1.1 Optional services requested by the city																		0	\$15,000	-	-	-	-	\$0	\$15,000
Subtotal Optional Tasks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$15,000	\$0	\$0	\$0	\$0	\$0	\$15,000
TOTAL HOURS - OPTIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0		-
Anticipated Salry Increases																			\$0	\$0	\$0	\$0	\$0	\$0	\$0
OTHER DIRECT COSTS - OPTIONAL																			\$500	\$0	\$0	\$0	\$0		\$500
TOTAL COST - OPTIONAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$15,500	\$0	\$0	\$0	\$0	\$0	\$15,500

EXHIBIT 2 March 21, 2019
Mark Thomas & Company, Inc. Rate Schedule
Expires June 30, 2019*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$425
Principal	\$394
Sr. Engineering Manager	\$332
Engineering Manager	\$284
Practice Area Leader	\$284
Sr. Project Manager	\$238
Sr. Technical Lead	\$238
Project Manager	\$195
Technical Lead	\$195
Sr. Project Engineer	\$167
Sr. Technical Engineer	\$167
Project Engineer	\$146
Design Engineer II	\$128
Design Engineer I	\$103
Sr. Technician	\$123
Technician	\$91
Intern	\$60

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$252
LAUD Division Manager	\$230
Sr. LAUD Project Manager	\$200
LAUD Project Manager	\$178
Landscape Architect II	\$145
Landscape Architect I	\$107
Landscape Designer II	\$98
Landscape Designer I	\$72
Intern	\$60

District Management Services

Deputy District Manager	\$247
Sr. Inspector	\$124
Inspector	\$90

Construction Management Services

Resident Engineer	\$236
Construction Inspector	\$159

Survey Services

Sr. Survey Manager	\$225
Survey Manager	\$210
Sr. Project Surveyor	\$190
Project Surveyor	\$160
Sr. Surveyor	\$145
Surveyor	\$125
Lead Survey Technician	\$150
Sr. Survey Technician	\$125
Survey Technician	\$110
Survey Intern	\$75
Single Chief	\$150
Single Chainman	\$125
Apprentice	\$80
1 Person Field Crew	\$175
2 Person Field Crew	\$275
3 Person Field Crew	\$375

Project Support/Coordination Services

Sr. Project Accountant	\$130
Project Accountant	\$103
Sr. Project Coordinator	\$124
Project Coordinator	\$98
Sr. Project Assistant	\$94
Project Assistant	\$66
Sr. Technical Writer	\$107
Technical Writer	\$68
Sr. Graphic Designer	\$117
Graphic Designer	\$83

Grant Writing Services

Sr. Funding Specialist	\$155
Funding Specialist	\$125

Special Services

Expert Witness	\$405
Strategic Consulting	\$405

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2019



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Mariah Dabel, Community Services Supervisor
APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

RECOMMENDATION(S)

1. Approve the Third Amendment to Consultant Agreement with Asset Protection Group Private Security Inc. to a revised not exceed total of \$145,000 for four years; and
2. Authorize the City Manager to execute and administer the amended agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

In July 2016, the City of Morgan Hill entered into an exclusive two-year consultant agreement with Asset Protection Private Group Security, Inc. to provide security at the Community and Cultural Center during events that include alcohol and dancing. Facility renters pay for this service, as needed, through their rental contract fees. The contract also allows for security services to be requested for additional one-time or ongoing events at other locations within the City as needed.

On September 27, 2017, the City Council approved the first amendment to increase compensation due to increased rental activity at the Community and Cultural Center, and the need for other security services within the City.

On May 16, 2018, the City Council approved the second amendment to extend the term for an additional year and increased the compensation to cover the expenses for the additional year.

City staff recommend a third amendment that proposes three changes to the amended agreement:

1. Asset Protection has continued to be a reliable and efficient company and staff recommends using the option to extend the final term to June 30, 2020.
2. Staff recommends the compensation be increased by \$40,000, to a revised not exceed amount of \$145,000, to cover the expenses of the additional year. Rental activity at the Community and Cultural Center continues to be strong.
3. The consultant requested to adjust one rate in the schedule of compensation (hours worked after midnight), as reflected in Exhibit B of the amended agreement. The compensation increase is directly related to increases in the consultant's operating costs.

The schedule of compensation rates is still within the range of the fees submitted in the Request for Proposals conducted in 2016. Staff recommends approving the request.

COMMUNITY ENGAGEMENT: Inform

Before entering into an agreement with Asset Protection, the City conducted a formal Request for Proposals (RFP) to find the best possible security company to meet the needs of the City. The community was informed of this request for proposals on the City website and in the local newspaper.

ALTERNATIVE ACTIONS:

The Council could elect to not approve the amendment and provide additional direction to staff on use of security services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council approved the first amendment to the agreement at the September 27, 2017 Council Meeting, and the second amendment at the May 16, 2018 meeting.

FISCAL AND RESOURCE IMPACT:

Majority of the expenses for this agreement are paid for through charges to facility renters. There is no additional fiscal impact, as security services expenses are budgeted at this level in the adopted Fiscal Year (FY) 2018-19 and FY 2019-20 biennial budget, within the Community Services Department, in the General Fund (010).

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. Asset Protection Group Private Security, Inc. 01 Amend 3

**THIRD AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ASSET PROTECTION GROUP PRIVATE SECURITY, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 24, 2016, for consultant services for a maximum compensation of FORTY-FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$44,500.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of November 27, 2017, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SIXTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$65,500.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of May 30, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED AND FIVE THOUSAND AND NO/DOLLARS. The CONSULTANT AGREEMENT, and the First, and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 24, 2016, until June 30, 2020. The City Manager is authorized to extend the term of this Agreement, for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED AND FORTY-FIVE THOUSAND AND NO/DOLLARS (\$145,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B** dated April 17, 2019, attached hereto and incorporated herein by

reference. 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."

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

"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."

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

"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."

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

"9. **Compliance with Law**.

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

9.2 Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal

Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

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2. Conflicts. In the event of a conflict between the terms and provisions of this THIRD Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendments, the terms of this Third Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

ASSET PROTECTION GROUP PRIVATE
SECURITY, INC.

LARRY A. JOHNSON
Larry A. Johnson
 By: _____
 Title: PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 03-29-2019

DEBRA JOHNSON
Debra Johnson

By: _____

Title: SECRETARY

Print Name and Title of Signer.

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

Date: 03-29-2019

APRIL 17, 2019

REVISED EXHIBIT B TO THIRD AMENDMENT TO AGREEMENT
SCHEDULE OF COMPENSATION RATES

Weekdays (Monday-Thursday) \$25.00 per hour

Weekends (Friday, Saturday, Sunday) \$25.00 per hour

After midnight \$30.00 per hour

Holidays \$30.00 per hour

Exhibit 1**SECOND AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, INC**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on May 30, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, ASSET PROTECTION GROUP PRIVATE SECURITY, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 16, 2018.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 24, 2016, for consultant services for a maximum compensation of FORTY-FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$44,500.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of November 27, 2017, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SIXTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$65,500.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 24, 2016, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. **Amount.** Total compensation to CONSULTANT under this Agreement during the term set forth in Section 2 above shall not exceed ONE HUNDRED AND FIVE THOUSAND AND NO/100 DOLLARS (\$105,000.00) and shall be billed based on the rate and basis set forth in revised **Exhibit B** dated April 18, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy
 City Clerk

Date:

5/31/18

APPROVED AS TO FORM:

for
 City Attorney

Date:

5-23-18

CITY OF MORGAN HILL

City Manager

Date:

5/30/18

ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

By:

Title:

LARRY A. JOHNSON
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

4-30-2018

By:

Title:

DELISKA JOHNSON
 Print Name and Title of Signer.

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

Date:

4-30-2018

Exhibit 1

176-04-16055

**FIRST AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, INC.,**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/27/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, Asset Protection Group Private Security Inc., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council Approval on September 27, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of 6/24/2016, for consultant services for a maximum compensation of \$44,500 ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

- 1.1. "4.1. **Amount.** Compensation under this Agreement shall not exceed SIXTY FIVE THOUSAND AND FIVE HUNDRED DOLLARS (\$65,500) and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy

City Clerk

Date:

12/4/17

APPROVED AS TO FORM:

City Attorney, Assistant

Date:

11-17-17

CITY OF MORGAN HILL

City Manager

Date:

11-27-17

Asset Protection Group Private Security,
Inc.

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date:

9-15-2017

By:

Title:

Print Name and Title of Signer.

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

Date:

9-15-2017

Exhibit A

126-04-16-055

CONSULTANT AGREEMENT
Asset Protection Group Private Security, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/24/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Asset Protection Private Group Security, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be security services as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$44,500. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed FORTY FOUR THOUSAND FIVE HUNDRED dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. Insurance Types and Amounts.

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

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

7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

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

10. Independent Contractor. CONSULTANT is an independent contractor and not an agent or employee of CITY.

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

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

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

Address of CONSULTANT is as follows:

Asset Protection Group Private Security, Inc.
1430 Blossom Hill Road
San Jose, Ca 95118

Address of CITY is as follows:

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

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

15. Maintenance of Records.

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

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

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

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
 - 20.1. Defense and Indemnification. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 20.2. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
 - 20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
 - 20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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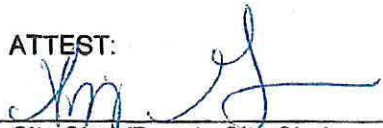
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

 Michelle Wilson
 Print Name

Date: 4/27/16

APPROVED AS TO FORM:


 Interim City Attorney

 Gary M. Baum
 Print Name

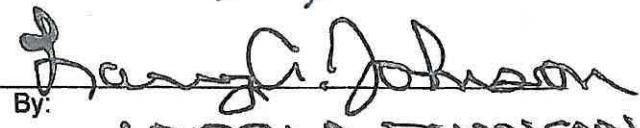
Date: 06/21/16

CITY OF MORGAN HILL


 City Manager

Steve Rymer
 Print Name

Date: 6/24/16

By: 

Title: LARRY A. JOHNSON
PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 5-23-2016

By: 

Title: CHIEF FINANCIAL OFFICER
NOLAN JOHNSON

Print Name and Title of Signer.

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

Date: 5-23-2016

**EXHIBIT A
SCOPE OF SERVICES**

Special Event and Banquet Security: Provide security services for the City at selected special events and banquets occurring at the Community and Cultural Center or other locations designated by the City. Responsibilities include:

1. Supply the Cities requested number of security officers for special events to provide customer service and a visible presence at the event.
2. Work under the direction of the City Building Coordinator or other staff designated by the City to maintain general order and ensure City policies and procedures are enforced.
3. Ensure that room capacities for events are not exceeded.
4. Verify attendees are over the age of 21 if alcohol is being served.
5. Periodically patrol the Community Center parking lot and grounds during events.
6. Contact the police department in the event of a disturbance, breach of the peace, or other emergency.
7. Ensure that the Community Center or other City facilities are secure and locked after special events have ended and escort the City employee to his or her car after the event.

APRIL 18, 2018
REVISED EXHIBIT B TO SECOND AMENDMENT TO AGREEMENT
SCHEDULE OF COMPENSATION RATES

Weekdays (Monday-Thursday) \$25 per hour

Weekends (Friday, Saturday, Sunday) \$25 per hour

Holidays \$30 per hour

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

As arranged by Community Services Department



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Jennie Tucker, Recreation Manager
APPROVED BY: City Manager

APPROVAL OF DENNIS KENNEDY AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

RECOMMENDATION(S)

Authorize the City Manager to execute, administer, and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Dennis Kennedy Aquatics Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

In November 2018, the City issued a Request for Proposal (RFP) for the Aquatics Center's (AC) concession operations, with the goal of entering into a contract with an experienced food and beverage operator. Public notice was published in the Morgan Hill Times on November 16 and November 23, 2018, and an optional onsite clarification meeting was held on December 11, 2018 at the AC.

Communication with previous concessionaires and to the Morgan Hill Downtown Association and Chamber of Commerce was also included in the RFP outreach.

As a result of the RFP, the City received one (1) proposal from the following vendor:

1. Sycamore Concessions Corporation

Sycamore was the most recent operator at the AC and staff recommends entering into a concessionaire license agreement with Sycamore Concessions Corporation (SCC) for another year.

SCC will continue to offer a variety of menu items including healthy choice options for visitors.

Key terms of the agreement include:

1. City's compensation would be the greater of \$25,000 annually or 18 percent of

the net income (gross sales less sales tax).

2. One-year agreement with an option for the City to renew for two (2) additional one-year terms.
3. Continue to allow visitors to bring outside food and beverage (excluding alcohol) into the facility.

COMMUNITY ENGAGEMENT: Consult

Community Services teammates will continue to solicit and gather feedback from AC customers regarding the provision of concession services. Feedback will be shared with the vendor to assist in making operational changes and adjustments.

ALTERNATIVE ACTIONS:

The Council could direct staff to attempt to negotiate changes to key terms of the agreement with the recommended vendor.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

April 6, 2011 City Council authorized the City Manager to execute a Concessionaire License Agreement with Burrito Azteca.

May 7, 2014 City Council authorized the City Manager to execute a Concessionaire License Agreement with Burrito Azteca.

April 19, 2017 City Council authorized the City Manager to execute a Concessionaire License Agreement with Sycamore Concessions Corporation.

FISCAL AND RESOURCE IMPACT:

This agreement would generate a minimum of \$25,000 in revenue annually to support AC operations. This revenue is accounted for in the adopted biennial budget, in the General Fund (010). (GL# 010.37940)

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. Sycamore Concession Agreement 2019
2. AC Concession RFP 2018 with Addendum

**CITY OF MORGAN HILL
AND
SYCAMORE CONCESSIONS CORPORATION
CONCESSIONAIRE LICENSE AGREEMENT**

This CONCESSIONAIRE LICENSE AGREEMENT ("AGREEMENT") is made this ____ day of _____, 2019 ("Effective Date"), by and between the CITY of Morgan Hill, a municipal corporation ("CITY"), and Sycamore Concessions Corporation ("Sycamore"), a California corporation.

RECITALS

- A. CITY currently operates the Morgan Hill Aquatics Center ("AC").
- B. Sycamore is an experienced food and beverage concessionaire with operations in the City of Berkeley, California and Sonoma, California.
- C. Sycamore desires to license from CITY and CITY desires to license to Sycamore the right to use certain portions of the AC for the purpose of providing food and beverage concession services and vending machine services to the public.

NOW THEREFORE, the parties agree as follows.

AGREEMENT

1. Parties.

A. CITY is the CITY of Morgan Hill, with its principal contact for purposes of this AGREEMENT as follows: Community Services Director, 17575 Peak Avenue, Morgan Hill, CA 95037, phone: 408-782-9154.

B. Sycamore is Sycamore Concession Corporation, a California corporation, with its principal contact for purposes of this AGREEMENT as follows: President, 340 Boulder Brook, Boulder Creek, CA, 95006, , phone: 209-916-5011.

2. Term and Renewal.

A. The "Term" of this AGREEMENT shall be for one year from the Effective Date unless terminated earlier as provided in Section 18 of this AGREEMENT or extended by mutual agreement as provided below. Sycamore's obligation to make final payment and the CITY's right to audit that payment shall survive the termination of this Agreement.

B. Six months after the Effective Date, or anniversary thereof upon renewal, both parties will meet to review the AGREEMENT terms and determine if a one year option to renew will be exercised. Any such renewal shall be by mutual written agreement. This AGREEMENT may be renewed for two (2) one year terms; the maximum term of this Agreement is three years from the Effective Date.

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

enforce any other right available to it under the laws of California or the provisions of this Agreement.

3. Compensation.

A. On or before the 15th day of each month following the Effective Date of this Agreement, Sycamore shall pay to CITY without notice or demand, 18 percent (18%) of "Net Income" as defined below collected by Sycamore from its operations at the AC during the preceding month ("Base Payment"). Sycamore guarantees that the CITY shall receive a Base Payment of at least \$25,000 for each one year period starting from the Effective Date of this Agreement. The same guarantee terms shall apply to any renewals of this Agreement. Each payment shall be accompanied by a report reflecting gross sales totals for each day of operation included in payment, sales tax paid/due and the total due to CITY.

For purposes of this AGREEMENT, "Net Income" shall mean amounts received by Sycamore from any source relating to the license described in Section 4 less sales taxes paid on those revenues.

B. Within 10 days after written notice, Sycamore shall provide the CITY with all financial books, records and receipts requested by CITY for the purpose of verifying the amount of Sycamore's revenues and the accuracy of Sycamore's calculation of the amount of compensation due to the CITY under this AGREEMENT. If an underpayment is determined based upon such review, Sycamore shall remit the balance owing within 30 days of notification by the CITY of its findings.

4. Permission Granted.

CITY hereby licenses to Sycamore and Sycamore hereby licenses from CITY for the term, at the price, and upon the terms, covenants and conditions set forth herein, the right to provide food and beverage concession services and vending machine services at the AC according to the following schedule:

Concession Summary Matrix:

	<u>City Contractor</u>	<u>Swim Meet Organizer</u>
Summer Recreation Swim Season	Exclusive*	
Summer Swim Meets	Allowed	Allowed
Summer Parties and Special Events	Exclusive*	
Vending Machines	Exclusive (year round service desired by City)	

*Aquatics Center customers shall be allowed to bring outside food and beverage (excluding alcohol) into the facility for consumption at the facility. The City may change or adjust this policy at its sole discretion.

5. Premises.

The parties agree that the rights provided by CITY to Sycamore create a license and do not create any tenancy, leasehold or possessory interest in the AC. CITY agrees that Sycamore, upon payment of the fees and charges specified herein, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, shall lawfully use the area designated as the "Premises" as specified in Exhibit "A" during the term of this AGREEMENT for the uses granted.

In carrying out its concession right on the Premises, Sycamore shall not interfere or obstruct the operation of the AC or the public enjoyment and use of the AC. The concession rights herein granted shall be carried on at the AC solely within the limits and confines of the Premises. No temporary stands or other places of operation shall be allowed during any other time without the express written permission of the Community Services Director. In the case of disputes, during the life of this AGREEMENT, over any conditions which may impede upon Sycamore's quiet enjoyment of the concession Premises, the Community Services Director shall have final determination of any solution to such dispute. His or her final determination shall be binding upon all parties in such dispute.

Sycamore shall not use or allow the Premises to be used, in whole or in part, during the term of this AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include those which relate to sanitation, public health and safety.

CITY reserves the right to further develop or improve the Premises as it sees fit; provided that the CITY will use its best efforts to minimize interference on the operation of the concession. At any time during the term of this AGREEMENT, the CITY may, by appropriate resolution fully setting forth the reason therefore, require Sycamore to surrender any portion of the Premises. Should CITY impose such a requirement on Sycamore to surrender, CITY shall provide comparable space at the AC for the continued operation of the concession.

6. Use. The Premises shall be used and occupied by Sycamore as a concessionaire for the preparation and sale of food and beverages for sale to and consumption by visitors and for no other purposes without the CITY'S prior approval.

7. Equipment, Furnishings and Supplies.

A. CITY shall have responsibility and sole discretion regarding the construction, purchase, and/or installation, of: furniture, fixtures, equipment, and interior furnishings to be utilized by Sycamore on the Premises, including, but not limited to, appliances and equipment, sinks, dishwashers, refrigerators, freezers, counters, tables, garbage disposals, and trash compactors.

B. Sycamore shall be solely responsible for the purchase of all food, beverages, paper products, and supplies, including office supplies to be used in its operations.

8. Common Areas.

A. Definition of Common Areas. The term "Common Areas" as used herein means all areas and facilities outside the Premises and within the exterior boundary line of the AC.

B. Sycamore 's Rights in Common Areas. CITY hereby grants to Sycamore, for the benefit of Sycamore and its employees, suppliers, shippers, customers, and invitees, during the Term of this AGREEMENT, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas.

C. Changes. CITY shall have the right, in CITY's sole discretion, so long as it will not unreasonably interfere with Sycamore 's use of the Premises and the accessibility of the public to the Premises, to make changes to or temporarily close the Common Areas.

9. Maintenance and Repairs.

A. CITY's Obligations. CITY shall, at its own expense, keep in good condition and repair the building's roof, foundations, windows, doors and interior and exterior walls, structural condition of interior bearing walls of the Premises, and air conditioning, electrical, steam, heating, ventilating, mechanical, plumbing systems and appliances as well as the parking lots, walkways, driveways, landscaping, fences, signs, and utility installations of the Common Areas and all parts thereof (collectively the "CITY Obligations"). CITY shall not be liable for damages or loss of any kind or nature by reason of CITY's failure to furnish any Common Area services when such failure is caused by accident, breakage, repairs, strikes, lockout, or other labor disturbances or disputes of any character, or by any other cause beyond the reasonable control of CITY.

B. Sycamore's Obligations. Sycamore shall at its own expense, keep in good order and condition: its vending machines, the Premises, and every part thereof including, equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, and ceilings. Sycamore shall complete all maintenance work expeditiously in a first class and workmanlike manner using high quality new materials. Sycamore shall be responsible for emptying trash bins within the Premises in the appropriate trash dumpster and cleaning and removing trash, including the clean-up of spilled food or beverages, from that portion of the Common Area located within twenty (20) feet of the exterior wall of the Premises and the picnic, party and cabana areas when Sycamore provides food and beverage service to parties in said areas. Sycamore shall closely monitor that portion of the Common Area that it is required to maintain and immediately clean-up spilled food or drinks. Sycamore shall also be responsible for collecting all serving trays, drink pitchers and other Sycamore supplies from throughout the Common Area at the end of each business day.

C. CITY and CITY's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same.

D. If Sycamore fails to perform Sycamore's maintenance and repair obligations, CITY may enter upon the Premises after ten (10) days' prior written notice to Sycamore (except in the case of emergency, in which case no notice shall be required), perform such obligations on Sycamore's behalf and put the Premises in good order and condition and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to CITY together with Sycamore 's next monthly compensation payment to the CITY.

E. On the last day of the Term hereof, or on any sooner termination, Sycamore shall surrender the Premises to CITY in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary

wear and tear if the same could have been prevented by good maintenance practices. Sycamore shall repair any damage to the Premises occasioned by the installation or removal of trade fixtures, alterations, furnishings, and equipment made by Sycamore.

F. Notwithstanding any other provision of this Section 9, the parties agree that Sycamore shall repair all Equipment used for purposes of this AGREEMENT with a repair cost of \$500 or less and the CITY shall repair all Equipment used for purposes of this AGREEMENT with a repair cost over \$500. For purposes of this Section 9 F, "Equipment" shall mean the inventory listed on the attached Exhibit "B" which Exhibit may be revised from time to time by mutual written agreement, which in the case of the CITY may be authorized by the Community Services Director; provided however that Sycamore shall be responsible for the cost of repair of any damage or malfunction of the Equipment caused by Sycamore's failure to maintain or by Sycamore's negligence.

10. Alterations and Additions.

A. Sycamore shall not, without CITY's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on, or about the Premises, or the AC during the Term of this AGREEMENT, nor shall Sycamore make any change or alteration to the exterior of the Premises or the exterior of any buildings which are part of the AC. For purposes of this AGREEMENT, "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, and plumbing. In the event that CITY consents to any alteration, improvement, addition, or Utility Installation, if CITY so elects, CITY may require that Sycamore remove any or all of said alterations, improvements, additions, or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. CITY may require Sycamore to provide CITY, at Sycamore's expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure CITY against any liability for mechanics' and materialmen's liens and to insure completion of the work. Should Sycamore make any alterations, improvements, additions, or Utility Installations without the prior written approval of CITY, CITY may, at any time during the Term of this AGREEMENT, require that Sycamore remove any or all of the same. All work with respect to any alteration or addition must be performed in a good and workmanlike manner.

B. Any alterations, improvements, additions, or Utility Installations in or about the Premises that Sycamore shall desire to make and which require the consent of CITY shall be presented to CITY in written form with proposed detailed plans. If CITY shall give its consent, the consent shall be deemed conditioned upon Sycamore acquiring any necessary permits from appropriate governmental agencies, the furnishing of copies thereof to CITY prior to the commencement of the work, and the compliance by Sycamore with all conditions of said permits in a prompt and expeditious manner.

11. Utilities and Services.

A. CITY shall furnish: (i) heating, air conditioning ventilation, electric current, gas and domestic water service in reasonable amounts as required for the normal use and occupancy of the Premise; and (ii) a grease interceptor, sewer line to the kitchen, and kitchen ventilation to the roof. All other services required for operation shall be furnished at Sycamore's expense.

B. Without the prior written consent of CITY, Sycamore shall not use any apparatus or device in the Premises that will in any way increase the amount of electricity, gas or water to be provided by CITY.

C. CITY shall have no obligation to furnish janitorial services to the Premises which shall be furnished by Sycamore at Sycamore's expense.

D. CITY reserves the right to temporarily stop the service of the air conditioning, plumbing, electrical, or other mechanical systems or facilities in any building when necessary by reason of accident or emergency, or for repairs, alterations, replacements, or improvements, that, in the reasonable judgment of CITY, are desirable or necessary, until such repairs, alterations, replacements, or improvements shall have been completed. CITY supports conservation efforts and, to that end, may cooperate with the efforts of national, state, or local governmental agencies or utilities in reducing energy or other natural resource consumption. In connection therewith, CITY reserves the right to limit, restrict, or ration on a reasonably nondiscriminatory basis the use of water, electricity, or any other form of energy or any other service or utility serving the Premises or any building.

12. Menus.

A. Sycamore shall submit to CITY for approval a proposed menu of all food and beverage items, including vending machine items and special event catering selections, and their prices, prior to the offering of any items for sale at the AC. No food or beverage items shall be offered for sale without CITY's prior approval.

B. Sycamore shall offer a reasonably priced menu that contains popular, healthy, freshly prepared items and pre-packaged snacks, and may expand/vary the menu offerings from time to time with the mutual agreement of the City. The menu shall comply with the City's Healthy Food and Beverage guidelines as they apply to concessionaires.

C. Sycamore shall not sell any non-food or non-beverage items without express written consent of the CITY.

D. Sycamore shall not serve or sell alcohol without prior written consent of the CITY.

E. Sycamore shall not sell tobacco products without prior written consent of the CITY.

F. Sycamore shall furnish and post professionally printed menus and signs at the food concession store, cabanas and other mutually agreed upon locations. Sycamore must have these signs in place prior to the start of the summer.

G. For purposes of this Section 12, the Community Services Director is authorized to provide the CITY's consent.

13. Permits. Sycamore shall, at its own expense, comply with all licenses and/or permit requirements of any governmental agency applicable to Sycamore's operations.

14. Signs. Sycamore shall not place any sign upon the Premises without CITY's prior written consent.

15. Displays. With the exception of food or beverage carts located in areas of the Common Area previously approved in writing by the CITY, Sycamore may not display or sell merchandise outside of the defined exterior walls and permanent doorways of the Premises. Sycamore shall not install any exterior lighting, amplifiers, or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs, or radio broadcasts. Sycamore shall not install any window displays without prior approval of the CITY.

16. Hours of Operation. Sycamore shall, during the Term, keep the Premises open for business during the same hours as the AC summer recreation swim hours. Vending machines shall be operable at all times and shall be repaired within 24 hours of oral or written notice from CITY.
17. Minimum Requirements for Sycamore Employees.
- A. Sycamore shall provide its own employees to manage and conduct its concession operations at the AC.
- B. Sycamore shall not permit any Sycamore employee to work at the AC, unless Sycamore has, within 90 days prior to said employee commencing work at the AC, conducted a criminal background check of such employee using Live Scan fingerprint services, and said check discloses no criminal conviction for any felony or misdemeanor involving moral turpitude.
- C. Sycamore shall not permit any Sycamore employee to work at the AC, unless Sycamore has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis. Sycamore shall comply with the requirements of Public Resources Code § 5163.
- D. Sycamore's employees shall wear uniforms approved by CITY and shall be properly groomed.
18. Termination.
- A. This AGREEMENT may be terminated before the end of the Term as follows:
- (a) The abandonment of the Premises by Sycamore for three (3) consecutive days.
 - (b) The failure by Sycamore to make any payment when due where such failure continues for a period of three (3) days after written notice thereof from CITY to Sycamore.
 - (c) Except as otherwise provided in this AGREEMENT, the failure by Sycamore to observe or perform any of the covenants, conditions, or provisions of this AGREEMENT to be observed or performed by Sycamore where such failure shall continue for a period of fifteen (15) days. Sycamore shall not be deemed to be in default if Sycamore diligently pursues a cure within said fifteen (15) day period.
 - (d) The making by Sycamore of any general arrangement or general assignment for the benefit of creditors: (i) Sycamore becoming a debtor as defined in Section 101 of Title 11 of the United States Code or any successor statute thereto, or any action taken or suffered by Sycamore under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief statute, whether now existing or hereinafter amended or enacted; (ii) the appointment of a trustee or receiver to take possession of substantially all of Sycamore's assets located at the Premises or of Sycamore's interest in this AGREEMENT, where possession is not restored to Sycamore within thirty (30) days; or (iii) the attachment, execution, or other judicial seizure of substantially all of Sycamore's assets located at the Premises or of Sycamore's interest in this AGREEMENT, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section 18(A)(d) is contrary to any applicable law, such provision shall be of no force and effect.

B. In the event of any such material default by Sycamore, CITY may at any time thereafter, with or without notice or demand and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default:

- (a) Terminate Sycamore's right to use the Premises by any lawful means, in which case this AGREEMENT shall terminate and Sycamore shall discontinue its use of the Premises.
- (b) Pursue any remedy now or hereafter available to CITY under the laws or judicial decisions of the state wherein the Premises are located. Any unpaid monetary obligations of Sycamore under the terms of this AGREEMENT shall bear interest from the due date at the maximum rate then allowable by law.

19. Late Charges. Sycamore hereby acknowledges that late payment by Sycamore to CITY of any sums due hereunder will cause CITY to incur costs not contemplated by this AGREEMENT, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any sum due from Sycamore shall not be received by CITY or CITY's designee within ten (10) days after such amount shall be due, then without any requirement for notice to Sycamore, Sycamore shall pay to CITY a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs CITY will incur by reason of late payment by Sycamore.

20. Insurance Requirements. Sycamore 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 Sycamore, 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. Sycamore further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Sycamore, at any time as deemed necessary to protect the interests of the CITY.

A. Insurance Types and Amounts.

- (a) Commercial General Liability (CGL). Sycamore 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 Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (b) Automobile Liability. Sycamore shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Sycamore does not own automobiles, then Sycamore 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 Sycamore under Sycamore's combined

insurance policies (including any excess or “umbrella” policies), whichever is greater.

- (c) Workers’ Compensation Insurance and Employer’s Liability. Sycamore 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 Sycamore under Sycamore's combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Sycamore is self-insured, Sycamore shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (d) Liquor Liability. If Sycamore engages in serving and/or selling alcoholic beverages, then Sycamore shall provide evidence of Liquor 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 for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

- (a) General Liability.
 - i. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
 - ii. 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,
 - iii. insurance shall be primary non-contributing.
- (b) Workers Compensation. The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

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

D. Certificates. Sycamore 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 Sycamore'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

21. 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.

22. Compliance with Law.

- A. Sycamore 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. Sycamore 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.
- B. Compliance with Wage and Hour Laws: Sycamore, 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 SYCAMORE and/or its subcontractors: BY SIGNING THIS AGREEMENT, SYCAMORE 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 SYCAMORE OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SYCAMORE 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 SYCAMORE or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SYCAMORE learns of such a judgment, decision, or order that was not previously disclosed, SYCAMORE 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. SYCAMORE and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SYCAMORE to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

23. Independent Contractor. Sycamore is an independent contractor and not an agent or employee of CITY.
24. Conflict of Interest and Reporting. Sycamore shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
25. 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 Sycamore is as follows:	
Address of CITY is as follows:	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

26. Licenses, Permits and Fees. Sycamore 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.
27. Maintenance of Records.
 - A. Maintenance. Sycamore 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. Sycamore 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 Sycamore shall retain said records until such action is resolved.
 - B. 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 Sycamore 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.

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

28. Familiarity with Work. By executing this Agreement, Sycamore 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 Sycamore 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 Sycamore's risk, until written instructions are received from CITY.
29. Time of Essence. Time is of the essence with respect to the obligations to be performed under this AGREEMENT.
30. No Assignment. Neither this Agreement nor any portion shall be assigned by Sycamore, 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.
31. Attorney Fees. In any legal action, proceeding, or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses incurred.
32. Defense and Indemnification.
 - A. Defense and Indemnification. Sycamore 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 Sycamore, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - B. Exceptions. Sycamore 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.
 - C. 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 Sycamore.
 - D. Right to Offset. CITY shall have the right to offset against any compensation due Sycamore under this Agreement any amount due CITY from Sycamore as a result of Sycamore's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount

due CITY from Sycamore arising from Sycamore 's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

E. 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 Sycamore 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.

33. 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 Sycamore. 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.
34. 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.
35. 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.
36. 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.
37. 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 Sycamore in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.
38. 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

Michelle Wilson

Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin

Print Name

Date: _____

City Manager
Christina Turner

Print Name

Date: _____

Sycamore Concessions Corporation

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 3/26/19

By:

Title:

Print Name and Title of Signer.

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

Date: 3/26/19

Attachment: Sycamore Concession Agreement 2019 (2270 : AC Concessionaire Agreement)

Premise Exhibit A

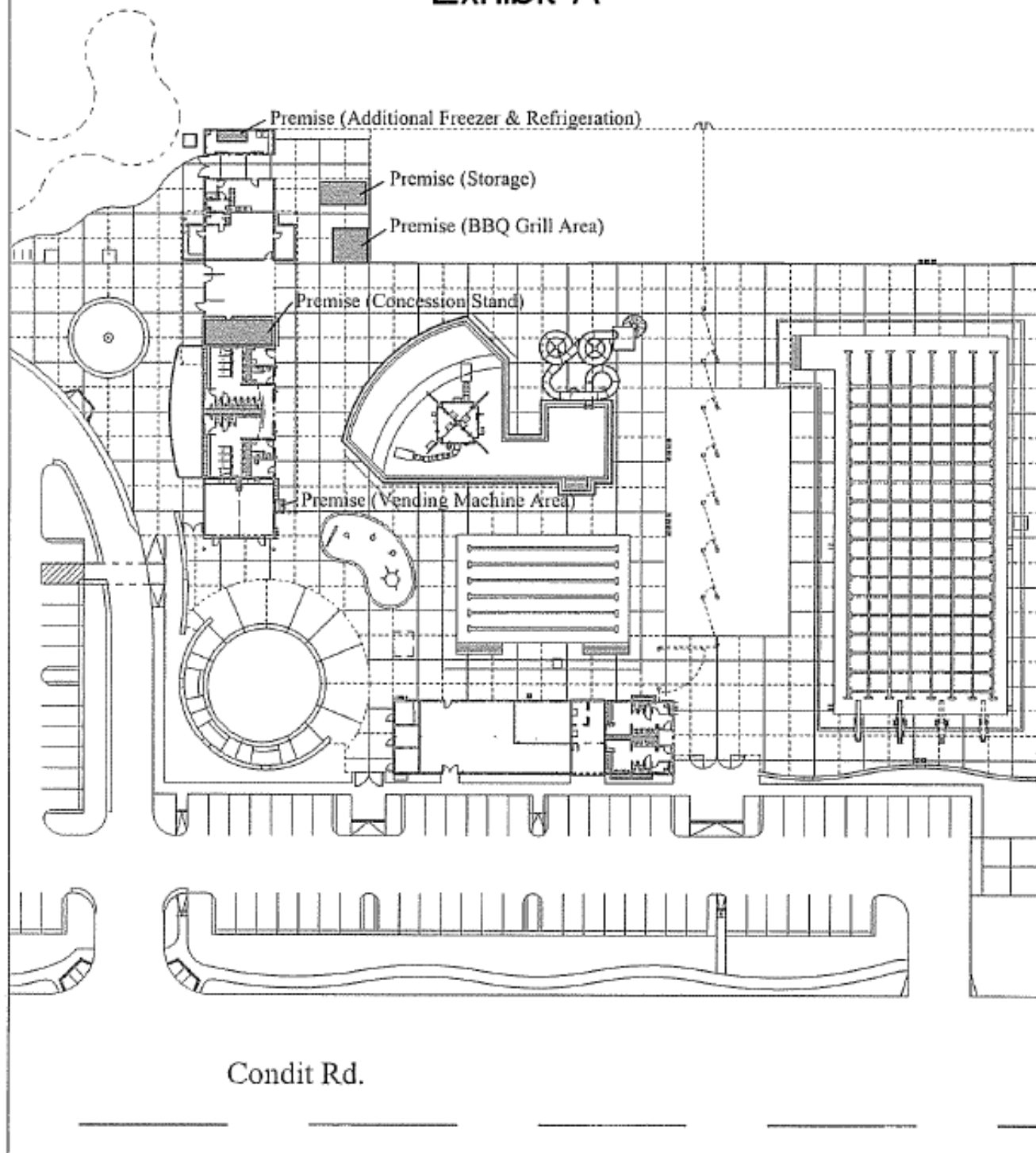


EXHIBIT B

17575 Peak Avenue
Morgan Hill, CA 95037
Te: 408-779-7271
www.morgan-hill.ca.gov

**Morgan Hill Aquatics Center
Equipment Inventory List**

- 1 Manitowoc commercial Ice Maker machine
- 1 True refrigerator, double door Model # T-49
- 1 White residential Freezer Model # FFH1767GW2
- 1 True sandwich refrigerator Model # TPP-60
- 1 6 burner + oven Sunfire stove
- 2 Single use Frymaster
- 1 True sandwich refrigerator Model # TWT-48
- 1 Small True freezer Model # TWT-27F
- 1 Portable sink Model # KSC402 120VAC
- 1 Large commercial charcoal BBQ grill



**AQUATICS CENTER
FOOD CONCESSION OPPORTUNITY
NOVEMBER 2018**

DUE DATE: JANUARY 11, 2019, 5:00PM

REQUEST FOR PROPOSAL

The City of Morgan Hill seeks proposals from experienced food and beverage service operators to provide food and beverage service at the Morgan Hill Aquatics Center, located at 16200 Condit Road, Morgan Hill, CA 95037.

CONCESSION SERVICES:

The City desires to enter into a mutually beneficial Concessionaire's License Agreement with an experienced food and beverage service operator who will be the sole and exclusive provider of food and beverage concession services at the Aquatics Center ("AC") during the Summer Recreation Swim Season. The City is seeking a food and beverage service provider to either operate out of a fully self-contained food truck on-site or use the Aquatic Center's existing kitchen facility. As part of the agreement, the City has the following expectations of the contractor selected to provide food concession services:

1. The food service contractor will be the sole and exclusive provider of food and beverage sales at the AC during the Summer Recreation Swim Season (see anticipated 2019 season schedule in the "Additional Information" section of this document) with the following exceptions:
 - a. Limited outside food and drink is permitted in the facility, such as small snacks and finger foods. Large food items or foods that require preparation, and/or glass and hard coolers are not allowed anywhere in the Aquatics Center. Additional detail is outlined in the "Aquatics Center Outside Food and Beverage Policy." within the Additional Information section below.
 - b. It is understood that the preseason School Dayz program allows school groups to bring their lunches to the facility and that the concession store shall also be open during these scheduled events (late May to early June).
 - c. It is understood that swim meets during the Summer Recreation Swim Season (historically two or three meets) shall be allowed to provide their own concessions of products not offered by the food service contractor,

including a hospitality room for meet officials and volunteers. During meets, the concession operation may also be open.

- d. Parties are allowed to bring their own cake.
2. The food service contractor shall offer a reasonably priced menu that contains popular, healthy, freshly prepared items and pre-packaged snacks, and may expand/vary the menu offerings from time to time with the mutual agreement of the City. **The menu shall comply with the City's Healthy Food and Beverage guidelines as they apply to concessionaries** (see attached).
3. The food service contractor shall ensure that concession employees look professional and are in uniform and extend a pleasant attitude and exemplary customer service to the patrons of the AC.
4. The food concession operation will be open for business during all recreation swim times and special events.
5. Food and beverage wait service will also be provided to the six (6) poolside cabanas during all recreation swim times. This service may be negotiable depending on the service model.
6. The food service contractor will work with City staff to coordinate the sale of food to parties and groups using the AC. The food service contractor is expected to be able to work directly with customers and provide exemplary customer service in those exchanges. On average, the AC hosts 100 parties during the summer season.
7. The food concession operation may also be open for business at other times as agreed upon by the City and the food service contractor.
8. The sale of alcohol and tobacco products is prohibited.
9. The food service contractor will post/furnish professionally-printed menus and signs at the food concession counter, cabanas, and other mutually agreed upon locations.
10. The food service contractor shall provide all food, beverages, supplies, personnel, insurance, and all other items necessary to operate the concession store to standards required by the Santa Clara County Health Department.
11. The City subscribes to a "green building" philosophy. The food service contractor should be prepared to demonstrate how their service will be operated to minimize trash products, and maximize reuse/recycling efforts, and compostable service ware. Similarly, City ordinance prohibits the distribution of prepared food using polystyrene food containers or service ware. Glassware is prohibited at the AC.
12. The City, at its discretion, may modify AC operating hours and programs as it sees fit.

13. Concession Summary Matrix:

	City <u>Contractor</u>	Swim Meet <u>Organizer</u>
Summer Recreation Swim Season	Exclusive*	
Summer Swim Meets	Allowed	Allowed
Summer Parties and Special Events	Exclusive*	
Vending Machines	Exclusive (year round service desired by City)	

**Customer allowed to bring in limited outside food and birthday cakes. See Aquatics Center Outside Food and Beverage Policy in this RFP.*

PREFERED TERMS OF AGREEMENT:

The City's Concessionaire License Agreement with the previous concession operator is attached as an example. The agreement should not be considered as the actual agreement that the City and new operator will enter into, only as an example. The final terms and language will be negotiated.

- 1) The food service contractor will be required to sign a Concessionaire License Agreement with the City of Morgan Hill. The City prefers a contract with an initial term of two (2) years which may be extended for a longer term by mutual agreement of both parties, but will consider other options.
- 2) The City will consider terms whereby the food service contractor will pay the City either a percentage of monthly gross receipts or another mutually agreed upon arrangement with a guaranteed minimum to the City.
- 3) Operating Model A: Food Truck (s)
 - (1) The City will pay for the cost of electrical utilities. The food service contractor will pay for all additional utilities required for operation (e.g. CO2 service), including the cost of Internet and data service. Free public Wi-Fi is available on site.
 - (2) The food service operator will furnish a self-contained food truck to serve as the base of operations for food preparation and sales.
 - (3) The food service operator will be responsible for proper disposal of all food preparation waste (grease).
- 4) Operating Model B: Concession Store

- i) The City shall provide use of the concession store premises, storage shed, grill, and existing equipment and furnishings to the food service contractor.
 - ii) The City will pay for the cost of all utilities currently being provided. The food service contractor will pay for all additional utilities required for operation (e.g. CO2 service).
 - iii) The food service contractor will be required to properly clean and maintain the concession store, storage shed, grill, vending machines, and all areas immediately adjacent to the aforementioned areas. All mentioned areas must be thoroughly cleaned following the end of the summer season.
 - iv) The contractor shall repair all Equipment used for purposes of providing concessions with a repair cost of \$500 or less and the City shall repair all Equipment used with a repair cost over \$500. The City shall have no responsibility for repairs to approved contractor provided equipment/furnishings.
- 5) The food service contractor shall be required to maintain insurance in the types and amounts as required by the City and shall possess or obtain a City of Morgan Hill Business License.
- i) Comprehensive general liability insurance: \$1,000,000 per occurrence
 - ii) Automobile insurance: \$1,000,000 per occurrence
 - iii) Worker's compensation insurance: as required by law

PROPOSAL FORMAT:

To ensure the provision all of the necessary information and that all proposals are evaluated equally, please submit your written proposal in the following format:

PROPOSAL SUBMISSION FORM:

Please complete the Proposal Submission Form attached to this RFP. Please place the form **on top** of your proposal. This will be used for proposal identification.

COVER LETTER:

Provide a signed cover letter indicating your desire to provide concession services.

SECTION 1: COMPANY INFORMATION

In this section, provide a summary of your company's qualifications that includes the following information:

- Name, business address and business phone of your company's owner
- Name, business address and business phone of local company supervisor or contact person, if not the same as above
- Describe your current company including the number of years in business, number of years at current business address, and number of employees

- Describe your experience in operating a food service company similar to one or both of the two proposed models (food truck and/or AC concession store) including current menu offerings and services provided by your company. Please include any experience you have working providing food and beverage service to parties and managing wait staff.
- Demonstrate financial stability

SECTION 2: PROPOSED BUSINESS PLAN

Describe your business plans and/or approaches you envision for the operation of the food truck or AC concessions store. Please include how you intend to maximize sales, understand the wants of your customers, provide exemplary customer service, and ensure orders are expedited in the timeliest manner.

Please include a two year proforma with estimated gross receipts and expenses. As part of this, please describe your proposed financial arrangement with the City, including the minimum guaranteed revenue to the City.

Please also include any plans to contract, partner, and/or collaborate with other food service providers in order to provide diverse menu options aimed at meeting the wants of AC customers (additional information below in Section 3) and the City's Healthy Food and Beverage Guidelines.

Please detail any site improvements needed to operate. Identify specific electrical/power utilities needs. Please outline your storage plan for perishable and non-perishable goods, whether on site at the AC, offsite, or some combination.

Please detail any mobile ordering or order-ahead apps or services you plan to use to minimize wait times in lines and provide efficient customer service (highly preferred).

SECTION 3: PROPOSED MENU OFFERING

In this section, provide a list of core menu items you are prepared to offer. The menu should be designed to maximize sales and satisfy customer demand. Note that in the AC setting, food and beverage items that result in the minimum amount of waste or trash are most desirable.

While the menu you propose is at your discretion, it should contain the following variety of foods:

- Hot and cold beverages;
- Freshly prepared hot and/or cold food items and snacks;
- Healthy options;
- A variety of pre-packaged snack foods.

The City also desires to have a diversity of menu items that may only be able to be delivered by collaborating, contracting, and/or partnering with other food service

providers. As such, the City is interested in receiving proposals that include creative approaches to providing quality food and beverage selections.

Concession Equipment:

Should the City select an operator for the AC Concession Store model (Model B), the City will provide the food service contractor access to the existing furnishings and equipment in the concession store and storage shed. If additional furnishings and/or equipment are desired, it is the contractor's responsibility to provide these items and to pay for any additional utility work that may be necessary, provided that it is approved first by the City. Furthermore, the contractor will pay for the additional monthly utilities expense.

Existing City-Owned Concession Equipment at the Morgan Hill Aquatics Center:

<u>Item</u>	<u>Quantity</u>
1 Manitowoc commercial Ice Maker machine	
1 True refrigerator, double door Model # T-49	
1 White residential Freezer Model # FFH1767GW2	
1 True sandwich refrigerator Model # TPP-60	
1 6 burner + oven Sunfire stove	
2 Single use Frymaster	
1 True sandwich refrigerator Model # TWT-48	
1 Small True freezer Model # TWT-27F	
1 Portable sink Model # KSC402 120VAC	
1 Large commercial charcoal BBQ grill	

Estimated RFP Schedule

The City's proposed schedule for review of the proposals and final selection of the Contractor is as follows:

Date	Item
Mon. 11/19/18	RFP Packages Available
Fri. 11/23/18 and 11/30/18	RFP posted in Morgan Hill Times
Tues. 12/11/18	Interested parties optional onsite RFP clarification meeting and Aquatics Center tour at 10am
Fri. 12/14/18	Deadline to submit questions in writing to Jennie Tucker at jennie.tucker@morganhill.ca.gov
Thurs. 12/20/18	City to issue addendum addressing all questions submitted in writing
Fri. 1/11/19	Proposals due by 5pm
Week of 1/21/19	Interviews with potential Contractors
March 2019	City Council considers approving agreement
May 2019	Contract concession operations begin

Request for Information:

Questions regarding this Request for Proposals must be submitted in writing to Jennie Tucker, Recreation Manager, at jennie.tucker@morganhill.ca.gov no later than Friday, December 14, 2018 at 5:00 p.m. An addendum addressing all questions will be issued no later than Thursday, December 20, 2018.

PROPOSAL SUBMITTAL:

Written proposals are due at the following address **no later than 5:00pm on January 11, 2019.** The City of Morgan Hill is not responsible for non-receipt of proposals sent by mail or courier.

Proposals should be completed and delivered **to the City Clerk of the City of Morgan Hill, located at 17575 Peak Avenue, Morgan Hill, CA 95037 clearly marked "AQUATICS CENTER CONCESSIONS PROPOSAL" no later than 5:00pm on January 11, 2019.**

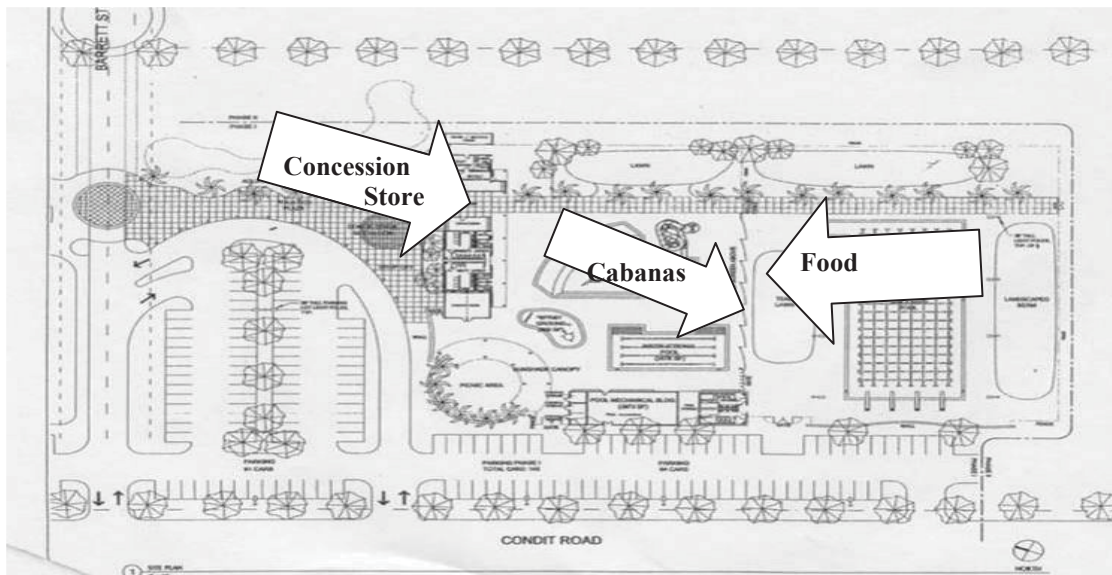
The City Council reserves the right to reject any or all proposals and to determine which proposal is in its judgment the best responsible submission by a responsible candidate and which proposal should be accepted in the best interest of the City Council. The City Council also reserves the right to waive any informality in any proposal or bid.

Please deliver **five (5) unbound copies** of your proposal to:

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

ADDITIONAL INFORMATION **ABOUT THE MORGAN HILL AQUATICS CENTER**

The Morgan Hill Aquatics Center opened in 2004 and offers a full range of instructional, recreation, and competition swim activities. The facility is located on approximately 5.5 acres of the total 8.8 acre site. The AC's main features include a recreation pool with two waterslides and a play structure, a 25 yard instructional pool, children's interactive water fountain, 50 meter competition pool with diving boards, and patio/lawn areas for picnics and relaxation. More information can be found online at www.mhaquaticscenter.com.



FOOD CONCESSION KITCHEN AND OTHER AMENITIES

The food concession kitchen is approximately 360 (30' x 12') square feet in the main pool house near the entrance to the Aquatics Center. It is furnished with commercial grade equipment to prepare and serve a wide variety of sandwiches, snack foods and beverages. In addition, a gas grill cooking area is provided and a 209 (19' x 11') square feet storage shed is also available to store contractor materials and supplies.

ANTICIPATED 2019 SUMMER RECREATION SWIM SCHEDULE

The Aquatics Center is anticipated to be open for the *2019 Summer Recreation Swim Season* as follows:

Pre-Summer

Memorial Day Weekend

Saturday, May 25 – Monday, May 27 11:30am - 5pm

Saturday, June 1 – Sunday, June 2 11:30am - 5pm

Saturday, June 8 – Sunday, June 9 11:30am - 5pm

School Dayz, Weekdays

Thursday, May 22– Friday, June 7 9:30am - 2pm

(Excluding Monday, May 27 due to Memorial Day)

Summer Season June 10 – August 9

Sunday-Saturday (7 days per week) 11:30am - 6:30pm

Weekends August 17 through September 15

Weekends Only & Labor Day, Monday, September 2 11:30am - 5pm

HISTORICAL BACKGROUND INFORMATION

The following information is intended to assist you in understanding historical summer recreation swim visits and concession sales. These are all estimates and should not be considered as a guarantee for future performance.

	FY17/18	FY16/17	FY15/16	FY 14/15	FY 13/14	FY 12/13
Daily Visits	54,399	57,413	58,304	60,594	67,132	56,010
Gross Concession Revenue	\$137,280	\$174,426	\$206,285	\$198,782	\$190,279	\$168,277
Revenue/Visit	\$2.52	\$3.04	\$3.54	\$3.28	\$2.83	\$3.00

Aquatics Center Outside Food and Beverage Policy

The Aquatics Center features a variety of food and beverage for sale for almost every taste and budget—including a wide range of choices to help accommodate Guests with food allergies or intolerances.

Guests may enjoy their own food and beverages in an ideal setting at the complimentary picnic area - conveniently located outside the Main Entrance to the Morgan Hill Aquatics Center. However, with the exception of food items for Guests with specific dietary restrictions, limited outside food or beverage items are permitted. Please see below for details or contact us at 408.782.2134.

Food and beverages allowed in the facility:

- o Snack foods, baby food, premade handheld food (no glass containers) may be brought into the facility.
- o Non-alcoholic beverages (no glass) may also be brought into the facility.
- o Small insulated, soft coolers (no hard sided coolers) no larger than 12"x12"x12" are allowed.

Food and beverages NOT allowed in the facility:

- o Food or beverages in glass containers
- o Alcoholic beverages
- o Large quantity food items or items that require preparation. These items may be enjoyed at the complementary picnic area outside the facility.
- o Hard sided and styrofoam coolers.
- o Other food items that cause/may cause excessive trash, distraction or harm to the facility or its patrons, or are otherwise deemed as non-permissible by Aquatics Center Management (e.g. sunflower seeds).

Camps:

If you are visiting with an organized camp, we ask that sack lunches be enjoyed outside of the facility.

Parties:

Our food concessionaire offers a variety of food and beverage options and party packages to accommodate your special event. Guests hosting a party at one of our reservable party areas (cabanas not included) may also choose to bring their own food and beverages for the party. Please note the following restrictions:

- o Unless purchasing from our food concessionaire, party hosts must bring their own plates, utensils and serving ware.
- o If you would like us to store your cake, please let us know. We cannot accommodate ice cream cakes or ice cream.
- o Food that requires prepping is not allowed.
- o Food cooking apparatuses (e.g. hotplates, electric skillet, rice cookers, etc.), open flames, BBQs and food warmers are not allowed.
- o Hard sided coolers must be stored in our air conditioned office. You are more than welcome to come into the office at any time to retrieve items for your

guests. If you would like, we do allow you to bring in soft bag coolers to your area.

Guests with food sensitivities, allergies or special dietary needs:

Guest may bring personal foods into the park, to the extent that they are medically necessary (e.g., for diabetics, baby formula for infants, gluten-free foods, or allergy-safe foods for allergies).

Our food outlets prepare and serve products sourced from third parties, which contain peanuts, tree nuts, fish, shellfish, eggs, milk, soy and gluten. Regular kitchen operations involve shared cooking and preparation areas, and food variations may occur to differences in suppliers, ingredient, substations, recipe revisions, and /or preparation at the parks. As such, we regret to inform you that the facility cannot, and does not, make any representations or guarantees whatsoever regarding allergy-free contests of any foods or beverages, or the safety thereof (especially in regard to any allergies).

SAMPLE MENU FROM PREVIOUS VENDOR



BEVERAGES

Coffee: Organic, free trade micro roaster	\$3.00
Hot Chocolate-Ghirardelli Premium Hot Chocolate	\$3.00
Tea-organic, iced or hot; various flavor varieties	\$3.00
Bottled Water	\$1.00
Fountain Soda-32 oz.	\$4.00
Bottled Drinks	\$2.50
Juice Boxes	\$2.00
Milk-organic, low fat	\$3.00

COLD SNACKS

Tropical Parfait: layers of mango, yogurt, tropical trail mix granola	\$5.00
Smoothies: Fresh Fruit, yogurt or juice. Strawberry, Banana, Mango	\$5.00

FROZEN SNACKS

Frozen Juice Bars	\$2.50
Ice Cream Bars-Variety of Choices	Varies
Snow Cone Cups	\$3.00

FRUIT & VEGETABLE SNACKS

Apple Sandwich: Sliced apple with almond butter, granola, coconut	\$2.50
Veggie Cup: ranch or hummus with carrots, bell peppers, celery	\$2.50
Fresh Fruit Cup: variety of in season fruits	\$3.50

FINGER FOOD

Hummus & Tortilla Chips or Chips and Salsa	\$3.50
French Fries	\$3.00
Garlic Fries	\$5.00
Sweet Potato Fries	\$5.00

SNACKS

Giant Soft Pretzel w/ salt or cinnamon sugar	\$3.50
Beef Jerky	varies
Chips, Pretzels, Granola Bars	varies
Sweets	varies
Nuts and Trail Mix	varies
Animal Crackers	\$1.00
The Crispery-Gourmet Rice Krispy Treats	\$4.50
Karens' Naturals freeze dried fruit snacks	\$2.00
Fresh Baked Cookies	\$1.50
Pop Corn-Popped Fresh Daily	\$2.00
Cotton Candy-Made fresh daily	\$3.00

DOLPHIN COVE CAFÉ



SALADS

Chicken Caesar: romaine, croutons, chicken, parmesan cheese	\$6.00
Mixed Greens: spring mix, tomato, cucumber, onion, bell pepper, cheese	\$5.00
Grilled Chicken & Berry: spring mix, berries, onion, walnuts, tomato, chicken	\$6.00

SANDWICHES: choice of bread & cheese, served w/ pickle spear

Roasted Turkey: oven roasted turkey	\$6.99
Tuna Salad-Albacore Tuna, mayo, relish & onion	\$6.99
Roasted Turkey, cream cheese, cranberry & walnuts	\$6.99
Turkey Club: Diestel Turkey, Bacon, Avocado	\$6.99
BLT: Hickory Bacon, Tomato and Lettuce	\$6.99
Vegetarian: Cheese, Grilled Veggies, Hummus & Chipotle Aioli	\$6.99

FROM THE BBQ: (\$1 adds: bacon, cheese or avocado)

Hamburger: ground chuck, brioche bun with fixings	\$7.00
Cheeseburger: ground chuck, cheddar, brioche bun with fixings	\$8.00
Hot Dog: Jumbo all beef dog with tomato, relish, onion, sauerkraut	\$6.00
Polish Sausage: Jumbo sausage with tomato, relish, onion, sauerkraut	\$6.00
Grilled Chicken Breast: all natural chicken, brioche bun with fixings	\$7.00
Tri-Tip Sandwich: on hoagie roll w/ BBQ sauce	\$8.00
Philly Cheese Steak: grilled tri-tip w/ onions, bell peppers and cheese	\$9.00

KIDS MENU-served with slice of seasonal melon

Corn Dog-turkey dog	\$3.50
Chicken Breast Nuggets and Fries	\$4.50
*Peanut Butter & Jelly on wheat	\$3.50
*Peanut Butter & Banana on wheat	\$4.00
*Peanut Butter & Honey on wheat	\$4.00
(can substitute Almond Butter-add .50)	
Grilled Cheese-American cheese	\$3.50
Kids Hot Dog-all beef, served plain	\$3.50
Kids Hamburger, served plain	\$4.50

DOLPHIN COVE CAFÉ
CATERING MENU
BIRTHDAY PACKAGE MENU



SPLASH'S SPREAD

Hamburgers & Hot Dogs
Choice of 2 sides
Green Salad

\$12.00 p/person 3 and up



PUFFER'S PIZZA PARTY

Cheese & Pepperoni Pizza
Green Salad

\$9.00 p/person 3 and up
Based on 2 slices per person



WHALES TAIL DELI PLATTER

Assorted Meat Platters (Turkey, Honey Ham, Roast Beef, Salami)
Assorted Cheese Platter (Cheddar, Swiss, Pepper Jack, Gouda, American)
Assorted Rolls and Breads
Green Salad, Potato Salad, Fruit Salad

Feeds 10-12
\$90.00



BLUE TANG BUFFET

Tri-Tip
Roasted Corn
Watermelon
Choice of Side

\$15.00 p/person 3 and up



CLOWN'S MINI MEAL

Veggie Sticks w/ Ranch
Chips
Hot Dogs (kid dogs)

\$6.00 p/person 2 and up

Tax and 18% gratuity will be added
Please order 72 hrs. in advance



**AQUATICS CENTER
FOOD CONCESSION OPPORTUNITY**

-PROPOSAL SUBMISSION FORM-

DUE DATE: JANUARY 11, 2019, 5:00PM

Name & Address of
Firm/Organization:

Contact Name:

Contact Phone:

Contact E-mail:

	Model A: Food Truck(s)	Model B: On-Site Kitchen
Proposed Financial Arrangement		
Minimum Guarantee To City		

The City reserves the right to reject any or all proposals and to determine which proposal is in its judgment the best responsible submission by a responsible candidate and which proposal should be accepted in the best interest of the City. The City also reserves the right to waive any informality in any proposal or bid.

Proposals received after the due date will not be considered. No proposal may be withdrawn after the due date or before the award and accepting of the contract; unless the award is delayed for a period exceeding ten (10) days.

**PLEASE PLACE THIS FORM ON TOP OF YOUR PROPOSAL
THANK YOU!**



Healthy Food & Beverage Guidelines

The City of Morgan Hill is committed to promoting and encouraging ways for City teammates, residents, and visitors to improve their overall health and wellness. One way to achieve the goal of supporting healthy living is to offer, purchase and serve food and beverages of greatest nutritional value and in appropriate serving sizes. The Work on Wellness Committee has developed the following guidelines to help the City of Morgan Hill promote a healthy work environment leading to greater job satisfaction, higher morale, and reduced health care costs and absenteeism.

Please note these guidelines are applicable when City funds are being used or the concessionaire is on City property. They are not directed at individuals' meals, snacks or beverages purchased and/or brought from home or with non-City funds.

Beverages

General Guidance

- Present water as an attractive and appealing option
- Offer sparkling water instead of soda
- Offer decaffeinated as well
- Serve coffee and tea unsweetened
- Offer juices that provide more beneficial nutrients, like orange and grapefruit



Beverages Recommended

- Water with no added sweeteners
- Fat-free (skim) or low-fat (1%) milk and milk alternatives (soy, rice, almond)
- Coffee and tea, hot and/or iced with no added sugar & creamer on the side
- Juice - 100% fruit or vegetable juices such as orange or grapefruit (no more than 120 calories per 8 fl.oz.)
- Artificially sweetened, calorie-reduced beverages that do not exceed 40 calories per 8 fl. oz. (e.g. diet beverages, calorie-free sports drinks, low calorie sparkling water products)

Guidelines:

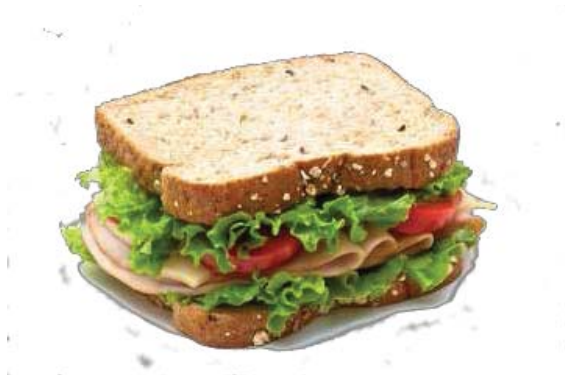
100% of the beverages served at City-sponsored celebrations, events, meetings, programs, and in vending machines shall meet the guidelines.

50% of beverages sold by concessionaires on City property shall meet the guidelines.

Food & Desserts

General Guidance

- Ensure healthier options are attractively presented and appealing
- Provide reasonable (not large) portions by cutting food in halves or quarters (e.g. ask for pizza slices to be cut smaller, slice bagels and sandwiches in half)
- Offer at least one vegetarian option every time food is served
- Prepare foods using healthy cooking techniques such as baking, roasting, grilling, or steaming
- Serve desserts in small portion sizes and provide healthier food options such as fresh fruit at the same time



Foods Recommended

- Fruits and vegetables (fresh, frozen, or canned in 100% fruit juice)
- Whole grains (e.g. whole wheat or whole grain bread, bagels, cereals, pasta, and tortillas; brown rice; oatmeal)
- Lean protein foods (e.g. skinless chicken breast or turkey, fish, reduced fat beef, pork loin, beans, tofu)
- Non-fat or low-fat dairy products (e.g. yogurt, cheese, cottage cheese)
- Foods made or produced without added sugar and less sodium
- Tomato based sauces and broth-based soups instead of cream based sauces and soups
- Lower fat condiments (e.g. vinaigrette and light salad dressing, nonfat or low fat cream cheese, hummus, mustard, light mayonnaise, salsa)
- Smaller portion desserts (e.g. mini brownie bites, small cookies, mini cupcakes)

Guidelines:

50% of the food options served at City-sponsored celebrations, events, meetings, programs, and sold by concessionaires on City property shall meet the guidelines.



Food Vending

100% of all snack foods in each City operated vending machine will meet *all of the following* criteria:*

- Contents of package/container must be a single serving size (*Nutrition Facts Label indicates Servings per Container: 1*).
- No more than 35% calories from fat with the exception of packages that contain 100% nuts or seeds. Snack mixes that contain less than 100% nuts and seeds must meet the 35% of calories from fat requirement.
- Zero *trans* fat.
- No more than 35% total weight from sugar and caloric sweeteners with the exception of fruits and vegetables that have not been processed with added sweeteners and fats;
- No more than 360 milligrams (mg) of sodium per package/container.
- **At least 10% of all snack foods** in each of the City operated vending machines will contain at least two (2) grams of dietary fiber per serving – information found on the packages' Nutrition Facts Labels.*
- **At least one snack food** item in each of the City operated vending machines will meet the FDA definition of "low sodium" or be ≤ 140 mg per serving.

*For more information on how to understand and use the Nutritional Facts Label go to the U.S. Food and Drug Administration (FDA) site at

<http://www.fda.gov/Food/ResourcesForYou/Consumers/NFLPM/ucm274593.htm>

See supplemental educational materials for suggested food ideas in compliance with the Morgan Hill food and beverage guidelines.

October 2015





COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

GENERAL: (408) 779-7271
FAX: (408) 779-3117

WWW.MORGANHILL.CA.GOV

ADDENDUM NO. 1

DATE: December 19, 2018

TO: ALL RESPONDING PARTIES TO THE RFP FOR AQUATICS CENTER CONCESSIONS

FROM: Jennie Tucker, Recreation Manager
Mariah Dabel, Community Services Supervisor

SUBJECT: City Responses to Questions

Question	City Response
1. I noticed a bid for food service on BidSync/Periscope. Can you think of any upcoming bids that will require Healthy Vending options?	A: The City does not have any upcoming bids for vending options scheduled at this time. Any future bids would be posted in the same location on the City of Morgan Hill website.
2. I have been invited to submit a quote for this project but it appears you might be looking for food suppliers? We do kitchen equipment. Are they looking to remodel the concession stand? Or replace any existing equipment?	A: The City is seeking food suppliers/services at this time. No remodel of the kitchen is planned.
3. There are also 2 freezers located in the lifeguard room that were not listed in the RFP equipment. Will these be available for storage for the concessions operator? Is there anything else that was not listed?	A: Yes, in addition to the equipment listed in the RFP, the following equipment is available for use by the concessions operator: a) Two True double door freezers Model # T-49F for concessions storage, and b) One commercial charcoal BBQ grill
4. The charcoal grill is not available during spare the air days?	A: Correct, the charcoal grill is not usable during spare the air days (approximately 10 days per season in recent years).
5. Is the City open to a cart and/or a trailer in combination with use of the kitchen?	A: The City is seeking concessionaires to propose services using either a Food Truck model or an On-Site Kitchen/Concessionaire Store model. The food truck model should be self-contained and not require operation of the kitchen. If use of the kitchen is needed, in combination with a food truck, cart, or trailer, please outline this clearly in your proposal.
6. What power is available throughout the facility?	A: There is 110 V power and water access throughout the facility. In addition to 110 V power and water access, the location flagged in the RFP for potential food trucks also has 220 V power.



COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

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WWW.MORGANHILL.CA.GOV

7. Is the food truck model being requested because the City wants to no longer incur the cost of maintaining the kitchen?	A: The City wants customers to be provided quality food at a reasonable cost. This RFP will enable the City to assess the best method to provide this service.
8. The RFP mentioned the vending machines on site. These have been serviced by Coca Cola which has been an issue in the past. Will that be continuing?	A: The City may arrange to remove the current vending machines and replace with a different vendor.

The proposal due date remains unchanged. All proposals are due on Friday, January 11, 2019 at 5:00 p.m.

ADDENDUM ACKNOWLEDGMENT

Bidder acknowledges receipt of this addendum, which shall be attached to the proposal.

Vendor's Representative

Date

THIS DOCUMENT AND ALL ATTACHMENTS SHALL BECOME PART OF THE PROJECT SPECIFICATIONS

Attachment: AC Concession RFP 2018 with Addendum [Revision 1] (2270 : AC Concessionaire Agreement)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Mario Ramirez,
APPROVED BY: City Manager

ACCEPT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES/ DEPARTMENT OF HOMELAND SECURITY FOR PORTABLE BARRICADE SYSTEM

RECOMMENDATION(S)

1. Adopt a resolution:
 - a. Accepting grant funds from the Santa Clara County Office of Emergency Services via the Department of Homeland Security in the amount of \$90,000, for the purchase of portable vehicle incursion barriers; and
 - b. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$90,000 in the Police Department budget for the capital expenditures; and
2. Authorize the City Manager to approve purchase order in the amount of \$90,000 with Delta Scientific Corporation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2019 Strategic Priorities

Infrastructure

Traffic/Transportation

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Santa Clara County Office of Emergency Services (SCC OES) engages the whole community in assessing needs and developing strategies to achieve stronger emergency preparedness, prevention, response, and mitigation capabilities within the Santa Clara County Operational Area (Op Area). The Op Area includes all fifteen cities within the County and special jurisdictions. The Op Area is responsible for coordinating information, resources, and priorities among the local governments during large scale emergency events.

SCC OES has a designated Emergency Operations Center for the overall coordination of large scale emergencies for County government and is capable of serving as the central point for coordination within the Op Area following the Standardized Emergency Management System.

SCC OES also oversees the State Homeland Security Grant Program and Emergency Management Performance Grant process for the County.

SCC OES wishes to provide a grant donation for the following amount and purpose:

\$90,000 for the purchase of two Delta Scientific Inc. MP5000 Portable Barricade Systems. Delta Scientific's MP5000 Portable Barricade System is a solution for portable barricading that provides a robust barrier against vehicle ramming attacks. The MP5000 can be towed by any vehicle rated to tow a trailer under 15,000 lbs. (gross vehicular weight) to where portable barricading is needed and sets up in less than fifteen minutes. It is self-contained and battery powered. The MP5000 is the only portable 20-foot barricade available on the market that is battery powered, can be lowered into position using hydraulic jacks, and is rated by the National Transportation and Safety Board to an M40 standard (stops a 15,000 lbs. truck traveling at 40 miles per hour). Additionally, the MP5000 will be used as a regional asset, as both the San Jose Police Department and the Mountain View Police Department will be purchasing the MP5000. The Police Department strives to provide a safe environment at each and every special event. With the goal of furthering event safety, having the temporary barricades deployed will help prevent vehicles from entering the closed streets where special events are occurring.

Its recommended the purchase be made pursuant to Morgan Hill purchasing code 3.04.150, as it is determined the vendor is the sole source of the Grantor approved system.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve as notification to the community of the grant funds from the Santa Clara County Office of Emergency Services/ Department of Homeland Security.

ALTERNATIVE ACTIONS:

N/A

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously accepted grant funds from the Santa Clara County Office of Emergency Services/ Department of Homeland Security to aid in the operation of the Police Department Emergency Operations Center.

FISCAL AND RESOURCE IMPACT:

Staff recommends adopting the resolution to accept the grant and recognize \$90,000 as revenue towards Police Grants (010.37552) and appropriate \$90,000 in the Police Department budget for capital expenditures (010.3210.43825), in the General Fund (010).

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. Resolution
2. QUOTE - MORGAN HILL PD MP5000-20ft JA0214192

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING GRANT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES DEPARTMENT VIA THE FEDERALLY FUNDED HOMELAND SECURITY GRANT PROGRAM AND AMENDING THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET TO APPROPRIATE \$90,000 FROM THE GENERAL FUND (010) FOR THE PURCHASE OF TWO DELTA SCIENTIFIC INC. MP5000 PORTABLE BARRICADE SYSTEMS THEREFOR

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

WHEREAS, the reasons supporting the 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 Grant funds from the Santa Clara County Office of Emergency Services/Department of Homeland Security for Portable Barricade System" submitted for City Council consideration at its meeting of April 17, 2019 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 Council wishes to accept the grant funds and is in support of the purchase of two Delta Scientific Inc., MP5000 Portable Barricade Systems; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to direct staff to purchase the vehicle incursions barriers per the provisions of the grant funds provided, specifically, that the total amounts to be received in grant funds by City shall in no event exceed ninety thousand dollars (\$90,000); and
- 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 A attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2018-19 Budget of the City; and
- e. 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 17th day of April 2019 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 April 17, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (2233 : Accept Grant for Portable Barricade System)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

036

FUND:

010 General Fund

DEPARTMENT:

3210 Police-Patrol

OBJECT:

43825 MACHINERY/EQUIPMENT (010.37552 - Revenue)

AGENDA DATE:

02/27/19

AGENDA ITEM TITLE:

SCC OES Grant Acceptance for Portable Barricade Systems

	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	-	505,353	904,986	(399,633)
RECOMMENDED ACTION	-	90,000	90,000	-
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,859,902</u>	<u>42,653,475</u>	<u>16,893,479</u>



MORGAN HILL PD

MP5000 MOBILE CRASH BARRIER

Quote #: JA0214192

MP5000 HYDRAULICALLY OPERATED MOBILE SURFACE MOUNTED BARRIER SYSTEM

******DELTA SCIENTIFIC ENGINEERED AND CERTIFIED TO ATSM M30 AND M40 RATINGS**

2	MP5000	BASIC STRUCTURE, -20 FT. (STANDARD) CLEAR OPENING	\$	69,964.00
2	H4050	BATTERY OPERATED HYDRAULIC PUMP / W CONTROL STATION	\$	11,295.94
2	MP5000TA	BARRIER TRAILER ASSEMBLY - INCLUDES SPARE TIRE, UTILITY BOX, AND VIN NUMBER	\$	6,541.26

BASIC SYSTEM CONSISTS OF:

- * QUICK DEPLOYMENT MOBILE BARRIER ASSEMBLY
- * HINGED, RIGID CRASH PLATE ASSEMBLY
- * TRAILER HITCH ASSEMBLY
- * STANDARD WHITE/YELLOW OR BLACK/YELLOW PAINT (OPTIONS AVAILABLE)
- * COMPLETE INSTRUCTIONS, START UP AND TROUBLE-SHOOTING MANUAL

MP5000 SYSTEM OPTIONS: (NOT INCLUDED WITH BASIC SYSTEM)

2	MPL-4050	REMOTE OPEN/CLOSE PUSH BUTTON STATION W/20' CABLE	\$	284.10	\$	568.20
0	MPL-4050-300	ADDITIONAL MPL4050 CABLE---300FT OF TOTAL CABLE	\$	675.00	\$	-
0	POWER CABLE	POWER CORD (300 FT) / SOW 14/3 BLACK NEOPRENE	\$	875.00	\$	-
		CONNECTORS ARE: 71435K41 PLUG / 509-2016 CONNECTOR MATE				
2	B2010	BARRICADE FULLY DOWN AUXILIARY LIMIT SWITCH	\$	216.00	\$	432.00
2	B1154	BOOSTER PAK 12VDC	\$	399.00	\$	798.00
2	90590-2	SIGNAL LIGHT MODULE	\$	-	\$	-
2	MPL-10	STOP GO SIGNAL LIGHT(S) (EXTERNAL POWER REQUIRED)	\$	791.47	\$	1,582.94
2	MPL-20W	48" TALL TRAFFIC LIGHT MOUNTING POST WITH 24" SQ BASE	\$	185.99	\$	371.98
0	SOLAR1	PEDESTAL MOUNTED SOLAR PANEL ASSEMBLY	\$	1,752.00	\$	-
0	MPL-20W	48" TALL SOLAR MOUNTING POST WITH 24" SQUARE BASE	\$	185.99	\$	-
0	GALVAN	GALVANIZE MOBILE BARRIER	\$	4,195.00	\$	-
2	CAB KIT	CABLE KIT (JUMPER CABLE, UTILITY OUTLET CONNECTION)	\$	296.00	\$	592.00
2	MP5K-TT1	BARRIER TURN TABLE	\$	481.56	\$	963.12
2	SEC1	HPU AND CONTROLS SECURITY KIT - FOR UNATTENDED USE	\$	1,518.15	\$	3,036.30
0	EXWA1	EXWARR ONE YEAR EXTENDED WARRANTY PER DELTA SCIENTIFIC'S EXISTING WARRANTY POLICY	\$	-	\$	-
0	EXWA2	EXWARR TWO YEAR EXTENDED WARRANTY PER DELTA SCIENTIFIC'S EXISTING WARRANTY POLICY	\$	-	\$	-
0		PREVENTIVE MAINTENANCE AGREEMENTS AVAILABLE, CONTACT OFFICE				

* ALL EQUIPMENT IS FOB FACTORY

TOTAL EQUIPMENT COST	\$	96,145.74
DISCOUNT 10%	\$	(9,614.57)
INSTALLATION	TBD	
Freight (if applicable)	\$	3,465.00

GRAND TOTAL (Quote is valid 60 days from 02/14/19)

Packet Pg. 233



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Jim Crawford, Division Chief of Operations for Morgan Hill Fire
APPROVED BY: City Manager

APPROVE PURCHASE OF THREE HEART MONITOR AND DEFIBRILLATOR DEVICES

RECOMMENDATION(S)

1. Adopt resolution amending the City's adopted Fiscal Year (FY) 2018-19 Budget to appropriate \$40,000 from the General Fund (010) for the purchase of three Advanced Life Support (ALS) Heart Monitor Defibrillator devices; and
2. Authorize the City Manager to approve the purchase order in the amount of \$121,162, for the purchase of said devices from Physio-Control, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Fire Department is requesting approval to procure three (3) Physio-Control Life Pack 15 heart monitor/defibrillator units (LP15). Currently, the Fire Department owns three LP15's but has six apparatus that can be staffed with Advanced Life Support (ALS) devices. A heart monitor/defibrillator is a required device for any staffed ALS Unit. Once acquired, the three new LP 15's will be placed on cross-staffed apparatus, the reserve engine, and the EMS Battalion Chief's vehicle. Once assigned to the apparatus the Fire Department may staff additional apparatus at the ALS level during special events, severe weather events, mutual aid assignments, natural disasters, and will have one spare to rotate in when a frontline device needs service.

To be consistent with the existing equipment, staff is recommending purchasing the same make model from Physio-Control, Inc. This allows devices to be interchanged across the apparatus, and staff is already well trained and experienced in using the LP 15 devices. The City also has an existing agreement with Physio-Control to periodically services the 3 existing devices. Staff will amend the agreement to include the additional 3 units in the service plan. The service agreement and future amendment is within the City Manager's authority; therefore, the amendment will be processed administratively.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community regarding the ALS devices the Fire Department wishes to procure for the City Fire apparatus.

ALTERNATIVE ACTIONS:

Council may elect to not approve the purchase of these devices. If not approved, it would limit the capabilities of staffing additional apparatus at the ALS level when needed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted the current FY 2018-19 and 2019-20 Biennial Budget, which included the purchase of these devices.

FISCAL AND RESOURCE IMPACT:

The cost of each ALS device is about \$40,000. Purchase of these devices are budgeted in the Fire Department's budgets; two devices within the General Fund (010), and one device within the Fire Impact Fund (313). The additional \$1,162 will be covered by savings within the existing budgets.

In efforts to be efficient and save time, staff is recommending advancing the purchase of the third device from next FY to the current FY. This recommendation requires Council to adopt a resolution amending the FY 2018-19 budget to appropriate \$40,000, from the General Fund (010). Subsequently, the FY 2019-20 budget will be reduced by the equal amount, and this recommendation will be reflected in the upcoming mid-cycle budget review. Purchase of devices are budgeted in the Fire Department's budget, within the General Fund (010). (GL#010.3510.43825)

CEQA (California Environmental Quality Act): Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, are not projects for purposes of CEQA review.

LINKS/ATTACHMENTS:

1. Resolution
2. MRG 3 LP15 quote 4.5.19

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2018-19 BUDGET TO APPROPRIATE \$40,000 FROM THE GENERAL FUND (010) FOR THE PURCHASE OF THREE ADVANCED LIFE SUPPORT (ALS) MONITOR DEFIBRILLATOR DEVICES

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 the City of Morgan Hill at its meeting held on this 17th day of April 2019 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 April 17, 2019.

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 #

037

FUND:

010 General Fund

DEPARTMENT:

3510 Fire Administration

OBJECT:

43825 MACHINERY/EQUIPMENT

AGENDA DATE:

04/17/19

AGENDA ITEM TITLE:

Purchase ALS Devices

	07/01/18			06/30/19 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	595,353	994,986	(399,633)
RECOMMENDED ACTION	-	-	40,000	(40,000)
RESULT OF RECOMMENDED ACTION	17,687,052	41,859,902	42,693,475	16,853,479



Physio-Control, Inc
 11811 Willows Road NE
 P.O. Box 97006
 Redmond, WA 98073-9706 U.S.A.
 www.physio-control.com
 tel 800.442.1142
 Sales Order fax 800.732.0956
 Service Plan fax 800.772.3340

To	MORGAN HILL FD Attn: Jesse Winnen 18300 OLD MONTEREY RD MORGAN HILL, CA 95037 (408) 710-7196 jesse.winnen@fire.ca.gov	Quote Number	00170441
		Revision #	1
		Created Date	4/5/2019
		Sales Consultant	Antonella Bondi 7025952216 antonella.bondi@stryker.com
		FOB	Redmond, WA
		Terms	All quotes subject to credit approval and the following terms and conditions
		NET Terms	NET 30
		Expiration Date	5/15/2019

Product	Product Description	Quantity	List Price	Unit Discount	Unit Sales Price	Total Price
99577-001958	LIFEPAK 15 V4 Monitor/Defib, Adaptive Biphasic, Manual & AED, Color LCD, 100mm Printer, Noninvasive Pacing, Metronome, Trending, SpO2, NIBP, 12-Lead ECG, EtCO2, Carbon Monoxide, Bluetooth, Temp INCLUDED AT NO CHARGE: 2 PAIR QUIK-COMBO ELECTRODES PER UNIT - 11996-000091, TEST LOAD - 21330-001365, N-SERVICE DVD - 21330-001486 (one per order) , SERVICE MANUAL CD- 26500-003612 (one per order) and ShipKit- (RC Cable) 41577-000290 INCLUDED. HARD PADDLES, BATTERIES, CARRYING CASE NOT INCLUDED.	3.00	37,000.00	-9,364.00	27,636.00	82,908.00
21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	9.00	479.00	-186.50	292.50	2,632.50
11160-000011	NIBP Cuff-Reusable, Infant	3.00	22.00	-7.75	14.25	42.75
11160-000013	NIBP Cuff-Reusable, Child	3.00	25.00	-8.50	16.50	49.50
11160-000015	NIBP Cuff-Reusable, Adult	3.00	31.00	-10.75	20.25	60.75
11160-000017	NIBP Cuff -Reusable, Large Adult	3.00	34.00	-11.50	22.50	67.50
11160-000019	NIBP Cuff-Reusable, Adult X Large	3.00	49.00	-15.25	33.75	101.25
11171-000049	Rainbow DCI Adt Reusable Sensor, 1/box	3.00	640.00	-83.20	556.80	1,670.40
11220-000028	Carry case top pouch for use w/LIFEPAK 12 or LIFEPAK 15	3.00	59.00	-7.67	51.33	153.99
11260-000039	LIFEPAK 15 Carry case back pouch	3.00	84.00	-10.92	73.08	219.24
11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	3.00	327.00	-42.51	284.49	853.47
11996-000474	4G Modem: Verizon Cellular non-Kore (customer data plan)	3.00	1,205.00	-156.65	1,048.35	3,145.05
	LIFEPAK15 Service - 4 YEAR. On-site ProCare Prevent					

Attachment: MRG 3 LP15 quote 4.5.19 (2281 : Approve Fire Department Purchase of Heart Monitor Defibrillators and Amend Service

LP15-PCPVOS-4-POS	Coverage. Annual Payments. Includes: -Services performed at customer's location by a Physio-Control Technical Specialist -Parts and labor necessary to restore device to original specifications -Annual Preventive Maintenance and inspections including quality assurance documentation -Discounts on accessories, disposables, and upgrades -Updates to the latest software version -Preconfigured loaner device provided if needed -Battery Replacement Service	3.00	7,200.00	-1,080.00	6,120.00	18,360.00

Subtotal USD 110,264.40

Estimated Tax USD 10,711.95

Estimated Shipping & Handling USD 185.00

Current Sales Tax Rates will be applied at the time of Invoice and tax rate is based on the Ship To location

Grand Total USD 121,161.35

Pricing Summary Totals

List Price Total USD 144,339.00

Total Contract Discounts Amount USD -33,171.75

Total Discount USD -902.85

Trade In Discounts USD 0.00

Tax + S&H USD 10,896.95

GRAND TOTAL FOR THIS QUOTE

USD 121,161.35

Attachment: MRG 3 LP15 quote 4.5.19 (2281 : Approve Fire Department Purchase of Heart Monitor Defibrillators and Amend Service

Please provide a company issued Purchase Order that includes Billing and Shipping Address.

PO must reference payment terms of Net 30 days.

- OR -

Required information if no Purchase Order is provided

Billing Address ☐ same as address on quote Account Name _____ Address _____ City _____ State _____ Zip Code _____	Shipping Address ☐ same as Billing Address Account Name _____ Address _____ City _____ State _____ Zip Code _____
Accounts Payable Contact Information Accounts Payable Contact _____ Accounts Payable Email _____	
Authorized Customer Signature Name _____ Title _____	
Accounts Payable Phone Number _____ Customer is Tax Exempt? ☐ Yes ☐ No Signature _____ Date _____	

Optional information:

Special Ship to Address _____

Comments _____

For Multiple End Users, please attach a supporting document with End User name, physical location, product type and quantity

Reference Number AB/17189301/193877

Attachment: MRG 3 LP15 quote 4.5.19 (2281 : Approve Fire Department Purchase of Heart Monitor Defibrillators and Amend Service

General Terms for all Products, Services and Subscriptions.

Physio-Control, Inc. ("Physio") accepts Buyer's order expressly conditioned on Buyer's assent to the terms set forth in this document. Buyer's order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

Pricing. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services unless Physio receives a copy of a valid exemption certificate prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions.

Payment. Payment for goods and services shall be subject to approval of credit by Physio. Unless otherwise specified by Physio in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.

Minimum Order Quantity. Physio reserves the right to charge a service fee for any order less than \$200.00.

Patent Indemnity. Physio shall indemnify Buyer and hold it harmless from and against all demands, claims, damages, losses, and expenses, arising out of or resulting, from any action by a third party against Buyer that is based on any claim that the services infringe a United States patent, copyright, or trademark, or violate a trade secret or any other proprietary right of any person or entity. Physio's indemnification obligations hereunder will be subject to (i) receiving prompt written notice of the existence of any claim; (ii) being able to, at its option, control the defense and settlement of such claim (provided that, without obtaining the prior written consent of Buyer, Physio will enter into no settlement involving the admission of wrongdoing); and (iii) receiving full cooperation of Buyer in the defense of any claim.

Limitation of Interest. Through the purchase of Physio products, services, or subscriptions, Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

Delays. Physio will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio's inability to obtain goods from its usual sources.

Limited Warranty. Physio warrants its products and services in accordance with the terms of the limited warranties located at <http://www.physio-control.com/Documents/>. The remedies provided under such warranties shall be Buyer's sole and exclusive remedies. Physio makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

Compliance with Confidentiality Laws. Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

Compliance with Law. The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.

Regulatory Requirement for Access to Information. In the event 42 USC § 1395x(v)(1)(I) is applicable, Physio shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Physio.

No Debarment. Physio represents and warrants that it and its directors, officers, and employees (i) are not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (iii) are not under investigation which may result in Physio being excluded from participation in such programs.

Choice of Law. The rights and obligations of Physio and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

Additional Terms for Purchase and Sale of Products.

In addition to the General Terms above, the following terms apply to all purchases of products from Physio:

Delivery. Unless otherwise specified by Physio in writing, delivery shall be FOB Physio point of shipment and title and risk of loss shall pass to Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from Buyer, Physio will obtain transportation on Buyer's behalf and for Buyer's account. Delivery dates are approximate. Freight is pre-paid and added to Buyer's invoice. Products are subject to availability.

Inspections and Returns. Within 30 days of receipt of a shipment, Buyer shall notify Physio of any claim for product damage or nonconformity. Physio, at its sole option and discretion, may repair or replace a product to bring it into conformity. Return of any product shall be governed by the Returned Product Policy located at <http://www.physio-control.com/Documents/>. Payment of Physio's invoice is not contingent on immediate correction of nonconformities.

No Resale. Buyer agrees that products purchased hereunder will not be resold to third parties and will not be reshipped to any persons or places prohibited by the laws of the United States of America.

Additional Terms for Purchase and Sale of Service Plans.

In addition to the General Terms above, the following terms apply to all Physio Service Plans.

Service Plans. Physio shall provide services according to the applicable Service Plan purchased by Buyer and described at <http://www.physio-control.com/ServicePrograms.aspx> for the length of the subscription purchased and for the devices specified as covered by the Service Plan ("Covered Equipment").

Pricing. If the number or configuration of Covered Equipment changes during the Service Plan subscription, pricing shall be prorated accordingly. For Preventative Maintenance, Inspection Only, Comprehensive, and Repair & Inspect Service Plans, Buyer is responsible to pay for preventative maintenance and inspections that have been performed since the last anniversary of the subscription start date and such services shall not be pro-rated.

Device Inspection Before Acceptance. All devices that are not covered under Physio's Limited Warranty or a current Service Plan must be inspected and repaired (if necessary) to meet specifications at then-current list prices prior to being covered under a Service Plan.

Unavailability of Covered Equipment. If Covered Equipment is not made available at a scheduled service visit, Buyer is responsible to reschedule with the Physio Service Technician, or ship-in the Equipment to a Physio service depot. Physio reserves the right to charge Buyer a surcharge for a return visit. Surcharges will be based on then-current Physio list price of desired services, less 10% for labor and 15% for parts, plus applicable travel costs. The return visit surcharge will be in addition to the subscription price of the Service Plan. To avoid the surcharge, Buyer may ship devices to a Physio service depot. Buyer shall be responsible for round-trip freight for ship-in service.

Unscheduled or Uncovered Services. If Buyer requests services to be performed on Covered Equipment which are not covered by a Service Plan, or are outside of designated Services frequency or hours, Physio-Control will charge Buyer for such services at 10% off Physio-Control's standard rates (including overtime, if appropriate) and applicable travel charges. Repair parts required for such repairs will be made available at 15% off the then-current list price.

Loaners. If Covered Equipment must be removed from service to complete repairs, Physio will provide Buyer with a loaner device, if one is available. Buyer assumes complete responsibility for the loaner and shall return the loaner to Physio in the same condition as received, normal wear and tear exempted, upon the earlier of the return of the removed Covered Equipment or Physio's request.

Cancellation. Buyer may cancel a Service Plan upon sixty (60) days' written notice to Physio. In the event of such cancellation, Buyer shall be responsible for the portion of the designated price which corresponds to the portion of the Service Plan subscription prior to the effective date of termination and the list-price cost of any preventative maintenance, inspections, or repairs rendered after the last anniversary date of the subscription start date.

No Solicitation. During the Service Plan subscription and for one (1) year following its expiration Buyer agrees to not to actively and intentionally solicit anyone who is employed by Physio to provide services such as those described in the Service Plan.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

APPROVE 3 YEAR PROPERTY LEASE AGREEMENT WITH MONUMENT (TECHON) CONSTRUCTION AT 16200 VINEYARD BOULEVARD

RECOMMENDATION(S)

Approve and authorize the City Manager to amend and execute a new Standard Lease Agreement with Monument Construction dba Techcon for the property located at 16200 Vineyard Blvd with an initial annual lease amount of \$68,424.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Financial Stewardship

REPORT NARRATIVE:

The property at 16200 Vineyard Boulevard, Suite 100, is a 6,080-square foot office space adjacent to the Police Department, owned by the City of Morgan Hill and currently occupied by Monument Construction, Inc. dba Techcon. The lease expires April 30, 2019. Staff recommends renewal of a new short term, market-rate lease with Monument Construction, Inc. for 36 months, with an option to extend for one year, starting May 1, 2019 for 3,285 square feet (SF) of exclusive office space, and 1,265 SF of common area space. The terms of the lease agreement are detailed in a section below.

Monument Construction, Inc. doing business as Techcon, has rented 16200 Vineyard Blvd., Suite 100 from the City for the past ten years. The lease expires at the end of April 2019. The proposed short-term lease agreement allows Techcon time to plan their move to a permanent location that would consolidate operations. Economic Development and Planning staff is working with Techcon to find an appropriate location that would accommodate office use as well as storage of landscaping and construction equipment.

The proposed lease agreement envisions the City subdividing the space, reducing Techcon's footprint from 6,080 SF to 3,285 SF. Techcon will have access and pay for their proportionate share of the common space (1,265 SF). Subdividing this space will require some tenant improvements such as new walls, doors and security or keying system. City staff plan to work with Techcon to implement some of the necessary tenant improvements and deduct these soft and hard costs from the rent.

Lease

Terms

- **Building:** 16200 Vineyard Blvd, Suite 100.
- **Premises:** 3,285 SF + use of 1,265 SF of common space (68% proportionate share for Techcon).
- **Use:** General office, administrative purposes.
- **Office Base Rent:** \$1.50 per square foot (PSF) – Year 1; \$1.75 PSF – Year 2; and \$2.00 PSF – Year 3.
- **Common Space Rent:** \$0.90 PSF – Year 1; \$1.05 PSF – Year 2; and \$1.20 PSF – Year 3.
- **Security Deposit:** \$5,702.00 (One month's rent)
- **Term:** 36 months, starting May 1, 2019, with option to extend for one year.
- **Utilities:** Lessee has separate utilities, except 7% of Gas portion of the monthly PG&E bill.

Current Morgan Hill market rate rents for office space range from \$1.50 PSF to \$3.00 PSF, depending on location and condition of the space. Rates for common space are usually lower than the office space rent and vary by location and costs associated with the proportionate maintenance/expenses of the common space.

Under the proposed lease agreement, Techcon would pay the City the following amounts in monthly and yearly rent.

Year 1: \$5,702 per month, \$68,424 total
 Year 2: \$6,652 per month, \$79,824 total
 Year 3: \$7,602 per month, \$91,224 total

Reducing the square footage for Techcon and approving a short-term lease agreement allows the City to collect a market rate rent while at the same time allowing Techcon time to find a new permanent home.

The City will have the ability to use the new available space at 16200 Vineyard Blvd. for City purposes and/or to relocate tenants currently housed at other City facilities. Staff is currently exploring relocation opportunities for tenants and City operations to find the most efficient and effective use of the City space.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed lease agreement.

ALTERNATIVE ACTIONS:

The City Council could choose not to move forward with the recommended lease agreement and/or provide recommendations for the future of the space.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 23, 2008, the City entered into a Purchase and Sale Agreement with Techcon for 17450 Monterey Road and Vacant Land North of El Capri with Paul and Diane

Swing and approved a short-term lease at 16200 Vineyard Blvd. Subsequently, the Council approved a five-year lease with a five-year extension, beginning April 30, 2009.

FISCAL AND RESOURCE IMPACT:

Currently, the City collects \$4,327 a month from Techcon for the entire space or approximately \$0.71 PSF. Under the new lease agreement, the City will collect \$239,472 in rent over the next three years, minus costs associated with the tenant improvements. This revenue will be offset by tenant improvements. At the end of the lease agreement, the City can choose to utilize this space itself or rent the space at market-rate. The revenue from this lease is deposited in the General Fund (010). (GL#010.37413)

CEQA (California Environmental Quality Act): Categorically Exempt.

The lease agreement is categorically exempt under CEQA pursuant to section 15301 of CEQA Guidelines as it involves the continuation of leasing existing facilities for office use, involving no expansion of existing use.

LINKS/ATTACHMENTS:

1. Lease Agreement 16200 Vineyard Blvd. Ste 100 (002) Techcon Signed

STANDARD LEASE**16200 VINEYARD****BLVD.**

By
and
between
THE CITY OF MORGAN HILL,
public body, corporate and politic
"Lessor"

AND

MONUMENT CONSTRUCTION,
INC.,
a California Corporation, d/b/a
Techcon "Lessee"

Dated as of
April __, 2019

TABLE OF CONTENTS

	<u>Page</u>
1. Basic Lease Provisions	1
2. Premises, Parking and Common Areas	1
3. Term	3
4. Rent	3
5. Security Deposit.....	4
6. Use	5
7. Maintenance, Repairs, Alterations and Common Area Services	6
8. Insurance; Indemnity	8
9. Damage or Destruction.....	11
10. Taxes	13
11. Utilities	14
12. Assignment and Subletting.....	15
13. Default; Remedies	15
14. Hazardous Substances	17
15. Premise Improvements	19
16. Broker's Fee	20
17. Estoppel Certificate	20
18. Sale or Assignment by Lessor.....	21
19. Severability	21
20. Interest on Past-due Obligations	21
21. Time of Essence	21
22. Entire Agreement; Amendments	21
23. Notices	21
24. Waivers; Modifications	21
25. Recording	22
26. Holding Over	22
27. Cumulative Remedies	22
28. Covenants and Conditions	22
29. Binding Effect; Choice of Law	22
30. Subordination	23
31. Attorney's Fees	23
32. Lessor's Access	23
33. Auctions	24
34. Signs	24
35. Merger	24

TABLE OF CONTENTS
(continued)

36.	Access Disclosure	24
37.	Quiet Possession	24
38.	Authority	25
39.	Intentionally Deleted	25
40.	Security Measures	25
41.	Lessor's Reservations; Lessee's Restrictions	25
42.	Easements	26
43.	Performance Under Protest	26
44.	Conflict	26
45.	Lender Modification	26
46.	Intentionally Deleted	26
47.	Multiple Parties	26
48.	Nondiscrimination	26
49.	Lessor's Termination Option	27
50.	Lessee's Termination Option	27
51.	Counterparts	27
52.	Attachments	27

16200 VINEYARD BLVD. STANDARD LEASE

1. Basic Lease Provisions

1.1 **Parties.** This Standard Lease, dated, for reference purposes only, APRIL __, 2019, is made by and between the City of Morgan Hill (herein called "**Lessor**"), and Monument Construction, Inc., a California corporation, d.b.a. Techcon (herein called "**Lessee**"). Throughout this Agreement, Lessor and Lessee may be referred to collectively as the "Parties" and individually as a "Party."

1.2 **Premises.** Suite Number 100, which is estimated to consist of approximately 3,285 primary rentable square feet and approximately 1,265 square feet of common space, as defined in Section 2 and as shown on **Exhibit "A"** hereto (the "**Premises**").

1.3 **Building.** Commonly described as 16200 Vineyard Street, in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 42,222 rentable square feet.

1.4 **Use.** General office and administrative purposes, subject to Section 6.

1.5 **Term.** Thirty six (36) months, commencing on May 1, 2019 ("Commencement Date"), with an option to extend as described in Section 39.

1.6 **Base Rent.** Five thousand Seven Hundred two dollars(\$5,702.00) per month during year one, and shall be adjusted annually for duration of the term as illustrated in Section 4.1.

1.7 **Security Deposit.** Concurrently with the execution of this Lease, Lessee shall pay the sum of \$5,702.00 as Security Deposit which is equivalent to one (1) month of the Base Rent in the first year, paid in advance. Lessee's security deposit of \$3,040.00 from previous lease agreement shall be applied towards new security deposit, therefore, the residual balance of security deposit to be paid is \$2,662.00.

1.8 **Amount Paid Upon Execution.** Concurrently with the execution of this Lease, Lessee shall pay Lessor the sum of \$8,364.00, representing the sum of the Security Deposit and the first month's Base Rent, paid in advance.

1.9 **Lessee's Share of Premises.** 8% of permanent space, and 2% interest in common space, of the building described in Section 1.3.

1.10 **Former Lease Agreement.** Parties acknowledge that Lessor and Lessee are currently parties to a Lease Agreement that is expiring effective April 30, 2019.

2. Premises, Parking and Common Areas.

2.1 **Premises.** Subject to the terms, covenants and conditions set forth in this Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor the Premises specified in Section 1.2 of the Basic Lease Provisions. The Premises are a portion of the Building identified in Section 1.3 of the Basic Lease Provisions. As used herein, the term "**Building**" shall include adjacent parking areas used in connection therewith. The Premises, the Building, the Common Areas, the land upon which the same are located, along with all other buildings and improvements thereon or thereunder, are herein collectively referred to as the "**Morgan Hill Police Department Building**." As used herein, the term "**Common Areas**" shall include all areas and facilities outside the Premises and within the exterior boundary line of the Morgan Hill Police Department Building that are provided and designated by Lessor from time to time for the general non-exclusive use of Lessor, Lessee and of other lessees of the Morgan Hill Police Department Building and their respective employees, suppliers, shippers, customers and invitees, including, but not limited to, common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, escalators, parking areas

to the extent not otherwise prohibited by this Lease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Lessor reserves unto itself and its designees the use of the roof, exterior walls and area beneath the floor and above the ceiling of the Premises, together with the right, from time to time, to install, maintain, use, repair and replace utility lines, tunneling, pipes, ducts, conduits, and wire and the like leading under, over or through the Premises.

2.2 Vehicle Parking. Subject to the rules and regulations attached hereto as **Exhibit "B"** (the **"Rules and Regulations"**), and as established by Lessor or its duly authorized parking operator from time to time, Lessee shall be entitled to use up to twenty (20) parking spaces in the Morgan Hill Police Department Building for company vehicles, on an unreserved and non-exclusive basis.

(a) If Lessee's employees violate any parking rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and invoice Lessee for the cost of such removal, which invoice shall be payable immediately upon receipt.

(b) Lessee agrees to comply with all regulations and ordinances of the City of Morgan Hill or the County of Santa Clara governing transportation management in the jurisdiction in which the Building is located.

2.3 Common Areas - Rules and Regulations. Lessee agrees to abide by and conform to and to cause its employees, suppliers, shippers, customers, and invitees to abide by and conform to the Rules and Regulations with respect to the Morgan Hill Police Department Building. Lessor or such other person(s) as Lessor may appoint (the **"Property Manager"**) shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to modify, amend and enforce the Rules and Regulations. Lessor shall not be responsible to Lessee for the noncompliance with the Rules and Regulations by other lessees, their agents, employees and invitees of the Morgan Hill Police Department Building, provided Lessor takes reasonable steps to enforce the Rules and Regulations. In the event of a conflict, this Lease prevails over the Rules and Regulations.

2.4 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Building interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number, and appearance thereof, including, but not limited to, the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Lessor shall at all times provide the parking facilities required by applicable law;

(b) To close temporarily any of the Common Areas for maintenance and repair purposes so long as reasonable access to the Premises remains available;

(c) To designate other land and improvements outside the boundaries of the Morgan Hill Police Department Building to be a part of the Common Areas, provided that such other land and improvements have a reasonable and functional relationship to the Morgan Hill Police Department Building;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Morgan Hill Police Department Building, or any portion thereof;

(f) To do and perform such other acts and make such other changes in, to or with

respect to the Common Areas and Morgan Hill Police Department Building as Lessor may, in the exercise of sound business judgment deem to be appropriate.

3. Term. The term of this Lease (the "**Term**") and the Commencement Date shall be as specified in Section 1.5 of the Basic Lease Provisions. All of Lessee's obligations under this Lease shall be effective as of the Commencement Date. Terms for option to extend are described in Section 39.

4. Rent.

4.1 Base Rent. By the first day of each calendar month during the Term, Lessee shall pay to Lessor the Base Rent for the Premises set forth in Section 1.6 of the Basic Lease Provisions, without notice, offset or deduction. Base Rent for any period during the Term which is for less than one month shall be prorated on the basis of a 30-day month. Base Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

Primary Space = 3,285 SF
Common Space (68%) = 1,265 SF

	Primary Space Rent Per Square Foot (PSF)	Common Space Rent Per Square Foot (PSF)	Monthly Rent	Yearly Rent
Year 1 (May 2019 - April 2020)	\$ 1.50	\$ 0.90	\$ 5,702	\$ 68,424
Year 2 (May 2020 - April 2021)	1.75	1.05	6,652	79,824
Year 3 (May 2021 - April 2022)	2.00	1.20	7,602	91,224
*OPTION TO EXTEND Year 4	2.50	1.20	9,245	110,940

4.2 Additional Rent. Lessee shall pay to Lessor all charges and other amounts required under this Lease, including, when applicable, Personal property Taxes pursuant to Section 10.1 and Possessory Interest Taxes pursuant to Section 10.2, as additional rent ("**Additional Rent**"). Base Rent and Additional Rent shall be referred to herein as "**Rent**". Additional Rent shall include, but not be limited to Lessee's Share of the Operating Expenses for the Morgan Hill Police Department Building.

(a) "**Lessee's Share**" is defined as the percentage set forth in Section 1.9 of the Basic Lease Provisions, which percentage has been determined by dividing the approximate square footage of the Premises by the total approximate square footage of the Morgan Hill Police Department Building. It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Lessor and Lessee agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises or a change in the space available for lease in the Morgan Hill Police Department Building.

(b) "**Operating Expenses**" is defined, for purposes of this Lease, to include all costs and expenses paid or incurred by Lessor in the exercise of its reasonable discretion, for:

(a) The operation, management, repair, maintenance, and replacement, in neat, clean, safe, good order and condition, of the Morgan Hill Police Department Building, including, but not limited to, the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, telecommunication and other equipment used in common by, or for the benefit of, lessees or occupants of the Morgan Hill Police Department Building, including tenant directories, fire detection systems, including sprinkler system maintenance and repair (the "**Building Systems**").

(b) General maintenance, trash disposal, janitorial and security services;

(c) Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "**Operating Expense**";

(d) The cost of the premiums for any liability and property insurance policies maintained by Lessor;

(e) The cost of water, sewer, gas, electricity, and other publicly mandated services to the Morgan Hill Police Department Building, to the extent that these services apply to the common areas of the Morgan Hill Police Department Building;

(f) Labor, salaries, payroll taxes and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Morgan Hill Police Department Building and accounting and a management fee attributable to the operation of the Morgan Hill Police Department Building; and

(g) The cost of any capital improvements made by Lessor to the Morgan Hill Police Department Building, the common facilities or any part thereof and the cost of replacing any capital improvements or equipment, such cost to be amortized over a reasonable period as Lessor shall determine, together with interest on the unamortized balance at the rate of ten percent (10%) per annum or such higher rate as may have been paid by Lessor on funds borrowed for the purpose of constructing or replacing such capital improvements.

(c) Operating Expenses shall not include any expenses paid by any lessee directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

(d) Lessee's Share of any Operating Expenses shall be payable by Lessee within fifteen (15) days after a reasonably detailed statement of actual expenses is presented to Lessee by Lessor. At Lessor's option, however, an amount may be estimated by Lessor from time to time, and the same shall be payable monthly or quarterly, as Lessor shall designate during each year of the Term, on the same day as the Base Rent is due hereunder. In the event that Lessee pays Lessor's estimate of Lessee's Share of Operating Expenses, Lessor shall deliver to Lessee after the expiration of each calendar year a reasonably detailed statement ("**Operating Expense Statement**") showing the actual amount of Lessee's Share of Operating Expenses incurred during such year. If Lessor's estimate of Lessee's Share of Operating Expenses exceeded the actual amount of Lessee's Share of Operating Expenses, Lessee shall be entitled to credit in the amount of such overpayment against the portion of Lessee's Share of Operating Expenses next falling due, or, if this Lease has terminated, such excess shall be refunded to Lessee within fifteen (15) days after delivery by Lessor to Lessee of the Operating Expense Statement. If Lessor's estimate of Lessee's Share of Operating Expenses was less than the actual amount of Lessee's Share of Operating Expenses, Lessee shall pay to Lessor (whether or not this Lease has terminated) the amount of the deficiency within fifteen (15) days after delivery by Lessor to Lessee of the Operating Expense Statement.

5. Security Deposit. Concurrently with the execution of this Lease, Lessee is depositing with Lessor the security deposit set forth in Section 1.7 of the Basic Lease Provisions (the "Security Deposit") as security for Lessee's faithful performance of its obligations hereunder. Lessee agrees that Lessor may, without

waiving any of Lessor's other rights and remedies under this Lease, upon the occurrence of any of the events of default described in Section 13 hereof, apply all or any portion of the Security Deposit to remedy any failure by Lessee to repair or maintain the Premises or to perform any other terms, covenants or conditions contained herein. Should Lessor so apply all or any portion of the Security Deposit, Lessee shall, within ten (10) days replenish the Security Deposit to the original amount. Lessor shall not be required to keep the Security Deposit separate from its general accounts and Lessee shall not be entitled to interest on the Security Deposit, except as required by law. If Lessee performs all of Lessee's obligations hereunder, the Security Deposit shall be returned to Lessee (or at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) within a reasonable time after the expiration of the Term. The Security Deposit shall not be deemed an advance payment of Rent or a measure of Lessor's damages for any default hereunder by Lessee. No trust relationship is created herein between Lessor and Lessee with respect to the Security Deposit. Should the Premises, the Building or the Morgan Hill Police Department Building be conveyed by Lessor, the remaining amount of the Security Deposit shall be turned over to Lessor's grantee and thereafter Lessor shall not be responsible for the return of the Security Deposit, and Lessee agrees to look to Lessor's grantee for return of the same. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Lessee or its successors or assigns, said Security Deposit shall be deemed to be applied first to the payment of Basic Rent or Additional Rent due Lessor for all periods prior to the institution of the proceedings, and the balance, if any, of said Security Deposit may be retained or paid to Lessor in partial liquidation of Lessor's damages.

6. Use.

6.1 **Use.** The Premises shall be used and occupied solely by Lessee and Lessee shall use the Premises solely for the purpose set forth in Section 1.4 of the Basic Lease Provisions and for no other purpose, without the express written permission of Lessor. Lessee hereby agrees that any variation from or expansion of the use specified herein shall constitute a material breach of this Lease.

6.2 **Compliance with Law.** Lessee shall, at Lessee's expense, promptly comply with all Applicable Laws, all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises or any other body exercising similar functions. As used herein, the term "**Applicable Laws**" means all applicable laws, codes, ordinances, orders, rules, regulations and requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof relating to or affecting Lessee, the Morgan Hill Police Department Building or the Building or the use, operation or occupancy of the Premises, whether now existing or hereafter enacted. Lessee shall conduct its business in a lawful manner and shall not use or permit the use of the Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Morgan Hill Police Department Building.

6.3 **Specially Designated National or Blocked Person.** Lessee certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation designated by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, group, entity or nation pursuant to any Applicable Laws that are administered or enforced by the Office of Foreign Assets Control, nor is Lessee initiating, facilitating or engaging in this transaction, directly or indirectly, for or on behalf of any such person, group, entity or nation.

6.4 Acceptance of Premises; Lessee's Work

(a) The Premises as furnished by Lessor consist of the improvements as they exist as of the date hereof. Lessor shall have no obligation for construction work or improvements on the Premises, and Lessor's contribution to the construction and improvements consists only of delivery of possession of the Premises to Lessee in their as-is condition and with all existing faults, if any. The improvements now or hereafter situated upon the Premises, whether constructed by, for, or at the expense of either Lessor or Lessee, are and shall become a part of the Premises and Lessee shall have only a leasehold interest therein.

(b) Prior to entering into this Lease, Lessee has made a thorough and independent examination of the Premises and all matters relating to Lessee's decision to enter into this Lease. Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in any acceptable condition and meet Lessee's needs. Lessee hereby accepts the Premises and the Morgan Hill Police Department Building in their condition existing as of the Commencement Date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that the Premises are in good order and repair and that it has satisfied itself by its own independent investigation that the Premises are suitable for its intended use, and that neither Lessor nor Lessor's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Morgan Hill Police Department Building for the conduct of Lessee's business.

7. Maintenance, Repairs, Alterations and Common Area Services

7.1 Lessor's Obligations. Subject to receipt by Lessor of Lessee's Share of any Operating Expenses, Lessor shall repair and maintain the structural portions of the Premises (including the roof structure and membrane and exterior walls), the Building Systems and Common Areas; provided that Lessee shall be obligated to reimburse Lessor for any repair or maintenance if necessitated or occasioned by the acts, omissions or negligence of Lessee, or any of its servants, employees, contractors, agents, visitors or licensees, which Lessee could have reasonably prevented. Except as provided in Section 9.4, there shall be no abatement of rent or liability of Lessor on account of any injury or interference with Lessee's business arising from the making of any improvements, alterations or repairs to any portion of the Morgan Hill Police Department Building or to fixtures, appurtenances and equipment therein, nor shall any such improvement, alteration or repair constitute an eviction or disturbance of Lessee's use or possession of the Premises.

7.2 Lessee's Obligations.

(a) Lessee shall take good care of the Premises and keep the Premises in good working order and in a clean, safe and sanitary condition. Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall pay, as Additional Rent, the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, that is attributable to causes beyond normal wear and tear. Lessee shall be responsible for the cost of such periodic painting or repair or replacement of wall coverings at the Premises as may reasonably be required and approved by Lessor and for the repair or replacement of any improvements that are not ordinarily a part of the Building or that are above generally accepted building standards.

(b) On the last day of the Term, or upon any sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Lessee. Lessee shall repair any damage to the Premises occasioned by the installation or removal of Lessee's trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this Lease, Lessee shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings, carpets, wall paneling, ceilings and plumbing on the Premises and in good operating condition.

7.3 Alterations and Additions.

(a) Lessee shall not make or permit any alterations, installations, improvements, additions, or repairs, structural or otherwise (collectively, "Alterations"), in, on or about the Premises, or the Morgan Hill Police Department Building without Lessor's prior written consent, which Lessor may give or

withhold in Lessor's sole discretion. As used herein, the term "Alterations" shall include, but not be limited to, carpeting, window and wall coverings, power panels, electrical distribution systems, lighting fixtures, air conditioning, plumbing, and telephone and telecommunication wiring and equipment. Along with any request for consent, Lessee will deliver to Lessor plans and specifications for the Alterations and names and addresses of all prospective contractors for the Alterations. Lessee shall, within ten (10) days after written request thereof, reimburse Lessor for all reasonable costs and expenses incurred by Lessor in reviewing any request to approve any proposed Alterations, regardless of whether Lessor approves or disapproves of such Alterations. If Lessor approves the proposed Alterations, Lessee will, before commencing the Alterations, deliver to Lessor copies of all contracts, certificates of insurance, copies of all necessary permits and licenses and such other information relating to the Alterations as Lessor reasonably requests. Lessee will cause all approved Alterations to be constructed (i) in a good and workmanlike manner, (ii) in compliance with all Applicable Laws (as defined in Section 6.2), (iii) in accordance with the Rules and Regulations and with any design guidelines established by Lessor, (iv) in accordance with all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises or any other body exercising similar functions, and (v) during times reasonably determined by Lessor to minimize interference with other lessees' use and enjoyment of the Morgan Hill Police Department Building.

(b) Lessee shall pay the cost and expense of all Alterations, including, without limitation, a reasonable charge for Lessor's review, inspection and engineering time, and for any painting, restoring or repairing the Premises or the Building that the Alterations occasion. Prior to commencing any Alterations, Lessee shall deliver the following to Lessor in form and amount reasonably satisfactory to Lessor: (i) demolition (if applicable) and payment and performance bonds, (ii) builder's "all risk" insurance in an amount at least equal to the replacement value of the Alterations, and (iii) evidence that Lessee and each of Lessee's contractors have in force commercial general liability insurance insuring against construction related risks in at least the form, amounts and coverages required of Lessee under Section 8. The insurance policies described in clauses (ii) and must name Lessor, Lessor's lender and the Property Manager as additional insureds.

(c) Lessor may inspect construction of the Alterations. Immediately upon completion of any Alterations, Lessee will furnish Lessor with contractor affidavits and full and final lien waivers and receipted bills covering all labor and materials expended and used in connection with the Alterations. Lessee will remove any Alterations Lessee constructs in violation of this Section 7.3 within ten (10) days after Lessor's written request and in any event prior to the expiration or earlier termination of this Lease. All Alterations Lessee makes or causes to be made to the Premises (including all telephone, computer, security and other wiring and cabling located within the walls of the Premises, but excluding Lessee's movable trade fixtures, furniture and equipment) become the property of Lessor and a part of the Building immediately upon installation and, unless Lessor requests Lessee to remove the Alterations, Lessee will surrender the Alterations to Lessor upon the expiration or earlier termination of this Lease at no cost to Lessor.

(d) Lessee will keep the Premises and the Morgan Hill Police Department Building free from any mechanics', material providers', or other liens arising out of any work performed, materials furnished or obligations incurred by or for Lessee. In the event that Lessee shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause any such lien to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Lessor and all expenses incurred by it in connection therewith (including, without limitation, reasonable counsel fees) shall be payable to Lessor by Lessee upon demand. Lessor shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Lessor shall deem proper for the protection of Lessor, the Premises, and the Morgan Hill Police Department Building, from mechanics' and material providers' liens. Lessee shall give to Lessor at least ten (10) days' prior written notice of commencement of any repair or construction on the Premises.

7.4 Utility Additions.

(a) **Additional Utilities Facilities.** Lessor reserves the right to install new or additional utility facilities throughout the Morgan Hill Police Department Building for the benefit of Lessor or Lessee, or any other lessee of the Morgan Hill Police Department Building, including, but not limited to, plumbing, electrical systems, communication systems, and fire protection and detection systems, so long as such installations do not unreasonably interfere with Lessee's use of the Premises.

(b) **Telecommunications Equipment.** Lessee's installation of telephone lines, cables, and other electronic telecommunications services and equipment shall be subject to the terms and conditions of Section 7.3 of this Lease. Upon the expiration or earlier termination of this Lease and upon the request of Lessor, Lessee shall remove, at its sole cost and expense, all of Lessee's telecommunications lines and cabling installed by Lessee, including, without limitation, any such lines and cabling installed in the plenum or risers of the Building (collectively, the "**Tenant Wiring**"), as designated by Lessor. In the event that Lessor elects to retain any Tenant Wiring, the Tenant Wiring shall be left in good condition and working order, lien free and properly labeled.

(c) **Wireless Systems.** Subject to Section 7.3. Lessee shall cause, at its sole cost and expense, any wireless systems equipment ("**WIFI Equipment**"), as installed, to at all times comply with all applicable technical requirements and Applicable Laws, and Lessee shall cause such equipment not to interfere with (i) any of the Building's mechanical and electrical equipment and machinery, or any Building System, and (ii) any wireless system or telecommunications facilities servicing or within the Building as of the date of installation by the Lessee. Lessee agrees to consult with Lessor at the earliest practical stage of consideration of any project by Lessee which may possibly interfere with the foregoing.

8. Insurance; Indemnity.

8.1 Insurance. Lessee shall, at Lessee's sole cost and expense, obtain and keep in effect during the Term:

(a) Commercial general liability insurance applying to the use and occupancy of the Premises and the Morgan Hill Police Department Building and any part thereof, or any areas adjacent thereto and including any licensed areas and storage spaces and the business operated by Lessee and any other occupants on the Premises. Such insurance shall have a minimum combined single limit of liability of not less than Two Million and 00/100 Dollars (\$2,000,000). Such policy shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned occurring during the policy term, with at least the following endorsements to the extent such endorsements are generally available: (i) deleting any employee exclusion on personal injury coverage, (ii) providing broad form property damage coverage and products completed operations coverage (where applicable), (iii) deleting any liquor liability exclusions, and (iv) providing for coverage of owned and non-owned automobile liability;

(b) Standard fire and extended perils insurance, including sprinkler leakages, vandalism and malicious mischief covering property of every description including furniture, fittings, installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of the Lessee in an amount of not less than one hundred percent (100%) of the full replacement cost thereof as shall from time to time be determined by Lessee in form satisfactory to Lessor;

(c) State Worker's Compensation Insurance in the statutorily mandated limits and Employer's Liability Insurance with limits of not less than Five Hundred Thousand Dollars (\$500,000), or such greater amount as Lessor may from time to time require;

(d) Any additional amounts of coverage or other form or forms of insurance as Lessor may reasonably require from time to time in amounts and for insurable risks against which a prudent Lessee would protect itself.

8.2 Insurance Policies. All policies of insurance provided for herein shall be issued by insurance

companies with general policyholders' rating of not less than (VII) and a financial rating of A- as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of California, and shall include as additional insureds Lessor, the Property Manager, and such other persons or firms as Lessor specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of Lessor, Lessee and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days prior to the delivery of possession of the Premises to Lessee and thereafter within thirty (30) days prior to the expiration of the term of such policy. All commercial general liability and property damage policies shall contain a provision that Lessor and the Property Manager, although named as additional insureds, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees, by reason of Lessee's negligence. As often as any policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All such policies of insurance shall provide that the company writing said policy will give to Lessor thirty (30) days' notice in writing in advance of any cancellation or lapse or of the effective date of any reduction in the amounts of insurance. All commercial general liability, property damage and other casualty policies shall be written on an occurrence basis and as primary policies, and not in excess of coverage that Lessor may carry. Lessor's coverage shall not be contributory. Such insurance shall specifically include the liability assumed hereunder by Lessee, shall provide for severability of interests, shall further provide that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

8.3 Failure to Obtain. Should Lessee fail to take out and keep in force each insurance policy required under this Section 8, or should such insurance not be approved by Lessor and should the Lessee not rectify the situation within forty-eight (48) hours after written notice from Lessor to Lessee, Lessor shall have the right, without assuming any obligation in connection herewith, to effect such insurance at the sole cost of Lessee, and all outlays by the Lessor shall be immediately payable by the Lessee to the Lessor as Additional Rent without prejudice to any other rights and remedies of Lessor under this Lease.

8.4 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance and to the extent of insurance proceeds received with respect to the loss, Lessor and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Morgan Hill Police Department Building or any portion thereof or the contents of any of the same, for any loss or damage maintained by such other party with respect to the Morgan Hill Police Department Building or the Premises or any portion of any thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated as a result of such waiver, Lessee shall, if possible, obtain from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Lessor or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

8.5 Lessor's Liability. No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

8.6 Indemnity. Lessee shall indemnify, protect, defend and save and hold Lessor, the Property Manager, and their respective trustees, directors, officers, agents and employees, harmless, from and against any and all losses, costs, liabilities, claims, damages and expenses, including, without limitation, reasonable attorneys' fees and costs and reasonable investigation costs, incurred in connection with or

arising from: (a) any default by Lessee in the observance or performance of any of the terms, covenants or conditions of this Lease on Lessee's part to be observed or performed, or (b) the use or occupancy or manner of use or occupancy of the Premises by Lessee or any person or entity claiming through or under Lessee, or (c) the condition of the Premises or any occurrence on the Premises from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Lessor, or (d) any acts, omissions or negligence of Lessee or of the contractors, agents, servants, employees, visitors, customers, or licensees of Lessee, in, on or about the Premises or the Morgan Hill Police Department Building. Lessee's obligations under this Section 8.6 shall survive the termination of the Lease.

8.7 Limitation of Lessor's Liability: Subject to Section 8.4, Lessee hereby agrees that Lessor shall not be responsible for or liable to Lessee and Lessee hereby releases Lessor and waives all claims against Lessor for any injury, loss or damage to any person or property in or about the Premises or the Morgan Hill Police Department Building by or from any cause whatsoever (other than Lessor's gross negligence or willful misconduct) including, without limitation, acts or omissions of persons occupying adjoining premises or any part of the Morgan Hill Police Department Building; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil or electricity in, on or about the Premises or the Morgan Hill Police Department Building. The liability of Lessor, any agent of Lessor, or any of their respective officers, directors, board members, beneficiaries, shareholders, or employees to Lessee for or in respect of any default by Lessor under the terms of this Lease or in respect of any other claim or cause of action shall be limited to the interest of Lessor in the Building, and Lessee agrees to look solely to Lessor's interest in the Morgan Hill Police Department Building for the recovery and satisfaction of any judgment against Lessor, any agent of Lessor, or any of their respective officers, directors, shareholders, and employees. Any action based upon such liabilities shall be commenced within six (6) months following the date of any assignment of this Lease by Lessor and no such action shall be brought thereafter. No holder or beneficiary of any mortgage or deed of trust on any part of the Morgan Hill Police Department Building shall have any liability to Lessee hereunder for any default of Lessor.

(a) Lessee expressly acknowledges the inherent risks of being situated in the same building as the Morgan Hill Police Department ("**Police Department**") and waives for itself and its guests, employees, vendors, customers, truckers, or anyone connected with Lessee in any way, any and all claims for damages or liability against the Police and against Lessor arising out of or resulting from being situated in the same building as the Police Department. Lessee shall indemnify and hold harmless Police and/or Lessor from all liability, damage or expenses arising out of or related to Lessee's being situated in the same building as the Police Department.

(b) Lessee expressly waives any rights or benefits to its or its successors and assigns with respect to the foregoing release under any provision of applicable law which generally provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the release which, if known by such creditor, would materially affect the settlements. By execution of this Agreement, Lessee acknowledges that it fully understands the foregoing and with this understanding nonetheless elects to and does assume all-risk or claims, known or unknown, described in the foregoing release provision. Without limiting the generality of the foregoing, Lessee acknowledges it has been advised by legal counsel and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

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

Lessee: 

Lessee, being aware of this Code Section, hereby expressly waives any right that it may have thereunder, as well as under any statutes or common law principles of similar effect. The foregoing shall survive the expiration or early termination of this Lease.

9. Damage or Destruction.

9.1 **Definition.** The term "**casualty**", for purposes of this Lease, includes (but is not limited to) the following acts or events:

(a) Extreme events of nature including but not limited to fire, flood, bad weather, earthquake, and other similar occurrences;

(b) Any act of war, terrorism, or bio-terrorism, where "bio-terrorism" shall mean the release (or threatened release) of an airborne agent or other contaminant that is or could adversely affect the Building or its occupants.

9.2 If the Premises or the Building or the Morgan Hill Police Department Building or any portion thereof (whether or not the Premises are affected) are damaged by fire or other Casualty, Lessor shall forthwith repair the same (except for Alterations installed by or on behalf of Lessee) provided that such repairs can be made within one hundred eighty (180) days after the date of such damage under the laws and regulations of the federal, state and local governmental authorities having jurisdiction thereof and are covered by the proceeds of any insurance maintained by Lessor. In such event, this Lease shall remain in full force and effect except that Lessee shall be entitled to a proportionate reduction of Base Rent and Additional Rent while such repairs are being made as provided below. Within thirty (30) days after the date of such damage, Lessor shall notify Lessee whether or not such repairs are covered by any insurance maintained by Lessor and whether such repairs can be made within one hundred eighty (180) days after the date of such damage. Lessor's determination thereof shall be binding on Lessee. If such repairs cannot be made within one hundred eighty (180) days from the date of such damage or such damage is not so covered by insurance, Lessor shall have the option within thirty (30) days after the date of such damage to notify Lessee of its election to terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after notice is given. If Lessor notifies Lessee that or such damage is not so covered by insurance, Lessor shall either: (a) notify Lessee of Lessor's intention to repair such damage, in which event this Lease shall continue in full force and effect, Lessor shall diligently prosecute such repairs to completion, and the Base Rent and Additional Rent shall be reduced as provided herein; or (b) notify Lessee of Lessor's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given. If such notice to terminate is given by Lessor, this Lease shall terminate on the date specified in such notice. In case of termination, the Base Rent and Additional Rent shall be reduced by a proportionate amount based upon the extent to which such damage interfered with the business carried on by Lessee in the Premises, and Lessee shall pay such reduced Base Rent and Additional Rent up to the date of termination. Lessor agrees to refund to Lessee any Base Rent and Additional Rent previously paid for any period of time subsequent to such date of termination. The repairs to be made hereunder by Lessor shall not include, and Lessor shall not be required to repair, any damage by fire or other cause to the property of Lessee or any damage caused by the negligence of Lessee, its contractors, agents, licensees or employees or any repairs or replacements of any paneling, decorations, railings, floor coverings, or any Alterations, additions, fixtures or improvements installed on the Premises by or at the expense of Lessee.

9.3 If Lessor elects or is required hereunder to repair, reconstruct or restore the Premises after any damage or destruction thereto, Lessee shall, at its own expense, as soon as reasonably practicable, replace or fully repair, reconstruct or restore all Alterations installed by Lessee and all other of Lessee's

improvements, fixtures and property. Lessee hereby waives the provisions of any statute or law that may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated, or a Lessee is given the right to terminate a lease upon such an occurrence.

9.4 Lessee shall have no interest in or claim to any portion of the proceeds of any insurance or self-insurance maintained by Lessor. Except as otherwise provided herein, Lessor shall have no interest in or claim to any portion of the proceeds of any insurance maintained by Lessee under Section 8.

9.5 Lessee agrees at all times after any damage to or destruction of the improvements on the Premises, or any portion thereof, to continue the operation of its business therein to the extent practicable. If Lessor is required or elects to make any repairs, reconstruction or restoration of any damage or destruction to the Premises under any of the provisions of this Section 9, Lessee shall not be entitled to any damages by reason of any inconvenience or loss sustained by Lessee as a result thereof. During the period commencing with the date of any such damage or destruction that Lessor is required or elects hereunder to repair, reconstruct or restore, and ending with the completion of such repairs, reconstruction or restoration the Base Rent and Additional Rent shall be proportionately reduced based upon the extent to which such damage and the making of such repairs by Lessor shall interfere with the business carried on by Lessee in the Premises. The full amount of Base Rent and Additional Rent shall again become payable immediately upon the completion of such work of repair, reconstruction or restoration. Except as expressly hereinabove provided, there shall be no reduction, change or abatement of any rental or other charge payable by Lessee to Lessor hereunder, or in the method of computing, accounting for or paying the same.

9.6 **Interruption of Service.**

(a) **Interruption of Service Defined.** No damages, compensation, or claim shall be payable by Lessor, and this Lease and the obligations of Lessee to perform all of its covenants and agreements hereunder shall in no way be affected, impaired, reduced, or excused, in the event that there is an interruption, curtailment, or suspension of the Building's HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel), or other Building systems serving the Premises or any other services required of Lessor under this Lease (each, an "Interruption of Service"), by reason of:

(i) any Casualty;

(ii) any emergency situation creating a threat to person or property;

(iii) any other causes of any kind whatsoever that are beyond the control of Lessor, including but not limited to:

(aa) a lack of access to the Building or the Premises beyond the control of Lessor (which shall include, but not be limited to, the lack of access to the Building or the Premises when it or they are structurally sound but inaccessible due to the evacuation of the surrounding area or damage to nearby structures or public areas);

(bb) any cause outside the Building;

(cc) reduced air quality or other contaminants within the Building that would adversely affect the Building or its occupants (including, but not limited to, the presence of biological or other airborne agents within the Building or the Premises);

(dd) a disruption of mail and deliveries to the building or the Premises resulting from a Casualty;

(ee) a disruption of telephone and telecommunications services to the Building or the Premises resulting from a Casualty; or,

(ff) a blockage of any windows, doors, or walkways to the Building or the Premises resulting from a Casualty.

(b) **Lessor's Interruption of Services.** Except as otherwise expressly provided in this Lease, Lessor reserves the right, without any liability to Lessee, and without being in breach of any covenant of this Lease, to effect an Interruption of Service, as required by this Lease or by law, or as Lessor in good faith deems advisable, whenever and for so long as may be reasonably necessary, to make repairs, alterations, upgrades, changes, or for any other reason, to the Building's HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel), or other Building systems serving the Premises or any other services required of Lessor under this Lease.

In each instance, Lessor shall exercise reasonable diligence to eliminate the cause of the Interruption of Service, if resulting from conditions within the Building, and conclude the Interruption of Service. Lessor shall give Lessee notice, when practicable, of the commencement and anticipated duration of such Interruption of Service.

(c) **No Remedies.** The occurrence of an Interruption of Service pursuant to Subsections 9.6(a) and 9.6(b) hereof shall not:

- (i) Constitute an actual or constructive eviction of Lessee, in whole or in part;
- (ii) Entitle Lessee to any abatement or diminution of Basic Rent, Additional Rent, or any other costs due from Lessee pursuant to this Lease;
- (iii) Relieve or release Lessee from any of its obligations under this Lease;
- (iv) Entitle Lessee to terminate this Lease, unless said interruption continues for a period in excess of ninety (90) days.

10. Taxes.

10.1 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon any Alterations made by it, as well as any of its trade fixtures, furnishings, equipment, and all other personal property of Lessee located in the Premises or elsewhere.

(b) If any of Lessee's personal property shall be jointly assessed with Lessor's real property, Lessee shall pay to Lessor the portion of the tax attributable to such personal property within fifteen (15) days after receipt of a written statement setting forth such amounts prepared by Lessor in accordance with Section 4.2.

10.2 **Possessory Interest Tax.** So long as the Morgan Hill Police Department Building is exempt from *ad valorem* real property taxes, the following provisions shall apply:

(a) **Definition.** "Possessory Interest Taxes" means a tax imposed by County of Santa Clara upon private uses of public property which constitute "possessory interests," pursuant to Cal. Const. Art. XIII, §1; Cal. Rev. & Tax. Code §§ 104, 107 and 201. A "possessory interest" includes,

inter alia, the "possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in property, except when coupled with ownership of the land or improvements in the same person." (Cal. Rev. & Tax. Code§107(a)).

(b) **Payment.** Lessee shall be solely responsible for payment of any Possessory Interest Tax obligation with respect to the Premises.

(c) **Challenges.** Lessee shall be entitled to challenge the assessment of Possessory Interest Tax with respect to the Premises at Lessee's sole cost and expense.

10.3 Joint Assessment. If the taxes on improvements or personal property which are to be paid separately by Lessee under this Section 10 are not separately assessed, Lessee's portion of such taxes shall be equitably determined by Lessor from the respective valuations assigned to such improvements or personal property in the assessor's work sheets or such other information (which may include the cost of construction) as may be reasonably available. Lessor's reasonable, good faith determination thereof shall be conclusive.

11. Utilities.

11.1 Services Provided by Lessor.

(a) Lessor shall not provide any services to the Premises, and Lessee shall be solely responsible for obtaining and paying for any and all services, pursuant to Section 11.2, except for gas bill as described herein.

(b) Lessor shall bill Lessee for seven (7) percent of the gas bill received from PG&E, or other provider, payable as described in Section 4.2.

11.2 Services Exclusive to Lessee. Lessee shall independently contact the service providers for, and shall pay all costs related to, all utilities and services furnished to or used at the Premises, including heating, ventilation, air conditioning, electricity, water, sewer, janitorial, other power, telephone and other communications services, and all other utilities and services supplied and/or metered to the Premises or to Lessee, together with any taxes or impositions thereon. Lessee shall be responsible for installing a separate water and electrical meter and hooking up the existing heating, ventilation and air conditioning system. If any of the above-listed services are not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises in the Building.

11.3 Excess Usage by Lessee. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extraordinary burden upon the utilities or services, including, but not limited to security services, over standard office usage for the Morgan Hill Police Department Building. Lessee shall reimburse Lessor for any expenses or costs resulting from a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at the Premises at Lessee's expense supplemental equipment and/or separate metering for use in measuring Lessee's excess usage or loading. Lessee will reimburse Lessor for such excess utility use as Additional Rent.

11.4 Interruptions. Lessor shall not be liable for and there shall be no rent abatement as a result of any stoppage, reduction, interruption or discontinuance of any utility or service due to riot, strike, act of war, act of terrorism or bioterrorism, labor dispute, breakdown, accident, repair or any other cause or in

cooperation with governmental request or directions, nor shall such stoppage, reduction, interruption or discontinuance be considered an eviction or interruption of Lessee's use or possession of the Premises.

12. Assignment and Subletting. Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Lessee) voluntarily or by operation of law sell, assign, mortgage, encumber, pledge or otherwise transfer or hypothecate all or any part of Lessee's interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, "**Assignment**"), or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises (collectively, "**Sublease**").

13. Default; Remedies.

13.1 Default. The occurrence of any one or more of the following events shall constitute a material default by Lessee under this Lease:

(a) The vacation or abandonment of the Premises by Lessee. Vacation of the Premises shall include the failure to occupy the Premises for a continuous period of thirty (30) days or more, whether or not the rent is paid.

(b) The breach by Lessee of any of the covenants, conditions or provisions of Sections 7.3(a), (b) or (d) (alterations), 12 (assignment or subletting), 17 (estoppel certificate), 30 (subordination), or 42 (easements), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by Lessor to Lessee thereof.

(c) The failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee hereunder, without deduction or offset, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(d) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee other than those referenced in subparagraphs (b) and (c), above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion. To the extent permitted by law, such thirty (30) day notice shall constitute the sole and exclusive notice required to be given to Lessee under applicable Unlawful Detainer statutes.

(e) (i) The making by Lessee or by any guarantor of Lessee's obligations under this Lease of any general arrangement or general assignment for the benefit of creditors; (ii) Lessee or any guarantor of Lessee's obligations under this Lease becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section 13.1(e) is contrary to any applicable law, such provision shall be of no force or effect, and this Section 13.1(e) shall be interpreted in such a way to give effect to the remaining provisions.

(f) Lessee shall do or permit to be done anything which creates a lien upon the Premises

or upon all or any part of the Building or the Morgan Hill Police Department Building.

(g) The default of any guarantors of Lessee's obligations hereunder under any guaranty of this lease, or the attempted repudiation or revocation of any such guaranty.

(h) The inclusion by Lessee or its successor in interest or by any guarantor of Lessee's obligation hereunder of false information in any financial statement provided hereunder.

13.2 Remedies. In the event of any material default or breach of this Lease by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to (i) the cost of recovering possession of the Premises; (ii) expenses of reletting, including necessary renovation and alteration of the Premises; (iii) reasonable attorneys' fees, and any real estate commission actually paid; (iv) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; (v) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Lessee proves could reasonably be avoided; (vi) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; (vii) that portion of the leasing commission paid by Lessor pursuant to Section 16 and (viii) that portion of the Lessee improvement allowance (if any) applicable to the unexpired Term of this Lease. As used in this Section 13.2, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have vacated or abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder. The foregoing remedies shall also be available to Lessor in the event Lessee has abandoned the Premises. Lessor's election not to terminate this Lease pursuant to this Section 13.2(b) or pursuant to any other provision of this Lease, at law or in equity, shall not preclude Lessor from subsequently electing to terminate this Lease or pursuing any of its other remedies.

(c) Re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of, in Lessor's sole discretion, and no acceptance of surrender of the Premises or other action on Lessor's part shall be construed as an election to terminate this Lease.

(d) Pursue any other remedy now or hereafter available to Lessor under applicable law. Unpaid installments of Rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

13.3 Right to Perform. Except as otherwise specifically provided in this Lease, all covenants and agreements of Lessee under this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any abatement or offset of Rent. If Lessee shall fail to pay any sum of money (other than monthly Base Rent) or fail to perform any other act on its part to be paid or performed hereunder and such failure shall continue beyond any applicable cure period, Lessor may, without waiving or releasing Lessee from any of Lessee's obligations, make such payment or perform such other act on behalf of Lessee. All sums so paid by Lessor and all necessary incidental costs incurred by Lessor in performing such other acts shall be payable by Lessee to Lessor within five (5) days after demand therefor as Additional Rent.

13.4 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying the obligation that Lessor has failed to perform; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently pursues the same to completion.

13.5 Late Charges; Right to Change Terms.

(a) Lessee hereby acknowledges that late payment by Lessee to Lessor of Base Rent, or Additional Rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Morgan Hill Police Department Building. Accordingly, if any installment of Base Rent, Additional Rent, or any other sum due from Lessee shall not be received by Lessor or Lessor's designee when due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

(b) Following any late rental payment occurring twice within any twelve (12) month period, Lessor may require one or more of the following at Lessor's sole discretion by giving written notice to Lessee (and in addition to any late charge or interest accruing pursuant to Section 13.5(a) above, as well as any other rights and remedies accruing pursuant to Article 13, or any other provision of this Lease or at law): (i) that Base Rent shall be paid quarterly in advance instead of monthly; (ii) that all future rental payments are to be made on or before the due date by cash, cashier's check, or money order; (iii) that the delivery of Lessee's personal or corporate check will no longer constitute a payment of rental as provided in this lease; and/or (iv) that Lessee provide a security deposit equal to three (3) months of that current Base Rent. Any acceptance of a monthly rental payment or of a personal or corporate check thereafter by Lessor shall not be construed as a subsequent waiver of said rights.

14. Hazardous Substances.

14.1 As used herein, the term "**Hazardous Substances**" shall mean any chemical, substance, medical or other waste, living organism or combination thereof which is or may be hazardous to the environment or human or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects. "Hazardous Substances" shall include, without limitation, petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all substances which now or in the future may be defined as "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "hazardous materials," "toxic substances," "infectious wastes," "biohazardous wastes," "medical wastes," "radioactive wastes" or which are otherwise listed, defined or regulated in any manner pursuant to any Environmental Laws. As used herein, "**Environmental Laws**" means all present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, licenses, approvals and other entitlements, and rules of common law, pertaining to Hazardous Substances, the protection of the environment or human or animal health or safety.

14.2 Lessee shall not cause or permit any Hazardous Substance to be used,

manufactured, stored, discharged, released or disposed of in, from, under or about the Premises, the Building, the Morgan Hill Police Department Building or any other land or improvements in the vicinity thereof, excepting only, if applicable, such minor quantities of materials as are normally used in office buildings, and then only in strict accordance with all Applicable Laws. Without limiting the generality of the foregoing, Lessee, at its sole cost, shall comply with all Environmental Laws. If the presence of Hazardous Substances on the Premises or elsewhere in the Morgan Hill Police Department Building caused or permitted by Lessee results in contamination of the Premises or any other portion of the Morgan Hill Police Department Building, or any soil or groundwater in, under or about the Morgan Hill Police Department Building, Lessee, at its expense, shall promptly take all actions necessary to return the Premises or the Morgan Hill Police Department Building or portion thereof affected, to the condition existing prior to the appearance of such Hazardous Materials. The termination of this Lease shall not terminate or reduce the liability or obligations of Lessee under this Section 14, or as may be required by law, to clean up, monitor or remove any Hazardous Substances.

14.3 Lessee shall indemnify, protect, defend and hold harmless Lessor, the Property Manager, and their respective officers, directors, trustees, agents and employees from and against all losses, costs, claims, damages, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, or expenses of any kind or nature (including, without limitation, attorneys' fees and expert's fees) arising out of or in connection with any Hazardous Substances on, in, under or affecting the Premises, Building, Office Project, or any part thereof that are or were attributable to Lessee or any employee, invitee, licensee, agent, contractor, or permitted sublessee Lessee or anyone claiming under Lessee or other person or entity acting at the direction, knowledge or implied consent of Lessee, including, without limitation, any cost of monitoring or removal, any reduction in the fair market value or fair rental value of the Premises, the Building or the Morgan Hill Police Department Building, and any loss, claim or demand by any third person or entity relating to bodily injury or damage to real or personal property and reasonable attorneys' fees and costs.

14.4 Lessee shall not suffer any lien to be recorded against the Premises, the Building or the Morgan Hill Police Department Building as a consequence of a Hazardous Substance, including any so called state, federal or local "super fund" lien related to the "clean up" of a Hazardous Substances in or about the Premises, the Building or the Morgan Hill Police Department Building where said Hazardous Substances are or were attributable to the activities of Lessee.

14.5 In the event Hazardous Substances are discovered in or about the Premises, the Building or the Morgan Hill Police Department Building, and Lessor has reason to believe that Lessee or any employee, invitee, licensee, agent or contractor of Lessee or anyone claiming under Lessee was responsible for the presence of such Hazardous Substances, then Lessor shall have the right to appoint a consultant, at Lessee's expense, to conduct an investigation to determine whether Hazardous Substances are located in or about the Premises, the Building or the Morgan Hill Police Department Building and to determine the corrective measures, if any, required to remove such Hazardous Substances. Lessee, at its expense, shall comply with all recommendations of the consultant, as required by law. To the extent it is determined that neither Lessee nor any employee, invitee, licensee, agent or contractor of Lessee, nor anyone claiming under Lessee, was responsible for the presence of the Hazardous Substances, then Lessor shall reimburse Lessee for any costs incurred by Lessor and paid by Lessee under the terms of this Section 14.

14.6 Lessee shall immediately notify Lessor of any inquiry, test, investigation or enforcement proceeding by or against Lessee or the Premises, the Building or the Morgan Hill Police Department Building known to Lessee concerning any Hazardous Substances. Lessee acknowledges that Lessor, as the owner of the Morgan Hill Police Department Building, at its election, shall have the sole right, at Lessee's expense, to negotiate, defend, approve and appeal any action taken or order issued with regard to Hazardous Substances by any applicable governmental authority.

14.7 Lessee shall surrender the Premises to Lessor, upon the expiration or earlier

termination of the Lease, free of Hazardous Substances which are or were attributable to Lessee or any employee, invitee, licensee, agent or contractor of Lessee, or anyone claiming under Lessee. If Lessee fails to so surrender the Premises, Lessee shall indemnify and hold Lessor harmless from all losses, costs, claims, damages and liabilities resulting from Lessee's failure to surrender the Premises as required by this Section, including, without limitation, any claims or damages in connection with the condition of the Premises including, without limitation, damages occasioned by the inability to relet the Premises or a reduction in the fair market and/or rental value of the Premises, the Building or the Morgan Hill Police Department Building or any portion thereof, by reason of the existence of any Hazardous Substances, which are or were attributable to the activities of Lessee or any employee, invitee, licensee, agent or contractor of Lessee, or anyone claiming under Lessee.

14.8 Upon or prior to the Commencement Date, Lessee shall provide to Lessor a complete list of any and all Hazardous Substances expected to be employed by Lessee within the Premises. Throughout the term of the Lease, Lessee shall continue to update this list of chemicals, contaminants and Hazardous Substances.

14.9 At any time and from time to time during the term of this Lease if Lessor has a good-faith, reasonable belief that Hazardous Substances are present on the Premises in violation of this Lease, Lessor may perform, at Lessee's sole cost and expense, an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm chosen by Lessor, indicating the presence or absence of Hazardous Materials caused or permitted by Lessee and the potential cost of any compliance, removal or remedial action in connection with any such Hazardous Substances on the Premises. Lessee shall grant and hereby grants to Lessor and its agents access to the Premises and specifically grants Lessor an irrevocable non-exclusive license to undertake such an assessment; and the cost of such assessment shall be immediately due and payable on demand.

14.10 Lessee shall fully complete and execute the Pre-Leasing Environmental Exposure Questionnaire attached hereto as **Exhibit C** and incorporated herein by reference and deliver the same to Lessor within thirty (30) days of execution of this Lease.

15. Premise Improvements. The parties agree that certain Premise Improvements, consisting generally of interior work to subdivide space within the Premises, are necessary for continuation of leasing the space by Lessee. The exact scope and cost of the Premise Improvements is not known at this time.

15.1 Lessee shall construct Premise Improvements within the Premises in accordance with Plans and Specifications (as prepared by a licensed architect), and shall be submitted to the Lessor's Building Department along with any required documentation for a building permit. Premise Improvements must satisfy the federal Americans with Disabilities Act (ADA), if applicable. Lessor shall have exclusive authority to approve the plans and specifications. Lessee shall pay for all costs of Premise Improvements, with the understanding that Lessee shall be entitled to abate from rent the costs of the Premise Improvements until Lessee's costs have been reimbursed in full. Lessor and Lessee shall agree to all Premise Improvement construction costs and schedule prior to commencement of construction. Only those costs approved by Lessor may be applied to rent payments.

15.2 Construction of Premise Improvements by Lessee shall commence within thirty days of agreeing to the schedule and costs, and completed within four to six weeks. Lessor shall have access to the Premises for inspection of the Premise Improvements. Lessor may reject any work that does not conform to the approved plans and specifications, or that does not meet the standards as

determined by the Lessor's Building Official.

- 15.3 All materials and equipment used or installed for the Premise Improvements shall be new. All contractors or subcontractors shall be appropriately licensed in accordance with state and local laws, including a Morgan Hill business license. All work shall be performed in a professional quality, free from faults and defects, in accordance with the plans and specifications approved by Lessor, and in compliance with all applicable federal, state, and local laws.
- 15.4 Premise Improvements shall be guaranteed for a period of one year after substantial completion, and Lessee shall, following written notice from Lessor, unconditionally make any repair, replacement, correction, of any nature necessary by virtue of defective construction or materials.
- 15.5 All Premise Improvements described in this Paragraph 15 shall be the property of Lessor.
- 15.6 Lessee acknowledges that the Premise Improvements described herein constitute a work of public improvement as defined by the Labor Code and therefore prevailing wages must be paid.

16. Broker's Fee. Each of Lessee and Lessor represents and warrants to the other that it has not had any dealings with any person, firm, broker or finder in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and no other broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transaction and Lessee and Lessor do each hereby indemnify, defend and hold the other harmless from and against any costs, expenses, attorney's fees or liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying party.

17. Estoppel Certificate.

17.1 Lessor's Request. Upon Lessor's written request, Lessee shall execute, acknowledge and deliver to Lessor a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated and is in full force and effect; (iii) the amount of the current Base Rent; (iv) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (v) the amount of any Security Deposit paid and the validity of any charges made thereto by Lessor (or, if Lessee contests the validity of any such changes, stating why); (vi) that the Lease has not been subleased or assigned, or if it has been so subleased or assigned, the identity of the sublessee or assignee; and (vii) that Lessor is not in default under this lease (or, if Lessor is claimed to be in default, stating why). Lessee shall deliver such statement to Lessor within ten (10) business days after Lessor's request. Any such statement by Lessee may be given by Lessor to any prospective purchaser or encumbrancer of the Premises, the Building or the Morgan Hill Police Department Building. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

17.2 At Lessor's option, the failure to deliver such statement within ten (10) business days of such request shall be a material default of this Lease by the responding party, without any further notice to Lessee, or it shall be conclusive upon Lessee that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Lessor is the requesting party, not more than one month's Base Rent has been paid in advance.

17.3 Lessee shall, when requested by Lessor from time to time but not more frequently than once each year, furnish a true and accurate audited statement of its financial condition for the last three (3) years; provided, however, that if Lessee is a publicly traded company Lessee may satisfy the requirements of this paragraph by providing Lessor with a copy of its Form 10-K.

18. Sale or Assignment by Lessor.

18.1 It is agreed that Lessor may at any time sell, assign or transfer by lease or otherwise its interest as Lessor in and to this Lease, or any part thereof, and may at any time sell, assign or transfer its interest in and to the whole or any portion of the Premises or the Morgan Hill Police Department Building. In the event of any transfer of Lessor's interest in the Premises or the Morgan Hill Police Department Building, the transferor shall be automatically relieved of any and all of Lessor's obligations and liabilities accruing from and after the date of such transfer provided that the transferee assumes all of Lessor's obligations under this Lease.

18.2 Lessee hereby agrees to attorn to Lessor's assignee, transferee, or purchaser from and after the date of notice to Lessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made in the first instance by and between Lessee and such assignee, transferee or purchaser. In the event of the exercise of the power of sale under, or the foreclosure of, any deed of trust, mortgage or other encumbrances placed by Lessor against all or any portion of the Premises, Lessee shall, upon demand, attorn to the purchaser upon the effective date of any such sale or foreclosure of any such deed of trust, mortgage or other encumbrance, and shall recognize the purchaser or judgment creditor as the Lessor under the Lease.

19. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

20. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

21. Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

22. Entire Agreement; Amendments. This instrument, including the exhibits hereto, which are incorporated herein and made a part of this Lease, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Lessee hereby acknowledges that neither Lessor nor Lessor's agents have made any representations or warranties with respect to the Premises, the Building, the Morgan Hill Police Department Building, or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

23. Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail and shall be deemed sufficiently given if delivered or addressed to Lessee or to Lessor at the address noted below the signature of the respective parties. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such

party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.

24. Waivers; Modifications.

24.1 No failure by Lessor to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy consequent upon a breach thereof, no acceptance of full or partial Rent or Additional Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any employee or agent of Lessor shall constitute a waiver of any such breach or of such term, covenant or condition or operate as a surrender of this Lease.

24.2 Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. The consent of Lessor given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of Lessor in any other or future instance under the terms of this Lease.

25. Recording. This Lease shall not be recorded without Lessor's consent. However, either Lessor or Lessee may, upon request of the other execute, acknowledge and deliver to the requesting party a "short form" memorandum of this Lease for recording purposes if the non-requesting party consents to the recording of such memorandum.

26. Holding Over. Lessee shall vacate the Premises upon the expiration or earlier termination of this Lease. Lessee shall reimburse Lessor for and indemnify, defend and hold Lessor harmless against all damages, liabilities and costs, including, but not limited to, attorneys' fees, incurred by Lessor from any delay by Lessee in vacating the Premises. If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the Term, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, except that the Rent payable shall be one hundred fifty percent (150%) of the Rent payable immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy. Any holding over without Lessor's consent shall constitute a default by Lessee and entitle Lessor to exercise any or all of its remedies provided hereunder, notwithstanding that Lessor may elect to accept one or more payments of Rent from Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

29. Binding Effect; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Section 18, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State where the Morgan Hill Police Department Building is located and any litigation concerning this Lease between the parties hereto shall be initiated in county in which the Morgan Hill Police Department Building is located.

30. Subordination.

30.1 This Lease, and any Option or right of first refusal granted hereby shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Morgan Hill Police Department Building and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. The foregoing provision of subordination shall be self-operative and no further instrument of subordination shall be needed. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the Rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

30.2 Lessee agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Lessee hereunder without further notice to Lessee or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this Section 30.2.

31. Attorney's Fees. In the event that either Lessor or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. Should Lessor be named as a defendant in any suit brought against Lessee in connection with or arising out of Lessee's occupancy hereunder, Lessee shall pay to Lessor its costs and expenses incurred in such suit, including reasonable attorneys' fees.

32. Lessor's Access.

32.1 Lessor reserves (for itself, its Property Manager, and any other designated agent, representative, employee or contractor) the right to enter the Premises at all reasonable times and, except in cases of emergency (which shall be determined by Lessor in its reasonable discretion), after giving Lessee reasonable notice, to inspect the Premises, to supply any service to be provided by Lessor hereunder, to show the Premises to prospective purchasers, mortgagees or, during the last year of the Term of this Lease, Lessees, to post notices of nonresponsibility, and to alter, improve or repair the Premises and any portion of the Building, without abatement of Rent or Additional Rent, and may for that purpose erect, use and maintain necessary structures in and through the Premises and the Building, where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that the business of Lessee shall not be interfered with unreasonably. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby. All locks for all of the doors in, upon and about the Premises, excluding Lessee's vaults and safes or special security areas (designated in advance in writing by Lessee) shall at all times be keyed to the Building master system and Lessor shall at all times have and retain a key with which to unlock all of said doors. Lessor shall have the right to use any and all means that Lessor may deem necessary or proper to open said doors in an emergency in order to obtain entry to any portion of the Premises, and any entry to the Premises or portions thereof obtained by Lessor by any of said means, or otherwise, shall not under any circumstances be

construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

32.2 Without limitation of the provisions of Section 32.1 above, Lessor and its authorized agents and representative shall be entitled to enter the Premises at all reasonable times during business hours for the purpose of exhibiting the same to prospective purchasers and, during the final ninety (90) days of the Term, Lessor shall be entitled to exhibit the Premises for hire or for rent and to display thereon in such manner as will not unreasonably interfere with Lessee's business the usual "For Rent" or "For Lease" signs, and such signs shall remain unmolested on the Premises.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction in the Premises or the Common Areas without first having obtained Lessor's prior written consent, which consent may be granted or withheld in Lessor's sole and absolute discretion. The holding of any auction on the Premises or Common Areas in violation of this Section shall constitute a material default of this Lease.

34. Signs. Lessee shall not place any signage upon the Premises or the Morgan Hill Police Department Building without Lessor's prior written consent. All such signage shall be in accordance with applicable city and county codes, ordinances and regulations. Lessee shall be responsible for all costs and expenses of such signage. Under no circumstances shall Lessee place a sign on the roof of the Morgan Hill Police Department Building.

35. Merger. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing sub tenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such sub tenancies.

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

37. Quiet Possession. Lessee, upon paying the Rent due hereunder and performing all of its obligations under this Lease, shall have quiet possession of the Premises for the entire Term subject to all of the provisions of this Lease.

38. Authority. If Lessee is a corporation or a partnership, Lessee and each of the persons executing this Lease on behalf of Lessee does hereby represent and warrant as follows: Lessee is an entity duly formed and validly existing and in good standing under the laws of its state of organization and qualified to do

business in the State of California. Lessee has the power, legal capacity and authority to enter into and perform its obligations under this Lease and no approval or consent of any person is required in connection with the execution and performance hereof. The execution and performance of Lessee's obligations under this Lease will not result in or constitute any default or event that would be, or with notice or the lapse of time would be, a default, breach or violation of the organizational instruments governing Lessee or any agreement or any order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject. Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Lessee. Upon Lessor's request, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor confirming the foregoing representations and warranties.

39. Option to Extend.

- 39.1 Lessee shall have the option to request an extension of the Term of this Lease on all the terms and conditions contained in this Lease, except Rent, for one (1) additional twelve (12) month period following expiration of the Initial Term (the "Extended Term") provided that (i) Lessee is current with respect to all of its monetary obligations under this Lease, both at the time of exercise of the option and at the commencement of the extended Term, (ii) Lessee submits to Lessor a written request to Extend the Lease at least 90 days before the expiration of the initial Term and (iii) during the initial Term of the Lease, Lessee has not been late with any Rent payment three (3) or more times (a Rent payment shall be considered late for purposes of this Option if it is received by Lessor on or after the fifth calendar day of the month).
- 39.2 Sole Discretion of the City. City retains the sole discretion to approve or deny a timely submitted request for an extension.
- 39.3 Rent for Extended Term. The Base rent for the extended term shall be \$2.50 PSF for the permanent space and \$1.20 PSF for the common space.
- 39.4 Option Personal. The Option authorized hereunder is personal to Lessee and is not assignable or transferrable by Lessee.

40. Security Measures. Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Morgan Hill Police Department Building. Lessee assumes all responsibility for the protection of Lessee, its agents, and invitees and the property of Lessee and of Lessee's agents and invitees from acts of third parties. Nothing herein contained shall prevent Lessor, at Lessor's sole option, from providing security protection for the Morgan Hill Police Department Building or any part thereof, in which event the cost thereof shall be included within the definition of Operating Expenses, as set forth in Section 4.2.

41. Lessor's Reservations; Lessee's Restrictions.

- 41.1 Lessor shall have the following additional rights:

- (a) To change the name, address or title of the Morgan Hill Police Department Building or the Building in which the Premises are located upon not less than sixty (60) days prior written notice;
- (b) To, at Lessee's expense, provide and install Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate;

(c) To permit any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein;

(d) To place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Morgan Hill Police Department Building or on pole signs in the Common Areas.

41.2 Lessee shall not:

(a) Use a representation (photographic or otherwise) of the Building or the Morgan Hill Police Department Building or their name(s) in connection with Lessee's business;

(b) Suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Easements.

42.1 Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications as Lessor deems necessary or desirable in its sole and absolute discretion, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material default of this Lease by Lessee without the need for further notice to Lessee.

42.2 The obstruction of Lessee's view, air or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

43. Performance Under Protest. If at any time a dispute arises as to any amounts payable hereunder, the party against whom the payment obligation is asserted shall have the right to make payment "under protest" and shall retain the right to bring an action to recover such sum.

44. Conflict. Any conflict between the printed provisions, Exhibits or Addenda of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

45. Lender Modification. Lessee agrees to make such reasonable modifications to this Lease as may be reasonably required by an institutional lender in connection with the obtaining of normal financing or refinancing of the Morgan Hill Police Department Building.

46. Intentionally Deleted.

47. Multiple Parties. If more than one person or entity is named as either Lessor or Lessee herein, except as otherwise expressly provided herein, the obligations of Lessor or Lessee herein shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee, respectively.

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

49. Lessor's Termination Option. Lessor shall have the option to terminate this Lease at any time with ninety (90) days prior written notice at any time after the second anniversary of the Commencement Date (the "Termination Option").

50. Lessee's Termination Option. So long as Lessee is not in default hereunder, Lessee shall have the option to terminate this Lease with at least ninety (90) days prior written notice to Lessor at any time after the second anniversary of the Commencement Date. Lessee shall surrender the Premises to Lessor in accordance with 7.2(b). For the purposes of clarification, in the event that Lessee terminates this Lease pursuant to this Section 50, no amounts shall be due or owing to Lessee by virtue of such termination.

51. Counterparts. This Lease may be signed in counterpart originals, each of which shall be deemed an original and all of which shall, when executed, constitute one and the same instrument.

52. Attachments. Attached hereto are the following documents which constitute a part of this Lease:

Exhibit A	Description of the Premises
Exhibit B	Rules and Regulations
Exhibit C	Pre-Leasing Environmental Exposure Questionnaire

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE TERMS. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE LESSOR OR BROKERS AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

LESSOR

CITY OF MORGAN HILL

Christina J. Turner
City Manager

Approved as to Form

Donald A. Larkin
City Attorney

Address for Notices:

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

LESSEE

MONUMENT CONSTRUCTION, INC. dba
TECHCON

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Address for Notices:

16200 Vineyard Blvd. Ste 100
Morgan Hill CA 95037

EXHIBIT A

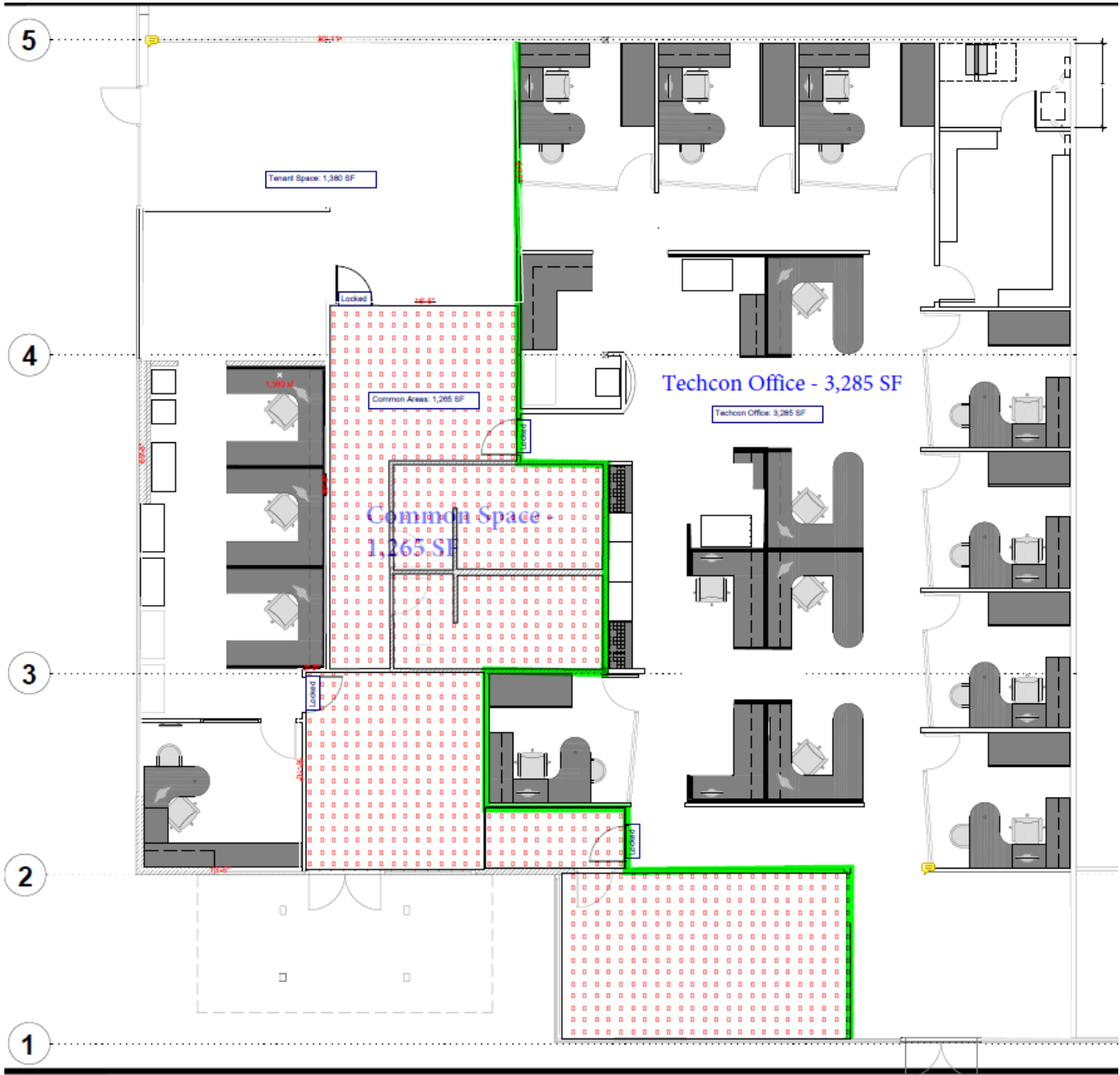


EXHIBIT B**RULES AND REGULATIONS**

It is further agreed that the following rules and regulations shall be and are hereby made a part of this Lease and Lessee agrees that Lessee's employees and agents or any others permitted by Lessee to occupy or enter the Premises will at all times abide by these rules and regulations as they may be amended or supplemented from time to time. Capitalized terms have the same meaning as used in the Lease, unless otherwise indicated.

(1) The sidewalks, entries, passages, corridors and stairways of the Morgan Hill Police Department Building shall not be obstructed or locked or used for smoking, storage or loitering by Lessee or Lessee's agents or employees or used for any purpose other than ingress and egress to and from the Premises. The fire doors shall not be locked or obstructed by Lessee.

(2) Furniture, equipment, or supplies will be moved in or out of the Building only through access ways designated by Lessor and then only during such hours and in such manner as may be prescribed by Lessor. The Lessor shall have the right to approve the movers or moving company employed by Lessee, which approval shall not be unreasonably withheld, and Lessee shall cause the movers to use only the loading facilities designated by Lessor. In the event Lessee's movers damage any part of the Building, Lessee shall forthwith pay to Lessor the amount required to repair that damage.

(3) No safe or article, the weight of which may, in the opinion of Lessor, constitute a hazard or damage to the Building or the Building's equipment, shall be moved into the Premises. Safes and other equipment, the weight of which is not excessive, shall be moved into, from, or about the Building only during such hours and in such manner as shall be prescribed by Lessor and Lessor shall have the right to designate the location of such articles in the Premises.

(4) No sign, advertisement or notice shall be inscribed, painted, or affixed on any part of the inside or outside of the Building (including windows) unless of such color, size, and style and in such place upon or in the Building as shall be first designated by Lessor in writing but there shall be no obligation or duty on Lessor to allow any sign, advertisement or notice to be inscribed, painted, or affixed on any part of the inside or outside of the Building. No furniture shall be placed in front of the Building or in any lobby or corridor of the Building (whether included wholly within the Premises, or otherwise), without the prior written consent of Lessor. Lessor shall have the right to remove all non-permitted signs and furniture, without notice to Lessee, at the expense of Lessee.

(5) Lessee shall not do or permit anything to be done in the Premises or bring or keep anything therein which would in any way increase the rate of fire insurance on the Building or on property kept therein which would in any way increase the rate of fire insurance on the Building or on property kept herein, constitute a nuisance or waste, obstruct or interfere with the rights of other Lessees or in any way injure or annoy them, or conflict with the laws relating to fire or with any regulations of the fire department, fire insurance underwriters, or with any insurance policy upon the Building or any part thereof, or conflict with any of the rules or ordinances of the Department of Health of the City and County where the Building is located.

(6) The janitor of the Building may at all times keep a passkey and other agents of Lessor shall at all times be allowed admittance to the Premises.

(7) Water closets and other water fixtures shall not be used for any purpose other than that for which they were intended and any damage resulting to them from misuse on the part of Lessee or Lessee's agents or employees shall be paid for by Lessee. No person shall waste water by tying back or wedging the faucets or in any other manner.

(8) No person shall disturb the occupants of the Building or adjoining buildings or premises by the use of any radio, sound equipment, or musical instrument or by the making of loud or improper noises.

(9) Bicycles or other vehicles shall not be permitted in the offices, halls, or corridors the Building nor shall any obstruction of sidewalks or entrances of the Building be permitted.

(10) Lessee shall not allow anything to be placed on the outside of the Building, nor shall anything be thrown by Lessee or Lessee's agents or employees out of the windows or doors or down the corridors, elevator shafts, or ventilating ducts or shafts of the Building. Lessee, except in case of fire or other emergency, shall not open any outside window. Lessee must at its own expense dispose of crates, boxes, or similar large items of refuse which will not fit into office waste paper baskets. In no event shall Lessee set any such items in the corridors or other areas of the Building or garage facility.

(11) No addition lock or locks shall be placed by Lessee on any door in the Building, unless written consent of Lessor shall first have been obtained. Lessor shall supply Lessee with such additional keys as Lessee may require at Lessee's sole cost and expense. At the termination of this tenancy, Lessee shall promptly return to Lessor all keys to offices, toilet rooms, or vaults.

(12) No window shades, blinds, screens, draperies, or other window covering will be attached or detached by Lessee without Lessor's prior written consent. Lessee agrees to abide by Lessor's rules with respect to maintaining uniform curtains, draperies and linings, or blinds at all windows and hallways.

(13) If any Lessee desires telegraphic, telephonic, or other electric connections, Lessor or Lessor's agents will direct the electricians as to where and how the wires may be introduced. Without such directions, no boring or cutting for wires will be permitted. Any such installation and connection shall be made at Lessee's expense.

(14) Lessee shall not install or operate any steam or gas engine or boiler or carry on any mechanical business in the Premises. The use of oil, gas, or inflammable liquids for heating, lighting, or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall be brought into the Building.

(15) Any painting or decorating, as may be agreed to be done by and at the expense of Lessor, shall be done during regular weekday working hours. Should Lessee desire such work on Saturdays, Sundays, Legal Holidays, or outside of regular working hours, Lessee shall pay for the extra cost thereof.

(16) Except as permitted by Lessor, Lessee shall not mark upon, paint signs upon, cut drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions, or floors of the Premises or of the Building and any defacement, damage, or injury caused by Lessee or Lessee's agents or employees shall be paid for by Lessee. Decorative paintings, pictures and the like may be hung in a customary manner on the interior walls of the Premises without Lessor's consent.

(17) Smoking is prohibited in the Building, including all Lessees' premises, inside lobbies, stairwells, bathrooms, and other Common Areas and public areas of the Morgan Hill Police Department Building and is restricted in all outside plaza areas of the Morgan Hill Police Department Building to specific locations designated by Lessor as smoking area, if any.

(18) Lessee shall be entitled to two sets of keys to the Premises. In the event Lessee needs any additional keys, such keys must be requested from Lessor. Lessee shall pay to Lessor the actual cost of making such additional keys. Lessor reserves the right to refuse admittance to the Building at any time other than during Ordinary Business Hours, to any person not producing a key to the Premises and/or a pass issued by Lessor. In case of fire, invasion, riot, public excitement or other commotion, Lessor also reserves the right to prevent access to the Building while it continues. Lessor shall in no case be liable for damages for the admission or exclusion of any person to or from the Building.

(19) No canvassing, soliciting, distribution of hand bills or other written material, or peddling shall be permitted in the Building on the Morgan Hill Police Department Building, and Lessee shall cooperate with Lessor in prevention and elimination of same.

PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles and company vehicles, herein called "**Permitted Size Vehicles**". For the purposes of clarification, no trailers or similar vehicles shall be parked in the parking area.
2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
3. . Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder's parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.
4. Lessor reserves the right to reasonably allocate parking spaces between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations and to allocate and assign parking spaces among Lessee and the other tenants of the Building or to restrict the use of certain parking spaces for certain tenants.
5. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
6. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
7. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.
8. The maintenance, washing, waxing or cleaning of vehicles in the parking area is prohibited.
9. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
10. Lessor reserves the right to amend or modify these rules and/or adopt such other reasonable and nondiscriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
12. Lessee agrees and acknowledges that the Premises are located inside a building which houses the Morgan Hill Police Department. As such, Lessee acknowledges and agrees that it will follow any rules and regulations set forth by the Police Chief or the Chief's designee. These rules and regulations shall include, but not be limited to, that at no time shall any vehicle of a guest, employee, vendor, customer, trucker or anyone connected in any way with Lessee block access to the gate. If access is blocked, the Police may use any and all necessary force to remove the blockage and Lessee waives for itself and its guests, employees, vendors, customers, truckers, or anyone connected with Lessee in any way, any and all claims for damages or liability against the Police and/or against Lessor for any damages resulting therefrom. Lessee shall indemnify, defend and hold harmless Lessor from all liability, damage, or expenses due to the police removing any such blockage.

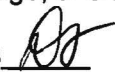
Initials 

EXHIBIT C

PRE-LEASING ENVIRONMENTAL EXPOSURE QUESTIONNAIRE

Property Address: 16200 Vineyard Blvd. • Suite 100

Proposed Lessee: Monument Construction Inc.
dba Techcon
 (Include full legal name of proposed lessee and any d/b/a)

Current Address: 16200 Vineyard Blvd. Ste 100
Morgan Hill CA 95037

Description of Proposed Use of Property: site development company corporate offices
sales, operations, HR, payroll

PLEASE ANSWER THE FOLLOWING QUESTIONS ACCURATELY AND FULLY, ATTACHING ADDITIONAL PAGES IF NECESSARY. YOUR RESPONSES TO THIS QUESTIONNAIRE, INCLUDING ANY AND ALL ATTACHMENTS, SHALL BE INCORPORATED AS REPRESENTATIONS AND WARRANTIES IN THE LEASE WHEN EXECUTED, AND INCORRECT, MISLEADING OR MATERIALLY INCOMPLETE RESPONSES SHALL BE DEEMED A BREACH OF SAID LEASE.

1. Will any of the following chemicals, petroleum products or hazardous materials be made, used, placed, or stored on the property in quantities greater than the minimum quantity listed in column (1) below? If yes, please mark column(s) (2), (3), and/or (4) as applicable.

	(1) <u>Minimum Quantity</u>	(2) <u>Made</u>	(3) <u>Used</u>	(4) <u>Placed</u>	(5) <u>Stored</u>
<u>Categories of Chemicals</u>					
Solvents, Degreasers	1 Gallon				
Paint Thinners/Remover	1 Gallon				
Paint	5 Gallons				
Oil (New)	5 Gallons				
Gasoline	1 Gallon				
Antifreeze	5 Gallons				
Other Automotive Fluids	1 Gallon				
Diesel Fuel	5 Gallons				
Heavy (Toxic) Metal Containing Compounds	1 Pound				
Liquid Plastics/Activators	1 Gallon				
Flammable Gases	20 Cu Ft				
Toxic Gases	20 Cu Ft				
Acids	1 Gl/5 Lb				
Bases (soda, ash, lye, etc.)	1 Gl/5 Lb				
Other Flammable Materials	1 Gl/5 Lb				
Other Corrosive Materials	1 Gl/5 Lb				
Other Toxic Materials	1 Gl/5 Lb				
Other Reactive Materials	1 Gl/5 Lb				
Liquid Hazardous Waste	1 Gallon				
Solid Hazardous Waste	1 Pound				

- 1.1 If required for your operations, please provide Lessor a copy of your Hazardous Material Business Management Plan.

Yes ☐ No ☒

- 1.2 Do your operations require H-occupancy storage or other special construction?

No ☒

If yes, please explain:

2. Will any of the following structures be used on the property? If yes, describe the contents of each.

No ☒

<u>Feature</u>	<u>Contents</u>		
Underground Tank	_____	_____	_____
Above-ground Tank	_____	_____	_____
Clarifier	_____	_____	_____
Sump	_____	_____	_____
Trench	_____	_____	_____
Waste Pile	_____	_____	_____
Chemical Piping	_____	_____	_____
Floor Drain	_____	_____	_____
Other _____	_____	_____	_____
_____	_____	_____	_____

- 2.1 Please describe plans for secondary containment and leak monitoring.

3. Will any hazardous wastes or liquid wastes be generated by on site operations or brought on to the property?

no _____

If yes, complete the following:

- 3.1 Identify each such hazardous waste or liquid waste.

- 3.2 Describe onsite storage, including secondary containment, and/or treatment.

- 3.3 Describe your plans for disposal of hazardous wastes or liquid waste including off-site disposal.

4. Will operations result in any wastewater discharges to the sewer?

no _____

Will operations result in any wastewater discharges to locations other than the sewer (including storm drain)?

If yes, describe each wastewater stream and plans for handling other than the sewer (including storm drain)

If yes, describe each wastewater stream and plans for handling wastewater discharges:

- 4.1 Have you performed any testing or analysis of wastewater discharges or other wastewater effluent from your current facility?

no _____

If yes, attach the results of any such testing or analysis.

4.2 Will your operations require any stormwater discharge permits?

no _____

If yes, describe:

5. Will activities on the property require warnings to be given to workers or visitors on the Premises or the surrounding community?

no _____

If yes, please describe how you will provide such communications or warnings. _____

6. Will operations result in any air emissions (including dust)?

no _____

If yes, describe:

7. Will operations result in air emissions which include hazardous or toxic air pollutants?

no _____

7.1 If yes, will any public notice or disclosure be required?

8. Will operations be subject to Risk Management & Preview Planning requirements or other risk reduction requirements?

no _____

9. Will your operations involve any on-site vehicle or equipment maintenance, repair or cleaning, including but not limited to oil changes, oil filter changes, brake pad replacement, battery changes, radiator flushing, radiator fluid replacement, and equipment, and equipment wash down and cleaning?

no _____

If yes, describe all such maintenance:

9.1 Will these on-site vehicles or equipment use batteries?

no _____

If yes, describe battery storage method:

10. Will your operations include a machine shop?

no _____

If yes, describe all operation:

11. Will your operations include any metal plating or metal fabrication?

no _____

If yes, describe:

12. Will your operations include the use of solvents?

no _____

If yes, describe:

13. Has your present facility or operation ever been the subject of an environmental investigation, an environmental enforcement action, or permit revocation proceeding?

no _____

If yes, describe:

14. Have you ever been identified as a potentially responsible party for any environmental cleanup, compliance or abatement proceedings?

no _____

If yes, describe:

15. Have you ever received a notice of violation or notice to comply from any environmental regulatory agency within the past five years?

no _____

If yes, describe:

16. Have you had any complaints from neighbors relating to noise, odor, air emissions, or dust at your present facility? no

If yes, describe:

- 16.1 Have you had any complaints relating to hazardous materials handling, storage, treatment or disposal from neighbors at your present facility? no

If yes, describe:

17. Will the proposed use of the property require the filing of any environmental reports or other documents to any agencies? no

18. Attach copies of all Material Safety Data Sheets ("MSDS") for all chemicals you intend to use, store, or handle on the property.

19. Has an Environmental Audit been conducted at your present facility? (If yes, attach a copy of any report prepared in connection with any such audit.) no

20. Please provide the Lessor your Emergency Response Plan and any contingency or emergency plans for the property in case of an accidental release of hazardous materials.

21. Identify the name, title and qualifications/experience of person responsible for your environmental, health and safety program:

Name: Tony Malagon

Title: Safety Manager

Qualifications/experience: 25+ years of industry safety

experience

22. Name and telephone number of person to contact for additional information:

Name: Stuart Arnold

Title: COO

Telephone Number: 408-316-0744

23. Please provide any additional information/comments concerning environmental compliance program and environmental compliance history:

The undersigned hereby certifies that the information above is correct and complete.

Monument Construction Inc. dba Techcon
Name of Proposed Lessee

Name: 

Title: Controller

Date: 4/12/19



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Nichole Martin, Community Services Coordinator
APPROVED BY: City Manager

APPROVE COMMUNITY PROMOTIONS FUNDING REQUESTS FOR FISCAL YEAR 2019-20

RECOMMENDATION(S)

Approve Fiscal Year (FY) 2019-20 Community Promotions funding requests totaling \$47,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust
Preserving Our Community History

REPORT NARRATIVE:

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The City Council funding is meant to offset the costs of City services required by the special event permit for the community event.

To be considered for this annual funding, the following criteria must be met:

- The organization requesting the funding is a non-profit
- The event hosted by the requesting organization is a community wide event, open to all, with no associated admission fees
- The event is not a fundraising event
- The event requires a special event permit and City services

In recent years, the City Council has approved funding for the Independence Day Celebrations' (IDC) Fourth of July events known as Freedom Fest; the Morgan Hill Downtown Association's (MHDA) Safe Trick or Treat; and the Kiwanis Holiday Lights Parade. Three years ago, the City Council also began approving funding to offset the cost of the tree lighting that happens in conjunction with the Holiday Lights Parade.

On March 1, 2019, staff provided Community Promotion Funding Request Applications to the three organizations noted above and posted the application with a Newsflash on the City website. The City received a total of four (4) requests from IDC, Morgan Hill Kiwanis, and MHDA (two separate requests). All applications are attached for reference.

As occurred last year, the MHDA has requested funding to offset the cost of the tree for the Holiday Tree Lighting Event. Although it does not meet the above stated criteria because funding the tree is not a community event, staff is once again recommending that the City Council fund the request. This recommendation is based on the tree being a key element in the Holiday Lights Parade and Tree Lighting Event, organized by a different organization. Additionally, the tree serves as a gateway icon for the community during the holiday season.

COMMUNITY ENGAGEMENT: Inform

The Community Promotion Funding Request Applications were sent via email to IDC, MHDA, and Morgan Hill Kiwanis informing those organizations of the deadline to submit their requests. Additionally, the application was posted to the website through a Newsflash providing information on the annual process and deadline to submit requests.

ALTERNATIVE ACTIONS:

1. The City Council could choose to provide less funding than was requested which could potentially hinder the ability of the requesting organization to put on the community event.
2. The City Council could choose to provide funding in an amount higher than has been budgeted potentially requiring a budget amendment.
3. The City Council could choose to provide no funding for the events, which in the case of the Holiday Lights Parade, Tree Lighting, and Safe Trick or Treat would likely mean the events would not occur. In the case of Freedom Fest, the Fourth of July Celebration would need to be scaled back significantly.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Annually, the City Council makes decisions to provide funding to support non-profit community events that benefit the entire community.

FISCAL AND RESOURCE IMPACT:

It should be noted that funding in the amount of \$41,800, annually, was allocated in the adopted biennial budget for FY 2018-19 and FY 2019-20. The total funds requested for FY 2019-20 have increased by \$5,200, with IDC requesting a total of \$30,000, rather than the \$24,700 that was previously adopted in the budget. This increase is due to an increase in the rental fees of the Outdoor Sports Center with management being under a new operator. The previous operator provided the rental at no charge in exchange for marketing, which the City was unaware of until the change in management was scheduled to occur. However, there are adequate savings in other line items to offset the increased cost for the IDC event and no budget adjustment is necessary.

Summary of Requests Received:

Requesting Organization	Funding Budgeted for FY 2018-19	Funding Budgeted for FY 2019-20	Funding Requested for FY 2019-20	Variance
-------------------------	---------------------------------	---------------------------------	----------------------------------	----------

Independence Day – Freedom Fest	\$24,700	\$24,700	\$30,000	+\$5,300
Kiwanis Morgan Hill – Holiday Lights Parade	\$5,100	\$5,100	\$5,000	-\$100
MHDA – Tree Lighting	\$6,000	\$6,000	\$6,000	\$0
MHDA – Safe Trick or Treat	\$6,000	\$6,000	\$6,000	\$0
Totals	\$41,800	\$41,800	\$47,000	Increase: \$5,200

The Community Promotions are budgeted within the City Council's budget (GL#: 010.1100.42413), in the General Fund (010).

CEQA (California Environmental Quality Act):

Council funding ultimately supports events held on public property. The support and permitting of the City to allow these events is categorically exempt under Class 1 Existing facilities, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

LINKS/ATTACHMENTS:

1. FY 19-20 Community Promotions Funding Applications



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The funding requested is meant to offset the cost of city services required by the special event permit for the community event.

To be considered for this annual funding the following criteria must be met:

- The organization requesting funding must be a non-profit
- The event hosted by the requesting organization must be a community-wide event, open to all, with no associated admission fees
- The event hosted by the requesting organization cannot be a fundraising event
- The event hosted by the requesting organization requires a special event permit and city services

The City Council will consider funding its Community Promotions budget as part of the FY 2019/20 budget review process.

To be considered for funding in FY 2019/20 please complete and return this form by 5:00 pm on Friday, March 22, 2019 to:

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Independence Day Celebration, Inc.

ORGANIZATION ADDRESS: PO Box 1776 Morgan Hill, CA 95038

CONTACT PERSON: Jeff Dixon

TELEPHONE and E-MAIL ADDRESS: 408-778-3900, president@mhfreedomfest.com

*Event Information:***NAME OF EVENT:** Freedom Fest**DATE OF EVENT:** July 3-4, 2019**LOCATION OF EVENT:** Community Center, Outdoor Sports Center, Downtown**ANTICIPATED ATTENDANCE:** 80,000-100,000*Budget Information:***ESTIMATED EVENT EXPENSES:** \$ 160,000**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ 160,000**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 30,000*Council Support Request Explanation:* To pay for city services and facility rentals**DESCRIPTION OF EVENT:**

July 3rd - Patriotic Sing and Family Music Fest

July 4th - Freedom Run, Car Cruise and Show, Historic Parade, Fireworks on the Green

PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

The Independence Day Celebration, Inc. is an all-volunteer, community service 501c3 non profit corporation. The Morgan Hill Freedom Fest is two day, six event celebration that bring up to 100,000 people to Morgan Hill each year. Without the financial support received from the City of Morgan Hill, we would not be able to continue operating the longest running July 4 celebration in Northern California.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

Maintaining fiscal responsibility

Serving youth

Preserving and cultivating public trust

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

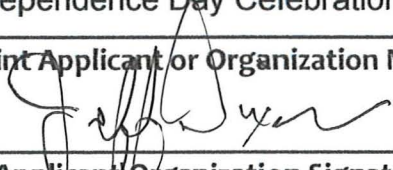
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Freedom Fest

Print Name of Event

Independence Day Celebration, Inc.

Print Applicant or Organization Name



Applicant Organization Signature

3/22/2019

Date

Attachment: FY 19-20 Community Promotions Funding Applications (2268 : Community Promotions)



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The funding requested is meant to offset the cost of city services required by the special event permit for the community event.

To be considered for this annual funding the following criteria must be met:

- The organization requesting funding must be a non-profit
- The event hosted by the requesting organization must be a community-wide event, open to all, with no associated admission fees
- The event hosted by the requesting organization cannot be a fundraising event
- The event hosted by the requesting organization requires a special event permit and city services

The City Council will consider funding its Community Promotions budget as part of the FY 2019/20 budget review process.

To be considered for funding in FY 2019/20 please complete and return this form by 5:00 pm on Friday, March 22, 2019 to:

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Morgan Hill Downtown Association

ORGANIZATION ADDRESS: 90 West Main Avenue (Suite 6), Morgan Hill, CA 95037

CONTACT PERSON: Valerie Gutierrez

TELEPHONE and E-MAIL ADDRESS: 408-779-3190 mhda@morganhilldowntown.org

*Event Information:***NAME OF EVENT:** Safe Trick or Treat**DATE OF EVENT:** October 31, 2019**LOCATION OF EVENT:** Downtown Morgan Hill, Monterey Road, Dunne Avenue to Main Avenue**ANTICIPATED ATTENDANCE:** 3,000-4,000*Budget Information:***ESTIMATED EVENT EXPENSES:** ~~\$ N/A~~ \$4,000**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ N/A**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 6,000 —*Council Support Request Explanation:***DESCRIPTION OF EVENT:**

Safe Trick or Treat is a Halloween tradition for over 25 years in Downtown Morgan Hill, where families bring their children of all ages to Trick-or-Treat in a safe, community environment. It is held on Monterey Road, from Dunne Avenue to Main Avenue. Businesses, Churches, and Non-Profits join together on this evening to provide crafts, activities, and Trick-or-Treating. It has become a staple of Downtown Morgan Hill events and shows what a fun community Morgan Hill has.

PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

Safe Trick or Treat has been a time honored tradition of Morgan Hill for over 25 years, providing a fun and safe environment for children and their families to gather for Trick-or-Treating.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

Street Closure and City Services, included but not limited to: Police, Garbage, Portable Restrooms

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

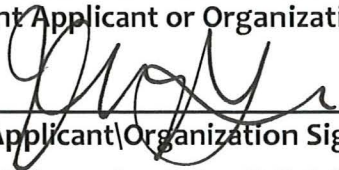
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Safe Trick or Treat

Print Name of Event

Morgan Hill Downtown Association

Print Applicant or Organization Name



Applicant/Organization Signature

March 11, 2019

Date



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The funding requested is meant to offset the cost of city services required by the special event permit for the community event.

To be considered for this annual funding the following criteria must be met:

- The organization requesting funding must be a non-profit
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- The event hosted by the requesting organization requires a special event permit and city services

The City Council will consider funding its Community Promotions budget as part of the FY 2019/20 budget review process.

To be considered for funding in FY 2019/20 please complete and return this form by 5:00 pm on Friday, March 22, 2019 to:

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Morgan Hill Downtown Association

ORGANIZATION ADDRESS: 90 West Main Avenue (Suite 6), Morgan Hill, CA 95037

CONTACT PERSON: Valerie Gutierrez

TELEPHONE and E-MAIL ADDRESS: 408-779-3190 / mhda@morganhilldowntown.org

*Event Information:***NAME OF EVENT:** Holiday Tree Lighting**DATE OF EVENT:** December 1st or 8th 2019**LOCATION OF EVENT:** Morgan Hill Community Center**ANTICIPATED ATTENDANCE:** 3,000-4,000- viewed by 20,000+ during the holiday season its in place.*Budget Information:***ESTIMATED EVENT EXPENSES:** \$ None**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ None**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 6,000*Council Support Request Explanation:* Holiday tree will provide holiday spirit to the entire community.**DESCRIPTION OF EVENT:**

Terminus of the holiday parade in December, is the Morgan Hill Community and Cultural Center with a holiday tree. A lighting ceremony takes place where the tree lights are turned on and the tree will be left in place for the duration of the holiday season.

PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

The tree is a symbol to many throughout the community during the holiday season. The holiday tree will be enjoyed by thousands of people from the community and those who are visiting. It will show Morgan Hill's holiday spirit.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

Preserving our cultural heritage: Morgan Hill has long had a holiday tree, Holiday parade, and Holiday tree lighting event which is known and appreciated by the region.

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

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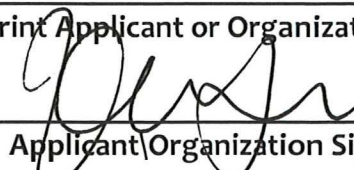
In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2019/20 General Fund budget development process.

Holiday Tree Lighting

Print Name of Event

Morgan Hill Downtown Association

Print Applicant or Organization Name



Applicant Organization Signature

March 21, 2019

Date

Attachment: FY 19-20 Community Promotions Funding Applications (2268 : Community Promotions)



**COMMUNITY PROMOTIONS
CITY COUNCIL FUNDING APPLICATION**

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events. The funding requested is meant to offset the cost of city services required by the special event permit for the community event.

To be considered for this annual funding the following criteria must be met:

- The organization requesting funding must be a non-profit
- The event hosted by the requesting organization must be a community-wide event, open to all, with no associated admission fees
- The event hosted by the requesting organization cannot be a fundraising event
- The event hosted by the requesting organization requires a special event permit and city services

The City Council will consider funding its Community Promotions budget as part of the FY 2017/18 budget review process.

To be considered for funding in FY 2017/18 please complete and return this form by Friday, May 5, 2017 to:

Maureen Tobin
Communications and Engagement Manager
17575 Peak Avenue
Morgan Hill, CA 95037
maureen.tobin@morganhill.ca.gov

Organizer Information:

EVENT ORGANIZER: Morgan Hill Kiwanis

ORGANIZATION ADDRESS: Box 751, Morgan Hill, CA 95038

CONTACT PERSON: Mary Lou Conragan

TELEPHONE and E-MAIL ADDRESS: 408 779 1473, mconragan@msn.com

*Event Information:***NAME OF EVENT:** Holiday Lights Parade**DATE OF EVENT:** Saturday December 7, 2019**LOCATION OF EVENT:** Monterey Road, Downtown Morgan Hill**ANTICIPATED ATTENDANCE:** 3000*Budget Information:***ESTIMATED EVENT EXPENSES:** \$ 6000**ESTIMATED EVENT REVENUE** (Do not include amount of Council support requested): \$ 1000**AMOUNT OF COUNCIL SUPPORT REQUESTED:** \$ 5000*Council Support Request Explanation:***DESCRIPTION OF EVENT:** Winter holiday parade, with tree lighting and post parade entertainment**PLEASE RESPOND TO THE FOLLOWING QUESTIONS:****1. WHY SHOULD THE CITY COUNCIL CONSIDER FUNDING THIS EVENT?**

The Holiday Lights Parade is a classic “Hometown” event held annually. Over the last 4 years it has seen considerable growth in participants and parade viewers. The parade has become more inclusive with more schools and community organizations participating. This is one of Morgan Hill classic event. The Parade was started by the city. They asked Morgan Hill Kiwanis to take over the arrangements 20 years ago when management costs escalated. The cost are for what was “furnished by city” in our original agreement: Police, road closure, permits, sound systems, amphitheater rental, etc.

2. WHAT COUNCIL PRIORITY IS SUPPORTED BY YOUR EVENT?

The support for these events adds to the community spirit which is identified as the good life of Morgan Hill.

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

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The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

In submitting our request for City Council funding, we understand that the City Council will consider funding of its Community Promotions budget as part of the FY 2017/18 General Fund budget development process.

Holiday Lights Parade

Print Name of Event

_Morgan Hill Kiwanis

Print Applicant or Organization Name

Mary Lou Conragan

Applicant\Organization Signature

March 5, 2019

Date

APPLICANT CERTIFICATION FOR SPECIAL EVENTS

As part of your City Council funding request, the Applicant must agree to the following as part of its Special Event Permit that will need to be applied for through the City's Community Services Department.

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

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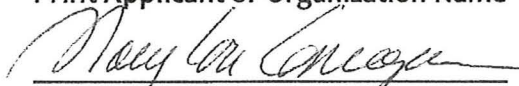
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Holiday Lights Parade

Print Name of Event

Morgan Hill Kiwanis

Print Applicant or Organization Name



Applicant/Organization Signature

March 5, 2019

Date



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Angie Gonzalez, Council Services Assistant

APPROVED BY: City Manager

APPOINT EMERGENCY STANDBY COUNCIL

RECOMMENDATION(S)

Appoint former City Council Members Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan as Emergency Standby Council Members to be called upon as needed in the event of an emergency.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Civil Disaster and Emergency Organization Chapter of the City of Morgan Hill's Municipal Code was updated on February 6, 2019 to include the appointment and duties of Emergency Standby Council members by adding the section "Continuity of Government in the event of Disaster." This addition outlines the duties and assignment of the emergency standby council when sitting council members are unavailable or there is not a quorum. The appointment of a standby council allows the City to appoint former council members who reside within the City limits. Without this update the default procedure per California Code states that when council members are not available during a large-scale event the authority goes to a neighboring municipality's City Council with the largest population. Therefore, without the standby council, the authority would fall to the City of San Jose.

Appointment recommendations by staff for the emergency standby council were brought forth during the February 6, 2019 City Council meeting to include at least five past City Council members who reside within Morgan Hill city limits. A total of six have since agreed to serve on the Emergency Standby Council: Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan.

COMMUNITY ENGAGEMENT: Inform

Assigning an Emergency Standby Council strengthens the City of Morgan Hill's ability to act independently during a large disaster on issues relative to the community.

ALTERNATIVE ACTIONS:

One alternative action by the Council could be to decline appointment of emergency standby council members. If a large-scale disaster were to occur and current City

Council members were not available, the neighboring city with the largest population would step in to ratify any emergency proclamations and/or decisions relative to Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The updated ordinance was introduced at the January 23, 2019 council meeting and was approved at the February 6, 2019 council meeting.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact to appointing an emergency standby council.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. 2296 - Adding Section to Civil Disaster and Emergency Organization of Municipal Code

ORDINANCE NO. 2296, NEW SERIES

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MORGAN HILL
ADDING SECTION 2.44.094 (CONTINUITY OF GOVERNMENT IN THE
EVENT OF A DISASTER) TO CHAPTER 2.44 (CIVIL DISASTER AND
EMERGENCY ORGANIZATION) OF TITLE 2 (ADMINISTRATION AND
PERSONNEL) OF THE MORGAN HILL MUNICIPAL CODE RELATING
TO THE APPOINTMENT AND DUTIES OF EMERGENCY STANDBY
COUNCIL MEMBERS**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. Section 2.44. 094 (Continuity of government in the event of disaster) is hereby added to Chapter 2.44 (Emergency Organization and Functions) of Title 2 (Administration and Personnel) of the Morgan Hill Municipal Code is to read as follows:

"(a) At the second council meeting in January each year or as soon thereafter as may be practicable, the City Council shall appoint five (5) emergency standby council members. Emergency standby council members shall be selected from former members of the City Council who agree to serve in that capacity during that year and to reside within the City of Morgan Hill during that year so long as they elect to participate as members of the emergency standby council. If insufficient numbers of former members of the City Council are available or willing to serve, City Council shall select emergency standby council members from current Planning Commissioners.

(b) A member of the emergency standby council shall serve in that capacity from the date of appointment until the appointment of another emergency standby council the following year or until the member notifies the City Clerk in writing that the member has elected to terminate participation in the emergency standby council. Each emergency standby council member shall take the oath of office required for the City Council prior to assuming the position of emergency standby council member.

(c) Each emergency standby council member appointed by the City Council as described in section (a) shall have the duty during the term of that member's appointment to remain informed of the duties of City Council members and the business and affairs of the City of Morgan Hill to the extent necessary to enable participation as a member of the City Council upon appointment in the event of an emergency as provided hereafter.

(d) In the event of the declaration of a state of war emergency, a state of emergency, or a local emergency as those terms are designated in Articles 12, 13, and 14 of Title 2 of the California Government Code and less than a quorum of the City Council is available and a City Council meeting is urgently required, the members of the emergency standby council shall be contacted for service. At that meeting, any City Council members who are unavailable for duty at the time of that meeting as defined by section 8636 of the California Government Code (unavailable such as the member is either killed, missing; or so seriously injured as to be unable to attend meetings and otherwise perform the duties of office), shall be replaced by a member of the emergency standby council as

necessary to reach five members. The order of selection of emergency standby council members shall be determined by Council Policy. The appointment of members of the emergency standby council to fill vacancies created by the unavailability of City Council members at any time during a state of emergency shall be performed by City Council, and additional emergency standby members shall be appointed during the state of emergency as required to maintain a total of five members on the City Council.

(e) Members of the emergency standby council who are appointed to serve as City Council members shall serve in that position until replaced by a member of the City Council who becomes no longer unavailable such that the addition of emergency standby council members is no longer necessary in order to constitute a quorum, until termination of the state of emergency, or until the election or appointment of a new regular City Council member as provided by law."

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect on March 7, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Morgan Hill held on the 23rd day of January 2019 and was finally adopted at a meeting of said Council on the 6th day of February 2019 and said Ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rene Spring, Yvonne Martinez Beltran, John McKay, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE:

2/7/2019

□ CERTIFICATE OF THE CITY CLERK □

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2296, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of February 2019.

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

DATE: _____

2/7/2019


IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT FEBRUARY 2019 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the month ended February 28, 2019. The Revenue and Expense Summary for the month of February is included on the first page. Overall, General Fund revenues through February totaled \$25.1 million or 62% of the budget. Expenditures, including encumbrances, amounted to \$28.5 million through February. The encumbrances represent commitments or contractual obligations that the City entered with vendors or suppliers such as Cal-West Lighting and Signal Maintenance for the maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial

and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. February 2019 Financial Statement Analysis
2. February 2019 Financial and Investment Report



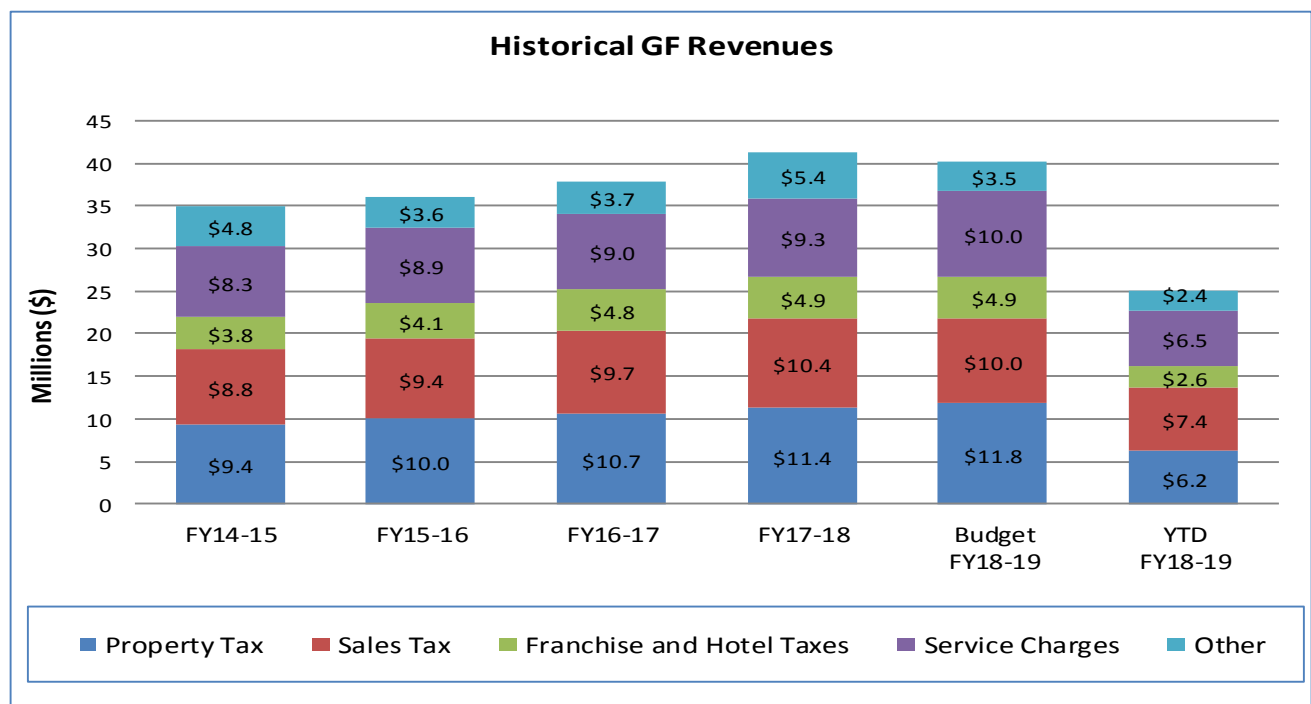
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED FEBRUARY 2019 – 67% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of February totaled \$25.1 million, or 62% of the budgeted revenues. The amount received is 1% or \$0.3 million higher than a year ago at this time primarily due to higher property tax and sales tax collections, partially offset by a reduction in other revenues. Sales tax collections increased by 7% compared to prior year.

As for property tax, the final advances for the December 10, 2018 secured and unsecured property tax installment have been received, and is 12% or approximately \$665,000 higher than a year ago at this time. Property tax revenue, excluding the property transfer tax, is forecasted to end the year at \$12.5 million, which is approximately \$800,000 more than the adopted budget partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution of \$943,000 versus \$495,000 budgeted. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 29% of the approximately \$40.5 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 99% of the budgeted amount as annual business license renewal payments are usually received in the first few months of the fiscal year.

The chart below shows historical General Fund revenues by major revenue category from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of February 28, 2019.



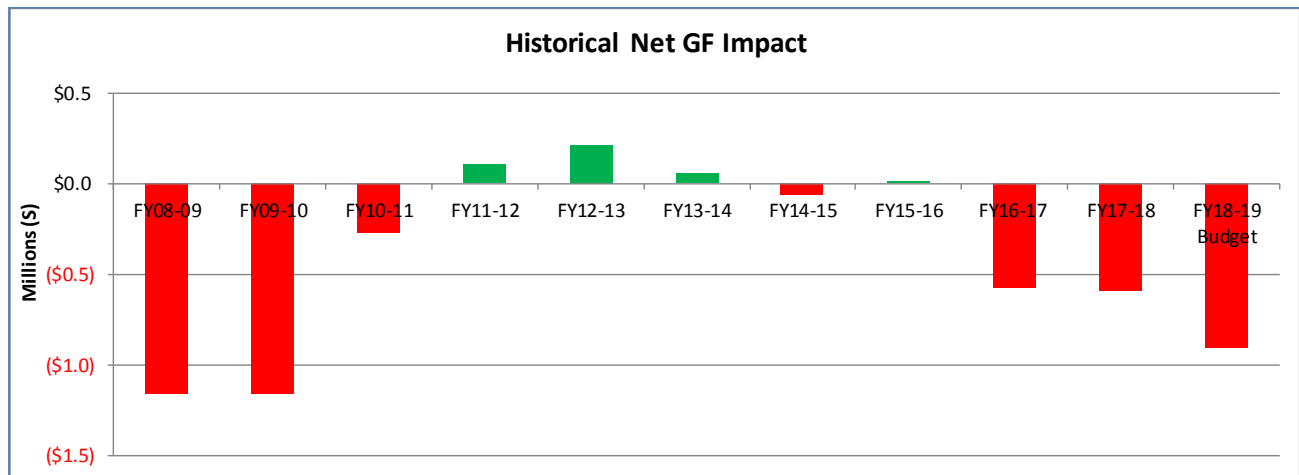
General Fund expenditures and encumbrances as of February 28, 2019 totaled \$28.5 million, of which



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED FEBRUARY 2019 – 67% OF YEAR COMPLETE

approximately \$2.0 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.0 million through the month of February. Without the carry-over encumbrances, the year to date operations through the month of February resulted in a small positive net impact to the general fund of approximately \$15,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through February totaled \$3.2 million, an increase of 9% or approximately \$275,000 more than a year ago at this time partially due to the fee increases that went into effect January 1, 2019. Expenditures, including encumbrances, totaled \$4.6 million. Without the outstanding encumbrances, however, expenditures through the month of February amounted to \$3.5 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$1.4 million. This is primarily due to the timing of fee increases, services or new projects unsupported by fees, such as front counter services, responding to public inquiries, tree removal permits, use permits for non-profits or special projects, and continued implementation of Measure S. In addition, fees are based on average time for processing, the more complicated the case, the more time is spent assisting the applicant in the application process. This extra time is not incorporated into the cost recovery model. There is available fund reserve to support the fund's operating deficits in the two-year window, however, a General Fund support may be required in future years due to the aforementioned reasons.
- **Debt Service Funds** – Expenditures through the month of February totaled \$520,000. The debt service



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED FEBRUARY 2019 – 67% OF YEAR COMPLETE

for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.

- **Wastewater Operations** – Revenues from Wastewater or Sewer Operations through the month of February totaled \$7.7 million. Expenditures and outstanding encumbrances totaled \$6.7 million or 59% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of February 28, 2019.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	10.3	10.2	9.7	10.3	10.7	7.7
Expenditures	8.8	12.0	9.8	10.8	11.3	6.7
Operating Margin	1.5	(1.8)	(0.1)	(0.5)	(0.6)	1.0
Operating Margin without Encumbrances	1.5	(1.8)	(0.0)	(0.3)	(0.6)	1.2

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of February totaled \$9.9 million, approximately 12% more than a year ago partially due to rate adjustment. Water Operations expenditures, including outstanding encumbrances, totaled \$9.1 million for the year. Without the encumbrances, however, the expenditures amounted to \$7.6 million. The table below shows Water Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and YTD as of February 28, 2019.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	YTD FY18-19
Revenues	8.8	8.5	10.9	13.0	13.8	9.9
Expenditures	9.3	9.7	11.2	12.1	13.5	9.1
Operating Margin	(0.5)	(1.2)	(0.3)	0.9	0.3	0.8
Operating Margin without Encumbrances	(0.5)	(1.2)	(0.1)	1.4	0.3	2.3

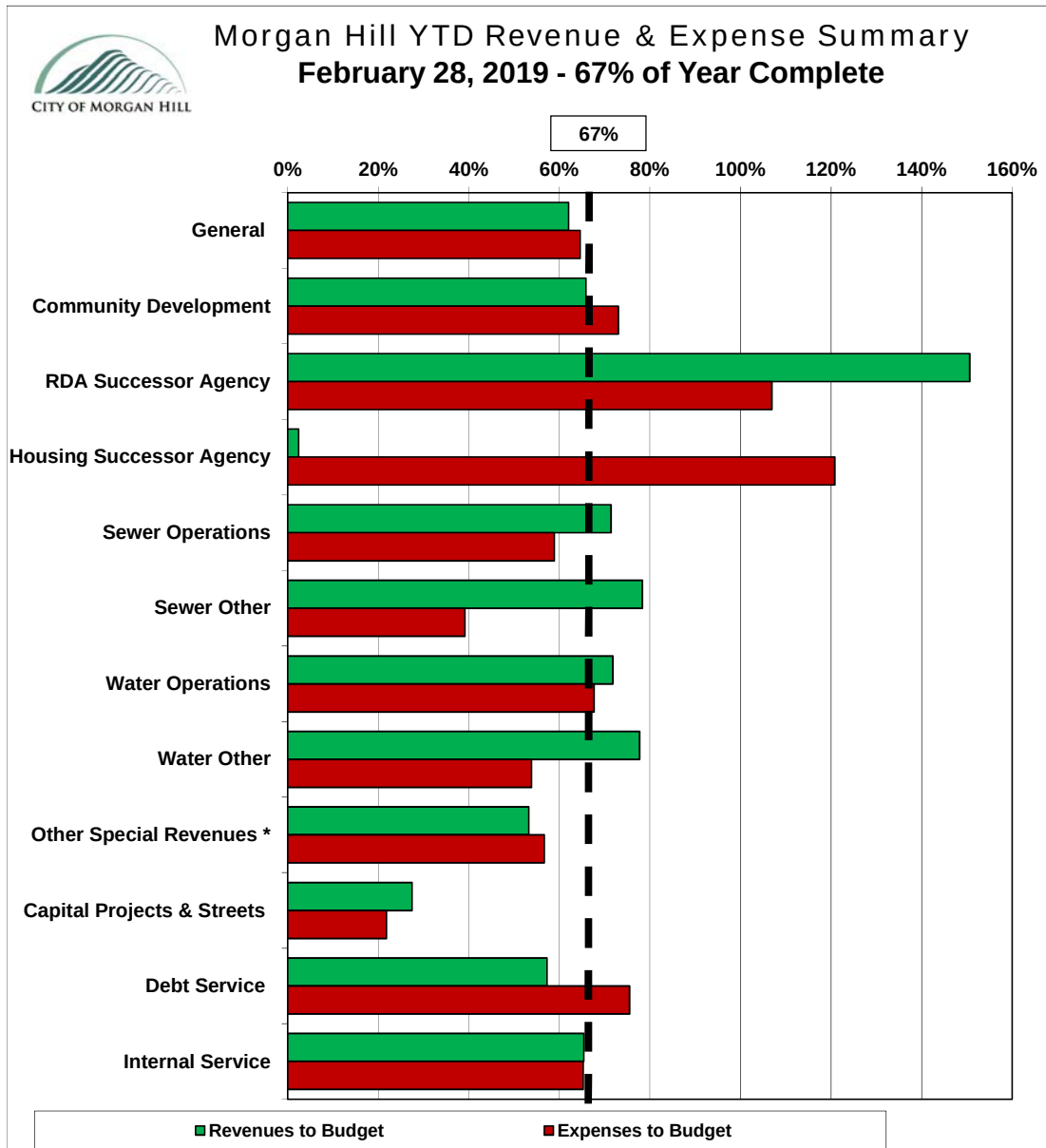
- **Investments** – No purchases were made during the month of February 2019. Total interest earnings received on investments were \$45,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
February 28, 1019 - 67% of Year Complete



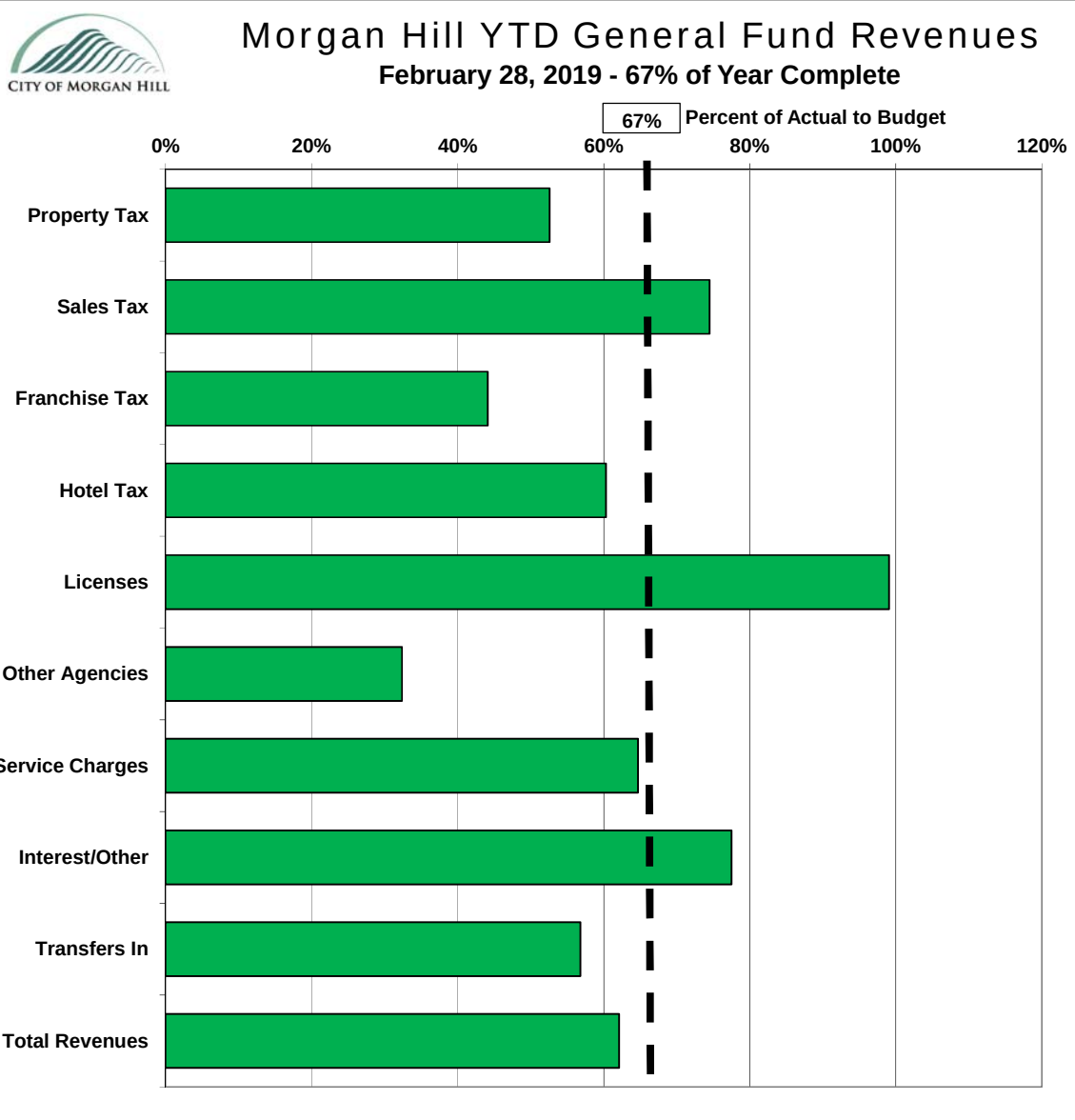
CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 25,140,222	62%	\$ 28,475,799	65%
Community Development	3,214,624	66%	4,558,187	73%
RDA Successor Agency	11,969,106	151%	8,535,682	107%
Housing Successor Agency	58,012	2%	4,445,655	121%
Sewer Operations	7,676,122	71%	6,661,044	59%
Sewer Other	6,084,282	78%	6,044,648	39%
Water Operations	9,871,457	72%	9,107,710	68%
Water Other	2,927,524	78%	3,183,661	54%
Other Special Revenues *	2,197,187	53%	3,128,119	57%
Capital Projects & Streets	11,598,737	27%	13,209,297	22%
Debt Service	386,383	57%	520,326	76%
Internal Service	7,796,876	65%	7,566,811	65%
TOTAL FOR ALL FUNDS	\$ 88,920,531	59%	\$ 95,436,937	51%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.



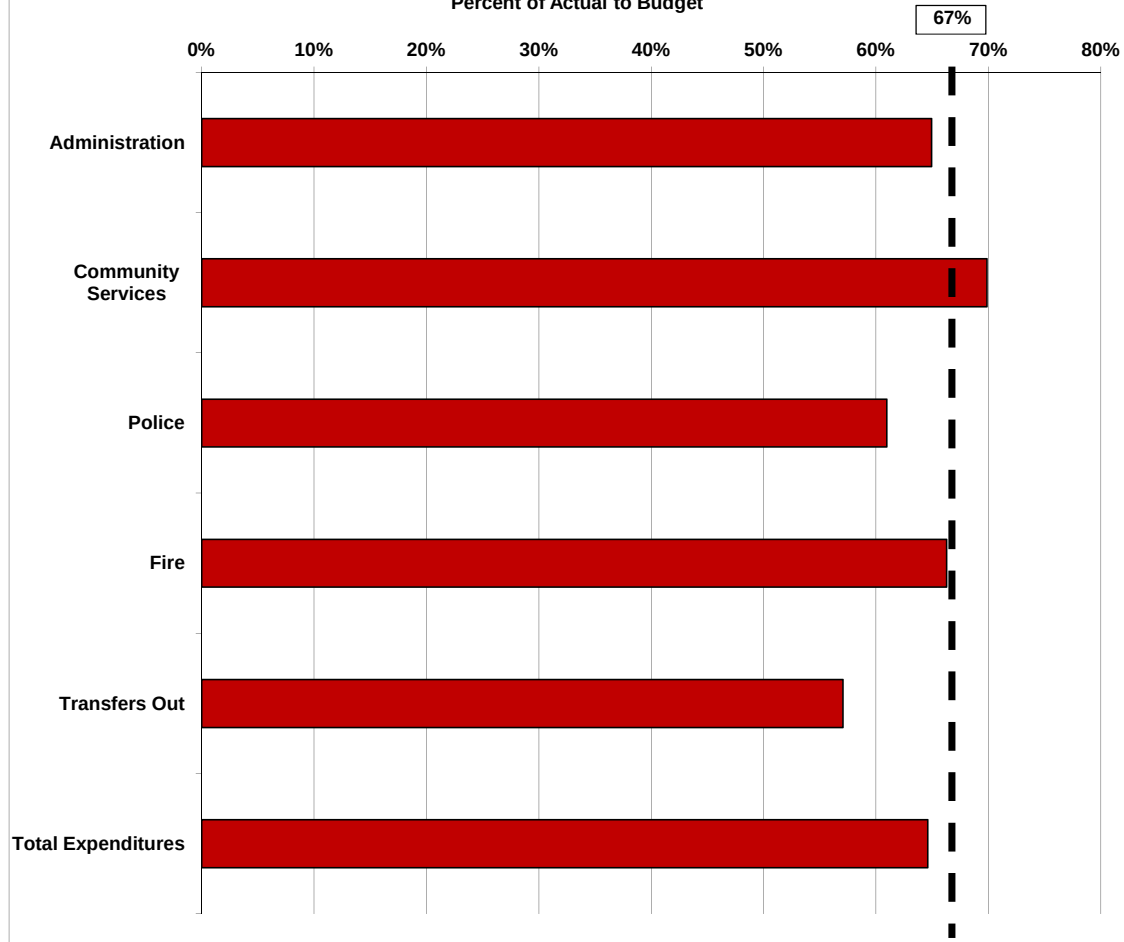
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 11,813,532	\$ 6,218,862	53%	\$ 5,554,278	12%
Sales Tax	9,981,124	7,433,325	75%	6,981,182	6%
Franchise Tax	2,164,190	955,035	44%	886,218	8%
Hotel Tax	2,754,000	1,660,732	60%	1,566,734	6%
Licenses	200,800	199,072	99%	186,341	7%
Other Agencies	546,332	177,131	32%	424,284	-58%
Service Charges	9,993,089	6,467,257	65%	6,034,377	7%
Interest/Other	1,406,042	1,089,035	78%	2,271,121	-52%
Transfers In	1,653,560	939,774	57%	933,368	1%
TOTAL REVENUES	\$40,512,669	\$25,140,222	62%	\$ 24,837,903	1%



Morgan Hill YTD General Fund Expenditures

February 28, 2019 - 67% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,043,269	\$ 3,275,611	65%	\$ 5,530,002	-41%
Community Services	12,540,603	8,760,652	70%	7,815,157	12%
Police	17,406,718	10,612,785	61%	10,050,216	6%
Fire	6,959,059	4,612,727	66%	3,956,099	17%
Transfers Out	2,127,498	1,214,024	57%	1,330,134	-9%
TOTAL EXPENDITURES	\$ 44,077,146	\$ 28,475,799	65%	\$ 28,681,609	-1%



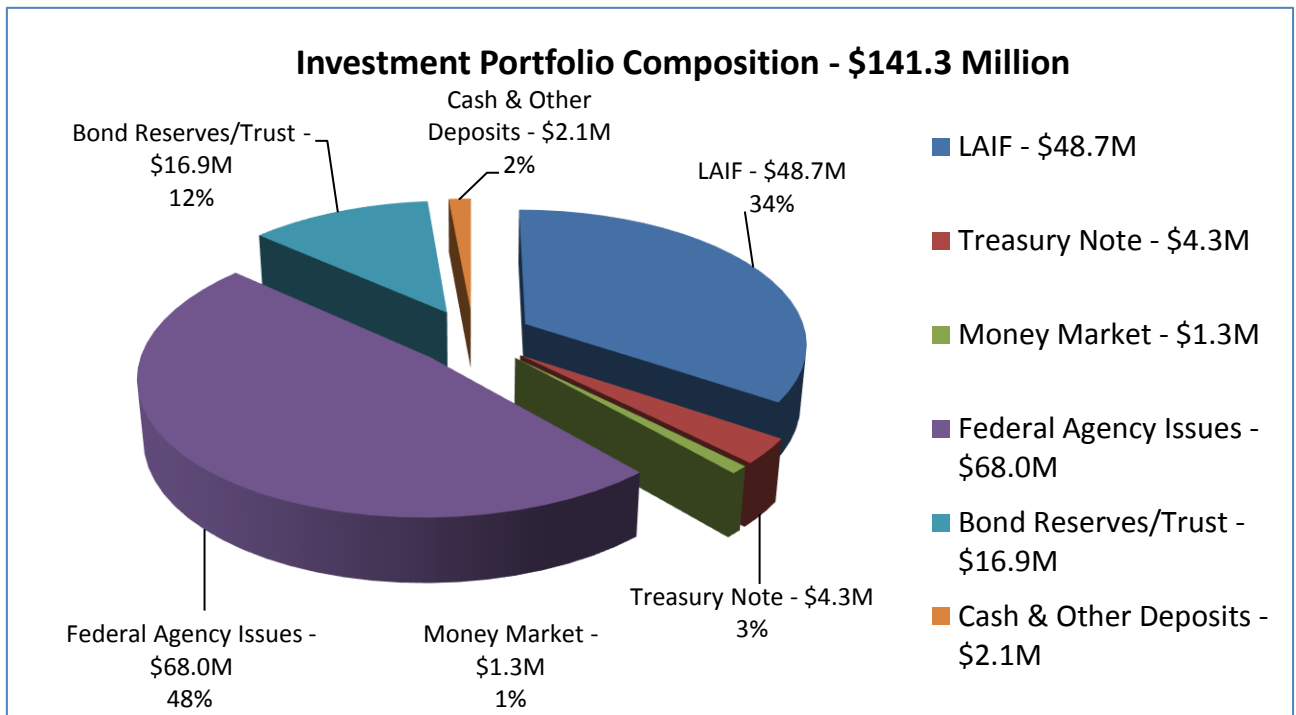
City of Morgan Hill
Recreation Report - Fiscal Year 2018-19
For the Month and Eight Months Ended February 28, 2019
67% of Year Complete

	<u>Budget</u>	<u>February 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,241,196	\$ 454,369	\$ 4,167,426	
Facility Rentals	898,700	74,640	651,594	
Community Services	147,840	40,112	77,692	
Transfers in	75,000	6,250	50,000	
Total Revenues	<u>\$ 7,362,736</u>	<u>\$ 575,372</u>	<u>\$ 4,946,712</u>	67%
Less: Expenditures				
Membership & Program Services	\$ 6,309,009	\$ 346,957	\$ 3,702,287	
Facility Rentals	1,355,732	106,355	865,911	
Community Services	653,307	39,753	363,675	
Total Expenditures	<u>\$ 8,318,049</u>	<u>\$ 493,063</u>	<u>\$ 4,931,873</u>	59%
Net Impact without encumbrances	<u>\$ (955,313)</u>	<u>\$ 82,308</u>	<u>\$ 14,839</u>	
Encumbrances	-	-	1,015,947	
Net Impact with encumbrances	<u>\$ (955,313)</u>	<u>\$ 82,308</u>	<u>\$(1,001,108)</u>	

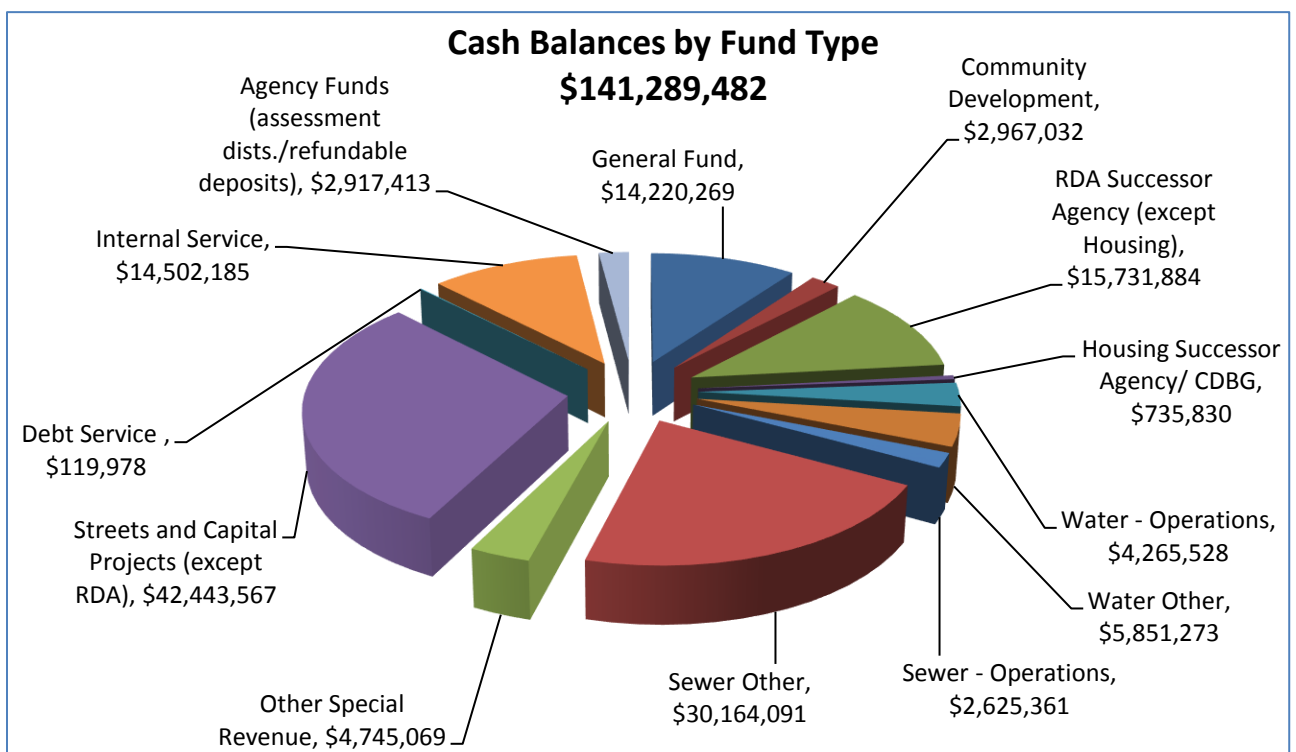
Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)

City of Morgan Hill Monthly Investment Report - February 28, 2019

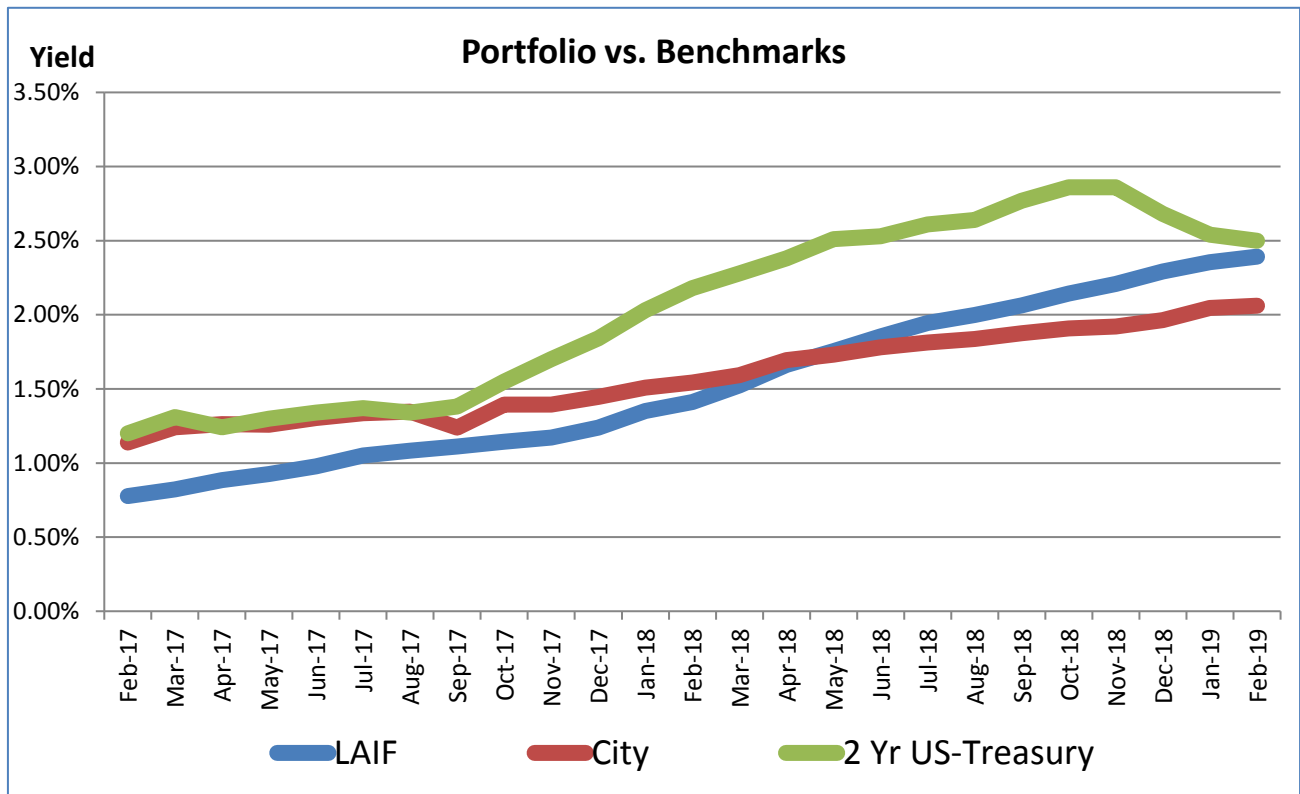
The following are the snapshots of City's investment portfolio as of February 28, 2019. The first chart shows the portfolio composition by investment type:



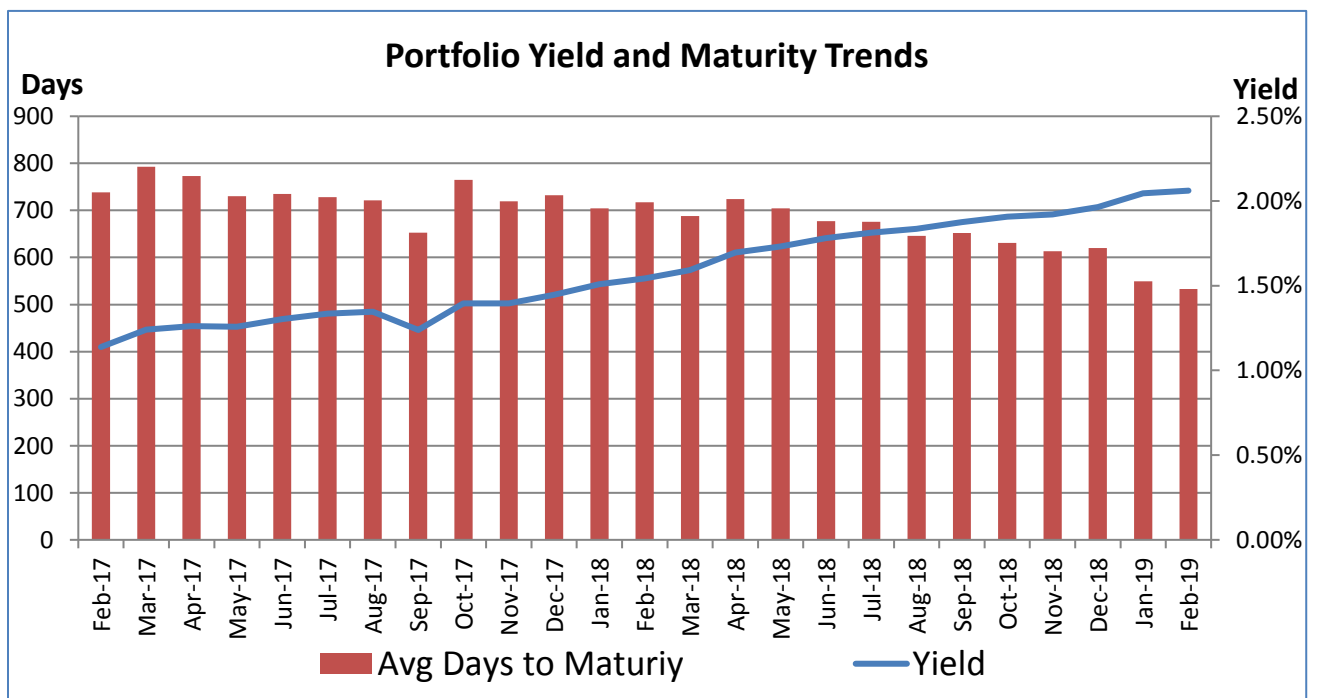
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of February 28, 2019

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 48,684,710	34.46%	\$ 48,638,514	2.39%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.83%	3,943,360	1.70%	4/19/2019	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.83%	3,906,840	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.83%	3,886,960	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.42%	1,953,860	1.65%	3/29/2019	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.83%	3,886,560	1.60%	3/29/2019	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.83%	3,900,600	1.60%	4/27/2019	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.83%	3,863,560	1.55%	4/28/2019	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.42%	1,952,620	1.65%	4/28/2019	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.83%	3,894,800	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.12%	2,927,760	1.65%	3/23/2019	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.83%	3,901,400	1.63%	3/23/2019	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.83%	3,925,120	1.88%	3/26/2019	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.92%	1,279,512	2.15%	3/29/2019	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.72%	3,787,207	2.15%	10/19/2022	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	2.94%	4,076,711	2.20%	4/26/2019	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.12%	2,971,740	2.50%	4/30/2019	1/30/2023
Treasury Note	4/30/2018	4,289,720	3.04%	4,323,870	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,589,720	42.18%	\$ 58,382,480	1.82%		
Money Market		\$ 1,214,570	0.86%	\$ 1,214,570	2.38%		
Total City Managed/Average		\$ 109,489,000	77.49%	\$ 108,235,562	2.20%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	749,914	0.53%	745,890	1.18%	7/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,988	0.53%	745,485	1.25%	5/23/2019	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.53%	745,440	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	10/7/2016	749,938	0.53%	744,810	1.29%	3/12/2019	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,973	0.53%	747,780	1.22%	5/23/2019	5/23/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,985	0.53%	744,443	1.25%	3/30/2019	9/30/2019
Fed Home Loan Mortgage	12/13/2016	1,001,010	0.71%	998,440	1.35%	5/30/2019	5/30/2019
Fed Home Loan Mortgage	12/29/2016	749,767	0.53%	748,860	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	740,813	0.52%	738,283	1.39%	6/20/2019	6/20/2019
Fed Home Loan Bank	6/19/2018	947,659	0.67%	947,445	2.38%	5/28/2019	5/28/2019
Fed Home Loan Mortgage	9/14/2018	820,485	0.58%	820,652	2.56%	8/1/2019	8/1/2019
Fed Home Loan Bank	9/26/2018	746,638	0.53%	748,733	2.80%	3/30/2020	3/30/2020
Fed Home Loan Bank	11/6/2018	739,054	0.52%	743,895	2.87%	11/15/2019	11/15/2019
Fed Home Loan Mortgage	1/18/2019	999,018	0.71%	999,650	2.59%	4/23/2020	4/23/2020
Fed Home Loan Bank	1/31/2019	1,493,071	1.06%	1,493,145	2.42%	5/8/2019	5/8/2019
Money Market		106,244	0.08%	106,244	2.38%		
Sub Total/Average		\$ 12,843,556	9.09%	\$ 12,819,194	1.87%		
Bond Reserve Accounts - Held By Trustees		\$ 14,705,310	10.41%	\$ 14,732,164			
Cash/Deposits		\$ 2,064,212	1.46%	\$ 2,064,212			
PARS Trust		\$ 2,187,404	1.55%	\$ 2,453,530			
GRAND TOTAL/AVERAGE		\$ 141,289,482	100.00%	\$ 140,304,663			

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF FEBRUARY 28, 2019
FOR THE FISCAL YEAR OF 2018-19

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	2.39%	\$ 44,679,231	31.62%	\$ 44,636,837
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.39%	4,005,478	2.83%	4,001,678
Federal Issues	All Funds Pooled	1.50%	68,037,312	48.15%	66,771,559
US Treasury Notes	All Funds Pooled	2.73%	4,289,720	3.04%	4,323,870
Dreyfus Treas Cash Management Acct	All Funds Pooled	2.38%	1,320,813	0.93%	1,320,813
	SUBTOTAL		\$ 122,332,556	86.58%	\$ 121,054,757
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	2.05%	245	0.00%	245
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	2.05%	311	0.00%	311
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.38%	9,105,520	6.44%	9,105,520
US Treasury Notes - Reserve Acct.	Successor Fund	1.26%	5,074,237	3.59%	5,101,091
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	2.05%	258,840	0.18%	258,840
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	2.05%	266,157	0.19%	266,157
	SUBTOTAL		14,705,310	10.41%	14,732,164
Other Cash/Deposits					
General Checking	All Funds		2,027,100	1.43%	2,027,100
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			1,387,404	0.98%	1,571,089
PARS - PENSION Trust			800,000	0.57%	882,442
	SUBTOTAL		4,251,616	3.01%	4,517,742
Total Cash and Investments			\$ 141,289,482	100.00%	\$ 140,304,663

CASH ACTIVITY SUMMARY
FY 2018-19

Fund Type	07/01/18 Balance	Change in Cash Balance	2/28/2019 Balance
General Fund	\$ 15,044,885	\$ (824,617)	\$ 14,220,269
Community Development	3,419,872	(452,839)	2,967,032
RDA Successor Agency (except Housing)	12,277,198	3,454,686	15,731,884
Housing Successor Agency/ CDBG	4,150,303	(3,414,473)	735,830
Water - Operations	2,317,454	1,948,075	4,265,528
Water Other	4,954,819	896,454	5,851,273
Sewer - Operations	1,505,059	1,120,302	2,625,361
Sewer Other	29,212,866	951,225	30,164,091
Other Special Revenue	5,052,285	(307,216)	4,745,069
Streets and Capital Projects (except RDA)	42,155,711	287,856	42,443,567
Debt Service	253,454	(133,476)	119,978
Internal Service	12,991,987	1,510,198	14,502,185
Agency Funds (assessment dists./refundable deposits)	4,116,381	(1,198,969)	2,917,413
Total	\$ 137,452,276	\$ 3,837,206	\$ 141,289,482

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by: Harjot Sangha, Accounting Manager

Approved by:

Reviewed by: Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 10,131,882	\$ 10,131,882	\$ 5,367,378	53%	\$ 5,140,072	\$ 227,306	4%
Property Tax - RPTTF Residual Distribution	1,405,500	1,405,500	704,304	50%	265,874	438,430	165%
Property Tax - Supplemental Roll	276,150	276,150	147,180	53%	148,332	(1,152)	-1%
Sales Tax	9,601,124	9,601,124	7,219,074	75%	6,777,313	441,761	7%
Public Safety Sales Tax	380,000	380,000	214,251	56%	203,869	10,382	5%
Transient Occupancy Taxes	2,754,000	2,754,000	1,660,732	60%	1,566,734	93,998	6%
Franchise (Refuse, Cable, PG&E)	2,164,190	2,164,190	955,035	44%	886,218	68,816	8%
Property Transfer Tax	505,000	505,000	318,034	63%	326,097	(8,063)	-2%
TOTAL TAXES	27,217,846	27,217,846	16,585,987	61%	15,314,509	1,271,477	8%
LICENSES/PERMITS							
Business License	196,000	196,000	195,154	100%	183,118	12,036	7%
Other Permits	4,800	4,800	3,918	82%	3,223	695	22%
TOTAL LICENSES/PERMITS	200,800	200,800	199,072	99%	186,341	12,732	7%
FINES AND PENALTIES							
Parking Enforcement	8,250	8,250	5,309	64%	4,281	1,028	24%
Bails & Fines	71,500	71,500	58,581	82%	34,419	24,162	70%
Administrative Citations	9,500	9,500	1,156	12%	13,300	(12,144)	-91%
TOTAL FINES AND PENALTIES	89,250	89,250	65,046	73%	52,000	13,046	25%
OTHER AGENCIES							
Motor Vehicle in-Lieu	23,934	23,934	21,366	89%	23,237	(1,871)	-8%
Other Revenue - Other Agencies	271,398	546,332	177,131	32%	424,284	(247,153)	-58%
TOTAL OTHER AGENCIES	295,332	570,266	198,498	35%	447,521	(249,023)	-56%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,000	33,000	27,845	84%	19,696	8,149	41%
Business License Application Review	36,000	36,000	31,082	86%	24,852	6,230	25%
Membership Services & Rec Programs	6,241,196	6,241,196	4,167,426	67%	3,881,048	286,378	7%
Facility Rentals	898,700	898,700	651,594	73%	661,201	(9,607)	-1%
Community Services	147,840	147,840	77,692	53%	72,267	5,424	8%
General Administration Overhead	1,709,712	1,709,712	1,137,408	67%	880,192	257,216	29%
Other Charges Current Services	926,641	926,641	374,210	40%	495,121	(120,911)	-24%
TOTAL CURRENT SERVICES	9,993,089	9,993,089	6,467,257	65%	6,034,377	432,880	7%
OTHER REVENUE							
Use of money/property	458,589	458,589	280,410	61%	224,192	56,218	25%
Other Revenues	254,014	329,269	404,179	123%	1,645,595	(1,241,416)	-75%
TOTAL OTHER REVENUE	712,603	787,858	684,589	87%	1,869,787	(1,185,198)	-63%
TRANSFERS IN							
Asset Seizure	-	15,840	-	0%	-	-	0%
Public Safety	100,000	100,000	48,809	49%	81,000	(32,191)	-40%
Streets	738,968	738,968	358,460	49%	323,000	35,460	11%
Police Impact	25,000	25,000	16,664	67%	16,664	-	n/a
Sewer Operations	349,376	349,376	232,920	67%	231,352	1,568	1%
Water Operations	349,376	349,376	232,920	67%	231,352	1,568	1%
Park Development	75,000	75,000	50,000	67%	50,000	-	n/a
TOTAL TRANSFERS IN	1,637,720	1,653,560	939,774	57%	933,368	6,406	1%
TOTAL GENERAL FUND	40,146,640	40,512,669	25,140,222	62%	24,837,903	302,319	1%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	751,089	751,089	406,761	54%	431,846	(25,085)	-6%
Interest / Other Revenue/Other Charges	-	-	1,730	n/a	640	1,090	170%
202 STREET MAINTENANCE	751,089	751,089	408,491	54%	432,486	(23,995)	-6%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	202	202	680	337%	188	492	261%
Police Grant/SLEF/JAG	100,000	100,000	90,413	90%	81,083	9,330	12%
205 PUBLIC SAFETY TRUST	100,202	100,202	91,093	91%	81,271	9,822	12%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,996,450	2,996,450	1,847,852	62%	1,571,888	275,965	18%
Planning Fees	1,396,529	1,396,529	1,013,358	73%	695,216	318,142	46%
Engineering Fees	462,524	462,524	319,238	69%	641,433	(322,195)	-50%
Other Revenue/Current Charges	24,265	24,265	34,175	141%	31,512	2,663	8%
206 COMMUNITY DEVELOPMENT	4,879,768	4,879,768	3,214,624	66%	2,940,049	274,575	9%
207 LONG RANGE PLANNING	741,894	741,894	465,849	63%	432,230	33,619	8%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	2,821	2,821	646	23%	1,730	(1,084)	-63%
215 and 216 HCD BLOCK GRANT	2,821	2,821	646	23%	1,730	(1,084)	-63%
225 ASSET SEIZURE	1,670	1,670	32,697	1958%	1,106	31,591	2855%
229 LIGHTING AND LANDSCAPE	188,591	188,591	99,329	53%	95,302	4,027	4%
230 COMMUNITY FACILITIES DISTRICT	44,198	44,198	34,248	77%	23,458	10,790	46%
232 ENVIRONMENTAL PROGRAMS	394,158	394,158	297,214	75%	320,649	(23,436)	-7%
234 MOBILE HOME PARK RENT STAB.	661	661	9,011	1363%	2,803	6,208	221%
235 SENIOR HOUSING	3,347	3,347	2,221	66%	1,646	575	35%
236 HOUSING MITIGATION	1,613,912	2,613,912	1,148,861	44%	1,986,964	(838,103)	-42%
240 EMPLOYEE ASSISTANCE	28,949	28,949	14,679	51%	18,509	(3,830)	-21%
247 ENVIRONMENT REMEDIATION	2,118	2,118	1,340	63%	1,046	294	28%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,946,430	7,946,430	11,969,106	151%	8,809,418	3,159,688	36%
255 HOUSING SUCCESSOR AGENCY	2,386,006	2,386,006	58,012	2%	219,826	(161,814)	-74%
TOTAL SPECIAL REVENUE FUNDS	19,085,815	20,085,815	17,847,420	89%	15,368,494	2,478,926	16%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	7,959,013	8,032,013	1,579,204	20%	1,737,558	(158,354)	-9%
302 PARK MAINTENANCE	1,320,332	1,320,332	629,419	48%	1,168,369	(538,950)	-46%
303 LOCAL DRAINAGE	1,394,482	1,394,482	499,370	36%	1,695,725	(1,196,355)	-71%
304 LOCAL DRAINAGE/NON AB1600	80,981	80,981	120,303	149%	145,183	(24,881)	-17%
306 AGRICULTURE & OPEN SPACE PRESERVATION	2,652,538	2,652,538	1,979,530	75%	623,212	1,356,318	218%
308 STREET CIP	3,861,662	3,861,662	2,037,713	53%	2,089,307	(51,594)	-2%
309 TRAFFIC IMPACT	17,251,157	19,501,157	1,907,473	10%	253,188	1,654,285	653%
311 POLICE IMPACT	277,713	277,713	234,614	84%	184,215	50,399	27%
313 FIRE IMPACT	349,306	349,306	243,757	70%	55,958	187,800	336%
346 PUBLIC FACILITIES NON-AB1600	590,499	590,499	135,009	23%	77,113	57,896	75%
347 PUBLIC FACILITIES IMPACT	198,932	269,672	166,776	62%	125,589	41,187	33%
348 LIBRARY	909,565	909,565	636,779	70%	423,439	213,340	50%
350 UNDERGROUNDING	45,800	45,800	141,445	309%	200,871	(59,425)	-30%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	684,678	749,778	33,187	4%	84,755	(51,569)	-61%
360 COMMUNITY/REC IMPACT FUND	1,275,010	1,415,260	845,666	60%	687,935	157,731	23%
TOTAL CAPITAL PROJECTS FUNDS	38,851,668	41,450,758	11,190,246	27%	9,552,416	1,637,829	17%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	298,856	298,856	199,018	67%	196,893	2,125	1%
441 POLICE FACILITY BOND	375,764	375,764	187,365	50%	229,232	(41,868)	-18%
TOTAL DEBT SERVICE FUNDS	674,620	674,620	386,383	57%	426,126	(39,742)	-9%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Eight Months Ended February 28, 2019
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,391,000	10,391,000	6,943,270	67%	6,474,099	469,171	7%
Interest Income/Transfers	37,151	37,151	20,004	54%	16,331	3,673	22%
Other Revenue/Current Charges	318,700	318,700	712,848	224%	212,474	500,374	235%
640 SEWER OPERATION	10,746,851	10,746,851	7,676,122	71%	6,702,904	973,218	15%
641 SEWER EXPANSION							
Interest Income	215,856	215,856	174,623	81%	108,930	65,693	60%
Development Impact Fee	4,717,263	4,717,263	3,956,496	84%	2,336,124	1,620,372	69%
Transfers/Other	-	-	-	0%	0	(0)	-100%
641 SEWER EXPANSION	4,933,119	4,933,119	4,131,119	84%	2,445,054	1,686,065	69%
642 SEWER RATE STABILIZATION	38,641	38,641	25,514	66%	18,923	6,591	35%
643 SEWER-CAPITAL PROJECT	2,797,976	2,797,976	1,927,648	69%	1,655,590	272,058	16%
TOTAL SEWER FUNDS	18,516,587	18,516,587	13,760,404	74%	10,822,471	2,937,932	27%
650 WATER OPERATION							
Water Sales	12,435,000	12,435,000	8,827,237	71%	7,719,569	1,107,668	14%
Meter Install & Service	123,000	123,000	98,647	80%	217,720	(119,073)	-55%
Transfers-In / Interest Income	440,840	440,840	299,934	68%	291,561	8,373	3%
Other Revenue/Current Charges	752,660	752,660	645,639	86%	549,317	96,322	18%
650 WATER OPERATION	13,751,500	13,751,500	9,871,457	72%	8,778,166	1,093,290	12%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	47,561	47,561	28,455	60%	26,860	1,595	6%
Development Impact Fee	1,311,698	1,311,698	1,184,076	90%	660,720	523,356	79%
651 WATER EXPANSION	1,359,259	1,359,259	1,212,531	89%	687,580	524,951	76%
652 Water Rate Stabilization	8,223	8,223	5,458	66%	338,328	(332,870)	-98%
653 Water Capital Project	2,400,895	2,400,895	1,709,534	71%	909,355	800,180	88%
TOTAL WATER FUNDS	17,519,877	17,519,877	12,798,981	73%	10,713,430	2,085,551	19%
TOTAL ENTERPRISE FUNDS	36,036,464	36,036,464	26,559,384	74%	21,535,901	5,023,483	23%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,870,983	1,870,983	1,260,021	67%	1,071,844	188,177	18%
740 BUILDING MAINTENANCE	3,326,619	3,380,619	2,254,598	67%	2,076,179	178,419	9%
741 BUILDING REPLACEMENT	789,958	789,958	510,859	65%	330,387	180,472	55%
745 CIP ADMINISTRATION	1,780,750	1,780,750	852,067	48%	895,355	(43,288)	-5%
760 UNEMPLOYMENT INSURANCE	2,324	2,324	1,561	67%	1,224	338	28%
770 WORKERS COMPENSATION	775,343	775,343	530,746	68%	696,510	(165,764)	-24%
790 EQUIPMENT REPLACEMENT	1,064,433	1,123,757	798,566	71%	666,753	131,813	20%
791 EMPLOYEE BENEFITS	1,171,099	1,171,099	905,486	77%	409,328	496,159	121%
793 CORPORATION YARD COMMISSION	-	-	2,830	0%	1,850	981	53%
795 GENERAL LIABILITY INSURANCE	1,020,581	1,020,581	680,142	67%	633,005	47,138	7%
TOTAL INTERNAL SERVICE FUNDS	11,802,090	11,915,414	7,796,876	65%	6,782,434	1,014,443	15%
TOTAL FOR ALL FUNDS	\$ 146,597,297	\$ 150,675,740	\$ 88,920,531	59%	\$ 78,503,274	\$ 10,417,257	13%

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Eight Months Ended February 28, 2019
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 35,625	\$ 337,607	\$ 245,374	\$ 25,453	\$ 270,827	80%	\$ 181,450
	CITY ATTORNEY	45,939	768,318	408,903	119,318	528,221	69%	481,450
	CITY MANAGER	32,481	433,799	259,415	64,851	324,266	75%	2,021,450
	HUMAN RESOURCES	53,528	846,813	530,232	23,478	553,710	65%	461,450
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	57,579	614,068	376,024	4,800	380,824	62%	381,450
	Elections	1,144	322,533	136,685	-	136,685	42%	61,450
	COUNCIL SVCS & RECORDS MGMT	58,722	936,601	512,709	4,800	517,509	55%	441,450
	FINANCE	124,953	1,720,130	1,053,102	27,976	1,081,078	63%	1,051,450
	TOTAL ADMINISTRATION	351,249	5,043,269	3,009,736	265,875	3,275,611	65%	4,671,450
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	346,957	6,309,009	3,702,287	930,400	4,632,687	73%	3,491,450
	Recreation Facility Rentals	106,355	1,355,732	865,911	29,536	895,447	66%	851,450
	Community Services	39,753	653,307	363,675	56,010	419,685	64%	441,450
	Environmental Services	16,556	303,894	138,060	-	138,060	45%	121,450
	Street Maintenance	182,486	2,362,851	1,457,592	223,210	1,680,802	71%	1,251,450
	Downtown Maintenance	21,428	354,644	217,172	24,796	241,968	68%	171,450
	Cable Television	1,712	21,581	13,619	-	13,619	63%	11,450
	COMMUNITY SERVICES	715,246	11,361,018	6,758,315	1,263,953	8,022,268	71%	6,361,450
	CODE COMPLIANCE	12,258	150,464	95,883	-	95,883	64%	71,450
	CONGESTION MANAGEMENT	1,304	81,861	38,328	-	38,328	47%	51,450
	ECONOMIC DEVELOPMENT PROGRAMS	46,572	947,260	459,758	144,414	604,172		
	TOTAL COMMUNITY SERVICES	775,381	12,540,603	7,352,285	1,408,367	8,760,652	70%	6,491,450
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	89,866	1,222,942	813,544	31,453	844,997	69%	751,450
	Field Operations	618,206	9,285,273	5,621,582	181,176	5,802,758	62%	4,971,450
	Support Services	173,865	2,288,547	1,431,415	11,071	1,442,487	63%	1,341,450
	Emergency Services/Haz Mat	13,720	187,057	109,085	-	109,085	58%	111,450
	Special Operations	251,219	2,748,496	1,384,004	-	1,384,004	50%	1,731,450
	Dispatch Services	125,828	1,674,402	1,024,425	5,029	1,029,454	61%	1,021,450
	POLICE	1,272,704	17,406,718	10,384,055	228,729	10,612,785	61%	9,941,450
	FIRE	659,833	6,959,059	4,504,371	108,356	4,612,727	66%	3,911,450
	TOTAL PUBLIC SAFETY	1,932,537	24,365,777	14,888,427	337,085	15,225,512	62%	13,861,450
IV. TRANSFERS								
	Other	151,753	2,127,498	1,214,024	-	1,214,024	57%	1,331,450
	TOTAL TRANSFERS	151,753	2,127,498	1,214,024	-	1,214,024	57%	1,331,450
	TOTAL GENERAL FUND	3,210,919	44,077,146	26,464,471	2,011,328	28,475,799	65%	26,351,450

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City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Eight Months Ended February 28, 2019
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	326	742,877	361,068	-	361,068	49%	32%
205	PUBLIC SAFETY/SUPP.LAW	545	106,536	53,169	-	53,169	50%	8%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	149,501	2,597,350	1,411,227	304,188	1,715,416	66%	1,21%
	Building	198,104	1,976,108	1,168,262	202,795	1,371,057	69%	1,13%
	Engineering	109,281	1,668,062	884,928	586,787	1,471,715	88%	82%
206	COMMUNITY DEVELOPMENT FUND	456,886	6,241,520	3,464,417	1,093,770	4,558,187	73%	3,17%
207	LONG RANGE PLANNING	81,703	1,383,881	416,981	532,032	949,013	69%	38%
215/216	CDBG	413	4,961	3,640	-	3,640	73%	14%
225	ASSET SEIZURE	-	15,840	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	14,805	195,274	123,574	19,955	143,529	74%	11%
230	COMMUNITY FACILITIES DISTRICT	1,251	46,262	15,243	-	15,243	33%	1%
232	ENVIRONMENT PROGRAMS	30,999	406,727	246,916	-	246,916	61%	26%
234	MOBILE HOME PARK	34	405	272	-	272	67%	-
236	HOUSING MITIGATION	71,250	3,323,394	1,549,120	157,188	1,706,308	51%	40%
240	EMPLOYEE ASSISTANCE	78	28,430	6,182	-	6,182	22%	1%
247	ENVIRONMENTAL REMEDIATION	104	-	3,039	807	3,846	0%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	9,263	7,983,635	8,511,792	23,890	8,535,682	107%	5,14%
255	HOUSING SUCCESSOR AGENCY	175,683	3,679,973	3,693,442	752,213	4,445,655	121%	1,43%
TOTAL SPECIAL REVENUE FUNDS		843,340	24,159,715	18,448,855	2,579,856	21,028,711	87%	11,49%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	78,209	8,952,955	303,307	758,904	1,062,211	12%	3,67%
302	PARK MAINTENANCE	73,074	1,248,941	723,173	172,243	895,415	72%	2,12%
303	LOCAL DRAINAGE	2,864	2,773,416	71,723	8,226	79,949	3%	1%
304	LOCAL DRAIN. NON-AB1600	6,452	338,627	8,091	-	8,091	2%	5%
306	AGRICULTURE & OPEN SPACE PRESERVATION	171,306	8,483,054	2,689,276	58,054	2,747,331	32%	3%
308	STREET CIP	43,235	5,392,576	1,714,358	486,657	2,201,015	41%	2,10%
309	TRAFFIC IMPACT	22,676	22,743,433	4,675,799	158,176	4,833,975	21%	1,58%
311	POLICE IMPACT	2,357	228,096	119,774	314	120,088	53%	14%
313	FIRE IMPACT	259	172,227	23,868	314	24,182	14%	1%
346	PUBLIC FAC.NON AB1600	6,856	1,041,119	126,272	9,379	135,650	13%	51%
347	PUBLIC FACILITIES IMPACT	198	145,959	3,569	314	3,883	3%	1%
348	LIBRARY IMPACT	62,299	3,849,962	396,641	80,596	477,237	12%	21%
350	UNDERGROUNDING	85	56,024	680	-	680	1%	-
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	18,299	1,830,740	50,714	11,835	62,549	3%	23%
360	COMM/REC CENTER IMPACT	5,576	2,419,177	64,941	131,031	195,972	0%	1%
TOTAL CAPITAL PROJECTS FUNDS		493,745	59,676,307	10,972,186	1,876,043	12,848,229	22%	10,71%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	799	308,656	225,101	-	225,101	73%	20%
441	POLICE FACILITY BOND DEBT	305	380,313	295,225	-	295,225	78%	29%
TOTAL DEBT SERVICE FUNDS		1,104	688,969	520,326	-	520,326	76%	50%

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City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Eight Months Ended February 28, 2019
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	774,126	11,311,787	6,475,332	185,712	6,661,044	59%	6,511,000
641	SEWER CAPITAL EXPANSION	260,836	4,406,573	1,018,243	410,231	1,428,474	32%	971,000
642	SEWER RATE STABILIZATION	86	1,027	688	-	688	67%	0
643	SEWER-CAPITAL PROJECTS	71,492	11,033,664	3,963,366	652,119	4,615,485	42%	2,651,000
TOTAL SEWER FUND(S)		1,106,540	26,753,051	11,457,629	1,248,062	12,705,691	47%	10,152,000
WATER								
	Water Operations	728,815	12,440,123	7,003,880	1,467,397	8,471,278	68%	6,521,000
	Utility Billing	60,132	809,160	502,895	25,964	528,859	65%	471,000
	Water Conservation	6,274	210,082	57,573	50,000	107,573	51%	51,000
650	WATER OPERATIONS	795,221	13,459,365	7,564,348	1,543,362	9,107,710	68%	7,051,000
651	WATER CAPITAL EXPANSION	158,013	3,374,572	1,361,691	969,888	2,331,579	69%	291,000
652	WATER RATE STABILIZATION	28	335	224	-	224	67%	0
653	WATER-CAPITAL PROJECTS	20,335	2,535,148	706,360	145,497	851,857	34%	1,471,000
TOTAL WATER FUND(S)		973,597	19,369,421	9,632,624	2,658,747	12,291,371	63%	8,822,000
TOTAL ENTERPRISE FUNDS		2,080,137	46,122,472	21,090,252	3,906,809	24,997,062	54%	18,974,000
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	137,943	2,013,703	1,001,989	57,156	1,059,145	53%	1,131,000
740	BUILDING MAINTENANCE	288,604	3,430,986	1,955,217	434,270	2,389,487	70%	1,961,000
741	BUILDING REPLACEMENT	6,392	429,806	232,055	48,132	280,186	65%	301,000
745	CIP ADMINISTRATION	111,729	1,813,012	860,096	33,657	893,753	49%	891,000
760	UNEMPLOYMENT	6,512	10,000	7,442	-	7,442	74%	0
770	WORKERS COMPENSATION	61,489	947,795	509,166	-	509,166	54%	891,000
790	EQUIPMENT REPLACEMENT	245,603	1,332,012	245,623	558,093	803,716	60%	641,000
791	EMPLOYEE BENEFITS FUND	50,000	600,000	775,336	-	775,336	129%	531,000
793	CORP YARD COMMISSION	-	1,903	1,220	-	1,220	0%	0
795	GEN. LIABILITY INSURANCE	8,460	1,010,346	847,358	-	847,358	84%	681,000
TOTAL INTERNAL SERVICE FUNDS		916,732	11,589,562	6,435,502	1,131,308	7,566,811	65%	7,074,000
REPORT TOTAL		\$ 7,545,977	\$ 186,314,170	\$ 83,931,593	\$ 11,505,344	\$ 95,436,937	51%	\$ 75,138,000

Attachment: February 2019 Financial and Investment Report (2278 : Accept February 2019 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Eight Months Ended February 28, 2019 67% of Year Complete										
Fund No.	Fund	Fund Balance 06-30-18	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance		
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved	
010	GENERAL FUND	\$ 17,604,727	\$ 25,140,222	62%	\$ 26,464,471	60%	\$ (1,324,249)	\$ 2,011,328	\$ 14,269,151	
TOTAL GENERAL FUND		\$ 17,604,727	\$ 25,140,222	62%	\$ 26,464,471	60%	\$ (1,324,249)	\$ 2,011,328	\$ 14,269,151	
202	STREET MAINTENANCE	58,830	\$ 408,491	54%	\$ 361,068	59%	\$ 47,423	\$ -	\$ 106,253	
205	PUBLIC SAFETY/SUPPL. LAW	50,422	91,093	91%	53,169	53%	37,924	-	88,346	
206	COMMUNITY DEVELOPMENT	2,001,953	3,214,624	66%	3,464,417	56%	(249,793)	1,093,770	658,389	
207	LONG RANGE PLANNING	1,160,548	465,849	63%	416,981	30%	48,868	532,032	677,384	
215 / 216	CDBG	59,981	646	23%	3,640	0%	(2,994)	-	56,987	
225	ASSET SEIZURE	111,921	32,697	1958%	-	0%	32,697	-	144,618	
229	LIGHTING AND LANDSCAPE	157,826	99,329	53%	123,574	63%	(24,245)	19,955	113,626	
230	COMMUNITY FACILITIES DISTRICT	82,203	34,248	77%	15,243	0%	19,004	-	101,207	
232	ENVIRONMENTAL PROGRAMS	243,732	297,214	75%	246,916	61%	50,298	-	294,030	
234	MOBILE HOME PK RENT STAB.	43,345	9,011	1363%	272	67%	8,739	-	52,084	
235	SENIOR HOUSING	224,078	2,221	66%	-	0%	2,221	-	226,299	
236	HOUSING MITIGATION	2,714,194	1,148,861	44%	1,549,120	47%	(400,260)	157,188	2,156,747	
240	EMPLOYEE ASSISTANCE	38,932	14,679	51%	6,182	22%	8,496	-	47,428	
247	ENVIRONMENT REMEDIATION	135,819	1,340	63%	3,039	0%	(1,699)	807	133,313	
250	COMH-SUCCESSOR AGENCY-MHRDA	(877,559)	11,969,106	151%	8,511,792	107%	3,457,315	14,203,647	(11,623,891)	
255	HOUSING SUCCESSOR AGENCY	4,072,877	58,012	2%	3,693,442	100%	(3,635,430)	752,213	(314,766)	
260	PUBLIC ART	111	-	n/a	-	-	-	-	111	
TOTAL SPECIAL REVENUE FUNDS		\$ 10,279,213	\$ 17,847,420	89%	\$ 18,448,855	76%	\$ (601,435)	\$ 16,759,613	\$ (7,081,835)	
301	PARK DEV. IMPACT FUND	2,787,306	\$ 1,579,204	20%	\$ 303,307	3%	\$ 1,275,897	\$ 758,904	\$ 3,304,299	
302	PARK MAINTENANCE	4,265,806	629,419	48%	723,173	58%	(93,754)	172,243	3,999,810	
303	LOCAL DRAINAGE	10,405,902	499,370	36%	71,723	3%	427,647	8,226	10,825,323	
304	LOCAL DRAINAGE/NON-AB1600	1,409,474	120,303	149%	8,091	2%	112,211	-	1,521,685	
306	AGRICULTURE AND OPEN SPACE PRESERV	7,017,877	1,979,530	75%	2,689,276	32%	(709,747)	58,054	6,250,076	
308	STREET CIP	2,333,919	2,037,713	53%	1,714,358	32%	323,355	486,657	2,170,617	
309	TRAFFIC IMPACT FUND	3,437,980	1,907,473	10%	4,675,799	21%	(2,768,326)	158,176	511,478	
311	POLICE IMPACT FUND	(736,934)	234,614	84%	119,774	53%	114,840	314	(622,408)	
313	FIRE IMPACT FUND	3,906,952	243,757	70%	23,868	14%	219,889	314	4,126,527	
346	PUBLIC FACILITIES NON-AB1600	166,110	135,009	23%	126,272	12%	8,738	314	174,534	
347	PUBLIC FACILITIES IMPACT FUND	520,300	166,776	62%	3,569	2%	163,206	80,596	602,910	
348	LIBRARY IMPACT FUND	2,371,544	636,779	70%	396,641	10%	240,138	-	2,611,682	
350	UNDERGROUNDING	707,205	141,445	309%	680	1%	140,765	11,835	836,136	
355	SCHOOL PEDESTRIAN/TRAFFIC SFY	1,502,442	33,187	4%	50,714	3%	(17,527)	131,031	1,353,884	
360	COMM/REC CTR IMPACT FUND	1,113,663	845,666	60%	64,941	0%	780,725	-	1,894,388	
TOTAL CAPITAL PROJECT FUNDS		\$ 41,209,546	\$ 11,190,246	27%	\$ 10,972,186	18%	\$ 218,059	\$ 1,866,664	\$ 39,560,941	
420	CIVIC CENTER DEBT	171,658	199,018	67%	\$ 225,101	73%	\$ (26,083)	\$ 245	\$ 145,331	
441	POLICE FACILITY BOND DEBT	82,263	187,365	50%	295,225	78%	(107,860)	311	(25,909)	
TOTAL DEBT SERVICE FUNDS		\$ 253,921	\$ 386,383	57%	\$ 520,326	76%	\$ (133,943)	\$ 556	\$ 119,422	

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Eight Months Ended February 28, 2019 67% of Year Complete									
Fund No.	Fund	Fund Balance 06-30-18	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,901,439	71%	\$ 7,676,122	71%	\$ 6,475,332	57%	\$ 1,200,790	185,712	3,916,518
641	SEWER IMPACT FUND*	15,556,702	84%	4,131,119	84%	1,018,243	23%	3,112,877	410,231	18,259,347
642	SEWER RATE STABILIZATION	2,574,831	66%	25,514	66%	688	67%	24,826	-	2,599,657
643	SEWER-CAPITAL PROJECTS	9,316,726	69%	1,927,648	69%	3,963,366	36%	(2,035,718)	652,119	6,628,889
650	WATER OPERATIONS	3,409,384	72%	9,871,457	72%	7,564,348	56%	2,307,108	1,543,362	4,173,131
651	WATER IMPACT FUND*	2,680,718	89%	1,212,531	89%	1,361,691	40%	(149,160)	969,888	1,561,670
652	WATER RATE STABILIZATION	514,170	66%	5,458	66%	224	67%	5,234	-	519,404
653	WATER -CAPITAL PROJECT	564,089	71%	1,709,534	71%	706,360	28%	1,003,175	145,497	1,421,766
TOTAL ENTERPRISE FUNDS		\$ 37,518,059	74%	\$ 26,559,384	74%	\$ 21,090,252	46%	\$ 5,469,132	\$ 3,906,809	\$ 39,080,382

730	INFORMATION SERVICES	\$ 591,635	67%	\$ 1,260,021	67%	\$ 1,001,989	50%	\$ 258,032	\$ 57,156	\$ 792,511
740	BUILDING MAINTENANCE	(4,788)	67%	2,254,598	67%	1,955,217	57%	299,381	434,270	(139,677)
741	BUILDING REPLACEMENT	2,081,486	65%	510,859	65%	232,055	54%	278,804	48,132	2,312,158
745	CIP ENGINEERING	62,962	48%	852,067	48%	860,096	47%	(8,029)	33,657	21,276
760	UNEMPLOYMENT	152,405	67%	1,561	67%	7,442	74%	(5,881)	-	146,524
770	WORKERS COMPENSATION	1,763,179	68%	530,746	68%	509,166	54%	21,579	30,000	1,754,758
790	EQUIPMENT REPLACEMENT	4,432,003	71%	798,566	71%	245,623	18%	552,943	558,093	4,426,853
791	EMPLOYEE BENEFITS FUNDS	(364,078)	77%	905,486	77%	775,336	129%	130,150	-	(233,928)
793	CORP YARD COMMISSION	-	0%	2,830	0%	1,220	0%	1,611	-	1,611
795	GEN. LIABILITY INSURANCE	1,341,056	67%	680,142	67%	847,358	84%	(167,215)	-	1,173,841
TOTAL INTERNAL SERVICE FUNDS		\$ 10,055,860	65%	\$ 7,796,876	65%	\$ 6,435,502	56%	\$ 1,361,374	\$ 1,161,308	\$ 10,255,926

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,604,727	\$ 25,140,222	62%	\$ 26,464,471	60%	\$ (1,324,249)	\$ 2,011,328	\$ 14,269,151
SPECIAL REVENUE GROUP	10,279,213	17,847,420	89%	18,448,855	76%	(601,435)	16,759,613	(7,081,835)
DEBT SERVICE GROUP	253,921	386,383	57%	520,326	76%	(133,943)	556	119,422
CAPITAL PROJECTS GROUP	41,209,546	11,190,246	27%	10,972,186	18%	218,059	1,866,664	39,560,941
ENTERPRISE GROUP	37,518,059	26,559,384	74%	21,090,252	46%	5,469,132	3,906,809	39,080,382
INTERNAL SERVICE GROUP	10,055,860	7,796,876	65%	6,435,502	56%	1,361,374	1,161,308	10,255,926
TOTAL ALL GROUPS	\$ 116,921,326	\$ 88,920,531	59%	\$ 83,931,593	45%	\$ 4,988,938	\$ 25,706,278	\$ 96,203,986

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDSCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Financial Stewardship
Housing
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

On March 20, 2019, the City Council introduced Ordinance No. 2300 New Series, by the following roll call vote: AYES: Carr, McKay, Constantine; NOES: Martinez Beltran; ABSTAIN: None; ABSENT: Spring.

Ordinance 2300 will approve a Development Agreement between the City of Morgan Hill and the Latala Group, LLC. This Development Agreement contains the Residential Development Control System (RDSCS) commitments for 49 Downtown RDSCS

allotments. On March 20, 2019, City Council requested and approved the project provide payment of in-lieu fees, consistent with the Morgan Hill Inclusionary Housing Ordinance, rather than provide the affordable housing units on-site. The Development Agreement was modified to incorporate this change. Prior to the scheduled second reading of the Ordinance on April 3rd, it was discovered that there was an inconsistency in the amount of the affordable housing fund contribution in the DA and the item was subsequently continued to the meeting of April 17th.

The project has committed to the estimated payment of \$948,103 for the inclusionary housing in-lieu fee based upon the actual square footage of the project at the time of construction. In addition, the DA reflects an additional 5% or estimated \$47,405 contribution to the affordable housing fund pledged by the Developer for a total estimated payment of \$995,508. The fees will be collected at the time of issuance of Certificates of Occupancy.

Ordinance 2300 contains only the project commitments made through the RDCS process. The project also has an approved Disposition and Development Agreement (DDA), in which all other commitments relative to timing of construction, the Depot Street vacation and sale, Depot Street realignment and commercial office space construction, and sale to the City of Morgan Hill are memorialized.

COMMUNITY ENGAGEMENT: Inform

All prior City Council actions were publicly noticed for the item including the Downtown Housing and Retail Capacity, Trends, and Opportunities workshop with the Planning Commission at the July 24, 2018 meeting.

In addition, the Developer met with:

- ☐ Jeff Dixon on June 15, 2018 representing the Freedom Fest event
- ☐ Downtown Restaurant Association on August 13, 2018
- ☐ Downtown Association on August 16, 2018
- ☐ Chamber of Commerce on August 28, 2018
- ☐ Sunday Minnich representing the Mardi Gras event on September 10, 2018
- ☐ Chamber of Commerce Economic Development Committee on September 13, 2018
- ☐ Cricket Rubino representing Bingo at the CCC on September 13, 2018.

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.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 18, 2018 – ENA was presented and approved by City Council.

- July 24, 2018 – Planning Commission Workshop on Downtown Housing and Retail Capacity, Trends, and Opportunities.
- August 21, 2018 – Presentation to the Parks and Recreation Commission for the opportunity to purchase the 3,000 square foot office space within the proposed development. Parks and Recreation Commission recommended approval to City Council.
- September 5, 2018 – Presented City Council the opportunity to purchase the 3,000 square foot office building for non-profits, to be developed as part of the project.
- October 3, 2018 – Approved Disposition Development Agreement for the sale of .29-acres of former Depot Street right-of-way and realignment of Depot Street to Church Street in conjunction with the redevelopment of the Hale Lumber site.
- October 17, 2018 – City Council adopted Ordinance No. 2282 N.S., approving General Plan and Zoning Amendments for the Depot Street right-of-way as the first step towards realigning Depot Street.
- January 22, 2019 – Planning Commission awarded 49 Downtown allotments and recommended approval of the RDCS Development Agreement to memorialize the commitments for those units.
- February 20, 2019 – The Council received the presentation, opened public comment, and continued the item to a date certain for staff to report back with Downtown Set-a-Side Units as it relates to RDCS, tree replacement plan, current development, and construction Downtown, and Depot Street circulation as it relates to future grade separations and Quiet Zones.
- March 20, 2019 – The Council approved the Development Agreement with the understanding that the developer will pay the affordable housing in-lieu fee instead of building the inclusionary units.

FISCAL AND RESOURCE IMPACT:

Depot Street Realignment with Parking Lot Enhancements

The estimated cost of construction for the realignment of Depot Street with CCC parking lot enhancements is a total of \$901,726. The resources to pay for the realignment of Depot Street and parking lot enhancements are outlined within the approved DDA.

Office Building

The project includes a 3,000 square foot office building that the City would like to purchase for non-profit services from the Recreation Center Impact Fund (360). An appraisal was completed for the proposed structure, assessing the price at \$800,000. On September 5, 2018, the Council was provided options for funding.

CEQA (California Environmental Quality Act):

The Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental Quality Act (CEQA) Guidelines Section 15175(a), identified the impacts of the Downtown Specific Plan in order to streamline the later environment review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan FEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from (in conformance with CEQA Guidelines Section 15176(d)).

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH #2015022074).

CEQA Guidelines § 15164 states that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in § 15162 calling for preparation of a subsequent EIR have occurred.

An Addendum was prepared to provide a program-level CEQA analysis of the proposed project, as part of the adopted 2009 Downtown Specific Plan EIR. The Addendum found no impacts that were not previously disclosed in the General Plan FEIR or the Downtown Specific Plan Master FEIR, nor would it result in a substantial increase in the magnitude of any significant environmental impacts previously identified.

LINKS/ATTACHMENTS:

1. 2300 Depot Latale RDCS DA
2. Revised DA

ORDINANCE NO. 2300, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2018-
0007: DEPOT-LATALA FOR A 49-UNIT MIXED USE
DEVELOPMENT LOCATED ON THE EASTERLY SIDE OF
DEPOT STREET NORTH OF EAST DUNNE AVENUE (APN
726-13-049)**

**THE CITY COUNCIL OF THE CITY MORGAN HILL DOES
ORDAIN AS FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code (MHMC), awarded 49 Downtown RDCS set-aside building allotments to application RDCS2018-0002 Depot-Latala. Additionally, pursuant to MHMC Chapter 18.116.040, the Planning Commission recommended approval of the Development Agreement.

SECTION 2. The City Council of the City of Morgan Hill adopted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the MHMC.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

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 accepts the recommendation of the Planning Commission and further finds that the development proposal and Development Agreement approved by this Ordinance are consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and the Downtown Specific Plan. The project would provide 49, residential units in a mixed use development, as well as the realignment of Depot Street. 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 proposed mixed-use development is permitted within the Mixed Use-Downtown Specific Plan area and would be compatible with the surrounding residential and small business 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 approved the payment of an in-lieu fee for the Inclusionary Housing requirement for the project at the March 20, 2019 meeting. These commitments are described within Exhibit C of the Development Agreement. This Development Agreement satisfies the Inclusionary Housing Ordinance requirements.

SECTION 9. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is a mixed-use residential development that would include the same normal daily operations of other surrounding uses.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement was analyzed pursuant to 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/Addendum previously prepared for purposes of the Development Agreement and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision

shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF MARCH 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 17th DAY OF APRIL 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:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: May 18, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2300, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of April 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

**DEVELOPMENT AGREEMENT
DA2018-0007**

by and between the
CITY OF MORGAN HILL
a California municipal corporation

and
THE LATALA GROUP, LLC
a California Limited Liability Company

regarding the
THE DEPOT-LATALA MIXED USE RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 THE LATALA GROUP, LLC
 REGARDING THE
 THE DEPOT-LATALA MIXED USE 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 The Latala Group, LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. Downtown Exempt allotments awarded pursuant to an RDCS application (RDCS2018-0002: Depot-Latala) and associated public benefit commitments;
2. Environmental Assessment EA2018-0013; and,
3. Disposition and Development Agreement DA2018-0005.

The Existing Approvals are more particularly described in the Addendum to the 2035 General Plan Final EIR and 2009 Morgan Hill Downtown Specific Plan Final EIR for the Morgan Hill Hale Lumber Land Exchange Project and the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 22, 2019, the Morgan Hill Planning Commission awarded 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 January 22, 2019, 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 49 units in a mixed-use residential development, as more particularly described in the RDCS Application RDCS2018-0002:Depot-Latala as described in Exhibit B. Any reference in this Agreement to the “Project” shall mean and include the “Property”.
- (11) “**Project Approvals**” mean, collectively, the Project’s Existing Approvals and the Subsequent Approvals.
- (12) “**Property**” shall mean that certain real property consisting of approximately 2.28 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.

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

- (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 RDSCS 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 – RDCS2018-0002:Depot -Latala and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission on January 22, 2019 and City Council on February 20, 2019) shall be incorporated into this Agreement by this reference.

(d) Compliance with Inclusionary Housing Ordinance. Developer is required to comply with Inclusionary Housing Ordinance Number 2278 that enacted Chapter 14.04 of the Morgan Hill Municipal Code by constructing ten percent inclusionary units on-site or by an alternative means of compliance. On March 20, 2019, the City Council adopted an amendment to the Inclusionary Housing Ordinance (Ordinance Number 2299) allowing payment of an in-lieu fee as an alternative to on-site construction subject to City Council approval. On March 20, 2019 the City Council approved the payment of the in-lieu fee by Developer for this project as described in Exhibit C. This Development Agreement satisfies the Inclusionary Housing requirement in Ordinances 2278 and 2299.

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 and allotment adjustments for ongoing projects 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.

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.

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	The Latala Group, LLC 1999 South Bascom Avenue, Suite 700 Campbell, CA 95008 Tel: (408)848-0300 Email: Paul@latalahomes.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

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

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

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:

s/ _____

Name/Title [print]

Date: _____

*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: Revised DA (2274 : Depot Latale Ordinance Adoption)

EXHIBIT A

**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and described as follows:

Parcel Number 1, as shown on that certain Parcel Map recorded July 5, 1994, in Book 657, Page 7 of Maps, in the City of Morgan Hill, County of Santa Clara, State of California.

Excepting therefrom, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals but without entering upon or using the surface of the property, and in such manner as not to damage the surface of the property, as reserved in document recorded June 1, 1999 As Instrument No. 14836987, of Official Records of said County.

APN: 726-13-049

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

EXHIBIT B**DESCRIPTION OF PROJECT**

RDCS APPLICATION NO. RDCS2018-0002:DEPOT-LATALA FOR A DEVELOPMENT THAT INCLUDES 40 TOWNHOME STYLE CONDOMINIUMS AND NINE RESIDENTIAL FLATS IN A MIXED USE DEVELOPMENT WITHIN THE MORGAN HILL DOWNTOWN SPECIFIC PLAN AREA.

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to the Development proposed in the RDCS application dated November 7, 2018 (or Application No. RDCS2018-0002: Depot-Latala). 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*
	SCHOOLS			
4.	Student Transportation Improvements	Applicant will contribute \$1,000 per unit to contribute to the City's Safe Access to Schools Fund to be used to construct physical improvements to enhance safe student access to MHUSD schools.	Prior to issuance of building permit	\$1,000 per unit
	LOCATION			
6.a	Water distribution lines	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.	Prior to Improvement Plan approval	N/A
6.b	Wastewater collection	The project does not require extending or replacing existing sewer pipes or lift stations	Prior to Improvement Plan approval	N/A

EXHIBIT C

-1-

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		outside of the project site. However, the project may be required to extend the sanitary sewer line along the entire length of project frontage.		
6.c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the project.	Prior to Improvement Plan approval	N/A
	AFFORDABLE HOUSING			
2.	Voluntary Contribution to Housing Fund	Project commits to contributing to the City's Affordable Housing Fund at a rate of 5% of baseline contribution. Total Livable Area: 71,826 34,300.00 square feet Per square foot fee: \$ 13.20 Baseline fee: 948,103.20 452,760.00 (total) Baseline fee per unit: \$19,349.04 9,240 (per unit) % of Baseline fee: 5% Voluntary fee estimate: \$47,405.16	Inclusionary Housing Agreement Required Prior to issuance of Certificate of Occupancy building permit.	\$ 2,772.00 per unit \$ 47,405.16 voluntary contribution based on estimated in-lieu fee for project
3.	Inclusionary Housing -In-Lieu Housing Fees	The project incorporates below market rate (BMR) units within the project for a mixed income community with 10 percent of the project designated as deed restricted for sale affordable units. The designated affordability limits shall be 81% AMI for six percent of the units (3 units) and 110% AMI for four percent of the units (2 units).	Inclusionary Housing Agreement required. The In-lieu fee payment is required prior to issuance of Certificate of Occupancy.	N/A In-lieu fees shall be calculated based on the fee schedule in effect at the

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		To satisfy the City's Inclusionary Housing requirement specified in Chapter 14.04 (Inclusionary Housing) of the City's Municipal Code, the applicant shall be required to pay an In-lieu fee payment. The fee of \$13.20 per square foot is equivalent to the cost to a developer of providing 10% affordable units onsite. Current In-lieu fee estimate: \$13.20 x 71,826 square feet = \$948,103.20		time the fee is paid
	HOUSING DIVERSITY			
2.	Diversity of Housing Types	The project shall provide three housing types within the development consisting of at least 10 percent of the total number of units: Triplex or Quadplex (16%), Single Family attached (65%) and Mixed Use Residential (18%)	Prior to Design Review Permit approval	N/A
3.	Variation in Housing Size	There shall be three different housing size categories within the development consisting of at least 10 percent of the total number of units in the project. There shall be a minimum of 35 percent variation between the smallest and largest floor plan for project.	Prior to Design Review Permit approval	N/A
4.	Small Units	Ten percent of the units within the project shall be small units.	Prior to Design Review Permit approval	N/A
	PARKS AND OPEN SPACE			

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.	On-Site Recreational Amenities	The project shall provide on-site recreational amenities to serve the residents, which shall include three separate shade trellis areas and two barbecue areas.	Prior to Design Review Permit approval	N/A
7.	Amenities for Age Group	The project shall provide on-site social and recreational amenities for various age groups, which shall include shaded areas for teens to socialize and barbecue areas for adults.	Prior to Design Review Permit approval	N/A
10.	Open Space Design	The project shall provide common open space and outdoor amenities, which shall include courtyards that are visible from living areas and private open space for attached units (at least 25% above zoning district requirement).	Prior to Design Review Permit approval	N/A
	ENVIRONMENTAL PROTECTION			
1.	Energy Efficiency	The project shall exceed the minimum building energy efficiency requirement by the California Energy Code by 10 percent.	Prior to issuance of building permit.	N/A
2.	On-site Solar Energy Generation	The project shall incorporate an on-site solar energy generation system that will offset at least 60 percent of the projects annual electrical energy costs.	Prior to issuance of building permit.	N/A
3.	Indoor Water Use	The project exceeds the minimum indoor water efficiency and conservation requirements of the California Green Building Standards Code by 5 percent.	Prior to issuance of building permit.	N/A
4.a	Natural Turf	Less than 50 percent of the landscaped area shall contain natural turf.	Prior to issuance of building permit.	N/A

EXHIBIT C

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.b	No Natural Turf Outside Common Areas	The project shall contain no natural turf outside common areas used for active play.	Prior to issuance of building permit.	N/A
4.e	Exceeds Outdoor Water Efficiency 30%	The project shall exceed outdoor water efficiency standards by 30 percent.	Prior to issuance of building permit.	N/A
	TRANSPORTATION			
3.	Off-Site Street and Parking Improvements or Fund Contribution	The project shall construct and/or fund off-site street roadway improvements as described in the Disposition and Development Agreement by and between the City of Morgan Hill and the Latala Group dated November 20, 2018.	Prior to Improvement Plan approval	N/A
5.a	Aligns and connects streets	The project shall align and connect streets intersecting the project boundary with all adjoining streets. The northerly entrance would align with Fifth Street; the southerly entrance aligns with the new Depot Street knuckle (leg one and two).	Prior to Improvement Plan approval	N/A
5.b	Extends Streets	The project shall extend streets to adjoining undeveloped land to provide access to undeveloped land in the event of its future development. The northerly terminus of the private drive aisle stubs to the common property line between the project and CMH parking lot.	Prior to Improvement Plan approval	N/A
5.c	Off-street bicycle and pedestrian connections	The project shall provide off-street bicycle and pedestrian connections, including private or public parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement,	Prior to Improvement Plan approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		dedication or other similar method to guarantee it remains accessible to the general public. As part of the re-alignment of Depot Street and re-striping of the Community and Cultural Center parking lot, a publicly-accessible pedestrian path shall be constructed to connect the Depot knuckle to Dunne Avenue.		
6.c	Direct pedestrian connections	The project shall provide direct pedestrian connections with minimal physical barriers from all units to common open space, recreational facilities, and other project amenities.	Prior to Improvement Plan approval	N/A
6.d	Neighborhood traffic management techniques	The project shall incorporate neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulbouts, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Prior to Improvement Plan approval	N/A
7.	Electric Vehicle Charging Stations	The project shall install all connections and equipment necessary for electrical vehicle charging stations to be ready for use by residents and visitors upon project completion.	Prior to Improvement Plan approval	N/A
	MUNICIPAL INFRASTRUCTURE			
1.	Water Infrastructure	The project shall construct off-site water infrastructure improvements as described in the Disposition and Development Agreement by and between the City of Morgan Hill and the Latala Group dated November 20, 2018.	Prior to Improvement Plan approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.	Wastewater Infrastructure	The project shall construct off-site wastewater infrastructure improvements as described in the Disposition and Development Agreement by and between the City of Morgan Hill and the Latala Group dated November 20, 2018.	Prior to Improvement Plan approval	N/A
5.a	Installs broadband conduit in public right-of-way	Broadband conduit shall be included within the re-aligned Depot Street public right-of-way.	Prior to Improvement Plan approval	N/A
5.b	Installs broadband conduit to home/buildings	Broadband conduit laterals shall be installed to each building.	Prior to issuance of building permit.	N/A
5.c	Pre-installs indoor conduit	The project shall install indoor conduit, wiring and other necessary infrastructure to accommodate broadband service to each unit.	Prior to issuance of building permit.	N/A
	PROJECT QUALITY			
1.a	Front Porches	A minimum of 50 percent of homes facing a street or common interior courtyard shall include a front porch. Porches must be part of the 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.	Prior to Design Review Permit approval	N/A
1.b	Balconies Facing Street or Courtyard	A minimum of 25 percent of homes facing a street or common interior courtyard shall 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.	Prior to Design Review Permit approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.c	Balconies Facing Alleys	A minimum of 25 percent of homes abutting a shared alley shall include a balcony overlooking the alley, parking area, or drive aisle.	Prior to Design Review Permit approval	N/A
1.d	Façade Articulation and Finishes	Front building facades shall include feature finishes to break up blank, flat walls, including but not limited to windows, shutters, awnings, balconies, bay windows, and stone enhancements.	Prior to Design Review Permit approval	N/A
1.e	360-degree Architecture	The project shall include full and consistent articulation and design detail on all building facades.	Prior to Design Review Permit approval	N/A
1.f	Corner Treatments	For projects where the side or rear of a home faces a street or common courtyard street, the project shall incorporate facade feature finishes, including but not limited to window, shutters, awning, balconies, bay windows, and some enhancements.	Prior to Design Review Permit approval	N/A
1.h	Individual Residences-Attached Projects	Large buildings have been architecturally subdivided so that they appear as individual residences or small groups of units. Buildings shall incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	Prior to Design Review Permit approval	N/A
1.i	Residential-Scale Design Elements-Attached Projects	Buildings shall incorporate design details, including but not limited to porches, projections, eaves, bay windows, and other similar	Prior to Design Review Permit approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		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 shall face streets along the project perimeter for projects: • Fronting an existing residential or collector street; or • Located Downtown	Prior to Design Review Permit approval	N/A
2.e	Roof Line Variation	The project shall provide variation in roof lines through changes in roof height to provide breaks in building massing.	Prior to Design Review Permit approval	N/A
2.j	Adjacent Building Types-Attached Projects	The project shall match building types along project edge with adjacent land that is developed to its ultimate potential use according to the General Plan or applicable zoning.	Prior to Design Review Permit approval	N/A
3.b	Landscaping-Visual Relief	Landscaping shall be placed and designed to minimize the appearance of building bulk and mass.	Prior to Design Review Permit approval	N/A
3.c	Exterior Lighting	Exterior lighting fixtures shall be architecturally integrated with the primary building's design, style, material, and colors.	Prior to Design Review Permit approval	N/A
3.e	Public/Private Transitions	The project shall include transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation.	Prior to Design Review Permit approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.f	Mechanical Equipment	All mechanical equipment shall be screened from the public right-of-way and common areas enclosed within an architecturally compatible structure. Equipment closures are screened through landscaping.	Prior to Design Review Permit approval	N/A
4.a	Garage Door Orientation	Garage doors shall not face the front street. All garages are configured on the site such that garage doors face either the side or rear of the property, or screened by buildings or landscaping is provided to avoid a direct line of sight to garage doors from public spaces.	Prior to Design Review Permit approval	N/A
4.c	Garage Door Design-Detailing	Garage doors shall feature windows or architectural detailing consistent with the main dwelling.	Prior to Design Review Permit approval	N/A
4.e	Parking-Attached Projects	The project shall locate 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 shall not be located between a building and any public sidewalk or street.	Prior to Design Review Permit approval	N/A
4.f	Screening	Parking visible from a public street shall be screened with fences, walls, and/or landscaping.	Prior to Design Review Permit approval	N/A
4.i	Pavement Design	Areas for vehicle parking and circulation shall feature paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	Prior to Design Review Permit approval	N/A

Attachment: Revised DA (2274 : Depot Latala Ordinance Adoption)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.a	Home Automation	Project shall install home automation devices within the unit for \$1,000 in device value per unit.	Prior to Building Permit Approval	\$1,000 per unit



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

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

ADOPT ORDINANCE 2301 NEW SERIES, AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2301, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

On April 3, 2019, the City Council introduced Ordinance No. 2301 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

A recent ruling by the Federal Communications Commission (FCC) requires the City to approve Small Cell Design Standards for wireless facilities located within the public right-of-way by April 15, 2019. In order to facilitate the newly adopted standards, the City needs to amend to Chapter 18.96 (Wireless Communication Facilities) to remove use permit language related to wireless communication facilities in the right of way. The amendment to the Zoning code aligns with a new permit process for small cells located within the public right-of-way through the issuance of an encroachment permit and the execution of a Small Cell License (SCL) agreement between the City and the wireless provider.

COMMUNITY ENGAGEMENT: Inform

A hearing notice was published in the Morgan Hill Times ten (10) days prior to the Planning Commission hearing on March 12, 2019. Verizon Wireless provided public comment in favor of the zoning code amendments proposed. Another hearing notice was published ten (10) days prior to the City Council hearing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 12, 2019, Planning Commission conducted a public hearing on a proposed amendment to Title 18, Division 1, Chapter 18.96 (Wireless Communications) and adopted a resolution recommending City Council approve the Zoning Code amendment.

FISCAL AND RESOURCE IMPACT:

The recommended actions amending Title 18, Division 1, Chapter 18.96 (Wireless Communications) are to comply with the new FCC Ruling. The work for this City initiated amendment was accommodated in the Economic Development and Planning Divisions' budget and workplan.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Small cell deployments on pole mounted facilities in the right-of-way are exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

LINKS/ATTACHMENTS:

1. 2301 Wireless in right of way

ORDINANCE NO. 2301, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 18.96.040 (REQUIRED PERMITS), 18.96.060 (SECTION 6409(a) MODIFICATIONS), 18.96.070 (PREFERRED SITING AND LOCATION), and 18.96.080 (DEVELOPMENT STANDARDS) OF CHAPTER 18.96 (WIRELESS COMMUNICATION FACILITIES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING SMALL CELL DEPLOYMENTS ON POLE MOUNTED FACILITIES WITHIN THE CITY RIGHT-OF-WAY

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 18.96.040 (Required Permits) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.040 - Required permits.

- A. Conditional Use Permit. Planning commission approval of a conditional use permit is required for all new facilities and modifications outside the public right-of-way, except for facilities requiring an administrative use permit or a Section 6409(a) Permit as identified below.
- B. Administrative Use Permit. Community development director approval of an administrative use permit is required for the following facilities:
 - 1. A collocation to an existing facility that is not eligible for a Section 6409(a) permit.
 - 2. A modification to an eligible support structure that is not eligible for a Section 6409(a) permit.
 - 3. Building- and facade-mounted facilities in a non-residential zoning district where the facility is completely concealed from public view and architecturally integrated into the existing support structure.
 - 4. A micro wireless facility in a non-residential zoning district.
- C. Section 6409(a) Permit. Modifications to an existing facility that do not result in a substantial change as defined by FCC regulations may be eligible for a Section 6409(a) permit. See Section 18.96.060 (Section 6409(a) Modifications).

SECTION 2. Section 18.96.060 (Section 6409(a) modifications) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.060 - Section 6409(a) modifications.

- A. Purpose. This section describes the process and requirements for the approval of an "eligible facilities request" that does not cause a "substantial change" to an existing facility as defined by FCC regulations.
- B. Eligible Facilities Request Defined. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as a request for modification of an existing tower or base station that does not substantially change the physical dimensions of the tower or base station, involving
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment; or
 - 3. Replacement of transmission equipment.
- C. Substantial Change Defined. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, defined according to the facility type and location as follows:
 - 1. Towers Outside the Public Right-of-Way. For towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 - 2. Monopoles in the Public Right-of-Way. For monopoles in the public rights-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than six feet from the edge of the wireless monopoles; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or

- d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (ten percent) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- 3. All Towers and Base Stations. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the community development director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.
- 4. Interpretation of Thresholds.
 - a. The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.
 - b. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).
- D. Permit Required. Approval of an eligible facilities request as defined above requires community development director approval of a Section 6409(a) Permit.
- E. Applications. Applications for a Section 6409(a) Permit shall contain all information and materials specified in Section 18.96.050.B (Application Contents) except as follows:
 - 1. Section 6409(a) Permit applications are not required to include a statement of purpose (Section 18.96.050.B.1) or an alternative sites analysis (Section 18.96.050.B.5).
 - 2. The application must include a detailed explanation as to why the applicant believes that the application qualifies as an eligible facility request subject to a Section 6409(a) Permit.
 - 3. For applications involving a collocation or modification to an eligible support structure, the application must be accompanied by all prior approvals for the existing facility (including but not limited to all conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment), as well as all permit applications with required application materials for each separate

permit required by the city for the proposed facility, including but not limited to a building permit and an encroachment permit (if applicable).

- F. Public Notice. Before the community development director may approve a Section 6409(a) Permit application, notice of the application shall be posted on site at least ten calendar days prior to the city taking action on the application and shall contain the following information:
1. A general explanation of the proposed modification or collocation;
 2. A general description of the location of the real property that is the subject of the application; and
 3. The following statement: "Federal law may require approval of this application pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a)."
- G. Basis for Approval.
1. This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a), and the applicable FCC and court decisions and determinations relating to the same. In the event that a court of competent jurisdiction invalidates all or any portion of Section 6409(a) or a FCC rule or regulation that interprets Section 6409(a), such that federal law would not mandate approval for any eligible facilities request, then all proposed modifications to existing facilities subject to this section must be approved by an administrative use permit, or conditional use permit, as applicable, and subject to the discretion of the community development director.
 2. The community development director shall approve a Section 6409(a) Permit upon finding that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change as defined above.
 3. In addition to any other alternative recourse permitted under federal law, the community development director may deny a Section 6409(a) permit upon finding that the proposed collocation or modification:
 - a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety;
 - b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification;
 - c. Involves the replacement of the entire support structure; or
 - d. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
 4. A denial of a Section 6409(a) permit application shall be without prejudice to the applicant, the real property owner, or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, administrative use permit, or Section 6409(a) permit as appropriate.

- H. Appeals. Community development director decisions on a Section 6409(a) Permit are final and may not be appealed.
- I. No Permit Term Extension.
 - 1. The approval of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station.
 - 2. A Section 6409(a) permit does not extend the permit term for any conditional use permit, administrative use permit, or other underlying regulatory approval and its term shall be coterminous with the underlying permit for the subject tower or base station.
- J. Applicant Notifications for Deemed Granted Remedies.
 - 1. Under state and/or federal law, the city's failure to act on a wireless communications facility permit application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions, accounting for tolling, may result in the permit being deemed granted by operation of law.
 - 2. To the extent federal or state law provides a "deemed granted" remedy for wireless communications facility applications not timely acted upon by the city, no such application shall be deemed granted unless and until the applicant satisfies the following requirements:
 - a. Submits a complete application package consistent with the application procedures specified in this chapter and applicable federal and state laws and regulations.
 - b. Following the date by which the city must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide notice to the city that the application is deemed granted by operation of law.
- K. Accelerated Permit Terms Due to Invalidation.
 - 1. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) permit, the permit or permits issued in connection with such 6409(a) modification(s) shall automatically expire one year from the effective date of the judicial order.
 - 2. A permit holder is not required to remove its improvements approved under the invalidated Section 6409(a) permit if the permit holder submits an application for a conditional use permit or administrative use permit for those improvements before the one-year period ends.
- L. No Waiver of Standing. The approval of a Section 6409(a) permit shall not be construed to waive any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) modification.

SECTION 3. Section 18.96.070 (Preferred siting and location) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.070 - Preferred siting and location.

The following siting and location preferences apply to all proposed new facilities and substantial changes to existing facilities. The community development director may require the applicant to submit an alternative sites analysis and evidence to demonstrate that a proposed facility could not be feasibly installed in a preferred site or location.

- A. Preferred Siting. To the extent possible, all proposed facilities should be sited according to the following preferences, ordered from most preferred to least preferred:
 1. Collocations on existing base stations outside the rights-of-way; then
 2. Collocations on towers outside the rights-of-way; then
 3. New building-mounted facilities outside the rights-of-way; then
 4. New towers outside the rights-of-way.
- B. Preferred Locations — General. All applicants should, to the extent possible, propose new facilities and substantial changes to existing facilities in non-residential zones.
- C. Preferred Locations — Non-Residential Zones. To the extent possible, all proposed facilities in non-residential zones should be located according to the following preferences, ordered from most preferred to least preferred:
 1. City owned or controlled parcels; then
 2. Parcels in the public facilities (PF) zone; then
 3. Parcels in the industrial (CI, IO, IC, IL, IG) zones; then
 4. Parcels in the commercial (CN, CG, CH, CS) zones;
 5. Parcels in the sports recreation leisure (SRL) zone.
 6. Parcels in the mixed use (MU-D, MU-N, MUF) zones.
- D. Preferred Locations -Residential and Open Space Zones. If a facility is proposed in a residential (RE, RDL, RDH, RAL, RAM, RAH)), a residential Planned Development, or open space (OS) zone, all facilities should be located according to the following preferences, ordered from most preferred to least preferred:
 1. City owned or controlled parcels; then
 2. Parcels that contain non-residential uses and do not contain residential uses; then
 3. Parcels that contain non-residential conditional uses and do contain residential uses; then
 4. Parcels that do not contain single-family homes; then
 5. All other parcels.

SECTION 4. Section 18.96.080 (Development standards) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.080 - Development standards.

A. General Design Standards. All facilities must conform to the following design standards.

1. Concealment. All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property must be completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:
 - a. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse, or dumpster corral; then
 - b. Within a new structure designed to integrate with or mimic the adjacent existing structure; then
 - c. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.
2. Height.
 - a. All new facilities and substantial changes to existing facilities must not exceed the height limit in the applicable zone except as allowed in Paragraph b below.
 - b. The review authority may approve a height exception up to 8 feet above the height limit when a proposed facility is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any towers or utility poles.
3. Setbacks. All facilities must comply with all setback requirements in the applicable zone.
4. Collocation. Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.
5. Landscaping. In addition to any landscaping required by the city for concealment or screening purposes, the applicant shall install and maintain additional landscaping to replace any existing landscaping displaced during the construction or installation of the facility.
6. Backup or Standby Power Sources and Generators. The city may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility cannot feasibly achieve its power needs with batteries, fuel cells or other similarly non-polluting, low noise-level means.
7. Lights.
 - a. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may exempt an applicant from this requirement when the applicant demonstrates a substantial public safety need.

- b. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the city to the maximum extent feasible.
 - 8. Noise. All transmission equipment and other equipment (including without limitation air conditioners and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in municipal code Chapter 8.28 (Noise).
 - 9. Signage.
 - a. A facility may not display any signage or advertisements unless expressly allowed by the city in a written approval, recommended under FCC regulations or required by law or permit condition.
 - b. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 - 10. Code Compliance. A permit holder shall design and maintain all facilities in compliance with all applicable federal, state, and local laws, codes, regulations, ordinances, or other rules.
- B. Tower-Mounted Facilities.
- 1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new towers applications should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks, and water tanks); then
 - b. Faux trees; then
 - c. Monopoles that do not conceal the antennas within a concealment device.
 - 2. Tower-mounted Equipment. All tower-mounted equipment shall be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
 - 3. Ground-mounted Equipment. Ground-mounted equipment shall be concealed with opaque fences or other opaque enclosures. The city may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
 - 4. Concealment Standards for Faux Trees. All faux tree facilities shall comply with the following standards:
 - a. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least eighteen inches.
 - b. The canopy shall be naturally tapered to mimic the particular tree species.

- c. All tower-mounted equipment, including antennas, equipment cabinets, cables, mounts, and brackets, shall be painted flat natural colors to mimic the particular tree species.
 - d. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage.
 - e. The entire vertical structure shall be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.
- C. Building and Facade Mounted Facilities.
- 1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new building and facade mounted facilities should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Completely concealed and architecturally integrated facade or rooftop mounted base stations which are not visible from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
 - b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys, and water tanks); then
 - c. Facade-mounted facilities incorporated into "pop-out" screen boxes designed to be architecturally consistent with the original support structure; then
 - d. Exposed facade-mounted and rooftop antennas.
 - 2. Ground-mounted Equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, outdoor ground-mounted equipment shall be concealed with opaque fences or landscape features that mimic the adjacent structures (including, but not limited to, dumpster corrals and other accessory structures).

Section 4. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 5. **Effective Date; Posting.** This Ordinance shall take effect on May 18, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 3rd DAY OF APRIL 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF APRIL 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:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: May 18, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2300, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th day of April 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2301 Wireless in right of way (2276 : Adopt Ordinance 2301 - Wireless in right-of-way)

DRAFT



Meeting Minutes City Council

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

Wednesday, April 3, 2019 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 6:00 p.m. for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

TELECONFERENCE

Council Member Spring participated in the regular meeting via teleconference as follows:

Crowne Plaza, Greater Noida
 Institutional Green 1, Surajpur Chowk
 Greater Noida, Uttar Pradesh -201306

Public comment from the teleconference location was allowed.

SPECIAL MEETING

6:00 P.M.

Minutes Acceptance: Minutes of Apr 3, 2019 6:00 PM (CONSENT CALENDAR)

CALL TO ORDER

Mayor Constantine called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Remote	7:03 PM
Yvonne Martinez Beltran	Council Member	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

CLOSED SESSION

City Attorney Donald Larkin announced the closed session item.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 6:01 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:01 p.m.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (CA Gov Code Section 54956.9(a))

Patton et al. v. City of Morgan Hill, et al. Case No. 16-CV-303044

REGULAR MEETING

7:00 P.M.

RECONVENE

The regular meeting convened at 7:03 p.m.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action from the closed session item.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr shared that he serves on the Board of Directors for the Valley Transportation

Authority (VTA) representing the cities of Morgan Hill and Gilroy. He reminded the community that the VTA is going through a process of developing the "Next Network" which lays out how they will be providing services. The plan is viewable on the VTA's website. Starting in April, committees will begin looking at the plan and in May it will be brought before the Board for final approval. There will be some changes to the services in South County including possible changes to the express bus services and services will be added to line 68. He encouraged the community to keep reviewing the plan throughout the process and providing feedback, before it gets to the Board in May.

He shared that the City has been working with Valley Water on a flood control project that is designed to alleviate the significant flooding that happens in Downtown Morgan Hill and parts of both northern and southern Morgan Hill. This project has been in the works for decades. Recently the Army Corps of Engineers issued the final permit that has been needed to begin construction on this project. Valley Water will now put the project out to bid and hopes to begin construction this summer. This project will provide flood protection to Downtown Morgan Hill, to over 1,000 homes and 500 businesses, and over 1,000 acres of farmland that is flooded on a routine basis. For those folks that have to pay high flood insurance rates, those rates will change once this project is completed. We are very excited that this project is getting started. When it does get started, you will receive lots of communication from both the City of Morgan Hill and Valley Water about how the construction may impact your lives.

He concluded by sharing that the wastewater treatment plant that Morgan Hill shares with Gilroy was just awarded top awards from the California Water Environment Association as both "Plant of the Year" and "Operator of the Year." These are significant awards that demonstrate environmental stewardship, plant operations, permit compliance, and cost effectiveness.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She recommended that items 6 and 13 be continued to the April 17, 2019 City Council meeting.

She shared that next week on Wednesday, April 10, 2019, Valley Water will have an environmental and project status update for the Anderson Dam Seismic Retrofit Project. That will take place at 6:00 p.m. at the Community and Cultural Center.

City Manager Christina Turner, Assistant City Manager Leslie Little, and the City Council recognized and thanked Principal Planner John Baty for his outstanding service to the City and wished him well in his new adventures.

OTHER REPORTS

Mayor Constantine shared that in regard to the interviews to fill vacancies on the Library, Culture, and Arts commission that took place on March 20, 2019, the Council re-appointed Katie Khera and Poonam Chabra and appointed Jake Thompson and Suman Ganapthy to serve terms ending April 1, 2021.

PUBLIC COMMENT

The public comment was opened at 7:18 p.m.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda continuing items 6 and 13 to the April 17, 2019 City Council meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 3, 4, 5, and 7.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

1. APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

Recommendation:

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

2. ITEM PULLED FOR DISCUSSION

3. APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT

Recommendation:

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

4. RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT

Recommendation:

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

5. RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Recommendation:

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

6. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, 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.

Item continued to the April 17, 2019 City Council meeting.

7. APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

Recommendation:

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

8. ITEM PULLED FOR SEPARATE VOTE

ITEM PULLED FOR SEPARATE VOTE

APPROVE THE MARCH 20, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT:	APPROVED [4 TO 0]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSTAIN:	Spring

ITEM PULLED FOR DISCUSSION

2. APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)

Recommendation:

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

Principal Planner John Baty presented the report.

The public comment was opened at 7:22 p.m.

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

MOTION:

Approving the recommended action.

Minutes Acceptance: Minutes of Apr 3, 2019 6:00 PM (CONSENT CALENDAR)

RESULT: AUTHORIZED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr, McKay

OTHER BUSINESS

9. PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

Recommendation:

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

Program Administrator Anthony Eulo, Principal Planner John Baty, and Assistant City Manager Leslie Little presented the report.

The public comment was opened at 8:05 p.m.

Gordon Jacoby was called to speak.

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

RESULT: NO ACTION TAKEN

The meeting recessed at 8:49 p.m.

The meeting reconvened at 8:57 p.m.

10. APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

Recommendation:

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

Economic Development Manager John Lang presented the report.

The public comment was opened at 9:40 p.m. The following people were called to speak:

Trevor Bacolini

Ginbar Ketema

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

MOTION:

Approving the small cell license agreement, small cell design standards, authorizing the City Engineer to amend the standards as necessary, and authorizing the City Manager to negotiate, amend, and execute small cell license agreements consistent with the small cell design standards for up to forty-four City owned street light poles for each telecommunication provider.

RESULT: APPROVED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr, McKay

PUBLIC HEARING

11. INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

Economic Development Manager John Lang and Economic Development Fellow Alexandra Noble presented the report.

The public hearing was opened at 10:11 p.m.

Trevor Bacolini was called to speak.

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

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

12. PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

Maintenance Services Coordinator Keri Russell presented the report.

The public hearing was opened at 10:17 p.m.

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

The meeting was recessed at 10:19 p.m.

The meeting was reconvened at 10:24 p.m.

MOTION:

Adopting resolution A.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Carr, McKay
ABSENT:	Martinez Beltran

13. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

Item continued to the April 17, 2019 City Council meeting.

RESULT:	CONTINUED TO A FUTURE MEETING
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14. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

Recommendation:

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Principal Planner John Baty presented the report.

The public hearing was opened at 10:35 p.m.

Dick Oliver was called to speak.

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

MOTION:

Extending the meeting to 11:30 p.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Approving the recommended actions.

RESULT:	DETERMINED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

15. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

Recommendation:

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Principal Planner John Baty presented the report.

The public hearing was opened at 11:17 p.m. The following people were called to speak:

Phil Kerr

Gershon Yakir

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

MOTION:

Extending the meeting to 11:45 p.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

MOTION:

Extending the meeting to 12:15 a.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

MOTION:

Approving the recommended actions.

RESULT:	DETERMINED [3 TO 1]
MOVER:	Rich Constantine, Mayor
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
NAYS:	Martinez Beltran
ABSENT:	Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting was adjourned in honor of John Baty at 12:13 a.m.

MINUTES PREPARED BY:

Minutes Acceptance: Minutes of Apr 3, 2019 6:00 PM (CONSENT CALENDAR)

Michelle Bigelow, Deputy City Clerk

Minutes Acceptance: Minutes of Apr 3, 2019 6:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 17, 2019

PREPARED BY: Angie Gonzalez, Council Services Assistant

APPROVED BY: City Manager

APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2019

RECOMMENDATION(S)

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to present Recology South Valley's (Recology) request for an adjustment in the maximum allowable solid waste rates charged within the City for City Council consideration and action.

One of the provisions of Recology's franchise agreement has historically been that service rate increases are based upon changes in the Consumer Price Index. With the amendment to the franchise agreement approved in 2014, rate amendments are now based on changes in both the Consumer Price Index and the price of compressed natural gas. The calculated rate adjustment requested this year for these factors is a 3.38% increase.

In addition to the above normal annual adjustment, a change in needed services has generated the need for an additional adjustment this year. As a result of State legislation and regulation, the City and Recology are required to significantly expand the provision of organic waste collection services to commercial accounts. CalRecycle, the State agency that regulates the City, is closely monitoring the City's implementation of this law to ensure that it is rigorously followed. The increased volume of organic waste, increases the overall costs of collecting, handling, and composting commercial organics. These costs are significantly higher than the cost of simply landfilling organic materials and necessitate additional trucks and drivers. Recology's overall rates need to be further adjusted to cover these costs. The incremental adjustment for the required service change is an additional 2.30%.

In accordance with their franchise agreement with the City, Recology submitted the attached timely request for a rate adjustment and staff has determined that Recology's

rate application follows the formula prescribed in the amended franchise agreement. The total calculated rate adjustment requested this year is a 5.68% increase. For residential customers, this adjustment applied to the current, basic residential service rate of \$31.60 is \$1.79 per month. With the approval of this adjustment, the maximum permitted monthly charge for flatland customers will be \$33.39 and the maximum permitted monthly charge for hillside customers will be \$36.32. For a business getting a 3-yard dumpster serviced once per week, the maximum allowable monthly rate will rise from \$347.56 to \$367.30.

It is recommended that the Council adopt the resolution increasing the maximum allowed rates for solid waste management services for July 2019 – June 2020.

COMMUNITY ENGAGEMENT: Inform

The community will be informed about the rate amendment via notices in the bills they receive from Recology.

ALTERNATIVE ACTIONS:

Not applicable as the City is contractually obligated to approve this amendment to the maximum rates for the normal annual adjustment, and if the City did not approve the additional service rate to add the additional services, significant fines would result.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has evaluated solid waste rate adjustments annually for the past seventeen years. In 2014, the City Council approved an amendment to the franchise agreement which changed the formula for the annual process.

FISCAL AND RESOURCE IMPACT:

The City's annual franchise fee revenues will increase by approximately \$60,000 under the proposed rate adjustments. This increase will be incorporated into the City's budget and financial forecast to be presented during the mid-cycle budget update. Franchise fee is a revenue source of the General Fund (010). Processing this application is an anticipated and included activity in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

This action will not result in physical changes to the environment and it is not a project under the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Recology Rate Resolution 2019
2. 2019 Rate Application

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN ADJUSTMENT TO SOLID WASTE COLLECTION RATES FOR 2019**

WHEREAS, the City of Morgan Hill (the "City") has approved a franchise agreement with Recology South Valley ("Recology") that establishes a methodology for regulating the maximum rates that Recology can charge to Morgan Hill customers; and

WHEREAS, Recology has submitted an application for a rate adjustment that substantially complies with the methodology in the Agreement; and

WHEREAS, the cost of living, as indicated by the consumer price index, and the cost of motor fuels have increased during the past year causing an increase in the cost of providing service; and

WHEREAS, additional organic collection services for businesses are needed to be added to the community in order to remain in compliance with State regulations; and

WHEREAS, providing these additional services necessitates amending solid waste rates in order to recover costs; and

WHEREAS, Recology has agreed to provide notice in their next garbage billing explaining the rate adjustment process; and

WHEREAS, further reasons supporting the rate adjustment described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Solid Waste Management Rate Adjustment for 2019" submitted for City Council consideration at its meeting of April 17, 2019, 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, 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 that Recology South Valley is hereby authorized to adjust their rates up to the maximum levels listed on the rate schedule attached hereto as Exhibit A.

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 17th day of April 2019 by the following vote.

AYES:

COUNCIL MEMBERS:

NOES:

COUNCIL MEMBERS:

ABSENT:

COUNCIL MEMBERS:

ABSTAIN:

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. adopted by the City Council at the Regular Meeting on April 17, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	31.60	1.79	33.39
SGL FAM - NO STREET SWEEPING	31.21	1.77	32.98
HILLSIDE RESIDENTIAL	34.37	1.95	36.32
HILLSIDE RESIDENTIAL - NO SWEEPING	33.89	1.92	35.81
LOW INCOME	25.39	1.44	26.83
LOW INCOME - NO ST SWEEPING	25.08	1.42	26.50
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	42.07	2.39	44.46
BULKY MATERIAL (EACH EXTRA ITEM)	16.81	0.95	17.76
SIDE/BACKYARD SERV	12.61	0.72	13.33
GARBAGE TOTES RENTAL	5.35	0.30	5.65
RETURNED TRIP COLLECTION	32.92	1.87	34.79
<u>Commercial Rates</u>			
1 CAN COMM	19.33	1.10	20.43
2 CANS COMM	31.68	1.80	33.48
3 CANS COMM	44.10	2.50	46.60
4 CANS COMM	56.53	3.21	59.74
5 CANS COMM	68.94	3.92	72.86
6 CANS COMM	81.37	4.62	85.99
7 CANS COMM	93.74	5.32	99.06
8 CANS COMM	106.13	6.03	112.16
9 CANS COMM	118.55	6.73	125.28
10 CANS COMM	130.95	7.44	138.39
<u>ORGANICS</u>			
1 CAN COMM			16.34
2 CANS COMM			26.78
3 CANS COMM			37.28
4 CANS COMM			47.79
5 CANS COMM			58.29
6 CANS COMM			68.79
7 CANS COMM			79.25
8 CANS COMM			89.73
9 CANS COMM			100.22
10 CANS COMM			110.71
2 YD 1 X WEEK	239.94	13.63	253.57
2 YD 2 X WEEK	454.94	25.84	480.78
2 YD 3 X WEEK	669.91	38.05	707.96
2 YD 4 X WEEK	884.90	50.26	935.16
2 YD 5 X WEEK	1,099.85	62.47	1,162.32
2 YD 6 X WEEK	1,313.26	74.59	1,387.85
1/2 3 YD 1 X WEEK	173.78	9.87	183.65
3 YD 1 X WEEK	347.56	19.74	367.30
3 YD 2 X WEEK	661.87	37.59	699.46
3 YD 3 X WEEK	976.25	55.45	1,031.70

Attachment: Recology Rate Resolution 2019 (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
3 YD 4 X WEEK	1,290.52	73.30	1,363.82
3 YD 5 X WEEK	1,604.84	91.15	1,695.99
3 YD 6 X WEEK	1,919.14	109.01	2,028.15
4 YD 1 X WEEK	449.73	25.54	475.27
4 YD 2 X WEEK	854.67	48.55	903.22
4 YD 3 X WEEK	1,259.64	71.55	1,331.19
4 YD 4 X WEEK	1,664.64	94.55	1,759.19
4 YD 5 X WEEK	2,069.59	117.55	2,187.14
4 YD 6 X WEEK	2,474.56	140.56	2,615.12
6 YD 1 X WEEK	671.94	38.17	710.11
6 YD 2 X WEEK	1,285.94	73.04	1,358.98
6 YD 3 X WEEK	1,899.93	107.92	2,007.85
6 YD 4 X WEEK	2,513.96	142.79	2,656.75
6 YD 5 X WEEK	3,127.98	177.67	3,305.65
6 YD 6 X WEEK	3,741.98	212.54	3,954.52
SPECIAL COLLECTION	27.61	1.57	29.18
ORGANICS			
1 YD 1 X WEEK			139.97
1 YD 2 X WEEK			265.39
1 YD 3 X WEEK			390.79
1 YD 4 X WEEK			516.21
1 YD 5 X WEEK			641.60
1 YD 6 X WEEK			766.09
2 YD 1 X WEEK			202.86
2 YD 2 X WEEK			384.62
2 YD 3 X WEEK			566.37
2 YD 4 X WEEK			748.13
2 YD 5 X WEEK			929.86
2 YD 6 X WEEK			1,110.28
1/2 3 YD 1 X WEEK			146.92
3 YD 1 X WEEK			293.84
3 YD 2 X WEEK			559.57
3 YD 3 X WEEK			825.36
3 YD 4 X WEEK			1,091.06
3 YD 5 X WEEK			1,356.79
3 YD 6 X WEEK			1,622.52
4 YD 1 X WEEK			380.22
4 YD 2 X WEEK			722.58
4 YD 3 X WEEK			1,064.95
4 YD 4 X WEEK			1,407.35
4 YD 5 X WEEK			1,749.71
4 YD 6 X WEEK			2,092.10
6 YD 1 X WEEK			568.09
6 YD 2 X WEEK			1,087.18
6 YD 3 X WEEK			1,606.28
6 YD 4 X WEEK			2,125.40

Attachment: Recology Rate Resolution 2019 (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
6 YD 5 X WEEK			2,644.52
6 YD 6 X WEEK			3,163.62
SPECIAL COLLECTION			23.34
REGULAR COMPACTOR (PER YARD)	43.62	2.48	46.10
RECYCLE COMPACTOR (PER YARD)	25.79	1.46	27.25
SUPER COMPACTOR (PER YARD)	87.22	4.95	92.17
20 YARD DEBRIS BOX	480.06	27.27	507.33
35 YARD DEBRIS BOX	685.82	38.95	724.77
40 YARD DEBRIS BOX	800.16	45.45	845.61
ORGANICS			
20 YARD DEBRIS BOX			405.86
35 YARD DEBRIS BOX			579.82
40 YARD DEBRIS BOX			676.49
PERM RENTAL	254.34	14.45	268.79
PERM DISPOSAL (PER YARD)	23.92	1.36	25.28
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	245.38	13.94	259.32
40 YARD OTHER RECYCLABLES	409.01	23.23	432.24
20 YARD DEBRIS BOX HILLSIDE	598.56	34.00	632.56
40 YARD DEBRIS BOX HILLSIDE	918.22	52.15	970.37
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	378.04	21.47	399.51
2 YARD COMPACTOR 2 X WEEK	756.07	42.94	799.01
2 YARD COMPACTOR 3 X WEEK	1,134.11	64.42	1,198.53
3 YARD COMPACTOR 1 X WEEK	567.06	32.21	599.27
3 YARD COMPACTOR 2 X WEEK	1,134.11	64.42	1,198.53
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	755.90	42.94	798.84
2 YARD COMPACTOR 2 X WEEK	1,511.80	85.87	1,597.67
2 YARD COMPACTOR 3 X WEEK	2,267.70	128.81	2,396.51
3 YARD COMPACTOR 1 X WEEK	1,133.85	64.40	1,198.25
3 YARD COMPACTOR 2 X WEEK	2,267.70	128.81	2,396.51
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: Recology Rate Resolution 2019 (2280 : Recology Rate Adjustment)



March 4, 2019

Mr. Anthony Eulo
Program Administrator
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: Revised July 2018 Rate Adjustment

Dear Anthony:

As outlined in section 6 of the Amended and Restated franchise agreement, we submit our request for a 5.68% adjustment to the collection rates effective July 1, 2019. 3.38% is attributed to the existing contractual formula and 2.30% is related to cost of commercial organics.

Section 6 (B) in the First Amendment describes using November to November index values for both the Consumer Price Index (CPI) for all Urban Consumers for the San Francisco/Oakland Metropolitan Area and the Department of Energy's Clean Cities Alternative Fuel Price Report.

The Bureau of Labor Statistics publishes the CPI index every other month; therefore the CPI index is not published in November. Additionally, the Department of Energy publishes the Alternative Fuel Price Report in October and January, therefore November is not available. Both indices are available in October.

For consistency purposes, and to most closely match the original Franchise Agreement we have used the October 2017 to October 2018 indexes in both cases as we did last year.

Attached are the following exhibits:

Exhibit 1 - CPI Calculation

CPI calculation using the formula described section 6 of the Amendment and Restated franchise agreement. Using October 2017 to October 2018 indexes.

Exhibit 2 – CPI Documentation

A Copy of the printout from the U.S. Department of Labor - Bureau of Labor Statistics web site displaying the required values of the CPI calculation.

Exhibit 3 – Clean Cities Alternative Fuel Price Report Documentation

Table 6 compressed Natural Gas (relative to Diesel) West Coast report

Exhibit 4 – Rate Schedule

This table applies the CPI factor and Fuel index to the current rates and calculates the adjusted new rates for July 1, 2019.

I have also included backup data outlining the additional cost of the commercial organics program.

Should you have any questions or need additional information, please call me at (408) 846-1395.

Sincerely,



Phil Couchee
General Manager
Recology South Valley

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATE ADJUSTMENT
EFFECTIVE JULY 1, 2019**

CPI RATE ADJUSTMENT

Formula outlined in Section 6 (B) First Amendment of
December 13, 2005 Franchise Agreement.

$$\frac{X (I) - X (I-2)}{X (I-2)}$$

Consumer Price Index Values

X (I) = October, 2018 = 289.673

X (I-2) = October, 2017 = 277.570

$$\text{CPI} = \frac{289.673 - 277.570}{277.570}$$

CPI = 4.36%

70% of CPI = 3.05%

***Pacific Gas & Electric's
G-NGV1 Schedule***

X (I) = October, 2018 = 2.85

X (I-2) = October, 2017 = 2.76

$$\text{MFI} = \frac{2.85 - 2.76}{2.76}$$

MFI = 3.26%

10% of MFI = 0.33%

Net index rate percentage adjustment

3.38%

AB 1826 Adjustment

2.30%

Total rate adjustment

5.68%

Attachment: 2019 Rate Application (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	31.60	1.79	33.39
SGL FAM - NO STREET SWEEPING	31.21	1.77	32.98
HILLSIDE RESIDENTIAL	34.37	1.95	36.32
HILLSIDE RESIDENTIAL - NO SWEEPING	33.89	1.92	35.81
LOW INCOME	25.39	1.44	26.83
LOW INCOME - NO ST SWEEPING	25.08	1.42	26.50
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	42.07	2.39	44.46
BULKY MATERIAL (EACH EXTRA ITEM)	16.81	0.95	17.76
SIDE/BACKYARD SERV	12.61	0.72	13.33
GARBAGE TOTE RENTAL	5.35	0.30	5.65
RETURNED TRIP COLLECTION	32.92	1.87	34.79
<u>Commercial Rates</u>			
1 CAN COMM	19.33	1.10	20.43
2 CANS COMM	31.68	1.80	33.48
3 CANS COMM	44.10	2.50	46.60
4 CANS COMM	56.53	3.21	59.74
5 CANS COMM	68.94	3.92	72.86
6 CANS COMM	81.37	4.62	85.99
7 CANS COMM	93.74	5.32	99.06
8 CANS COMM	106.13	6.03	112.16
9 CANS COMM	118.55	6.73	125.28
10 CANS COMM	130.95	7.44	138.39
<u>ORGANICS</u>			
1 CAN COMM			16.34
2 CANS COMM			26.78
3 CANS COMM			37.28
4 CANS COMM			47.79
5 CANS COMM			58.29
6 CANS COMM			68.79
7 CANS COMM			79.25
8 CANS COMM			89.73
9 CANS COMM			100.22
10 CANS COMM			110.71
2 YD 1 X WEEK	239.94	13.63	253.57
2 YD 2 X WEEK	454.94	25.84	480.78
2 YD 3 X WEEK	669.91	38.05	707.96
2 YD 4 X WEEK	884.90	50.26	935.16
2 YD 5 X WEEK	1,099.85	62.47	1,162.32
2 YD 6 X WEEK	1,313.26	74.59	1,387.85
1/2 3 YD 1 X WEEK	173.78	9.87	183.65
3 YD 1 X WEEK	347.56	19.74	367.30
3 YD 2 X WEEK	661.87	37.59	699.46
3 YD 3 X WEEK	976.25	55.45	1,031.70
3 YD 4 X WEEK	1,290.52	73.30	1,363.82
3 YD 5 X WEEK	1,604.84	91.15	1,695.99
3 YD 6 X WEEK	1,919.14	109.01	2,028.15
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4 YD 5 X WEEK	2,069.59	117.55	2,187.14
4 YD 6 X WEEK	2,474.56	140.56	2,615.12
6 YD 1 X WEEK	671.94	38.17	710.11
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6 YD 5 X WEEK	3,127.98	177.67	3,305.65
6 YD 6 X WEEK	3,741.98	212.54	3,954.52
SPECIAL COLLECTION	27.61	1.57	29.18
<u>ORGANICS</u>			
1 YD 1 X WEEK			139.97
1 YD 2 X WEEK			265.39
1 YD 3 X WEEK			390.79

Attachment: 2019 Rate Application (2280 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2019

DESCRIPTION	Current Rates	Add Current 5.68%	New Rates
1 YD 4 X WEEK			516.21
1 YD 5 X WEEK			641.60
1 YD 6 X WEEK			766.09
2 YD 1 X WEEK			202.86
2 YD 2 X WEEK			384.62
2 YD 3 X WEEK			566.37
2 YD 4 X WEEK			748.13
2 YD 5 X WEEK			929.86
2 YD 6 X WEEK			1,110.28
1/2 3 YD 1 X WEEK			146.92
3 YD 1 X WEEK			293.84
3 YD 2 X WEEK			559.57
3 YD 3 X WEEK			825.36
3 YD 4 X WEEK			1,091.06
3 YD 5 X WEEK			1,356.79
3 YD 6 X WEEK			1,622.52
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4 YD 5 X WEEK			1,749.71
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6 YD 6 X WEEK			3,163.62
SPECIAL COLLECTION			23.34
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20 YARD DEBRIS BOX	480.06	27.27	507.33
35 YARD DEBRIS BOX	685.82	38.95	724.77
40 YARD DEBRIS BOX	800.16	45.45	845.61
ORGANICS			
20 YARD DEBRIS BOX			405.86
35 YARD DEBRIS BOX			579.82
40 YARD DEBRIS BOX			676.49
PERM RENTAL	254.34	14.45	268.79
PERM DISPOSAL (PER YARD)	23.92	1.36	25.28
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
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40 YARD OTHER RECYCLABLES	409.01	23.23	432.24
20 YARD DEBRIS BOX HILLSIDE	598.56	34.00	632.56
40 YARD DEBRIS BOX HILLSIDE	918.22	52.15	970.37
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	378.04	21.47	399.51
2 YARD COMPACTOR 2 X WEEK	756.07	42.94	799.01
2 YARD COMPACTOR 3 X WEEK	1,134.11	64.42	1,198.53
3 YARD COMPACTOR 1 X WEEK	567.06	32.21	599.27
3 YARD COMPACTOR 2 X WEEK	1,134.11	64.42	1,198.53
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	755.90	42.94	798.84
2 YARD COMPACTOR 2 X WEEK	1,511.80	85.87	1,597.67
2 YARD COMPACTOR 3 X WEEK	2,267.70	128.81	2,396.51
3 YARD COMPACTOR 1 X WEEK	1,133.85	64.40	1,198.25
3 YARD COMPACTOR 2 X WEEK	2,267.70	128.81	2,396.51
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: 2019 Rate Application (2280 : Recology Rate Adjustment)

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Databases, Tables & Calculators by Subject

Change Output Options:

From: 2008 To: 2018


☐ include graphs ☐ include annual averages

[More Formatting Options](#)

Data extracted on: February 21, 2019 (11:28:57 AM)

CPI-All Urban Consumers (Current Series)

Series Id: CUUR349BSA0

Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2008		219.612		222.074		225.181		225.411		225.824		218.528	222.767	221.730	223.800
2009		222.166		223.854		225.692		225.801		226.051		224.239	224.395	223.305	225.480
2010		226.145		227.697		228.110		227.954		228.107		227.658	227.469	226.994	227.940
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.690
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.200
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.150
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.460
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.420
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.770
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.540
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.420

Compressed Natural Gas (Relative to Diesel)

TABLE 6
Compressed Natural Gas (CNG) and Diesel
Average Retail Prices by Region

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.90	\$3.32	-\$0.42
Central Atlantic	\$2.60	\$3.31	-\$0.71
Lower Atlantic	\$2.38	\$3.20	-\$0.82
Midwest	\$2.30	\$3.28	-\$0.98
Gulf Coast	\$2.38	\$2.99	-\$0.61
Rocky Mountain	\$2.15	\$3.24	-\$1.09
West Coast	\$2.85	\$3.98	-\$1.13
NATIONAL AVERAGE	\$2.48	\$3.36	-\$0.88

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis, between October 1 and October 15, 2018.

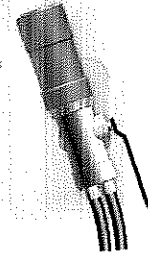
Compressed Natural Gas (Relative to Diesel)

TABLE 6 Compressed Natural Gas (CNG) and Diesel Average Retail Prices by Region			
Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.76	\$2.81	-\$0.05
Central Atlantic	\$2.51	\$2.97	-\$0.46
Lower Atlantic	\$2.38	\$2.74	-\$0.36
Midwest	\$2.28	\$2.68	-\$0.40
Gulf Coast	\$2.34	\$2.48	-\$0.14
Rocky Mountain	\$2.26	\$2.63	-\$0.37
West Coast	\$2.76	\$3.13	-\$0.37
NATIONAL AVERAGE	\$2.45	\$2.76	-\$0.31

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$ DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis, between October 1 and October 16, 2017.



Special - Regular Meeting Agenda

City Council

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

Wednesday, April 17, 2019 5:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

AMENDED AGENDA

Teleconference information added to the agenda

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 p.m. for the purpose of conducting Planning Commission interviews.

5:00 p.m. Planning Commission interviews

7:00 p.m. Regular Meeting

TELECONFERENCE

Council Member Martinez Beltran will be participating in the meeting via teleconference as follows:

Crown Paradise Club Puerto Vallarta

Sala de Hospitalidad

Las Garzas 3, Zona Hotelera

Zona Hotelera Nte., 48333

Puerto Vallarta, Jal., Mexico

Public comment from the teleconference location shall be allowed.

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

Deputy City Clerk Michelle Bigelow

PLANNING COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL SIX (6) SEATS ON THE PLANNING COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY MANAGER QUARTERLY RECOGNITIONS

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

YOUTH ACTION COUNCIL ASSET # 9 - SERVICE TO OTHERS

PROCLAMATIONS

Proclaiming the Week of April 14th through April 20th as
National Telecommunicator's Week

April 17, 2019

LEGISLATIVE UPDATE

Assembly Member Robert Rivas

RECOGNITIONS

Daniel Redfield and Norma Bussing for their Service on the Library, Culture, and Arts Commission

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. APPROVE SECOND AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve Second Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project to a revised not to exceed total of \$583,433; and
2. Authorize the City Manager to execute and administer the amended agreement.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

Recommendation:

1. Approve the Third Amendment to Consultant Agreement with Asset Protection Group Private Security Inc. to a revised not exceed total of \$145,000 for four years; and
2. Authorize the City Manager to execute and administer the amended agreement.

4. APPROVAL OF DENNIS KENNEDY AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

Recommendation:

Authorize the City Manager to execute, administer, and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Dennis Kennedy Aquatics Center.

5. ACCEPT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES/ DEPARTMENT OF HOMELAND SECURITY FOR PORTABLE BARRICADE SYSTEM

Recommendation:

1. Adopt a resolution:
 - a. Accepting grant funds from the Santa Clara County Office of Emergency Services via the Department of Homeland Security in the amount of \$90,000, for the purchase of portable vehicle incursion barriers; and
 - b. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$90,000 in the Police Department budget for the capital expenditures; and
2. Authorize the City Manager to approve purchase order in the amount of \$90,000 with Delta Scientific Corporation.

6. APPROVE PURCHASE OF THREE HEART MONITOR AND DEFIBRILLATOR DEVICES

Recommendation:

1. Adopt resolution amending the City's adopted Fiscal Year (FY) 2018-19 Budget to appropriate \$40,000 from the General Fund (010) for the purchase of three Advanced Life Support (ALS) Heart Monitor Defibrillator devices; and
2. Authorize the City Manager to approve the purchase order in the amount of \$121,162, for the purchase of said devices from Physio-Control, Inc.

7. APPROVE 3 YEAR PROPERTY LEASE AGREEMENT WITH MONUMENT (TECHON) CONSTRUCTION AT 16200 VINEYARD BOULEVARD

Recommendation:

Approve and authorize the City Manager to amend and execute a new Standard Lease Agreement with Monument Construction dba Techcon for the property located at 16200 Vineyard Blvd with an initial annual lease amount of \$68,424.

8. APPROVE COMMUNITY PROMOTIONS FUNDING REQUESTS FOR FISCAL YEAR 2019-20

Recommendation:

Approve Fiscal Year (FY) 2019-20 Community Promotions funding requests totaling \$47,000.

9. APPOINT EMERGENCY STANDBY COUNCIL

Recommendation:

Appoint former City Council Members Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan as Emergency Standby Council Members to be called upon as needed in the event of an emergency.

10. ACCEPT FEBRUARY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

11. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, 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.

12. ADOPT ORDINANCE 2301 NEW SERIES, AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

Waive the reading, adopt Ordinance No. 2301, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

13. APPROVE THE APRIL 3, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

14. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2019

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2019.

Estimated Time: 15 Minutes

CONTINUED PUBLIC HEARINGS

15. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES - ITEM CONTINUING TO THE MAY 15, 2019 CITY COUNCIL MEETING

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.

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Enhancing Diversity and Inclusiveness · Advancing Regional Initiatives

2019-2020 STRATEGIC PRIORITIES

Agricultural Preservation
Cannabis Policy
Community Engagement and Messaging
Economic Development
Financial Stewardship
High Speed Rail
Homelessness
Housing Infrastructure
Telecommunications
Traffic/Transportation



Special - Regular Meeting Agenda

City Council

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

Wednesday, April 17, 2019 5:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 p.m. for the purpose of conducting Planning Commission interviews.

5:00 p.m. Planning Commission interviews

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

PLANNING COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL SIX (6) SEATS ON THE PLANNING COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY MANAGER QUARTERLY RECOGNITIONS

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

YOUTH ACTION COUNCIL ASSET # 9 - SERVICE TO OTHERS

PROCLAMATIONS

Proclaiming the Week of April 14th through April 20th as
National Telecommunicator's Week

LEGISLATIVE UPDATE

Assembly Member Robert Rivas

RECOGNITIONS

Daniel Redfield and Norma Bussing for their Service on the Library, Culture, and Arts Commission

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. APPROVE SECOND AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve Second Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project to a revised not to exceed total of \$583,433; and
2. Authorize the City Manager to execute and administer the amended agreement.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

Recommendation:

1. Approve the Third Amendment to Consultant Agreement with Asset Protection Group Private Security Inc. to a revised not exceed total of \$145,000 for four years; and
2. Authorize the City Manager to execute and administer the amended agreement.

4. APPROVAL OF DENNIS KENNEDY AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

Recommendation:

Authorize the City Manager to execute, administer, and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Dennis Kennedy Aquatics Center.

5. ACCEPT FUNDS FROM THE SANTA CLARA COUNTY OFFICE OF EMERGENCY SERVICES/ DEPARTMENT OF HOMELAND SECURITY FOR PORTABLE BARRICADE SYSTEM

Recommendation:

1. Adopt a resolution:
 - a. Accepting grant funds from the Santa Clara County Office of Emergency Services via the Department of Homeland Security in the amount of \$90,000, for the purchase of portable vehicle incursion barriers; and
 - b. Amending the adopted Fiscal Year (FY) 2018-19 budget in the General Fund to recognize the Santa Clara County Office of Emergency Services/ Department of Homeland Security funds as revenue, and appropriate \$90,000 in the Police Department budget for the capital expenditures; and
2. Authorize the City Manager to approve purchase order in the amount of \$90,000 with Delta Scientific Corporation.

6. APPROVE PURCHASE OF THREE HEART MONITOR AND DEFIBRILLATOR DEVICES

Recommendation:

1. Adopt resolution amending the City's adopted Fiscal Year (FY) 2018-19 Budget to appropriate \$40,000 from the General Fund (010) for the purchase of three Advanced Life Support (ALS) Heart Monitor Defibrillator devices; and
2. Authorize the City Manager to approve the purchase order in the amount of \$121,162, for the purchase of said devices from Physio-Control, Inc.

7. APPROVE 3 YEAR PROPERTY LEASE AGREEMENT WITH MONUMENT (TECHON) CONSTRUCTION AT 16200 VINEYARD BOULEVARD

Recommendation:

Approve and authorize the City Manager to amend and execute a new Standard Lease Agreement with Monument Construction dba Techcon for the property located at 16200 Vineyard Blvd with an initial annual lease amount of \$68,424.

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Recommendation:

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Recommendation:

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CONTINUED PUBLIC HEARINGS

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